

WSR 21-20-035
PERMANENT RULES
BENTON CLEAN AIR AGENCY

[Filed September 27, 2021, 11:49 a.m., effective October 28, 2021]

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

Purpose: The changes to Benton Clean Air Agency (BCAA) Regulation 1 are to address outdated RCW codes throughout the regulation and update them with the correct new codes. References to fee tables no longer contained within BCAA Regulation 1 were removed. Addition of language regarding variances to the rule was added.

Citation of Rules Affected by this Order: Amending BCAA Regulation 1.

Statutory Authority for Adoption: RCW 70A.15.2040, 70A.15.3050(2).

Adopted under notice filed as WSR 21-13-125 on June 21, 2021.

Changes Other than Editing from Proposed to Adopted Version: None, other than to include the effective date of November 1, 2021.

Date Adopted: September 23, 2021.

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Regulation 1
 November 1, 2021

TABLE OF CONTENTS
REGULATION 1

ARTICLE 1 Policy, Purpose and Applicability
 Section 1.01 Name of the Agency 1-3
 Section 1.02 Policy and Purpose. 1-3
 Section 1.03 Applicability 1-3

ARTICLE 2 General Provisions
 Section 2.01 Powers and Duties of the Benton Clean Air Agency (BCAA) 2-1
 Section 2.02 Requirements for Board of Directors Members. 2-1
 Section 2.03 Powers and Duties of the Board of Directors. 2-2
 Section 2.04 Powers and Duties of the Control Officer 2-3
 Section 2.05 Severability 2-4
 Section 2.06 Confidentiality of Records and Information. 2-4
 Section 2.07 Entering Private, Public Property 2-4
 Section 2.08 Authority to Collect Fees. 2-5
Section 2.09 Variances 2-6

ARTICLE 3 Industrial Source Regulations
 Section 3.01 Incinerator Burning and Incineration Hours 3-1
 Section 3.02 General Surface Coating 3-1
 Section 3.03 General Air Pollution Control for Industrial Sources. 3-8
 Section 3.04 Standards for Marijuana Production and Marijuana Processing 3-8

ARTICLE 4 General Standards for Particulate Matter

Section 4.01 Definitions 4-1
 Section 4.02 Particulate Matter Emissions 4-1
 Section 4.03 Agricultural Particulate Matter Emissions 4-3

ARTICLE 5 Outdoor Burning
 Section 5.01 Definitions 5-1
 Section 5.02 Special Burning Permits 5-1
 Section 5.03 Outdoor Burning Requirements. 5-2
 Section 5.04 Benton Clean Air Agency Requirements 5-3

ARTICLE 6 Agricultural Burning
 Section 6.01 Definitions 6-1
 Section 6.02 Agricultural Burning Permit 6-1

ARTICLE 7 Solid Fuel Burning Device
 Section 7.01 Definitions 7-1
 Section 7.02 Solid Fuel Burning Device, Prohibitions 7-2

ARTICLE 8 Asbestos
 Section 8.01 Definitions 8-1
 Section 8.02 Asbestos Survey Requirements 8-4
 Section 8.03 Notification Requirements. 8-7
 Section 8.04 Asbestos Removal Requirements

Prior to
 Renovation or Demolition 8-9
 Section 8.05 Procedures for Asbestos Projects. 8-10
 Section 8.06 Alternate Means of Compliance 8-12
 Section 8.07 Exception for Hazardous Conditions 8-15
 Section 8.08 Disposal of Asbestos-Containing Waste
 Material 8-15
 Section 8.09 Compliance With Other Rules. 8-16

ARTICLE 9 Source Registration
 Section 9.01 Source Registration Required 9-1
 Section 9.02 Source Registration Program

Purpose
 and Components. 9-1
 Section 9.03 Registered Source General Requirements 9-2
 Section 9.04 Registered Source Emission Level Classification 9-2

ARTICLE 10 Fees and Charges
 Section 10.01 Fees and Charges Required 10-1
 Section 10.02 Fees Otherwise Provided 10-1
 Section 10.03 Fee Exemptions 10-1
 Section 10.04 General Administrative Fees 10-1
 Section 10.05 Registered Source Fees 10-1
 Section 10.06 Fees for Application for Notice of Construction (NOC) for Stationary and Portable Sources, and Notice of Intent to Operate (NIO) Relocating Portable Sources. 10-2
 Section 10.07 State Environmental Policy Act (SEPA) Fees. 10-3
 Section 10.08 Asbestos Fees and Waiting Periods 10-4
 Section 10.09 Title 5 Air Operating Permit Fees 10-5

Section 10.10 Special Burning Permit Fees 10-11
 Section 10.11 Agricultural Burning Permit Fees 10-11

ABBREVIATIONS AND ACRONYMS A-1

ARTICLE 1

Policy, Purpose and Applicability

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority: RCW ((70.94.205)) 70A.15.2510]

Section 1.01 Name of the Agency

The name of this Air Pollution Control Agency is the Benton Clean Air Agency, referred to as the Agency.

Section 1.02 Policy and Purpose

[Statutory Authority: RCW ((70.94.014)) 70A.15.1005, RCW ((70.94.057)) 70A.15.1520, and RCW ((70.94.144)) 70A.15.2040]

A. The public policy of the Agency under chapter ((70.94)) 70A.15 RCW is to:

1. Provide for the systematic control of air pollution from air contaminant sources within Benton County and for the proper development of the county's natural resources.
2. Secure and maintain such levels of air quality that protect human health and safety, including the most sensitive members of the population;
3. Secure compliance with the requirements of the Federal Clean Air Act;
4. Prevent injury to plant and animal life and to property;
5. Foster the comfort and convenience of its inhabitants;
6. Promote the economic and social development of Benton County; and
7. Facilitate the enjoyment of the natural attractions of Benton County.

B. The purpose of Regulation 1 is to establish technically feasible and reasonably attainable standards and to establish rules applicable to the control and/or prevention of the emission of air contaminants.

C. The intent of Regulation 1 is to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

D. The Agency intends to implement and enforce the state regulations. Wherever Regulation 1 restates the requirements and purposes of chapter ((70.94)) 70A.15 RCW, it is the intent of the Agency that Regulation 1 be interpreted in the same manner as the enabling statute.

Section 1.03 Applicability

[Statutory Authority: RCW ((70.94.144)) 70A.15.2040, RCW ((70.94.395)) 70A.15.3080, and RCW ((70.94.422 RCW)) 70A.15.3130]

A. The Agency implements and enforces the Washington Administrative Code State Air Pollution Control rules adopted by Ecology in Title 173 under chapter ((70.94)) 70A.15 RCW, as in effect now and including all future amendments, except where specific provisions of BCAA Regulation 1 apply.

B. The provisions of this regulation shall apply within Benton County of Washington State.

C. The Agency is authorized to enforce this regulation and may also adopt standards or requirements.

D. The Agency does not have jurisdiction over the following sources:

1. Specific source categories over which the State assumes jurisdiction.
2. Automobiles, trucks, aircraft, chemical pulp mills and primary aluminum reduction facilities.
3. Sources under the jurisdiction of the Energy Facility Site Evaluation Council (EFSEC) through chapter 80.50 RCW.

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.

Reviser's note: The unnecessary underscoring and strike-through 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.

ARTICLE 2

General Provisions

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

Section 2.01 Powers and Duties of the Benton Clean Air Agency (BCAA)

[Statutory Authority: RCW ((70.94.081)) 70A.15.1560, and RCW ((70.94.144)) 70A.15.2040]

A. RCW ((70.94.081)) 70A.15.1560 deems Benton Clean Air Agency a municipal corporation with the following authorities:

1. Right to perpetual succession;
2. Adopt and use a seal;
3. Sue and be sued in the name of the Agency in all courts and in all proceedings;
4. Receive, account for, and disburse funds;
5. Employ personnel; and
6. Acquire or dispose of any interest in real or personal property within or without the Agency in the furtherance of its purposes.

7. The Board will have all the powers and duties of Section 2.02 of this Regulation and of an activated air pollution control authority under RCW ((70.94.081)) 70A.15.1560 and ((70.94.144)) 70A.15.2040.

Section 2.02 Requirements for Board of Directors Members

[Statutory Authority: RCW ((70.94.100)) 70A.15.2000]

A. Public interest.

1. A majority of the members of the Agency's Board of Directors (Board) will represent the public interest.

2. A majority of the members of the Board will not derive a significant portion of their income from persons subject to enforcement orders pursuant to the State and Federal Clean Air Acts.

3. An elected public official and the Board will be presumed to represent the public interest. In the event that a member derives a significant portion of his/her income from persons subject to enforcement orders, he/she will delegate

sole responsibility for administration of any part of the program that involves these persons to an assistant.

B. Disclosure.

1. Each member of the Board will disclose any potential conflict of interest in any matter prior to any action or consideration before the Board.

2. The member will remove themselves from participation as a Board member in any action, including voting on the matter.

3. The Board will, if the potential conflict of interest, in the judgment of a majority of the Board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action.

a. Definition of significant income: For the purposes of this Section, "significant portion of their income" means twenty percent of gross personal income for a calendar year. In the case of a retired person, "significant portion of income" will mean fifty percent of income in the form of pension or retirement benefits from a single source other than Social Security. Income derived from employment with local or state government will not be considered in the determination of "significant portion of income."

Section 2.03 Powers and Duties of the Board of Directors

A. Pursuant to the provisions of chapter ~~((70.94))~~ 70A.15 RCW, the Board will:

1. Establish procedures and take action required to implement Regulation 1 consistent with federal, state, and local air pollution laws or regulations;

2. Take action as may be necessary to prevent air pollution including control and measurement of the emission of air contaminant from a source; and

3. Appoint a Control Officer, in accordance with RCW ~~((70.94.170))~~ 70A.15.2300, competent in the control of air pollution who will, with the Board's advice and approval, enforce the provisions of Regulation 1 and all ordinances, orders, resolutions, or rules and regulations of the Agency pertinent to the control and prevention of air pollution in Benton County.

B. Under RCW ~~((70.94.141))~~ 70A.15.2040, the Board will have the power to:

1. Adopt, amend, and repeal its own rules and regulations, implementing chapter ~~((70.94))~~ 70A.15 RCW and consistent with it, after consideration at a public hearing held in accordance with chapter 42.30 RCW. Rules and regulations will also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, 34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules will not be published in the Washington Administrative Code. Judicial review of rules adopted by the Agency will be in accordance with Part V of chapter 34.05 RCW;

2. Hold hearings relating to any aspect of or matter in the administration of chapter ~~((70.94))~~ 70A.15 RCW not prohibited by the provisions of Chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath;

3. Issue such notices, orders, permits, or determinations as may be necessary to effectuate the purposes of federal, state, or local air pollution laws or regulations and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in Chapter 62, Laws of 1970 ex. sess.;

4. Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere;

5. Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise;

6. Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction;

7. Encourage voluntary cooperation by persons or affected groups to achieve the purposes of federal, state and local air pollution laws or regulations;

8. Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control;

9. Collect and disseminate information and conduct educational and training programs relating to air pollution;

10. Advise, consult, cooperate and contract with:

a. State agencies, departments, and educational institutions;

b. Other political subdivisions, other states, interstate or interlocal agencies, and the United States government; and

c. Industries, interested persons or groups.

11. Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation will be construed to relieve any person from compliance with any federal, state, or local law or regulation in force pursuant thereto, or any other provision of law; and

12. Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for carrying out any of the functions any federal, state, or local law or regulation.

C. Exception to powers of the Agency.

The Agency may not hold adjudicative proceedings pursuant to the Administrative Procedures Act, chapter 34.05 RCW. Decisions and orders may be appealed to the Pollution Control Hearings Board as provided in WAC 173-400-250.

Section 2.04 Powers and Duties of the Control Officer

[Statutory Authority: RCW ~~((70.94.141))~~ 70A.15.2040, RCW ~~((70.94.170))~~ 70A.15.2300, RCW ~~((70.94.200))~~ 70A.15.2500 RCW]

A. The Control Officer and duly authorized representatives of the Agency will observe and enforce applicable federal, state, and local air pollution laws and regulations and all orders, ordinances, resolutions, or rules and regulations of the Agency pertaining to the control and prevention of air pollution pursuant to the policies set down by the Board.

B. The Control Officer, with the approval of the Board, will have the authority to appoint and remove such staff per-

sons as are necessary to the performance of the duties assigned and to incur necessary expenses within the limitations of the budget.

C. The Control Officer will maintain appropriate records and submit reports as required by the Board, state agencies, and federal agencies.

D. The Control Officer may engage, at the Agency's expense, within the limitation of the budget, qualified individuals or firms to make independent studies and reports as to the nature, extent, quantity or degree of any air contaminants that are or may be discharged from any source within Benton County.

E. As authorized under RCW (~~(70.94.200)~~) 70A.15.2500, for the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, the Control Officer and duly authorized representatives of the Agency will have the power to enter, at reasonable times, upon any private or public property, excepting non-multiple unit private dwellings housing two (2) families or less. No person may refuse entry or access to the Control Officer or duly authorized representatives of the Agency who requests entry for the purpose of inspection and who presents appropriate credentials, nor may any person obstruct, hamper or interfere with any such inspection.

F. If the Control Officer or a duly authorized representative of the Agency during the course of an inspection desires to obtain a sample of air contaminant, fuel, process material or other material that affects or may affect the emission of air contaminants, the Control Officer or a duly authorized representative will:

1. Notify the owner or operator of the time and place of obtaining a sample so the owner or operator has the opportunity to take a similar sample at the same time and place; and
2. Will give a receipt to the owner or operator for the sample obtained.

G. The Control Officer will be empowered by the Board to sign official complaints, issue citations, initiate court suits, or use other legal means to enforce the provisions of all ordinances, orders, resolutions, or rules and regulations of the Agency pertinent to the control and prevention of air pollution in Benton County.

Section 2.05 Severability

[Statutory Authority: chapter 43.21B RCW]

The provisions of this regulation are severable. If any provision, meaning phrase, clause, subsection or section, or its application to any person or circumstance is held to be invalid by any court of competent jurisdiction, the application of such provision to other circumstances and the remainder of the regulation to other persons or circumstances will not be affected.

Section 2.06 Confidentiality of Records and Information

[Statutory Authority: RCW (~~(70.94.205)~~) 70A.15.2510]

Whenever any records or other information, other than ambient air quality data or emission data, furnished to or obtained by the Agency, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such

records or information will be only for the confidential use of the Agency. Nothing herein will be construed to prevent the use of records or information by the Agency in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this Section: PROVIDED FURTHER, That emission data furnished to or obtained by the Agency will be correlated with applicable emission limitations and other control measures and will be available for public inspection during normal business hours at offices of the Agency.

Section 2.07 Entering Private, Public Property

[Statutory Authority: RCW (~~(70.94.200)~~) 70A.15.2500]

For the purpose of investigating conditions specific to the control, recovery or release of air contaminants in the atmosphere, a control officer, the department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting non-multiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the department, or their duly authorized representatives, who request entry for the purpose of inspection, and who present appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection.

Section 2.08 Authority to Collect Fees

[Statutory Authority: RCW (~~(70.94.151)~~) 70A.15.2200]

A. Legal Authority.

Washington Clean Air Act authorizes the agency to assess fees and recover costs for permits, registrations, and professional services.

B. Charges.

Charges include but are not limited to the following:

1. Reimbursement of agency staff time for review of complex projects of lengthy enforcement action;
2. Costs incurred by the authority for the implementation of the Air Operating Permit program as defined in WAC 173-401;
3. Reimbursement of agency staff time for costs to prepare notices of construction;
4. Reimbursement of the costs for annual registrations including periodic inspections;
5. Charges from Ecology for state level support and oversight work, and;
6. Appropriate charges incurred by other agencies and requested to be collected shall be billed as part of a penalty.

C. Refunds

1. The following fees are non-refundable:
 - a. Actual costs incurred by the authority;
 - b. Application fees.
2. Fees collected in excess of actual cost will be refunded with interest.
3. Fees collected in error will be refunded with interest.

D. Fees

1. Adoption of fee schedules.

Fee Schedules shall be adopted by board resolution under the authority of RCW 42.30 at any time after receiving public comment.

2. Fees for the Registration and Notice of Construction Programs are contained in the Fee Schedule. (~~Other fees are listed in Article 10 of Regulation 1.~~)

3. Availability of Fee Schedules and Related Information. The Fee Schedule and billing rate schedule for reimbursable fees shall be made available upon request.

Section 2.09 Variances

[Statutory Authority: RCW 70A.15.2310]

A. Any person who owns or is in control of any plant, building, structure, establishment, process or equipment including a group of persons who own or control like processes or like equipment may apply to the board for a variance from the rules or Regulation governing the quality, nature, duration or extent of discharge of air contaminants. The application shall be accompanied by such information and data as the Board may require. The Board may grant such variance, but only after public hearing or due notice, if it finds that:

1. The emissions occurring or proposed to occur do not endanger public health or safety; and

2. Compliance with the rules or Regulation from which variance is sought would produce serious hardship without equal or greater benefits to the public.

B. No variance shall be granted pursuant to this Section until the Board has considered the relative interests of the applicant, other owners or property likely to be affected by the discharge, and the general public.

C. Any variance or renewal thereof shall be granted within the requirements of Section 2.09A and for time periods and under conditions consistent with reasons therefore, and with the following limitations:

1. If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement, or control of the pollution involved, it shall be only until the necessary means for prevention, abatement, or control becomes known and available, and subject to the taking of any substitute or alternate measure that the Board may prescribe.

2. If the variance is granted on the ground that compliance with the particulate requirements or requirement from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time, as in view of the Board, is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

3. If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided in subsection 2.09 (C)(1) and 2.09 (C)(1), it shall be for not more than one year.

D. Any variance granted pursuant to this Section may be renewed on terms and conditions and for periods which would be appropriate under all circumstances including the criteria considered on the initial granting of a variance and that acquired during the existence of the variance. If a complaint is made to the board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the board finds that

renewal is justified. No renewal shall be granted except on application thereof. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with the rules and Regulation of the Board.

E. A variance or renewal shall not be a right of the applicant or holder thereof but shall be at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof under the provisions of chapter 34.05 RCW as now or hereafter amended.

F. Nothing in this Section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70A.15.6040 to any person or his property.

Reviser's note: The typographical errors in 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.

ARTICLE 3

Industrial Source Regulations

ADOPTED: 11-Dec-2014

AMENDED: 5 August 2020

[Statutory Authority RCW ((70.94.144)) 70A.15.2040]

PURPOSE: This Article establishes controls on incinerator operations and Surface Coating operations in Benton County in order to reduce particulate emissions, reduce public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, and to encourage pollution prevention in Benton County.

Section 3.01 Incinerator Burning and Incineration Hours

A. The Agency implements and enforces WAC 173-400-050, in Benton County in addition to Parts B through E of this Section. The more stringent requirement in WAC 173-400-050 or Section 3.01 of this Regulation supersedes the lesser.

B. It shall be unlawful for any person to burn any combustible refuse in any incinerator within the jurisdiction of this Agency except in an approved multiple-chambered incinerator or in equipment found by the Control Officer in advance of such use to be equally effective for the purpose of air pollution control. The Control Officer may require the installation of additional control apparatus on an incinerator of approved design, if he/she finds that it is not effectively controlling air pollution emissions or is the cause of legitimate complaints.

C. It shall be unlawful for any person to cause or allow the operation of an incinerator at any time other than daylight hours, except with the approval of the Control Officer.

D. Approval of the Control Officer for the operation of an incinerator at other than daylight hours may be granted upon the submission of a written request stating:

1. Full name and address of the applicant;
2. Location of the incinerator;
3. A description of the incinerator and its control equipment;
4. Good cause for issuance of such approval;

5. The hours, other than daylight hours, during which the applicant seeks to operate the equipment; and

6. The length of time for which the exception is sought.

E. No one shall install or operate an "Air Curtain Incinerator" or "Wigwam Burner" within the Agency's jurisdiction.

Section 3.02 General Surface Coating

A. Purpose. This Section establishes controls on surface coating operations in Benton County in order to:

1. Reduce particulate emissions from coating overspray;
2. Reduce public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC;
3. Reduce emissions of precursors to the formation of tropospheric ozone and other photochemical oxidants; and
4. Encourage pollution prevention.

B. Applicability.

This Section applies to all surface preparation, surface coating, cleanup, and disposal associated with general surface coating in Benton County, unless specifically exempted.

C. Definitions.

Unless a different meaning is clearly required by context, words and phrases used in this Section have the following meaning:

1. "Airless Spray" means a spraying system that uses hydraulic atomization instead of air atomization. The coating is supplied to the gun under high fluid pressure between 1000 and 3000 psig and the coating is forced through a small orifice.

2. "Air-Assisted Airless Spray" means a spraying system that combines air and airless features. An airless type fluid tip atomizes the paint and shapes the fan pattern at fluid pressures between 300 and 1000 psig. Lower pressure air from 10 to 30 psig combines at the spray cap to adjust the fan shape to eliminate heavy edges (tails).

3. "Automated" means the technique, method, or system of operating or controlling a process by mechanical, electrical, hydraulic, or electronic means independent of human intervention.

4. "Brush Coat Application" means manual application of coatings by use of a paint brush.

5. "Coating" means a material or formulation of materials that is applied to or impregnated into a surface in order to beautify, protect, enhance the function, or otherwise cover the surface.

6. "Container" means the individual receptacle that holds a coating or coating component for storage and distribution.

7. "Dip Coat Application" means application of coatings in which the surface to be coated is immersed in a solution (or dispersion) containing the coating material and withdrawn.

8. "Electrostatic Application" means application of coatings where an electrostatic potential is created between the part to be coated and the paint particles.

9. "Exempt Solvent" means a solvent or solvent component, which is not a volatile organic compound (VOC).

10. "Flow Coat Application" means application of coatings by flowing the coating over the surface to be coated and draining the excess coating to a collection system.

11. "High Volume, Low Pressure (HVLP) or Low Volume, Low Pressure (LVLP) coating system" means equipment used to apply coatings by means of a spray gun which

operates between 0.1 and 10.0 pounds per square inch gauge air pressure measured at the nozzle and that exhibits a minimum transfer efficiency of 65%, as applied.

12. "Light Duty Vehicle" means a passenger car, truck, van, or other motor vehicle which has a gross vehicle weight of 8500 pounds or less, or components thereof.

13. "Multi-Coat System" means a coating system where more than one product or coat is sequentially applied to the same surface and generally consists of a pigmented base coat, one or more semi-transparent mid-coats, and a transparent clear coat. The VOC content for a multi-coat system are calculated as follows:

$$VOC_{TM} = \frac{VOC_{BC} + VOC_{X1} + VOC_{X2} + \dots + VOC_{Xn} + 2X}{n + 3}$$

where:

VOC_{TM} is the average sum of the VOC content, as applied to the surface, in a multi-coat system; and

VOC_{BC} is the VOC content, as applied to the surface, of the base coat; and

VOC_X is the VOC content, as applied to the surface, of each sequentially applied mid-coat; and

VOC_{CC} is the VOC content, as applied to the surface, of the clear coat (Two coats are applied); and

n is the total number of coats applied to the primer coat(s) surface.

14. "Pre-packaged Aerosol Can Application" means application of coatings from cans which are sold by the coating supplier as non-reusable, hand-held pressurized containers. The coating is expelled as a finely divided spray when a valve on the container is depressed.

15. "Primer" means any coating that is applied to a surface to enhance corrosion resistance, protection from the environment, functional fluid resistance, and adhesion of subsequently applied coatings.

16. "Reducer" means any solvent added to a coating which has the effect of reducing the viscosity of the coating or shortening the drying time.

17. "Refinishing" means reapplying coating to a surface to repair, restore, or alter the finish.

18. "Roll Coat Application" means manual application of coatings by the use of a paint roller.

19. "Solvent Consumption" means the volume of solvent purchased or otherwise procured, less the volume recycled or disposed. In the absence of records which document the transfer of solvent to an authorized recycler or waste hauler, solvent consumption means the volume of solvent purchased or otherwise procured.

20. "Standard engineering practices" means that accepted, peer reviewed sets of criteria are used in designing equipment (i.e. Uniform Building, Electrical, and Fire Codes, recommendations of the American Conference of Governmental Industrial Hygienists, guidelines of the Department of Labor and Industry, etc.).

21. "Surface Coating" means the application of coating to a surface.

22. "VOC Content" means pounds of VOC per gallon of coating (Lb/Gal) or grams of VOC per liter of coating (G/L), minus water and exempt solvents. The VOC content is calculated as follows:

$$VOC_{CT} = \frac{W_V}{V_M - V_W - V_{ES}}$$

where:

VOC_{CT} is the VOC content of the coating, as applied to the surface; and

W_V is the weight of VOC per unit volume of coating, as applied to the surface; and

V_M is the unit volume of coating, as applied to the surface; and

V_W is the volume of water per unit volume of coating, as applied to the surface; and

V_{ES} is the volume of exempt solvents per unit volume of coating, as applied to the surface.

23. "Wash Solvent" means any solution, solvent, suspension, compound, or other material, excluding water that is used to clean spray equipment, spray equipment lines, containers, and any other equipment associated with the application of coatings.

24. "Wipe-Down Agent" means any solution, solvent, suspension, compound, or other material that is applied to a surface exclusively for cleaning the surface or preparing the surface for coating.

D. Prohibitions on emissions.

1. No person may cause or allow the application of any coating which contains greater than 0.1% by weight of one or more compounds of lead or hexavalent chromium.

2. Light duty vehicle refinishing - prohibitions on VOC content. Except as provided in Section 3.02.F of this Regulation, no person shall cause or allow the application of any coating or other agent to any light duty vehicle or light duty vehicle component, with a VOC content in excess of the limits listed in 40 C.F.R. 59, Subpart B, Table 1 - EPA National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings.

E. Requirements.

All persons subject to the requirements of Section 3.02 of this Regulation must comply with all of the following, unless exempted under Section 3.02.F of this Regulation.

1. Enclosure and Controls.

Spray application must be conducted in a booth or area which is vented to an operating particulate control system. The particulate control system, including filtration, ducting, and fan must be installed and sized according to standard engineering practices. Acceptable filtration methods may include:

a. Filter banks supplied with filter media designed for spray booth applications.

b. Water baths where the inlet air flow to the water bath is submerged.

c. Water wall systems that form a continuous water curtain through which the particulate flow stream must pass.

d. Other filtration methods that have received the prior written approval of the Control Officer, which meet the following conditions:

i. The control system must be equipped with a fan which is capable of capturing all visible overspray;

ii. Emissions from the booth/area must be vented to the atmosphere through a vertical stack;

iii. The top of the exhaust stack/vent must be at least 6 feet above the penetration point of the roof, or if the exhaust stack/vent exits horizontally out the side of the building, then the exhaust stack/vent must vent vertically at least 6 feet above the eave of the roof;

iv. A higher stack/vent may be required if the Agency determines that it is necessary for compliance with WAC 173-400-040;

v. There must be no flow obstruction (elbows, tees, or stack caps) inside of, or at the top of, the stack that will impede upward vertical flow of the exhausted air; and

vi. It is the owner/operator's responsibility to comply with other applicable federal, state, and local regulations for the stack/vent.

2. Visible Emissions.

Visible emissions from the stack may not exceed 10% opacity averaged over any six minute period, as determined by EPA Method 9.

3. Application methods.

Except as provided in Section 3.02.F. of this Regulation, no person may cause or allow the application of any coating or other agent containing VOC unless the coating or agent is applied by one of the following methods:

a. High Volume, Low Pressure coating system;

b. Low Volume, Low Pressure coating system;

c. Wet or Dry electrostatic application;

d. Flow coat application;

e. Dip coat application;

f. Brush coat application;

g. Pre-packaged aerosol can application;

h. Roll coat application;

i. A spraying technique that when tested, using the methodology presented in ASTM Standard D 5327-92, or when test documentation, provided to and approved by the Agency, exhibits that the spraying technique has a transfer efficiency of at least 65%;

j. Alternate application methods that have received the written approval of the Control Officer.

Such alternate methods may be used, provided that the owner or operator makes a written request to use an alternate method and the Control Officer grants approval. These methods include but are not limited to the following application methods and circumstances:

i. Airless and Air-Assisted Airless Spray systems may be used under any of the following circumstances:

(a) when the volatile organic compound (VOC) emissions are determined by the Control Officer to be no more than VOC emissions that would be generated by a spray application with a transfer efficiency of 65%;

(b) when the spraying operation is automated;

(c) when spray painting structural steel members where the coating, as formulated by the coating manufacturer, does not require addition of reducers to spray, and is delivered

under high pressure (> 1,000 psig for airless, or > 300 psig for air-assisted airless) to the application system; or

(d) where the Control Officer has determined that the coating cannot be feasibly applied with a method that has a minimum transfer efficiency of 65%.

4. Equipment Cleanup.

Equipment cleanup and any other use of wash solvent must be totally enclosed during washing, rinsing, and draining; or wash solvent, after making contact with the equipment being cleaned, must be immediately drained to a closed sump which is an integral part of the cleaning system.

5. General Clean-up.

a. All unused or partially used containers of coatings, wipe-down agents, wash solvents, reducers, and waste materials containing VOC must be closed, except when in use, when being filled or emptied.

b. Spills must be cleaned up upon discovery and the clean-up materials and collected waste must be stored in closed metal containers.

c. All disposable materials which contain VOCs associated with wipe-down or application of coatings and other agents must be stored in closed metal containers for disposal.

6. Recordkeeping.

All persons subject to Section 3.02 of this Regulation must maintain the following records for the previous 24-month period at the place of business where surface coating is performed:

a. The most current material safety data sheets (MSDS) or other data sheets which clearly indicate the VOC content of the product and of any multi-coat system.

b. Records of purchases and usage, including unused materials returned to the supplier.

i. Light duty vehicle refinishing. Annual purchases and usage of total primers, total top coats, total clear coats, and total gun cleaner. Usage must be reported "as applied", i.e. after reducing and catalyzing, if applicable.

ii. Other surface coating facilities. Annual purchases and usage of individual coatings, coating additives, wipe-down agents, wash solvents, reducers, there materials containing volatile organic compounds or volatile toxic air pollutants.

c. Waste materials disposal records, including volumes of waste solvents and coatings transferred in sealed containers to authorized waste haulers.

F. Exceptions.

Exceptions to Section 3.02 of this Regulation must be made as follows:

1. Noncommercial exemption.

Nothing in Section 3.02 of this Regulation may apply to surface coating operations conducted solely for personal, noncommercial purposes if, on a facility-wide basis, less than 5 gallons of surface coatings are applied per year.

2. Coating process exemptions.

Nothing in Section 3.02 of this Regulation applies to the following coating processes:

a. The application of architectural coatings to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs;

b. Fiberglass resin application operations;

c. Gel coating operations;

d. The application of asphaltic or plastic liners. This includes undercoating, sound deadening coating, and spray on bed lining for trucks;

e. Spray plasma plating operations; or

f. Application of coatings to farming equipment.

7. Low usage exemption.

Nothing in Sections 3.02.E.3 & 4 applies to surface coating operations which, on a facility-wide basis, apply less than 10 gallons per year of surface coatings.

8. Exemption for large objects.

Nothing in Subsection 3.02.E.1. of this Regulation applies to the infrequent outdoor surface coating of large objects where the Control Officer determines that it is impractical to totally enclose the object inside a booth or vented area. The request for this exemption must be made in writing to the Control Officer and the approval must be in writing. Infrequent means outdoor spray surface coating that amounts to 10% or less of the total annual gallons of paint applied at the facility in the previous 12 months. Annual records must be kept of the number of gallons of paint that are sprayed outdoors. In such case, a temporary enclosure (tarps) must be maintained around the object during the surface coating operation, sufficient at all times to prevent overspray from remaining airborne beyond the property line of the facility.

9. Wash solvent exemption.

Nothing in Subsection 3.02.E.4. of this Regulation applies to:

a. the use of wash solvents with composite vapor pressure of organic compounds less than 45mm Hg at 20°C as determined by ASTM Method D-2306-81; or

b. wash solvent operations if total wash solvent consumption does not exceed 10 gallons per year.

10. Stack exemption.

The stack/vent requirements in Subsection 3.02.E.1. of this Regulation does not apply to surface coating operations where the owner or operator can demonstrate to the satisfaction of the Control Officer that emissions of toxic air pollutants will not exceed the Acceptable Source Impact Levels as defined in WAC 173-460-150 & 160 and emissions will not create a nuisance.

11. Non-spray and aerosol can application exemption.

Nothing in Subsection 3.02.E.1 of this Regulation applies to the application of any coating or other agent from pre-packaged aerosol cans, flow coat, dip coat, brush coat, or roll coat applications.

12. Low VOC content exemption.

Nothing in Subsection 3.02.E.3 of this Regulation applies to the application of coatings where the VOC content does not exceed 2.1 Lb/Gal or 250 G/L.

13. Lead or Hexavalent Chrome exemption.

The prohibition in Subsection 3.02.D.1 of this Regulation does not apply to a surface coating operation where the control officer determines that no practical alternative coating is available.

14. Enclosure and/or particulate control exemption.

The enclosure and/or particulate control requirements of Subsection 3.02.E.1 of this Regulation does not apply to a surface coating operation where the control officer determines that such requirements would be ineffective, or unrea-

sonable in capturing or controlling particulate or volatile organic compounds emissions from the facility.

15. Inside exhaust exemption.

If the Department of Labor & Industries or another agency of jurisdiction determines that the emissions from a surface coating operation to an inside work area are below the threshold where an exhaust system is required and the Fire Department or District of jurisdiction has no objection, then the Control Officer may grant an exemption to Subsection 3.02.E.1 of this Regulation.

G. Compliance with other laws and regulations.

Compliance with Section 3.02 of this Regulation or qualifying for an exemption in Section 3.02.F. of this Regulation does not necessarily mean that the surface coating operation complies with fire protection, waste disposal, or other federal, state, or local applicable laws or regulations.

Section 3.03 General Air Pollution Control for Industrial Sources

A. Air Pollution sources not specifically regulated in this Section are regulated by the current 173-400 WAC General Regulations for Air Pollution Sources and 173-460 WAC Controls for New Sources of Toxic Air Pollutants.

B. In addition to the source-specific requirements in this Section, requirements of Article 9 Source Registration of this Regulation apply.

Section 3.04 Standards for Marijuana Production and Marijuana Processing

A. Purpose.

The production and processing of marijuana emits air contaminants. Section 3.04 establishes standards to minimize air contaminants from stationary sources that produce or process marijuana.

B. Authority.

BCAA implements and enforces WAC 173-400-040 (General standards for maximum emissions) in Benton County in addition to Section 3.04. The provisions of RCW ((70.94.14+)) 70A.15.2040 (Air pollution control authority— Powers and duties of activated authority) are herein incorporated by reference.

C. Applicability.

This section applies to all persons or entities having an active Washington State Liquor and Cannabis Board (LCB) license for marijuana production operations and marijuana processing operations in Benton County.

D. Definitions.

Unless a different meaning is clearly required by context, words and phrases used in this section will have the following meaning:

1. "Control of environmental conditions" means modifying surroundings to facilitate plant growth, may include, but is not limited to; lighting, temperature, relative humidity, and carbon dioxide levels. For implementation of Section 3.04, watering plants and short term covering of plants for a portion of each day as needed for frost protection are not considered control of environmental conditions.

2. "Housing unit" means a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building, and which

have direct access from the outside of the building or through a common hall.

3. "Indoor marijuana production and indoor marijuana processing" means production or processing occurring in a fully enclosed building that is permanently affixed to the ground, has permanent rigid walls, a roof that is permanent and non-retractable, and doors. The building is equipped to maintain control of environmental conditions. Hoop houses, temporary structures, or other similar structures are not considered indoor.

4. "Marijuana" means all parts of the cannabis plant, as defined in Chapter 69.50 RCW as it now exists or as amended.

5. "Processor (process, processing)" means LCB licensed operations that dry, cure, extract, compound, convert, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products.

6. "Producer (production, producing)" means LCB licensed operations that propagate, grow, harvest, and trim marijuana to be processed.

7. "Public Place" - means that portion of any building used by and open to the public. A public place does not include a private residence. A public place also includes a lot, parcel, or plot of land that includes a building or structure thereon that is used by and open to the public.

8. "Responsible person" means any person who owns or controls property on which Section 3.04 is applicable.

E. Marijuana Odor.

With respect to odor, it shall be unlawful for any production or processing facility of marijuana to cause an odor that can be detected beyond the facilities property line. The agency may take enforcement action pursuant to chapter ((70.94)) 70A.15 RCW, under this section if the Control Officer or a duly authorized representative has documented the following:

1. The odor or can be readily smelled from a public place or the private property of another housing unit;

2. An affidavit from a person making a complaint that demonstrates that they have experienced the odor of marijuana so as to unreasonably interfere with their life and property. (The affidavit should describe or identify, to the extent possible, the location, duration, and offensiveness of the odor experienced by the complainant);

3. The source of the odor.

F. With respect to odor, the agency will determine whether or not a violation of Section 3.04E has occurred based on its review of the information obtained during the investigation.

G. When determining whether to take formal enforcement action authorized in Section 3.04E, the agency may consider written evidence provided by the person causing the odors which demonstrates to the satisfaction of the agency that all controls and operating practices to prevent or minimize odors to the greatest degree practicable are being employed. If the agency determines that all such efforts are being employed by the person causing the odors and that no additional control measures or alternate operating practices are appropriate, the agency may decline to pursue formal enforcement action.

H. Nothing in this section shall be construed to impair any cause of action or legal remedy of any person, or the public for injury or damages arising from the emission of any air contaminant in such place, manner or concentration as to constitute air pollution or a common law nuisance.

I. Requirements.

All persons or entities subject to the requirements of Section 3.04 must comply with the following:

1. Production and processing must occur indoors, as defined in 3.04(B), unless the operation is exempt under Section 3.04(N);

2. Indoor production and processing requirements:

a. Control equipment and facility design:

i. Operations must be equipped with air pollution control equipment that is properly sized for the air flow to be controlled. Air pollution control equipment may include, but is not limited to, carbon adsorption within the facility, carbon filtration on facility exhaust points, vertical exhaust stacks. Air pollution control equipment is not required for windows, doors, or other openings, provided these openings are kept closed except as needed for active ingress or egress; or

ii. Operations must be designed to prevent exhaust from production and processing operations directly to the outside; or

iii. Both.

b. Operations must meet the requirements of Section 3.04(E).

3. Operation and maintenance plan. Air pollution control equipment must be operated and maintained in accordance with the manufacturers recommendations. An operation and maintenance plan for the air pollution control equipment must be available on site. The plan must include written operation instructions and maintenance schedules. Record shall be kept of the dates and description of all maintenance and repair performed on the air pollution control equipment. Record must be kept on site for the previous 24 months and be provided to the agency upon request.

J. Compliance with Other Laws and Regulations. Compliance with Regulation I, Article 3, Section 3.04, does not constitute an exemption from compliance with other Sections of Regulation I, or other laws or regulations.

K. Producers, Processors and Responsible Persons. If there is a violation of Regulation I, Article 3, Section 3.04E, a Notice of Violation may be issued to all producers and processors on the parcel, and all responsible persons.

L. Compliance Schedule. All persons or entities subject to the requirements of Article 3, Section 3.04 must be in compliance with Section 3.04 requirements as follows:

1. New producers and processors or expansion at existing producers and processors, that begin or expand operations after August 17, 2018, must be in full compliance with Section 3.04 requirements before production and/or processing begins.

M. Any new marijuana production or processing facility must notify the agency by completing the proof of notification form found on www.bentoncleanair.org.

N. Exemptions.

1. Existing marijuana producers and processors, in-operation prior to the Section 3.04 effective date August 17, 2018

are exempt from of Section 3.04I. This exemption does not exclude them from the requirements of Section 3.04E.

2. Any existing marijuana producer or processor, in-operation prior to the section 3.04 effective date August 17, 2018 found to be in violation of Section 3.04E, may be required to comply with Section 3.04I within 180 days of receipt of the penalty from said violation or as defined by a compliance schedule agreed upon with the Benton Clean Air Agency.

Reviser's note: The typographical errors in 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.

Reviser's note: The unnecessary underscoring 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.

ARTICLE 4

General Standards for Particulate Matter

ADOPTED: 11-Dec-2014

AMENDED: 28-Apr-2017

[Statutory Authority: RCW ((70.94.141)) 70A.15.2040]

PURPOSE: This Article is intended to prevent and reduce fugitive dust emissions from projects which destabilize soil in Benton County.

Section 4.01 Definitions

A. "Fugitive dust" means a particulate emission made airborne by forces of wind, human activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive Dust is a type of fugitive emissions.

B. "Fugitive emissions" means emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

C. "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, shellfish, grain, mint, hay, and dairy products.

D. "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock, agricultural commodities, or cultured aquatic products.

E. "Destabilization project" means construction, repair, or demolition of any building or road, or landscaping work on a property, which destabilizes the soil and thus has potential for fugitive dust emissions.

F. "Emergency" means:

1. Active operations conducted during emergency, life threatening situations, or in conjunction with an officially declared disaster or state of emergency; or

2. Active operations conducted by public service utilities to provide electrical, natural gas, telephone, water, or sewer service during emergency outages.

G. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative).

H. "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

Section 4.02 Particulate Matter Emissions**A. Fallout.**

No person may cause or allow the emission of particulate matter from any source to be deposited beyond the property under direct control of the owner or operator of the source in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited. [WAC 173-400-040(3)]

B. Fugitive emissions.

The owner or operator of any emissions unit or operation engaging in materials handling, construction, demolition or other operation which is a source of fugitive emission: [WAC 173-400-040(4)]

1. Must take reasonable precautions to prevent the release of air contaminants from the operation located in an attainment or unclassifiable area and not impacting any non-attainment area. [WAC 173-400-040 (4)(a)]

2. Are required to use reasonable and available control methods. If the emissions unit has been identified as a significant contributor to the nonattainment status of a designated nonattainment area. The methods must include any necessary changes in technology, process, or other control strategies to control emissions of the air contaminants for which nonattainment has been designated. [WAC 173-400-040 (4)(b)]

C. Fugitive dust [WAC 173-400-040(9)]

1. The owner or operator of a source, including developed or undeveloped property, or activity that generates fugitive dust must take reasonable precautions to prevent that fugitive dust from becoming airborne and must maintain and operate the source to minimize emissions. [WAC 173-400-040 (9)(a)]

2. These reasonable precautions may include, but are not limited to watering, chemical stabilizers, physical barriers, compaction, gravel, vegetative stabilization, mulching and keeping open areas to a minimum.

3. The owner or operator of any existing source or activity that generates fugitive dust that has been identified as a significant contributor to a PM-10 or PM-2.5 nonattainment area is required to use reasonably available control technology to control emissions. Significance will be determined by the criteria found in WAC 173-400-113(4). [WAC 173-400-040 (9)(b)]

D. Project Notification.**1. Applicability.**

The owner or operator of any destabilization project must notify the Agency of the project prior to commencement of any work that destabilizes the soil via the Agency website, www.bentoncleanair.org.

2. Exemptions.

- a. Any project at an existing facility.
- b. Any emergency project.
- c. Any agricultural operation.

3. Requirements.

The notification must include all of the following:

- a. At least two contacts, including name and phone number, for those responsible for mitigating fugitive dust 24 hours a day.
- b. The Benton County Parcel ID of each parcel affected by the destabilization project.
- c. The owner and operator(s) of the site.

d. statement, electronically signed by the owner or operator of the site, accepting responsibility for controlling fugitive dust emissions.

E. Dust Control Plans.**1. Applicability.**

The owner or operator of any destabilization project must maintain a written dust control plan for the project and make the dust control plan readily available.

2. Exemptions.

- a. Any project at an existing facility.
- b. Any emergency project.
- c. Any agricultural operation.

4. Dust Control Plan Requirements.

a. Dust control plans must identify management practices and operational procedures which will effectively control fugitive dust emissions.

b. Dust control plans must contain the following information:

- i. A detailed map or drawing of the site;
- ii. A description of the water source to be made available to the site, if any;
- iii. A description of preventive dust control measures to be implemented, specific to each area or process; and
- iv. A description of contingency measures to be implemented in the event any of the preventive dust control measures become ineffective.

c. An owner or operator must implement effective dust control measures outlined in dust control plans.

d. The owner or operator must provide the Agency with a copy of the plan within two business days of it being requested.

5. Master Dust Control Plan.

a. As an alternative to a site dust control plan, an owner or operator may develop a master dust control plan that applies to more than one site or project. The master plan must:

- i. Address all the requirements in Section 4.02.E.3 of this Regulation; and
- ii. Provide for effective control of fugitive dust emissions to all sites and projects.
- iii. Prior to the commencement of work at any site or project covered by the master plan, the owner or operator must notify the Agency.

Section 4.03 Agricultural Particulate Matter Emissions**A. Exemption.**

Fugitive dust caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of Section 4.02 unless they have a substantial adverse effect on public health.

B. Establishing Good Agricultural Practices.

1. In determining whether agricultural activity is consistent with good agricultural practices, the Agency shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

2. Additionally, at the Agency's written request, the operator of the agricultural activity must provide the following within 5 business days to assist in determining whether agricultural activity is consistent with good agricultural practices:

- a. A description of the agricultural activity.

b. A timeline of the agricultural activity of a length appropriate to that activity.

c. A description of the good agricultural practices employed with respect to wind erosion.

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.

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.

ARTICLE 5 Outdoor Burning

ADOPTED: 17-Feb-2005

AMENDED: 11-Dec-2014

[Statutory Authority: RCW ((~~70.94.6511~~)) 70A.15.500, RCW ((~~70.94.6554~~)) 70.15.5220]

PURPOSE: This Article establishes controls on outdoor burning in Benton County in order to reduce particulate emissions and public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, in Benton County.

Section 5.02 Definitions

Definitions of all terms in this article, unless otherwise defined below, are as defined in WAC 173-425-030.

A. "Burn day" means a day, as determined by the Agency, during which outdoor burning may take place in areas where outdoor burning is allowed. The length of the burn day is defined as the period from 9:00 AM until one hour before sunset.

B. "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

C. "Urban Growth Area" or "UGA" means land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.-030.

Section 5.02 Special Burning Permits

A. All types of outdoor burning require a special burning permit, unless exempted in Section 5.02.F or 5.03 of this Regulation.

B. A request for special burning permit application for a special burning permit must be submitted at least five (5) working days before the proposed burning dates. Special burning permits are subject to a fee as described in ((~~Article 10 of this Regulation~~)) the Benton Clean Air Agency fee schedule, Table 6: Burning Fees, and payable at the time of application. Payment of the application fee does not guarantee the applicant that a special burning permit will be approved.

C. Any special burning permit issued by the Agency will specify restrictions and conditions on a case-by-case basis.

D. Permit holders must comply with all conditions listed in the permit.

E. Special burning permits are valid for a period not to exceed one (1) year.

F. The Agency will approve with conditions, or deny, any outdoor burning permits as needed to comply with state and local air pollution rules and regulations. All permits will include conditions to satisfy the requirements in WAC 173-

425-050, and may require other conditions, such as restricting the time period for burning, restricting permissible hours of burning, imposing requirements for good combustion practice, and restricting burning to specified weather conditions. The Agency may also include conditions to comply with other state and local air pollution rules and regulations pertaining to outdoor burning.

G. A special burning permit will not be required by fire protection districts for firefighting instruction fires for training to fight:

1. Structural fires by fire protection districts outside the UGAs provided that the Agency Form *Fire Training Notification Outside Urban Growth Areas* is submitted and approved prior to conducting the training fire as provided in RCW 52.12.150;

2. Aircraft crash rescue fires as provided in RCW ((~~70.94.650(5)~~)) 70A.15.5180(2); or

3. Forest fires as provided in RCW ((~~70.94.650.1.b~~)) 70A.15.5180(4).

Section 5.03 Outdoor Burning Requirements

A. The person responsible for the fire must contact the Agency to determine if the type of burning to be conducted is permitted for the day and may not burn when the type of burning to be conducted is prohibited.

B. Inside Urban Growth Areas.

Residential and land clearing burning is prohibited inside all UGAs of Benton County, which include but are not limited to Kennewick, Richland, West Richland, Prosser, and Benton City.

C. Outside Urban Growth Areas.

1. Residential burning may be conducted without obtaining a permit, if such burning can be conducted in accordance with the requirements of Section 5.03.E of this Regulation and the following:

a. Residential burning may only occur during permitted hours on a burn day;

b. Residential burns may contain only material that was generated at the residence where the burn occurs;

c. The pile may not be larger than four feet by four feet by three feet (4 ft. x 4 ft. x 3 ft.);

d. Only one pile at a time may be burned, and each pile must be extinguished before lighting another; and

e. No outdoor fire is permitted within five hundred (500) feet of forest slash.

D. Inside and Outside Urban Growth Areas.

1. A permit is not required to burn tumbleweeds that have been blown by the wind.

2. A permit is not required for recreational fires with a total fuel area that is less than three feet in diameter and/or two feet in height.

E. General Requirements.

1. All outdoor burning is subject to the following:

a. The following materials may not be burned in any outdoor fire:

- Garbage;
- Dead animals;
- Asphalt;
- Petroleum products;
- Paints;

- Rubber products;
- Plastics;
- Paper (other than what is necessary to start a fire);
- Cardboard;
- Treated wood;
- Construction/demolition debris;
- Metal; or
- Any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned.

b. No outdoor fire may contain material (other than firewood) that has been hauled from inside the UGA to a location outside the UGA;

c. If material is transferred from multiple locations outside the UGA to a single location outside the UGA, a special burning permit must be obtained before burning the material;

d. No outdoor fire may be ignited:

i. When the Benton County Fire Marshall has declared a ban on burning due to fire safety; or

ii. On a day when burning is not permitted by the Agency, during any stage of impaired air quality conditions, or during a forecast, alert, warning, or emergency air pollution episode declared under RCW ((70.94.715)) 70A.15.-6010.

e. It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.

f. The use of an outdoor container for burning, such as a "burn barrel", for burning, unless regulated under WAC 173-400-070(1), is prohibited throughout Benton County;

g. A person capable of extinguishing the fire must attend it at all times, and the fire must be extinguished before leaving it;

h. No fires are to be within fifty (50) feet of structures; and

i. Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.

j. Agricultural heating devices that otherwise meet the requirements of chapter ((70.94)) 70A.15 RCW will not be considered outdoor fires under this article.

2. Outdoor burning is not allowed on any construction or demolition site. However, Section 5.02.G of this Regulation provides requirements for demolition of a structure by a fire protection district for firefighting instructional purposes.

3. Material, other than firewood, may not be hauled or transferred from inside the UGA to an area outside the UGA for the purposes of burning.

Section 5.04 Benton Clean Air Agency Requirements

The Agency will make a daily decision determining the restriction on all types of outdoor burning.

ARTICLE 6

Agricultural Burning

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority: chapter ((70.74)) 70.15.5070 RCW, RCW ((70.94.6528)) 70A.15.5090]

PURPOSE: This Article establishes controls on agricultural burning in Benton County in order to reduce particulate emissions and public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, in Benton County.

Section 6.01 Definitions

Definitions of all terms in this article, unless otherwise defined below, are as defined in WAC 173-430-030.

A. "Agricultural burn day" means a day, as determined by the Agency, during which permitted agricultural burning may take place in areas where agricultural burning is allowed. The length of the burn day is defined as the period from 9:00 AM until one hour before sunset.

B. "Incidental agricultural burning" means agricultural burning that is incidental to commercial agricultural activities and meets one of the following conditions:

1. Orchard prunings: An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, assist with tree canopy training and improve the management of plant and disease, and pest infestations.

2. Organic debris along fencelines: A fenceline or fence-row is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field.

3. Organic debris along or in irrigation or drainage ditches: An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field.

4. Organic debris blown by the wind: The primary example is tumbleweeds.

C. "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

Section 6.02 Agricultural Burning Permit

A. Agricultural Burning Permit Required.

1. All agricultural burning, except for incidental agricultural burning, requires a written agricultural burning permit from the Agency. Agricultural burning permits are subject to a fee as described in ((Article 10 of this Regulation)) the Benton Clean Air Agency fee schedule, Table 6: Burning Fees, and payable at the time of application.

2. Permitted agricultural burning is allowed only on designated agricultural burn days.

3. It is the responsibility of the person conducting agricultural burning to be informed of additional fire safety rules established by the Benton County Fire Marshall.

4. Permit holders must comply with all conditions listed in the permit.

B. Agricultural Burning Permit Not Required.

1. Incidental agricultural burning, as defined in Section 6.01.B of this Regulation, is allowed without obtaining an agricultural burning permit from the Agency and on days that are not agricultural burn days, except when restricted by the Agency under the following conditions:

a. The Benton County Fire Marshall declared a ban on burning due to fire safety; or

b. During any stage of impaired air quality conditions, or during a forecast, alert, warning, or emergency air pollution episode; or

c. The National Weather Service (NWS) in Pendleton, Oregon forecasts surface wind speeds 20 mph or greater.

2. The operator must notify the local fire department within the area and the Agency.

3. The burning does not occur during an air pollution episode or any stage of impaired air quality.

ARTICLE 7

Solid Fuel Burning Device

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority: RCW ((70.94.144)) 70A.15.2040; RCW ((70.94.450-477)) 70A.15.3500-3600]

PURPOSE: This Article establishes controls on solid fuel burning devices in Benton County in order to reduce particulate emissions and public exposure to Toxic Air Pollutants as listed in Chapter 173-460 WAC, in Benton County.

Section 7.01 Definitions

Definitions of all terms in this article, unless otherwise defined, are as defined in WAC 173-433-030.

A. "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

B. "Solid fuel burning device" (same as solid fuel heating device) means a device that burns wood, coal, or any other nongaseous or non-liquid fuels, and includes any device burning any solid fuel, except those prohibited by WAC 173-443-120. This also includes devices used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one (1) million BTU/hr.

C. "Woodstove" (same as "wood heater") means an enclosed solid fuel burning device capable of and intended for residential space heating and domestic water heating that meets the following criteria contained in "40 CFR. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990:

1. An air-to-fuel ratio in the combustion chamber averaging less than 35.0, as determined by EPA Reference Method 28A;

2. A useable firebox volume of less than twenty cubic feet;

3. A minimum burn rate less than 5 kg/hr as determined by EPA Reference Method 28; and

4. A maximum weight of 800 kg, excluding fixtures and devices that are normally sold separately, such as flue pipe, chimney, and masonry components not integral to the appliance.

5. Any combination of parts, typically consisting of but not limited to: Doors, legs, flue pipe collars, brackets, bolts and other hardware, when manufactured for the purpose of being assembled, with or without additional owner supplied parts, into a woodstove, is considered a woodstove.

D. "Fireplace" means: Any permanently installed masonry fireplace; or any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

Section 7.02 Solid Fuel Burning Device, Prohibitions

A. Within Benton County, a person may not advertise to sell, offer to sell, sell, bargain, exchange, give away, or install woodstoves, factory-built fireplaces, or other solid fuel burning devices that do not meet the requirements of WAC 173-433-100.

B. The Agency may declare first and second state air quality impairment in accordance with WAC 173-433-150. During those declarations, the use of any solid fuel burning device is restricted as per WAC 173-433-150.

1. Whenever the Agency has declared the first stage impaired air quality conditions, declared under RCW ((70.94.715)) 70A.15.6010, residences and commercial establishments with an adequate source of heat other than a solid fuel burning device, may not operate any solid fuel burning device, unless the solid fuel burning device is:

a. A non-affected pellet stove; or

b. A woodstove certified and labeled by the EPA under "40 CFR. 60 Subpart AAA - Standards of Performance for Residential Wood Heaters" as amended through July 1, 1990; or

c. A woodstove meeting the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.

2. Whenever the Agency has declared the second stage of impaired air quality for a geographical area a person in a residence or commercial establishment within that geographical area with an adequate source of heat other than a solid fuel burning device must not operate any solid fuel burning device.

C. A person must not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of twenty percent opacity for six consecutive minutes in any one-hour period. The provision does not apply during the starting of a new fire for a period not to exceed twenty minutes in any four-hour period.

D. A person may not cause or allow any of the following materials to be burned in a solid fuel burning device, including fireplaces:

- Garbage;
- Treated wood, defined as wood of any species that has been chemically impregnated, painted, or similarly modified to prevent weathering and deterioration;
- Plastic and plastic products;
- Rubber products;
- Animal carcasses;
- Asphaltic products;
- Waste petroleum products;
- Paints and chemicals; or
- Any substance which normally emits dense smoke or obnoxious odors other than paper to start the fire, properly seasoned fuel wood, or coal with sulfur content less than one percent (1.0%) by weight burned in a coal-only heater.

Reviser's note: The typographical errors in 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.

**ARTICLE 8
Asbestos**

ADOPTED: 17-Feb-2005

AMENDED: 5 August 2020

[Statutory Authority: RCW ((~~70.94.141~~)) 70A.15.2040]

PURPOSE: The Board of Directors of the Benton Clean Air Agency recognizes that airborne asbestos is a serious health hazard. Asbestos fibers released into the air can be inhaled and cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board of Directors has adopted this regulation to control asbestos emissions primarily resulting from asbestos projects, renovation projects, and demolition projects in order to protect the public health.

Section 8.01 Definitions

A. "AHERA Building Inspector" means a person who has successfully completed the training requirements for a building inspector established by United States Environmental Protection Agency (EPA) Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

B. "AHERA Project Designer" means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

C. "Asbestos" means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

D. "Asbestos-Containing Material" means any material containing more than one percent (1%) asbestos as determined using the method specified in the EPA publication, Method for the Determination of Asbestos in Building Materials, EPA/600/R-93/116, July 1993 or a more effective method as approved by EPA.

E. "Asbestos-Containing Waste Material" means any waste that contains or is contaminated with asbestos-containing material. Asbestos-containing waste material includes asbestos-containing material that has been removed from a structure, disturbed, or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. "Asbestos Project" means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other

non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released.

G. "Asbestos Survey" means a written report resulting from a thorough inspection performed pursuant to Section 8.02 of this Regulation.

H. "Asphalt Shingles" means asphalt roofing in shingle form, composed of glass felt or felts impregnated and coated on both sides with asphalt, and surfaced on the weather side with mineral granules. Some asphalt shingle styles are commonly referred to as three-tab shingles.

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

J. "Component" means any equipment, pipe, structural member, or other item or material.

K. "Contiguous" means touching or adjoining.

L. "Controlled Area" means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

M. "Demolition" means wrecking, razing, leveling, dismantling, or intentional burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. It includes any related handling operations. It also includes moving a structure (except a mobile home which remains intact) and wrecking or taking out of any load-supporting structural member.

N. "Disposal Container" means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

O. "Facility" means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function.

P. "Homogenous Area" means an area of surfacing material, thermal system insulation material, or a miscellaneous material that is uniform in color or texture. Unless approved otherwise by the Agency, rubble piles, debris piles, ash, soil, and similar materials are not homogeneous areas.

Q. "Friable Asbestos-Containing Material" means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes asbestos-containing material that, when dry, can be:

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal;

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal.

4. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

R. "Leak-Tight Container" means a dust-tight and liquid tight disposal container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

S. "Nonfriable Asbestos-Containing Material" means asbestos-containing material that is not friable (e.g., when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

T. "Owner-Occupied, Single-Family Residence" means any non-multiple residential unit that is used by one family who owns the property as their domicile (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g. utility bills). This term does not include rental properties, multiple unit buildings (e.g. duplexes and condominiums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g. a business being operated out of a residence), structure, or installation that contains a residential unit.

U. "Owner's Agent" means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, demolition, or property subject to Article 8 of this Regulation. It also includes the person(s) submitting a notification pursuant to Section 8.03 of this Regulation and/or performing the asbestos survey.

V. "Person" means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

W. "Renovation" means altering a structure or component in any way, other than demolition, that disturbs materials totaling greater than or equal to 10 linear feet, or greater than or equal to 48 square feet, that was considered a suspect asbestos containing material prior to performing an asbestos survey.

X. "Residential Unit" means any building with four or fewer dwelling units each containing space for uses such as living, sleeping, preparation of food, and eating that is used, occupied, or intended or designed to be occupied by one family as their domicile. This term includes houses, mobile homes, trailers, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include any facility that contains a residential unit.

Y. "Structure" means something built or constructed, in part or in whole. Examples include, but are not limited to, the

following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-tos, and foundations. This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

Z. "Surfacing Material" means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fire-proofing material on structural members, or other material on surfaces for decorative purposes.

AA. "Suspect Asbestos-Containing Material" means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material (excluding asphalt shingles), fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g. as determined using the method specified in the EPA publication, *Method for the Determination of Asbestos in Building Materials*, EPA/600/R-93/116, July 1993).

AB. "Thermal System Insulation" means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AC. "Visible Emissions" means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

AD. "Wallboard System" means joint compound and tape specifically applied to cover nail holes, joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. A wallboard system where joint compound and tape have become an integral system (40 C.F.R. Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

AE. "Waste Generator" means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

AF. "Workday" means Monday through Friday 8:00 a.m. to 5:00 p.m. excluding legal holidays observed by the Agency.

Section 8.02 Asbestos Survey Requirements

A. Except as provided for in Section 8.02.F of this Regulation, it is unlawful for any person to cause or allow any renovation, demolition, or asbestos project unless the property owner or the owner's agent first obtains an asbestos survey, performed by an AHERA building inspector.

B. Asbestos Survey Procedures.

1. An asbestos survey must consist of a written report resulting from a thorough inspection performed by an AHERA building inspector. The AHERA building inspector must use the procedures in EPA regulations 40 C.F.R. 763.86 or an alternate asbestos survey method pursuant to Section 8.02.F of this Regulation. The inspection, and resulting asbestos survey report, must be performed to determine whether materials, components, or structures to be worked on, renovated, removed, disturbed, impacted, or demolished (including materials on the outside of structures) contain asbestos.

2. Except as provided for in Section 8.02.F of this Regulation, only an AHERA building inspector may determine, by performing an asbestos survey, that a material is not a suspect asbestos-containing material and that a suspect asbestos-containing material does not contain asbestos.

3. All loose vermiculite insulation must be sampled and analyzed according to EPA 600 PLM method with milling (EPA/600/R-93/116, July 1993) or CARB 435 (California Air Resources Board Method 435, June 1991) or must be presumed to be a friable asbestos-containing material.

C. Asbestos Survey Report.

These requirements apply to asbestos surveys, regardless of when they were performed. Except where additional information is required pursuant to EPA regulation 40 C.F.R. 763.85, asbestos surveys must contain, at a minimum, all of the following information:

1. General Information.

- a. Date that the inspection was performed;
- b. AHERA Building Inspector signature, certification number, date certification expires, and name and address of entity providing AHERA Building Inspector certification;
- c. Site address(es)/location(s) where the inspection was performed;
- d. Description of the structure(s)/area(s) inspected (e.g. use, approximate age and approximate outside dimensions);
- e. The purpose of the inspection (e.g. pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage, etc.), if known;
- f. Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area, etc.);

g. Identify and describe locations of all homogeneous areas of suspect asbestos-containing materials, except where limitations of the asbestos survey identified in Section 8.02.C.1.f prevented such identification and include whether each homogeneous material is surfacing material, thermal system insulation, or miscellaneous material;

h. Identify materials presumed to be asbestos-containing material;

i. Exact location where each bulk asbestos sample was taken (e.g., schematic and/or other detailed description sufficient for any person to match the bulk sample results to the material on site);

j. Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:

- i. Laboratory name, address and NVLAP certification number;
- ii. Bulk sample numbers;
- iii. Bulk sample descriptions;
- iv. Bulk sample results showing asbestos content; and
- v. Name of the person at the laboratory that performed the analysis.

2. Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

a. Describe the color of each asbestos-containing material;

b. Identify the location of each asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project (e.g., schematic and/or other detailed description);

c. Provide the approximate quantity of each asbestos-containing material (generally in square feet or linear feet; and

d. Describe the condition of each asbestos-containing material (e.g. good, damaged). If the asbestos-containing material is damaged, describe the general extent and type of damage (e.g., flaking, blistering, crumbling, water damage, fire damage).

D. Asbestos Survey Posting.

Except as provided for in Section 8.02.F of this Regulation, a complete copy of an asbestos survey must be posted by the property owner or the owner's agent in a readily accessible and visible area at all times for inspection by the Agency and all persons at the work site. This applies even when the asbestos survey performed by an AHERA Building Inspector states there are no asbestos-containing materials in the work area. If it is not practical to post the asbestos survey in this manner, it must be made readily available for inspection by the Agency and all persons at the demolition site.

E. Asbestos Survey Retention.

The property owner, owner's agent, and the AHERA building inspector that performed the asbestos survey (when the asbestos survey has been performed by an AHERA building inspector), must retain a complete copy of the asbestos survey for at least 24 months from the date the inspection was performed and provide a copy to the Agency upon request.

F. Exceptions.

1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.

For renovation of an owner-occupied, single-family residence performed by the owner-occupant, an asbestos survey is not required. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

2. Demolition of a Structure 120 sq. ft. or less at a residential unit.

For demolition of a structure 120 sq. ft. or less at a residential unit, an asbestos survey is not required. A property owner's assessment for the presence of asbestos-containing material prior to demolition is adequate. A written report is not required.

3. Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.

It is not required that an AHERA building inspector evaluate (e.g., sample and test) any material presumed to be asbestos-containing material. If material is presumed to be asbestos-containing material, this determination must be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. The determination must include a description, approximate quantity, and location of presumed asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project. The property owner, owner's agent, and the person that determined that material would be presumed to be asbestos-containing material, must retain a complete copy of the written determination for at least 24 months from the date it was made and must provide a copy to the Agency upon request. Except for

Section 8.02.A through E of this Regulation, all other requirements remain in effect.

4. Alternate Asbestos Survey.

A written alternate asbestos survey method must be prepared and used on occasions when conventional sampling methods required in EPA regulation 40 C.F.R. 763.86 cannot be exclusively performed (all other asbestos survey requirements in Section 8.02 of this Regulation apply). For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof (e.g., when materials are not intact or homogeneous areas are not identifiable). Conventional sampling methods shall not be used for rubble or debris piles, and ash or soil unless approved otherwise in writing by the Agency. If conventional sampling methods cannot exclusively be used and material is not presumed to be asbestos-containing material, alternate asbestos survey methodology must be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically includes random sampling according to a grid pattern (e.g., random composite bulk samples at incremental 1' depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies, EPA/600/R-92/128, July 1992.

Section 8.03 Notification Requirements

A. General Requirements.

Except as provided for in Section 8.03.A.7 of this Regulation, it is unlawful for any person to cause or allow any work on a renovation or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, has been submitted to the Agency, in accordance with the notification waiting period requirements in ~~((Article 10, Section 10.08 of this Regulation--))~~ the fee schedule, Table 5: Asbestos Fees. Unless otherwise approved by the Agency, the notification must be submitted by the property owner or owner's agent via the Agency's website, www.bentoncleanair.org. Notifications will not be accepted if the earliest project start date is greater than 365 days from the date of submittal.

1. When the Notification Waiting Period Begins.

The notification waiting period begins on the workday on which a complete notification is received by the Agency and ends after the notification waiting period in ~~((Section 10.08 of this Regulation--))~~ the fee schedule, Table 5: Asbestos Fees has passed (e.g., A 10-day notification period means work on an asbestos project or demolition can begin on day 11). A notification is considered complete when all information requested on the notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, is received by the Agency. The notification waiting period does not begin for incomplete notifications (e.g. unpaid fees, notifications where the asbestos project start date and/or completion date and/or demolition start date is listed as "To Be Determined", when types and quantities of asbestos are unknown, etc.).

2. Project Duration.

The duration of an asbestos project must be commensurate with the amount of work involved. The duration of the project may take into account applicable scheduling limitations (e.g., asbestos removal that needs to be done in phases, based on scheduling limitations determined by the property owner).

3. Multiple Asbestos Projects or Demolitions.

Notification for multiple structures may be filed by a property owner or owner's agent on one form if all the following criteria are met:

a. The notification applies only to renovations or demolitions on contiguous real properties having the same owner or real properties with the same owner separated only by a public right-of-way (e.g., alley or roadway).

b. The work will be performed by the same abatement and/or renovation/demolition contractor.

c. The notification includes the specific site address for each structure. Where a specific site address isn't available for each structure (e.g., at a large commercial (site with multiple structures), provide a detailed description/location for each structure.

d. The notification includes the amount and type of asbestos-containing material associated with each structure and indicates which structures will be demolished.

4. Notification Expiration.

Notifications are valid for no more than 365 days from the earliest original notification start date. The Agency may revoke a notification for cause (e.g., providing any false material statement, representation, or certification) and may require that a new notification be submitted with the appropriate non-refundable fee as set forth in ~~((Section 10.08 of this Regulation--))~~ the fee schedule, Table 5: Asbestos Fees prior to work continuing.

5. Notification Posting.

A copy or printout of the notification and all amendments to the notification must be posted by the property owner or the owner's agent in a readily accessible and visible area at all times for inspection by the Agency and all persons at the asbestos project or demolition site. If it is not practical to post the notification and all amendments to the notification in this manner, the documents must be made readily available for inspection by the Agency and all persons at the demolition site.

6. Notification Retention.

The property owner, owner's agent, and the person that filed the notification, must retain a complete copy of all notification records for at least 24 months from the date the notification was filed with the Agency and provide a copy to the Agency upon request.

7. Notification Exceptions.

a. Renovation Performed by Owner-Occupant of an Owner-Occupied, Single Family Residence with No Asbestos.

Notification is not required for renovation of an owner-occupied, single family residence when the work is performed by the owner-occupant and asbestos will not be disturbed.

b. Demolition of Structures at Residential Units With a Projected Roof Area \leq 120 Square Feet.

Notification is not required for demolition of structures at residential units with a projected roof area less than or equal to 120 square feet, unless asbestos-containing material is present. If asbestos-containing material is present, asbestos project notification requirements apply. All other requirements remain in effect except as provided by Article 8 of this Regulation.

c. Abandoned Asbestos-Containing Material.

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

d. Emergencies.

The advance notification period may be waived if an asbestos project or demolition must be conducted immediately due to a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, is necessary to protect equipment from damage, or is necessary to avoid imposing an unreasonable financial burden. This term includes operations necessitated by non-routine failures of equipment.

e. State of Emergency.

If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, the Control Officer may temporarily waive part or all of the project fee(s) by written authorization. The written authorization must reference the applicable state of emergency, what fee(s) will be waived, to what extent the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

B. Amendments.

1. Mandatory Amendments.

An amendment must be submitted to the Agency for any of the following changes in notification, must be submitted in accordance with Section 8.03.A of this Regulation and the advance notification requirements in (~~Section 10.08 of this Regulation~~) the fee schedule, Table 5: Asbestos Fees, and must be accompanied by the appropriate nonrefundable fee established in (~~Section 10.08 of this Regulation~~) the fee schedule, Table 5: Asbestos Fees:

a. Project Type.

Changes in the project type (e.g., from asbestos removal only to asbestos removal and demolition).

b. Job Size.

Increases in the job size category, which increase the fee or when the amount of asbestos affected changes by at least 20 percent. For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category must be submitted. When there is an increase in the job size category which increases the fee, the additional quantities of friable asbestos-containing material must be itemized on the amendment form. If the original notification was filed as an emergency and there is an increase in the job size category which increases the notification fee category, the emergency fee applies to the new fee category.

c. Type of Asbestos.

Changes in the type or new types of asbestos-containing material that will be removed. All types and quantities of asbestos-containing material must be itemized on the amendment form.

d. Start Date.

Changes in the asbestos project start date (i.e. asbestos removal start date or earliest demolition start date). This includes placing a project "on hold" (e.g., an asbestos project is temporarily delayed and a new project date has not been determined). If an asbestos project date is placed "on hold", an amendment taking it "off hold" must be filed prior to work on the asbestos project resuming. The new asbestos project date must be provided when the project is taken "off hold".

e. End Date.

Changes in the asbestos project end date greater than two days after the original end date.

Section 8.04 Asbestos Removal Requirements Prior to Renovation or Demolition

A. Removal to Prevent Disturbance.

Except as provided in Section 8.04B of this Regulation, it is unlawful for any person to cause or allow any demolition or renovation that may disturb asbestos-containing material or damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this regulation. Asbestos-containing material need not be removed from a component if the component can be removed, stored, or transported for reuse without disturbing or damaging the asbestos.

B. Exceptions.

1. Hazardous Conditions.

Asbestos-containing material need not be removed prior to a demolition or renovation, if the property owner demonstrates to the Control Officer that it is not accessible because of hazardous conditions such as: structures or buildings that are structurally unsound and in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. The property owner must submit the written determination, along with any notification required in Section 8.03, of the hazard by an authorized government official or a licensed structural engineer, and must submit the procedures that will be followed for controlling asbestos emissions during the demolition or renovation and disposal of the asbestos-containing waste material.

2. Leaving Nonfriable Asbestos-Containing Material in Place During Demolition.

Nonfriable asbestos-containing material may be left in place during demolition, if an AHERA Project Designer has evaluated the work area, the type of asbestos-containing materials involved, the projected work practices, and the engineering controls, and demonstrates, via written report, to the Agency that the asbestos-containing material will remain nonfriable during all demolition activities and subsequent disposal of the debris. The written report must include a description of the work area, the type of asbestos-containing materials involved, the projected work practices, and the engineering controls. No asbestos-containing material shall remain in place if the demolition involves burning or other

activities that would result in the potential release of asbestos-containing materials to the ambient air.

Section 8.05 Procedures for Asbestos Projects

A. Training Requirements.

It is unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) commensurate to the type of work being performed and whose certification is current. This certification requirement does not apply to asbestos projects conducted in an owner-occupied, single-family residence performed by the resident owner of the dwelling.

B. Standard Asbestos Project Work Practices.

Standard asbestos project work practices generally involve manual removal methods used for asbestos-containing material that is intact and readily identifiable. Standard asbestos work practices require removal of asbestos-containing material using all procedures described in Section 8.05.B.1-6 of this Regulation. Except as provided in Sections 8.06, 8.07, and 8.08 of this Regulation, it is unlawful for any person to cause or allow the removal or disturbance of asbestos-containing material unless all the following requirements are met:

1. Controlled Area.

The asbestos project must be conducted and maintained in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area must be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g., when workers are on break or off-site).

2. Negative Pressure Enclosure.

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

3. Wetting Asbestos-Containing Material Prior to and During Removal.

a. Absorbent asbestos-containing materials, such as surfacing material and thermal system insulation, must be saturated with a liquid wetting agent prior to removal. Wetting must continue until all the material is permeated with the wetting agent. Any unsaturated absorbent asbestos-containing material exposed during removal must be immediately saturated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

b. Nonabsorbent asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, must be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent asbestos-containing material exposed during removal must be immediately coated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

c. Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material do not require wetting of the asbestos-containing material if all access points to the asbestos-containing materials are welded shut or the component has mechanical seals, which

cannot be removed by hand, that separate the asbestos-containing material from the environment.

4. Handling.

Except for surfacing material being removed inside a negative pressure enclosure, asbestos-containing material that is being removed, has been removed, or may have fallen off components during an asbestos project must be carefully lowered to the ground or the floor, not dropped, thrown, slid, or otherwise damaged.

5. Asbestos-Containing Waste Material.

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

b. All asbestos-containing waste material resulting from an asbestos project must be sealed in leak-tight containers as soon as possible after removal, but no later than the end of each work shift.

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

d. Immediately after sealing, each leak-tight container, or the outer packaged container if the waste is aggregated, must be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be made at the site where the waste was generated and must be readable without opening the container.

e. Leak-tight containers must not be dropped, thrown, slid, or otherwise damaged.

6. Visible Emissions.

No visible emissions may result from an asbestos project.

Section 8.06 Alternate Means of Compliance

A. Alternate Asbestos Project Work Practices for Removing Asbestos-Containing Material Prior to Renovation or Demolition.

Unless otherwise approved by the Agency in writing, alternate means of compliance must be used where standard asbestos project work practices in Section 8.05.B of this Regulation cannot be utilized to remove asbestos-containing material (financial considerations aside) prior to renovation or demolition; when asbestos-containing material has been disturbed or is otherwise no longer intact (e.g., when demolition has already occurred or a similar situation exists, typically leaving a pile/area of debris, rubble, ash, or soil); or when mechanical methods are used for removal. Projects performed under this section must be performed under the alternate asbestos project work practice notification category and must comply with all of the following:

1. Qualifications of Person(s) Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the

planned control methods will be as effective as the work practices in Section 8.05.B of this Regulation.

2. AWP Contents.

The AWP must contain all of the following information:

- a. Reason(s) why standard work practices cannot be utilized;
- b. Date(s) the work area was evaluated by the person(s) that prepared the AWP;
- c. Site address(es)/location(s) where the inspection was performed;
- d. The purpose of the evaluation (e.g., asbestos removal from an electrical structure or component where standard wet methods cannot be utilized, removal and disposal of a debris pile resulting from a fire-damaged structure, etc.);
- e. If an asbestos survey was performed, incorporate it by reference;
- f. All procedures that will be followed for controlling asbestos emissions during the asbestos project;
- g. Procedures that will be followed for the final inspection of the property to ensure that asbestos-containing material has been removed and disposed of in accordance with applicable regulations;
- h. A statement that the AWP will be as effective as the work practices in Section 8.06.B of this Regulation;
- i. Signature(s) of the person(s) that prepared the AWP; and
- j. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

3. Asbestos Survey.

If an asbestos survey is not performed pursuant to Section 8.02 of this Regulation, it must be presumed that the asbestos project involves friable and nonfriable asbestos-containing material.

4. AWP Procedures.

The AWP must identify in detail all procedures that will be followed for controlling asbestos emissions during the asbestos project (e.g., during asbestos removal, when workers are off-site, etc.). All procedures and requirements in the AWP must be followed. Unless alternate procedures are specified in the AWP by an AHERA Project Designer and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer, the AWP must include all of the following requirements in Section 8.06.A.4.a through g of this Regulation:

a. Controlled Area.

The asbestos project must be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area must be restricted to authorized personnel only. The controlled area must protect persons outside the controlled area from potential exposure to airborne asbestos.

b. Wetting.

All materials and debris must be handled in a wet condition.

- i. Absorbent materials must be saturated with a liquid wetting agent prior to removal. Wetting must continue until all the material is permeated with the wetting agent. Any unsaturated surfaces exposed during removal must be wetted immediately.

- ii. Nonabsorbent materials must be continuously coated with a liquid wetting agent on any exposed surface prior to and during the removal. They must be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers. Any dry surfaces exposed during removal must be wetted immediately.

c. Asbestos-Containing Waste Materials.

- i. All asbestos-containing waste material and/or asbestos contaminated waste material must be kept wet and must be sealed in leak-tight containers while still wet, as soon as possible after removal but no later than the end of each work shift.

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

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

- iv. Leak-tight containers must be kept leak-tight.

- v. The asbestos-containing waste material must be stored in a controlled area until transported to an approved waste disposal site.

d. Air Monitoring.

Procedures that must be followed for air monitoring at the outside perimeter of the controlled area, both upwind and downwind, to ensure that the asbestos fiber concentrations do not exceed a net difference (between concurrent upwind and downwind monitoring results) of 0.01 fibers per cubic centimeter (f/cc) as determined by the NIOSH Manual of Analytical Methods, Method 7400 (asbestos and other fibers by PCM).

- i. The procedures must require that any air sampling cassette(s) that become(s) overloaded with dust be immediately replaced. Work must stop until an AHERA Project Designer has re-evaluated the engineering controls for dust control, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

- ii. The Agency must immediately be notified by the owner or owner's agent if the airborne fiber concentrations exceed a net difference of 0.01 f/cc and work must stop until an AHERA Project Designer has re-evaluated the engineering controls, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

e. Competent Person.

- i. A competent person must be present for the duration of the asbestos project (includes demolition) and must observe work activities at the site.

- ii. The competent person must stop work at the site to ensure that friable asbestos-containing material found in the debris, which can readily be separated, is removed from the main waste stream and is placed and maintained in leak-tight containers for disposal.

- iii. The competent person must stop work if AWP procedures are not be followed and must ensure that work does not resume until procedures in the AWP are followed.

f. Separation of Materials.

If the project involves separation of clean(ed) materials from debris piles (e.g., rubble, ash, soil, etc.) that contain or are contaminated with asbestos-containing materials, the material separation procedures must be included in the AWP. In addition to these procedures, the following requirements apply:

i. The AWP must identify what materials will be separated from the asbestos-containing material waste stream and must describe the procedures that will be used for separating and cleaning the materials. All materials removed from the asbestos-containing waste material stream must be free of asbestos-containing material.

ii. A competent person must ensure that materials being diverted from the asbestos-containing waste material stream are free of asbestos-containing material.

g. Visible Emissions.

No visible emissions may result from an asbestos project.

5. Record Keeping

a. The AWP must be kept at the work site for the duration of the project and made available to the Agency upon request. The property owner or owner's agent and AHERA Project Designer that prepared the AWP must retain a complete copy of the AWP for at least 24 months from the date it was prepared and make it available to the Agency upon request.

b. Complete copies of other asbestos-related test plans and reports (e.g., testing soil for asbestos, air monitoring for asbestos, etc.) associated with the project must also be retained by the property owner or owner's agent for at least 24 months from the date it was performed and made available to the Agency upon request. The person(s) preparing and performing such tests must also retain a complete copy of these records for at least 24 months from the date it was prepared and make it available to the Agency upon request.

((77))

Section 8.07 Exception for Hazardous Conditions

When the exception for hazardous conditions is being utilized, all of the following apply:

A. Friable and nonfriable asbestos-containing material need not be removed prior to demolition, if it is not accessible (e.g., asbestos cannot be removed prior to demolition) because of hazardous conditions such as structures or buildings that are structurally unsound, structures or buildings that are in danger of imminent collapse, or other conditions that are immediately dangerous to life and health.

B. An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health. The determination must be retained for at least 24 months from the date it was prepared and made available to the Agency by the property owner or owner's agent upon request.

C. An AHERA Project Designer must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be protective of public health. The AWP must contain all of the following information:

1. Date(s) the work area was evaluated by the person(s) that prepared the AWP;

2. Site address(es)/location(s) where the inspection was performed;

3. A copy of the hazardous conditions determination from a government official or licensed structural engineer;

4. If an asbestos survey was performed, include a copy or incorporate it by reference;

5. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

6. A statement that the AWP will be protective of public health;

7. Signature(s) of the person(s) that prepared the AWP; and

8. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

D. AWP Procedures.

The requirements of Section 8.06.A.3-5 of this Regulation and all other applicable requirements, including those specified in the AWP, must be complied with.

Section 8.08 Disposal of Asbestos-Containing Waste Material

A. Disposal Within 10 Days of Removal.

Except as provided in Section 8.08.B of this Regulation, it is unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 calendar days of removal at a waste disposal site authorized to accept such waste.

B. Temporary Storage Site.

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

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the Agency.

2. The application must be accompanied by a non-refundable fee as set in the fee schedule.

3. Accumulated asbestos-containing waste material must be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons.

4. All asbestos-containing waste material must be stored in leak-tight containers which are maintained in leak-tight condition.

5. The storage area must be locked except during transfer of asbestos-containing waste material.

6. Storage, transportation, and disposal must not exceed 90 calendar days. An extension may be granted upon written request.

7. Asbestos-Containing Waste Material Temporary Storage Permits approved by the Agency are valid for one calendar year unless a different time frame is specified in the permit.

Section 8.09 Compliance With Other Rules

Other government agencies have adopted rules that may apply to asbestos regulated under these rules including, but not limited to, the U.S Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, and the

Washington State Department of Labor and Industries. Nothing in the Agency's rules must be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

Reviser's note: The typographical errors in 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.

Reviser's note: The spelling 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.

Reviser's note: The unnecessary underscoring 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.

ARTICLE 9

Source Registration

ADOPTED: 17-Feb-2005

AMENDED: 28-Apr-2017

[Statutory Authority RCW (~~(70.94.151)~~) 70A.15.2200]

PURPOSE: This Article establishes source registration requirements for sources of air pollution in Benton County.

Section 9.01 Source Registration Required

A. The Agency regulates the sources of air contaminants in Benton County under the authority of RCW (~~(70.94.151)~~) 70A.15.2200. Any source identified in WAC 173-400-100 whether publicly or privately owned, must register with the Agency unless exempted.

B. All facilities with Permits issued under the Notice of Construction Program (WAC 173-400-110) are considered part of the Registration Program (WAC 173-400-099) and subject to annual registration fees.

Section 9.02 Source Registration Program Purpose and Components

A. Program purpose.

The registration program is a program to develop and maintain a current and accurate record of air contaminant sources. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

B. Program components.

The components of the registration program consist of:

1. Initial registration and annual or other periodic reports from stationary source owners providing information on location, size, height of contaminant outlets, processes employed, nature and quantity of the air contaminant emissions, and other information that is relevant to air pollution and available or reasonably capable of being assembled. For purposes of this chapter, information relevant to air pollution may include air pollution requirements established by rule, regulatory order, or ordinance pursuant to chapter RCW (~~(70.94)~~) 70A.15.

2. On-site inspections necessary to verify compliance with registration requirements.

3. Data storage and retrieval systems necessary for support of the registration program.

4. Emission inventory reports and emission reduction credits computed from information provided by source owners pursuant to registration requirements.

5. Staff reviews including engineering analysis for accuracy and currency of information provided by source owners pursuant to registration requirements.

6. Clerical and other office support in direct furtherance of the registration program.

7. Administrative support provided in directly carrying out the registration program.

Section 9.03 Registered Source General Requirements

A. General.

Any person operating or responsible for the operation of an air contaminant source in Benton County for which registration and reporting are required must register the source emission unit with the Agency. The owner or operator must make reports containing information as may be required by the Agency concerning location, size and height of contaminant outlets, processes employed, nature and quantity of the air contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

B. Registration form.

Registration information must be provided on forms supplied by the Agency and must be completed and returned within the time specified on the form. Emission units within the facility must be listed separately unless the Agency determines that certain emission units may be combined into process streams for purposes of registration and reporting.

C. Signatory responsibility.

The owner, operator, or their designated management representative must sign the registration form for each source. The owner or operator of the source must be responsible for notifying the Agency of the existence of the source, and for the accuracy, completeness, and timely submittal of registration reporting information and any accompanying fee.

D. Operational and maintenance plan.

Owners or operators of registered sources within Benton County must maintain an operation and maintenance plan for process and control equipment. The plan must reflect good industrial practice and must include a record of performance and periodic inspections of process and control equipment. In most instances, a manufacturer's operations manual or an equipment operation schedule may be considered a sufficient operation and maintenance plan. The plan must be reviewed and updated by the source owner or operator at least annually. A copy of the plan must be made available to the Agency upon request.

E. Report of closure.

A report of closure must be filed with the Agency within ninety (90) days after operations producing emissions permanently cease at any applicable source under this Section.

F. Report of change of ownership.

A new owner or operator must report to the Agency within ninety (90) days of any change of ownership or change in operator.

G. Operating permit program source exemption.

Permit program sources, as defined in RCW (~~(70.94-030)~~) 70A.15.1030 are not required to comply with the registration requirements of this Section.

Section 9.04 Registered Source Emission Level Classification

A. Gasoline Facilities:

1. Gasoline dispensing facilities (gas stations) using Stage I or Stage II vapor recovery systems, as defined in WAC 173-491;

2. Bulk gasoline plants, as defined in WAC 173-491;

3. Bulk gasoline terminals, as defined in WAC 173-491;

B. Class 1.

Facilities and sources whose actual annual emissions are less than the following will be classified as Class 1 sources:

1. 20 tons/yr of carbon monoxide (CO);

2. 8 tons/yr of nitrogen oxides (NO_x);

3. 8 tons/yr of sulfur dioxide (SO₂);

4. 5 tons/yr of total suspended particulate (TSP);

5. 3 tons/yr of fine particulate matter (PM₁₀);

6. 8 tons/yr of volatile organic compounds (VOC);

7. 240 pounds/yr of lead;

8. 1,200 pounds/yr of fluorides;

9. 2,800 pounds/yr of sulfuric acid mist;

10. 2 tons/yr of hydrogen sulfide (H₂S); or

11. 2 tons/yr of total reduced sulfur, including H₂S.

C. Class 1 Toxic Source.

Toxic air pollutants are those listed in WAC 173-460-150. Facilities and sources whose actual emissions are less than the following will be classified as Class 1 Toxic Sources:

1. One (1.0) ton/yr of a single toxic air pollutant; or

2. Two and one-half (2.5) tons/yr of a combination of toxic air pollutants will be classified as Class 1 Toxic Sources.

D. Class 2.

Sources whose actual annual emissions are greater than that listed in Section 9.04.B, of this Regulation but less than one hundred (100) tons/yr of CO, NO_x, SO₂, TSP, PM₁₀, VOCs, or lead, will be classified as Class 2 Sources.

E. Class 2 Toxic Sources.

Toxic air pollutants are those listed in WAC 173-460-150. Sources whose actual emissions are greater than that listed in Section 9.04.C of this Regulation, but less than ten (10) tons/yr of any single toxic air pollutant or less than twenty-five (25) tons/yr of a combination of toxic air pollutants, will be classified as Class 2 Toxic Sources.

F. Synthetic Minor Source.

Sources that have requested and received a federally enforceable emissions limit that limits the total potential-to-emit of the facility to less than one hundred (100) tons/yr of any criteria pollutant, ten (10) tons/yr of any single hazardous air pollutant, or twenty-five (25) tons/yr of any combination of hazardous air pollutants are synthetic minor sources.

ARTICLE 10

Fees and Charges

ADOPTED: 17-Feb-2005

AMENDED: 5 August 2020

[Statutory Authority RCW ((70.94.151)) 70A.15.2200, RCW ((70.94.152)) 70A.15.2210]

Section 10.01 Fees and Charges Required

A. Unless otherwise provided, any fee assessed by the Agency must be paid within thirty (30) days of assessment. Failure to pay a fee may result in the commencement of a formal enforcement action.

B. Upon approval by the Board as part of the annual budget process, fees may be increased annually by at least the fiscal growth factor as determined by the Washington State Office of Financial Management.

C. Electronic Payment of Fees. A convenience fee, charged by the fee processor, may be charged to a source for the electronic payment of all or part of the fee at the rates set by the processor.

Section 10.02 Fees Otherwise Provided

All fees and charges provided for in this Article must be in addition to fees otherwise provided for or required to be paid by Regulation 1, provided the Control Officer waives payment of any fee or service charge hereby required if such fee duplicates a fee charged or required to be paid by another Article of this Regulation.

Section 10.03 Fee Exemptions

A. The Control Officer may waive or reduce the registration fee for an operation provided a source presents sufficient demonstration of hardship circumstances.

B. Stationary sources subject to the Operating Permit Regulation, Chapter 173-401 WAC.

Section 10.04 General Administrative Fees

A. ((fifty dollar (\$50.00))) fee, according to the fee schedule, will be assessed for any check written to the Agency returned due to non-sufficient funds.

Section 10.05 Registered Source Fees

A. The Agency will charge an annual registration fee pursuant to RCW ((70.94.151)) 70A.15.2200 for services provided in administering the registration program. Fees received under the registration program will not exceed the cost of administering the registration program. The Board will review the registration program on an annual basis.

B. All registrants must pay a fee in accordance with the current Fee Schedule.

C. Fee Payment.

1. Fee Payment. The annual registration fee is due and payable by the date on the invoice, unless otherwise specified in writing to the source by the Agency.

2. Late Payment of Fees.

A late fee will be charged to a source for late payment of all or part of its annual registration fee at the following rates:

a. Ten percent of the source's total assessed fee for payment received after the due date for fee payment but up to the first thirty days past the due date for fee payment;

b. Fifteen percent of the source's total assessed fee for payment received between the thirty-first day and the sixtieth day past the due date for fee payment; and

c. Twenty-five percent of the source's total assessed fee for payment received between the sixty-first day and the ninetieth day past the due date for fee payment.

3. Failure to Pay Fees.

The Agency will charge a penalty to a permit program source under its jurisdiction for failure to pay all or part of its annual registration fee and/or penalties thereon after ninety

days past the due date for fee payment in an amount three times the source's total assessed fee. Failure to pay all or part of an annual registration fee after the ninety first day past the due date may result in enforcement action.

4. Other Penalties.

The penalties authorized in Section 10.08.A.5.b and c of this Regulation are additional to and in no way prejudice the Agency's ability to exercise other civil and criminal remedies, including the authority to revoke a source's operating permit for failure to pay all or part of its operating permit fee.

5. Facility Closure.

Sources that permanently cease operations will be required to pay only a pro rata portion of the annual registration fee for the fiscal year in which they cease operations. The portion of the fee to be paid will be calculated by dividing the number of calendar days that have passed in the relevant calendar year at the time the source ceases operations by the total of 365 calendar days, and multiplying the fraction thus derived by the fee that the source would have paid for the relevant calendar year, had it not ceased operations.

6. Transfer in Ownership.

Transfer in ownership of a source will not affect that source's obligation to pay registration fees. Any liability for fee payment, including payment of late payment and other penalties will survive any transfer in ownership of a source.

Section 10.06 Fees for Application for Notice of Construction (NOC) for Stationary and Portable Sources, and Notice of Intent to Operate (NIO) Relocating Portable Sources

A. NOC Application Filing Fee.

An application filing fee will be due and payable at the time of filing the NOC application. The filing fee is non-refundable and is contained in the Fee Schedule.

B. Portable Source NIO Filing Fee.

A Filing fee will be due and payable at the time of filing the NIO form. The fee is contained in the Fee Schedule. The filing fee is non-refundable. NIO must be received at least 15 days prior to starting operation.

1. Notice of Intent to Operate: The owner or operator of a portable source with a valid permit per WAC 173-400-036 must notify the Agency of the intent to relocate and operate within the jurisdiction of the Agency at least 15 days prior to starting operation by submitting a complete Notice of Intent to Operate (NIO). You must receive an Approval to Operate Portable Source from Benton Clean Air Agency prior to starting operation.

C. NOC or NIO Engineering Examination and Inspection Fee.

1. An examination and inspection fee will be charged according to the Fee Schedule. The engineering and inspection fee will be due and payable at the time of filing the NOC or NIO, unless otherwise specified to the applicant by the Agency.

2. Emergency application or expedited review fee will be two (2) times the normal application and review fee.

D. Additional Fees.

Additional fees may be charged according to the Fee Schedule. Fees are cumulative. The additional fees will be due and payable at the time of filing the NOC or NIO, unless otherwise specified to the applicant by the Agency.

1. Fee amounts in the Fee Schedule listed as "Actual" are based upon the Agency's actual cost to complete a review or task and will be determined using the actual or direct hours expended completing the specific review or task.

2. If an NOC or NIO applicability determination fee is received by the Agency and an NOC or NIO is determined not to be required, the Engineering Examination and Inspection Fee will be the actual time expended at the current engineering charge rate in dollars per hour.

E. Any NOC or NIO application received by the Agency without the accompanying fee will be rejected and returned to sender. Such action will not constitute a determination of completeness or incompleteness as per WAC 173-400-111.

Note: Tables 10-1 and 10-2 have been deleted. The Fee Schedule for the Registration and Notice of Construction Programs is approved by the board per Article 2.8 D.

Section 10.07 State Environmental Policy Act (SEPA) Fees

A. Where review of an Environmental Impact Statement (EIS), Environmental Checklist, or an addendum to, or adoption of, an existing environmental document pursuant to Chapter 197-11 WAC is required, in association with an NOC or a NIO, the applicant will pay a review fee of the greater of:

1. ~~((One hundred fifty dollars (\$150.00), due and payable at the time of submittal))~~ A fee as listed in the fee schedule for SEPA review; or

2. Actual costs to complete the review or task and will be determined using the actual or direct hours expended completing the specific review and the corresponding hourly rate of each staff person directly involved. Actual costs will be billed by the Agency to the owner, operator, or applicant after a threshold determination has been made and/or a preliminary determination has been issued.

B. Additional fees may be charged according to the Fee Schedule. Fees are cumulative. The additional fees will be due and payable at the time of filing, unless otherwise specified to the applicant by the Agency.

Section 10.08 Asbestos Fees and Waiting Periods

A. Any fee required for asbestos projects will be due and payable at the time of filing, unless otherwise specified to the applicant by the Agency.

B. Failure to pay all or part of the fee may result in the commencement of a formal enforcement action.

The notification waiting period begins on the workday on which a complete notification is received

Note: Table 10-3 has been deleted. The Fee Schedule for the Asbestos Program is approved by the board per Article 2.8 D.

Section 10.09 Title 5 Air Operating Permit Fees

[Statutory Authority RCW ((70.94.164)) 70A.15.2260]

All eligible sources under Chapter 173-401 WAC will be subject to the annual fees described in this Section.

A. Permanent annual fee determination and certification.

1. Fee Determination.

a. Fee Determination.

The Agency will develop a fee schedule using the process outlined below, according to which it will collect fees from permit program sources under its jurisdiction. The fees

will be sufficient to cover all permit administration costs. The Agency will also collect its jurisdiction's share of Ecology's development and oversight costs. The fee schedule will differentiate as separate line items the Agency and Ecology's fees. Opportunities for public participation will be afforded throughout the fee determination process, as provided in Section 10.0((8))2.A.3((a)) of this Regulation.

b. Fee Eligible Activities.

The costs of permit administration and development and oversight activities are fee eligible.

i. Permit Administration.

Permit administration costs are those incurred by the Agency in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Eligible permit administration costs are as follows:

(a) Pre-application assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(b) Source inspection, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(c) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(d) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(e) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(f) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(g) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(h) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(i) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(j) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(k) Training for permit administration and enforcement;

(l) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(m) Required fiscal audits, periodic performance audits, and reporting activities;

(n) Tracking of time, revenues and expenditures, and accounting activities;

(o) Administering the permit program including the costs of clerical support, supervision, and management;

(p) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the Federal Clean Air Act; and

(q) Other activities required by operating permit regulations issued by the United States Environmental Protection Agency under the Federal Clean Air Act.

ii. Ecology Development and Oversight.

Development and oversight costs are those incurred by Ecology in developing and administering the state operating permit program and in overseeing the administration of the program by the delegated local authorities. ~~(Development and oversight costs are in Chapter 252, Laws of 1993 Section 6.2.b of this Regulation.)~~

c. Workload Analysis.

i. The Agency will conduct an annual workload analysis of the previous years' work, to projecting resource requirements for the purpose of preparation for permit administration. The workload analysis will include resource requirements for both the direct and indirect costs of the permit administration activities in Section 10.0((8))2.A.1.b.i of this Regulation.

ii. Ecology will, for the two-year period corresponding to each biennium, identify the development and oversight activities that it will perform during that biennium. The eligible activities are those referenced in Section 10.0((8))2.A.1.b.ii of this Regulation.

d. Budget Development.

The Agency will annually prepare an operating permit program budget. The budget will be based on the resource requirements identified in an annual workload analysis and will take into account the projected fund balance at the start of the calendar year. The Agency will publish a draft budget for the following calendar year on or before May 31 and will provide opportunity for public comment in accordance with Chapter 173-401 WAC Operating Permit Regulation. The Agency will publish a final budget for the following calendar year on or before June 30.

e. Allocation Method.

i. Permit Administration Costs.

The Agency will allocate its permit administration costs and its share of Ecology's development and oversight costs among the permit program sources for which it acts as permitting authority, according to a three-tiered model based upon:

(a) The number of sources under its jurisdiction;

(b) The complexity of the sources under its jurisdiction, and

(c) The size of the sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted. The quantity of each regulated pollutant emitted by a source will be determined based on the annual emissions data during the most recent calendar year for which data is available. Each of the three tiers will be equally weighted.

ii. Ecology Development and Oversight Costs.

Ecology will allocate its development and oversight costs among all permitting authorities, including the Agency based upon the number of permit program sources under the jurisdiction of each permitting authority. If Ecology determines that it has incurred extraordinary costs in order to oversee a particular permitting authority and that those costs are

readily attributable to the particular permitting authority, Ecology may assess to that permitting authority such extraordinary costs.

f. Fee Schedule.

The Agency will issue annually a fee schedule reflecting the permit administration fee and Ecology's development and oversight fee to be paid by each permit program source under its jurisdiction. The fee schedule will be based on the information contained in the final source data statements for each year; the final source data statements will be issued after opportunity for petition and review has been afforded in accordance with Section 10.0((8))9.A(-).4 of this Regulation.

2. Fee Collection - Ecology and Benton Clean Air Agency.

a. Collection from Sources.

The Agency, as a delegated local authority, will collect the fees from the permit program sources under its jurisdiction.

i. Permit Administration Costs. The Agency will collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its permit administration costs.

ii. Ecology Development and Oversight Costs. The Agency will collect from permit program sources under its jurisdiction fees sufficient in the aggregate to cover its share of Ecology's development and oversight costs.

b. Dedicated Account.

All receipts from fees collected by the Agency, as a delegated local authority, from permit program sources will be deposited in - dedicated account -. Expenditures from these dedicated accounts will be used only for the activities described in RCW ((70.94.162)) 70A.15.2270.

3. Accountability.

a. Public Participation during Fee Determination Process.

The Agency will provide for public participation in the fee determination process described under Section 10.09.A(-) of this Regulation which provision will include but not be limited to the following:

i. The Agency will provide opportunity for public review of and comment on:

(a) Each annual ((~~workload analysis~~)) AOP fee calculation;

(b) Each annual Agency budget; and

(c) Each annual Agency fee schedule

ii. ((~~The Agency will submit to Ecology for publication in the Permit Register notice of issuance of its draft annual workload analysis, issuance of its draft annual budget and issuance of its draft annual fee schedule.~~))

((~~iii~~)) ii. The Agency will make available for public inspection and to those requesting opportunity for review copies of its draft:

(a) Annual ((~~workload analysis~~)) AOP fee calculation on or before May 31;

(b) Annual Agency budget on or before May 31; and

(c) Annual Agency fee schedule on or before May 31.

((~~iv~~)) iii. The Agency will provide a minimum of thirty (30) days for public comment on the ((~~draft annual workload analysis and~~)) draft annual budget. Such thirty-day period for

comment will run from the date of publication of notice in the Permit Register as provided in this Section.

b. Tracking of Revenues, Time and Expenditures.

i. Revenues.

The Agency will track revenues on a source-specific basis.

ii. Time and Expenditures.

The Agency will track time and expenditures on the basis of functional categories as follows:

(a) Application review and permit issuance;

(b) Permit modification;

(c) Permit maintenance;

(d) Compliance and enforcement;

(e) Business assistance;

(f) Regulation and guidance development;

(g) Management and training; and

(h) Technical support.

iii. Use of Information Obtained from Tracking Revenues, Time and Expenditures.

The Agency will use the information obtained from tracking revenues, time and expenditures to modify its workload analysis during each calendar year's review provided for under Section 10.09.A.1.d of this Regulation.

iv. The information obtained from tracking revenues, time, and expenditures will not provide a basis for challenge to the amount of an individual source's fee.

c. Periodic Fiscal Audits, Reports and Performance Audits.

A system of regular, periodic fiscal audits, reports and performance audits will be conducted in order to evaluate Ecology's and the Agency's operating permit program administration, as follows:

i. Fiscal Audits.

The Agency will contract with the State Auditor to perform a standard fiscal audit of its operating permit program every other year.

ii. Annual Routine Performance Audits.

The Agency will be subject to annual routine performance audits, except that the routine audit will be incorporated into the extensive performance audit, conducted pursuant to Section 10.09.A.3.c.v of this Regulation in each year during which an extensive performance is conducted. Ecology will issue guidance regarding the content of the routine performance audits and will conduct the Agency audits.

iii. Annual Random Individual Permit Review.

One permit issued by the Agency will be subject to review in conjunction with the annual routine performance. The permit to be reviewed will be selected at random. Ecology will issue guidance regarding the content of the random individual permit review and will conduct the Agency's review.

iv. Periodic Extensive Performance Audits.

The Agency will be subject to extensive performance audits every five years. In addition, the Agency may be subject to an extensive performance audit more frequently under the conditions of Section 10.09.A.3.c.v of this Regulation. Ecology will issue guidance regarding the content of the extensive performance audits and will conduct the audits of this agency.

v. Finding of Inadequate Administration or Need for Further Evaluation.

If, in the process of conducting a fiscal audit, annual routine audit, or annual random individual permit review, the auditor or Ecology finds that the Agency is inadequately administering the operating permit program or finds that further evaluation is immediately warranted, an extensive performance audit will be conducted, as provided in Section 10.09.A.3.c.iv of this Regulation.

vi. Annual Reports.

The Agency will prepare an annual report evaluating its operating permit program administration. Such report will include any findings of the auditor or Ecology resulting from the relevant fiscal audits, annual routine audits, annual random individual permit reviews or periodic extensive performance audits. The Agency will submit its report to its Board and to Ecology.

4. Administrative Dispute Resolution.

a. Preliminary Statement of Source Data.

The Agency will provide to the permit program sources under their respective jurisdictions a preliminary statement of emissions and other data from that source upon which the Agency intends to base its allocation determination under Section 10.09.A.1.e of this Regulation. Such preliminary statement will be provided to the permit program sources on or before September 30 of each year. Such preliminary statement will indicate the name, address and telephone number of the person or persons to whom the source or other individual may direct inquiries and/or petitions for review under Section 10.0((8))2.A.4.b of this Regulation regarding the accuracy of the data contained therein.

b. Petition for Review of Statement.

A permit program source or other individual under the jurisdiction of the Agency as a delegated local authority, may petition to review for accuracy the data contained in the preliminary source data statement provided for under Section 10.0((8))2.A.4.a of this Regulation. Such petition will be lodged on or before October 31 of each year. Such petition will be in writing, directed to the individual indicated on the statement of source data. Such petition will indicate clearly the data to be reviewed, the specific action that the source or petitioning individual is requesting be taken and may, if the source or petitioning individual desires, be accompanied by written documentation supporting the request for review. Such petition will, in addition, state the name, address and telephone number of the person or persons to whom the Agency may direct inquiries regarding the request. Upon receipt of such a petition, the Agency, as a delegated local authority, must issue its written response to the petitioner on or before November 30 of each year. Such response will state the conclusions of the review and the reasons therefore, and will contain a new preliminary source data statement, revised to reflect any changes necessitated by the Agency's response.

c. Final Source Data Statement.

The Agency will provide to the permit program sources under its jurisdiction a final statement of emissions and other data from that source upon which the Agency will base its allocation determination under Section 10.0((8))2.A.1 of this Regulation along with an invoice reflecting the fee billed to

that source on or before (~~January~~) February 20th of each year.

5. Fee Payment and Penalties.

a. Fee Payment.

Each permit program source will pay a fee in the amount reflected in the invoice issued under Section 10.09.A.4.c of this Regulation. Fees will be invoiced by (~~January~~) February 20th of each year. Such fee will be due on or before April 15th of each year.

b. Late Payment of Fees.

The Agency will charge a penalty to a permit program source under its jurisdiction for late payment of all or part of its operating permit fee at the following rates:

i. Ten percent of the source's total assessed fee for payment received after the due date for fee payment but up to the first thirty days past the due date for fee payment;

ii. Fifteen percent of the source's total assessed fee for payment received between the thirty-first day and the sixtieth day past the due date for fee payment; and

iii. Twenty-five percent of the source's total assessed fee for payment received between the sixty-first day and the ninetieth day past the due date for fee payment.

c. Failure to Pay Fees.

The Agency will charge a penalty to a permit program source under its jurisdiction for failure to pay all or part of its operating permit fee and/or penalties thereon after ninety days past the due date for fee payment in an amount three times the source's total assessed fee.

d. Other Penalties.

The penalties authorized in Section 10.0((8))2.A.5.b and c of this Regulation are additional to and in no way prejudice the Agency's ability to exercise other civil and criminal remedies, including the authority to revoke a source's operating permit for failure to pay all or part of its operating permit fee.

e. Facility Closure.

Sources that permanently cease operations will be required to pay only a pro rata portion of the annual operating permit fee for the fiscal year in which they cease operations. The portion of the fee to be paid will be calculated by dividing the number of calendar days that have passed in the relevant calendar year at the time the source ceases operations by the total of 365 calendar days, and multiplying the fraction thus derived by the fee that the source would have paid for the relevant calendar year, had it not ceased operations.

f. Transfer in Ownership.

Transfer in ownership of a source will not affect that source's obligation to pay operating permit fees. Any liability for fee payment, including payment of late payment and other penalties will survive any transfer in ownership of a source.

6. Development and Oversight Remittance by Local Authorities to Ecology.

a. Ecology will provide to the Agency a statement of the share of Ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before December 31 of each year.

b. The Agency will remit to Ecology one-half of the share of Ecology's development and oversight costs for which it is responsible for collecting from sources under its jurisdiction on or before March 31 of each year and will remit

to Ecology the balance of its share of Ecology's development and oversight costs on or before June 30 of each year.

B. Air Operating Permit sources are not subject to fees under the Registration Program.

Section 10.10 Special Burning Permit Fees

[Statutory Authority RCW (~~(70.94.6528)~~) 70A.15.5090]

A. An application fee (~~(of fifty dollars (\$75.00))~~) as listed in the fee schedule is due and payable at the time of submittal of a request for special burning permit. The application fee is non-refundable. A fee will be charged for each additional inspection that's required.

B. (~~An additional fee for inspection and oversight costs will be charged for each submittal of a request for special burning permit.~~) An (~~The~~) additional fee will be calculated based upon the volume of the material to be burned. The additional fee will not exceed (~~(eight dollars and fifty cents (\$8.50))~~) the amount listed in the fee schedule per cubic yard or the adjusted amount according to Chapter 173-425 WAC.

C. The additional fee will be due and payable within thirty (30) days of issuance of the special burning permit. Special burning permit fees will be due within thirty (30) days of issuance of the special burning permit.

D. A late fee (~~(of twenty five dollars (\$25.00))~~) as listed in the fee schedule may be charged for special burning permit fees that have not been paid within thirty (30) days of issuance of the special burning permit. Failure to pay said fee within sixty (60) days of the issuance of the special burning permit may result in the commencement of a formal enforcement action.

Section 10.11 Agricultural Burning Permit Fees

A. An application fee for an agricultural burning permit will be due and payable at the time of submittal of the application. Refunds may be issued by the Agency for acres or tons not burned under each permit provided the adjusted fee after subtracting refunds is no less than the minimum fee.

B. Permit Fee Schedule.

The agricultural burning permit fee schedule established through Chapter 173-430 WAC applies in the Agency.

Reviser's note: The typographical errors in 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.

ACRONYMS AND ABBREVIATIONS

- ACM Asbestos Containing Material
- ARP. Application for Relief from Penalty
- AWP Alternate Work Plan
- BACT Best Available Control Technology
- BART Best Available Retrofit Technology
- BCAA Benton Clean Air Agency Board. Benton Clean Air Agency Board of Directors
- BTU. British Thermal Unit (unit of measure)
- CEM Continuous Emission Monitoring
- C.F.R. U.S. Code of Federal Regulations
- Ecology Washington State Department of Ecology
- ERC. Emission Recovery Credit
- LAER Lowest Achievable Emission Rate
- MACT Maximum Achievable Control Technology
- NESHAP. National Emission Standards for Hazardous Air Pollutants

- NOC Notice of Construction
- NIO Notice of Intent to Install and Operate a Temporary Source
- NOI Notice of Intent to Demolish or Remove Asbestos
- NOP. Notice of Penalty
- NSPS. New Source Performance Standard
- PCHB Washington State Pollution Control Hearings Board
- PSD Prevention of Significant Deterioration
- RACM. Regulated Asbestos Containing Material
- RACT Reasonably Available Control Technology
- RCW Revised Code of Washington
- SEPA. State Environmental Policy Act
- UGA Urban Growth Area
- USC. United States Code
- WAC Washington Administrative Code

WSR 21-22-004

PERMANENT RULES

BELLEVUE COLLEGE

[Filed October 20, 2021, 4:59 p.m., effective November 20, 2021]

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

Purpose: Bellevue College is updating its policy on college property use in order to clarify processes. Changes include updating titles, contacts, and roles of officials and offices. Out-of-date language is being brought into alignment with current rules, policies, procedures, and ordinances.

Citation of Rules Affected by this Order: New WAC 132H-140-022; repealing WAC 132H-140-010 and 132H-140-040; and amending WAC 132H-140-020, 132H-140-025, 132H-140-030, 132H-140-050, 132H-140-065, 132H-140-070, 132H-140-085, 132H-140-110, and 132H-140-120.

Statutory Authority for Adoption: RCW 28B.50.140(13); chapter 34.05 RCW.

Adopted under notice filed as WSR 21-09-078 on April 20, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 9, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 9, Repealed 2.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 9, Repealed 2.

Date Adopted: October 20, 2021.

Alicia M. Keating Polson
Executive Assistant to the
President and Board of Trustees

Rules Coordinator

Chapter 132H-140 WAC

~~((FEES FACILITY RENTAL ADDITIONAL SERVICES FOR COMMUNITY)) COLLEGE ((DISTRICT VIII)) PROPERTY USE~~

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-140-020 Statement of purpose. The purpose of this chapter is to establish procedures and reasonable controls for the use of college property by all college and noncollege groups. Bellevue ((Community)) College ((District VIII)) is an educational institution provided and maintained by the people of the state of Washington. The college reserves its ~~((facilities, buildings and grounds))~~ property for ~~((those))~~ activities that are related to its broad educational mission. ~~((At other times, the))~~ When not being used for those purposes, college ~~((facilities))~~ property may be made available to other individuals and organizations.

~~((The purpose of these regulations is to establish procedures and reasonable controls for the use of college facilities for noncollege groups and for college groups where applicable.~~

~~In keeping with this general purpose, and))~~ Consistent with RCW 28B.50.140(7) and 28B.50.140(9), ~~((facilities))~~ college property should be available for a variety of uses which are of benefit to either the college community or the general public if such ~~((general))~~ uses substantially relate to and do not interfere with the mission of the college. However, a state agency is under no obligation to make its ~~((public facilities))~~ property available to the ~~((community))~~ general public for private purposes.

When determining whether to authorize a particular use, primary consideration shall be given at all times to activities ~~((specifically))~~ related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, student programming, or ~~((public service))~~ other college-sponsored programs.

~~((Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to insure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Such arrangements by both organizations and individuals must be made through campus operations.))~~

NEW SECTION

WAC 132H-140-022 Definitions. For the purposes of this chapter, the following definition shall apply:

"College property" shall include, but not be limited to, all campuses of the college, wherever located, and all college-controlled land, buildings, facilities, vehicles, equipment, and any other property owned or used by the college, including study abroad, retreat, and conference sites.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-140-025 ~~((Facilities use for first amendment activities.))~~ Applicability to expressive activity. Use of ~~((the campus))~~ college property for ~~((first amendment activities, as defined by law,))~~ expressive activity is governed by the rules set forth in chapter ~~((WAC 132H-142-010 through 132H-142-060. This chapter does not apply to those individuals or groups using the college facilities for first amendment activities))~~ 132H-142 WAC.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-140-030 Request for use of ~~((facilities))~~ college property. Requests by ~~((noncollege))~~ individuals or groups ~~((for utilization of college facilities))~~ from outside the college shall be made to the ~~((director of campus operations))~~ vice president of administrative services or a designee, who shall be the agent of the college in consummating rental and use agreements.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-140-050 Scheduling and reservation practices. The primary purpose of college ~~((facilities))~~ property use is to ~~((serve the instructional program))~~ advance the mission of the college. However, ~~((the facilities))~~ college property, when not required for scheduled college ~~((use))~~ purposes, may be available for ~~((rental))~~ use by the public in accordance with current fee schedules and other relevant terms and conditions ~~((for such use))~~ developed and maintained by the vice president of administrative services.

No college ~~((facilities))~~ property may be used by individuals or groups from outside the college ~~((unless the facilities including buildings, equipment and facilities land have been reserved))~~ without first executing a written contract, signed by the vice president of administrative services or designee, reserving the property and setting forth the fees, terms, and conditions of use.

In determining whether to accept a request for the use of college ~~((facilities))~~ property, the administration shall use the college mission statement and the following items, listed in priority order, as guidelines:

- (1) Bellevue ~~((Community))~~ College scheduled programs ~~((and)),~~ activities, and events.
- (2) ~~((Major college events.~~
- ~~((3)))~~ Foundation related events.
- ~~((4)))~~ (3) Noncollege (outside individual or organization) events.

Arrangements for use of college ~~((facilities))~~ property must be made through the ~~((campus operations))~~ office of the vice president of administrative services.

AMENDATORY SECTION (Amending WSR 05-07-069, filed 3/14/05, effective 4/14/05)

WAC 132H-140-065 Limitations and denial of use. Bellevue ~~((Community))~~ College is a state agency and exists

to serve the public. However, the college may deny use of its ~~((facilities))~~ property to any individual, group or organization if the requested use would:

(1) Interfere or conflict with the college's ~~((instructional))~~ mission including, but not limited to, instruction, student services ~~((or))~~, support programs, research, or public service programs;

(2) Interfere with the free flow of pedestrian or vehicular traffic on campus;

(3) Involve illegal activity or fail to comply with college policies, procedures, contracts, or the Washington Administrative Code;

(4) Create a hazard or result in damage to college ~~((facilities))~~ property; or

(5) Create undue stress on college resources ~~((e.g., a request for a major event may be denied if another major event is already scheduled for the same time period, because of demands for parking, security coverage, etc.))~~.

Where college space is used for an authorized function ~~((such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities))~~, groups must obey or comply with directions of ~~((the designated administrative officer or individual in charge of the meeting))~~ college officials.

Any individual or group granted permission to use college ~~((facilities))~~ property shall agree in advance to abide by all college rules and regulations. Use of college property by college personnel, students, college organizations and the general public is also subject to local, state, and federal laws.

The college reserves the right to deny use of college ~~((facilities))~~ property to any individual or group whose past conduct indicates a likelihood that college rules and regulations will not be obeyed. The college may also deny use to a requesting individual or organization ~~((which has))~~ that used ~~((the facilities))~~ college property in the past and ~~((has damaged college property))~~ caused damage, left college buildings and grounds in excessive disorder, or failed to cooperate with college ~~((staff))~~ officials concerning use of the ~~((facilities))~~ property.

~~((No person or group may use or enter onto college grounds or facilities having in their possession firearms or other dangerous weapons, even if licensed to do so, except commissioned police officers as prescribed by law.))~~

College ~~((facilities))~~ property may be used for purposes of political campaigning by or for candidates who have filed for public office, if the campaigning is directed to members of the public, and only when the full ~~((rental cost of))~~ fee for the ~~((facility))~~ property is paid. Use of state funds to pay for ~~((facility rental costs for political campaigns))~~ or subsidize a political campaign's use of college property is prohibited.

If at any time actual use of college ~~((facilities))~~ property by an individual or group constitutes an unreasonable disruption of the normal operation of the college, such use shall immediately terminate~~((s))~~; all persons engaged in such use shall immediately vacate the premises~~((s))~~ and leave the college property upon ~~((command))~~ direction of ~~((the appropriate))~~ a designated college official.

Advertising or promotional materials for any event being held on or in ~~((a))~~ college ~~((facility))~~ property must ~~((follow the same procedure as applies to students outlined in WAC~~

~~132H-120-050))~~ comply with college policies and procedures.

Use of audio amplifying equipment is permitted only in locations and at times that will not disrupt, or disturb, or interfere with the normal conduct of college affairs including, but not limited to, the use of classrooms, offices, libraries, and laboratories; and previously scheduled college events or activities.

~~((BCC facilities may not be used for private or commercial purposes unless such activities clearly serve the educational mission of the college, are either sponsored by an appropriate college unit or conducted by contractual agreement with the college. Commercial uses may also be made as noted in WAC 132H-133-050.))~~

Use of college property for commercial purposes must be preapproved by the vice president of administrative services and comply with WAC 132H-133-050.

Alcoholic beverages will not be served without the approval of the ~~((president))~~ provost or ~~((his/her))~~ designee. It shall be the responsibility of the event sponsor to obtain all necessary licenses from the Washington state liquor ~~((control))~~ and cannabis board and adhere to their regulations~~((s))~~ and those of Bellevue ~~((Community))~~ College.

AMENDATORY SECTION (Amending WSR 02-14-007, filed 6/20/02, effective 7/21/02)

WAC 132H-140-070 Other requirements. (1) When using college ~~((facilities))~~ property, an individual or organization may be required to make an advance deposit, post a bond and/or obtain insurance to protect the college against costs or other liability.

(2) When the college grants permission to an individual or organization to use its ~~((facilities))~~ property it is with the expressed understanding and condition that the individual or organization assumes full responsibility for any loss or damage resulting from such use and agrees to hold harmless and indemnify the college against any loss or damage claim arising out of such use.

AMENDATORY SECTION (Amending WSR 02-14-007, filed 6/20/02, effective 7/21/02)

WAC 132H-140-085 ~~((Facility rental/use))~~ College property use fees. Use fees will be charged in accordance with a schedule developed by the vice president of administrative services, which is available at the ~~((campus operations))~~ events office. The college reserves the right to make pricing changes without prior written notice, except that such price changes shall not apply to facility use agreements already approved by the administration.

AMENDATORY SECTION (Amending WSR 02-14-007, filed 6/20/02, effective 7/21/02)

WAC 132H-140-110 Animals ~~((policy))~~ on campus. Pets on the grounds of Bellevue ~~((Community))~~ College shall be in the physical control of their owner in accordance with the city of Bellevue ~~((leash law))~~ dog leash and waste removal required ordinance, chapter ~~((8-04))~~ 8.05.

Animals(~~(except for service animals,))~~ are prohibited from entering buildings operated by Bellevue (~~(Community))~~ College, with the exception of service animals or as approved as an accommodation for a disability in accordance with Bellevue College policies and procedures.

AMENDATORY SECTION (Amending WSR 02-14-007, filed 6/20/02, effective 7/21/02)

WAC 132H-140-120 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate these rules will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the president(~~(;))~~ or (~~(his or her))~~ designee(~~(;))~~ to leave the college property. Such a request prohibits the entry of and withdraws the license or privilege to enter onto or remain upon any portion of the college (~~(facilities))~~ property by the person or group of persons requested to leave. Such persons shall be subject to arrest under the provisions of chapter 9A.52 RCW. Individuals requested to leave college property may appeal that decision by submitting to the college president by certified mail, return receipt requested, a letter stating the reasons the person should not be barred from college (~~(facilities))~~ property. The college president or designee shall respond in writing within fifteen calendar days with a final decision of the college. Persons shall continue to be barred from college property while an appeal is pending.

(2) Students, faculty, and staff of the college who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with this chapter or with other applicable rules, regulations, or policies.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132H-140-010 Title.

WAC 132H-140-040 Facility usage board policy.

WSR 21-22-009 PERMANENT RULES DEPARTMENT OF REVENUE

[Filed October 21, 2021, 12:18 p.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: RCW 82.49.040 requires the department of revenue to prepare a depreciation schedule (at minimum annually) for use in the determination of the fair market value for watercrafts, which is the basis for measuring the watercraft excise tax. The purpose of this rule-making effort is to adopt a watercraft excise tax depreciation schedule by rule.

The rule will also provide general guidance and an overview of the watercraft excise tax and include several examples which illustrate the topics covered in the rule.

Citation of Rules Affected by this Order: New WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 82.49.040.

Adopted under notice filed as WSR 21-15-126 on July 21, 2021.

Changes Other than Editing from Proposed to Adopted Version: The depreciation schedule in subsection (6) of the rule has been expanded to include depreciation rates for years 14, 15, and 16. The depreciation rate for vessels in year 14 or later of ownership has been modified to apply to vessels in year 17 or later of ownership. Additionally, the column titled "Years Owned" has been retitled "Year of Ownership."

A final cost-benefit analysis is available 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, TTY 1-800-451-7985, email BrentonM@dor.wa.gov, website dor.wa.gov.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 0, Repealed 0.

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

Date Adopted: October 21, 2021.

Atif Aziz
Rules Coordinator

NEW SECTION

WAC 458-20-23801 Watercraft excise tax—Watercraft depreciation schedule. (1) **Introduction.** This rule addresses the watercraft excise tax, including an overview of the tax, exemptions from the tax, and the watercraft depreciation schedule used to determine a watercraft's fair market value. The rule also addresses administrative issues including payment, interest and penalties, and includes examples.

(2) **Examples.** This rule includes examples that identify a number of facts and then state a conclusion. These examples should only be used as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(3) **Definitions and terms.** The following definitions and terms apply throughout this rule.

(a) **"Dealer"** means a person, partnership, association, or corporation engaged in the business of selling vessels at wholesale or retail in this state. RCW 88.02.310.

(b) **"Fair market value."**

(i) In cases where the most recent purchase price of a vessel is known to the vessel owner, "fair market value" means the purchase price of the vessel in the year it was purchased. For subsequent years, "fair market value" means the

purchase price of the vessel depreciated according to the schedule in subsection (6) of this rule. RCW 82.49.040.

(ii) In cases where a vessel has been acquired by lease or gift, or the most recent purchase price of the vessel is not known to the vessel owner, "fair market value" means the appraised value of the vessel determined according to subsection (7) of this rule. RCW 82.49.050(1).

(iii) In cases where the department determines that the purchase price stated by the owner is not a reasonable representation of the true "fair market value" of the vessel, the department must appraise the vessel according to subsection (7) of this rule. RCW 82.49.050(2).

(c) **"Owner"** means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest, and means registered owner where the reference to owner may be construed as either to registered or legal owner. RCW 88.02.310.

(d) **"Powerboat"** means any vessel 16 feet or longer, other than a sailboat, that uses mechanical power as a method of propulsion.

(e) **"Sailboat"** means any vessel 16 feet or longer that is capable of using sails as a method of propulsion. A vessel is considered a sailboat regardless of whether the vessel is also capable of using mechanical power as a method of propulsion.

(f) **"Vessel"** means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. RCW 88.02.310.

(g) **"Waters of this state"** means any waters within the territorial limits of this state as described in 43 U.S.C. Sec. 1312. RCW 88.02.310.

(4) Overview of the watercraft excise tax.

(a) The watercraft excise tax generally applies to vessels measuring 16 feet or more in overall length. The tax is imposed for the privilege of using a vessel upon the waters of this state, except those vessels which are exempt from the tax under subsection (5) of this rule and under RCW 82.49.020. The tax is imposed on an annual basis and is equal to the greater of five dollars or one-half of one percent of a vessel's fair market value.

(b) Persons required to register a vessel with this state under chapter 88.02 RCW who fail to register their vessel and avoid paying the watercraft excise tax are guilty of a gross misdemeanor and are liable for any unpaid excise tax. The department must also impose the penalties authorized under subsection (9) of this rule and under RCW 82.49.080 and chapter 82.32 RCW.

(c) When a person first registers a vessel in this state, the watercraft excise tax is imposed beginning with the month in which the vessel is registered through the following June 30th. In cases where the initial registration period is less than 12 months, the watercraft excise tax is prorated according to the number of months covered by the registration period. The initial registration is valid from the month of registration through the following June 30th.

(i) The department of licensing may extend or diminish the initial registration period for purposes of staggered renewal periods under RCW 88.02.560.

(ii) A vessel is considered first registered in this state if in the immediately preceding 12 month period the vessel was not registered in this state or was registered in another jurisdiction during the same period.

(iii) Example 1. Watercraft excise tax computation - Initial vessel registration.

Facts: Dan Carter purchases a 20 foot powerboat from a Washington dealer in April 2022. The purchase price is \$20,000. Dan is a resident of Washington. Dan registers the vessel with the department of licensing shortly after his purchase, in April 2022.

Result: The department of licensing will issue a registration decal for the vessel covering the registration period of July 2021 through June 2022 and collect the annual watercraft excise tax liability for this registration period in the amount of \$25 (\$20,000 (purchase price) x .005 (watercraft excise tax rate) x .25 (3 month prorated period April - June 2022)).

(5) **Exemptions.** The following types of vessels are exempt from watercraft excise tax:

(a) Those exempt from vessel registration under RCW 88.02.570;

(b) Those used exclusively for commercial fishing purposes;

(c) Those measuring less than 16 feet in overall length, including personal watercraft;

(d) Those owned and operated by the United States, another state, or any municipality or subdivision thereof;

(e) Those owned by a nonprofit organization or association engaged in character building of children under 18 years of age and solely used for such purposes;

(f) Those held for sale by a dealer, but not rented on a regular commercial basis; and

(g) Those owned by Indian tribes and tribal members, used in the exercise of treaty fishing rights, and exempt under WAC 308-93-720.

(6) Depreciation schedule.

(a) RCW 82.49.040 requires the department to prepare a depreciation schedule annually, for use in determining the fair market value of vessels, which is the measure of the watercraft excise tax. The following schedule includes separate depreciation rates for three categories of vessels, including a column for the vessel's year of ownership and columns for the depreciated percentage of the vessel's value by vessel type. First, vessel owners must determine the appropriate column to use, depending on the type of vessel they own. Second, vessel owners must identify the depreciated percentage of value for their vessel according to the row which corresponds to the number of years they have owned the vessel.

Year of Ownership	Sailboat	Powerboat less than 30 feet	Powerboat 30 feet or more
1	1.00	1.00	1.00
2	0.90	0.84	0.83
3	0.85	0.76	0.74
4	0.79	0.70	0.67
5	0.74	0.65	0.62

Year of Ownership	Sailboat	Powerboat less than 30 feet	Powerboat 30 feet or more
6	0.68	0.61	0.58
7	0.63	0.57	0.55
8	0.60	0.54	0.52
9	0.58	0.51	0.49
10	0.54	0.49	0.47
11	0.51	0.47	0.46
12	0.48	0.45	0.45
13	0.44	0.43	0.44
14	0.44	0.39	0.42
15	0.44	0.39	0.42
16	0.44	0.38	0.41
17 or more	0.43	0.36	0.41

(b) Example 2. Standard sailboat registration renewal.

Facts: Deborah Peters purchased a sailboat in September 2017. The purchase price of the sailboat was \$40,000. Deborah is a Washington resident and the sailboat is used exclusively upon Washington waters. In June 2022, Deborah renews the vessel's registration for the upcoming annual period of July 2022 through June 2023.

Result: Deborah will use the column titled "Sailboat" to determine the fair market value of her sailboat. Since Deborah bought the sailboat within the annual period of July 2017 through June 2018, that period is considered Year 1 for purposes of ownership. Accordingly, the period of July 2022 through June 2023 is considered Year 6 for purposes of ownership. The depreciated value of the sailboat in Year 6 is equal to 68 percent of Deborah's initial purchase price of \$40,000, or \$27,200. Deborah is subject to watercraft excise tax in the amount of \$136 (\$27,200 (fair market value) x .005 (watercraft excise tax rate)).

(7) Vessel appraisal.

(a) If a vessel has been acquired by lease or gift, or the most recent purchase price of a vessel is not known to the owner, the department must appraise the vessel before it can be registered for use upon the waters of this state.

(b) If the department determines the purchase price of a vessel reported by the vessel's owner at the time of its registration is not representative of its fair market value, the department must appraise the vessel to determine its fair market value. If the appraised value is less than the reported purchase price, the department will issue a refund of the overpaid tax. If the appraised value is greater than the reported purchase price, the department will notify the vessel owner of the additional tax liability, which must be paid within 30 days of the department's notice.

(c) If a vessel is homemade, the vessel's owner must make a notarized declaration of its value. See RCW 82.49-.050(3) for more information.

(d) For purposes of this subsection, "appraisal" includes the use of industry pricing guides, other evaluation tools, and

independent appraisals in order to ascertain the fair market value of a vessel.

(8) Disputes related to a vessel's fair market value, appraised value, or taxability.

(a) Any vessel owner who disputes a vessel's computed fair market value under RCW 82.49.040, appraised value under RCW 82.49.050, or taxable status may request a review of a tax assessment by filing a petition with the department as provided in WAC 458-20-100 (Informal administrative reviews).

(b) If the vessel owner's petition is denied, the vessel owner may appeal to the board of tax appeals as provided in RCW 82.03.190. In deciding the case, the board of tax appeals may require an independent appraisal of the vessel, the cost of which must be shared between the vessel owner and the department.

(9) Administration.

(a) **Payment of tax.** The watercraft excise tax is due and payable to the department of licensing, county auditor, or other appointed agent at the time the vessel is registered. A registration will not be issued or renewed until the watercraft excise tax is paid in full. For previously registered vessels, watercraft excise tax is due at the time of the vessel's registration renewal and must be paid prior to the start of the vessel registration period, which covers the period of July 1st through June 30th of the following year.

(b) **Refunds.** Taxpayers who overpay the watercraft excise tax in full or in part at the time of a vessel's registration are eligible for a refund of the overpaid tax. Taxpayers are also entitled to receive interest according to RCW 82.32.060. See RCW 82.49.065 for more information regarding refunds.

(c) **Penalties and interest.** An owner of a vessel that is not registered as required under chapter 88.02 RCW and that avoided payment of the watercraft excise tax is liable for the following penalties and interest:

- (i) One hundred dollars for the owner's first violation;
- (ii) Two hundred dollars for the owner's second violation;
- (iii) Four hundred dollars for the owner's third violation and any successive violations;
- (iv) The penalties prescribed under chapter 82.32 RCW; and
- (v) The interest prescribed under chapter 82.32 RCW.

**WSR 21-22-011
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE**

[Filed October 21, 2021, 2:08 p.m., effective November 21, 2021]

Effective Date of Rule: Thirty-one days after filing.
Purpose: Amend WAC 132Q-02-340 Definitions.
Citation of Rules Affected by this Order: WAC 132Q-02-340.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140(13).

Adopted under notice filed as WSR 21-18-103 on August 31, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: October 19, 2021.

John O'Rourke
Code Reviser Coordinator

AMENDATORY SECTION (Amending WSR 12-05-104, filed 2/21/12, effective 3/23/12)

WAC 132Q-02-340 Definitions. The following definitions shall apply in interpreting these regulations:

(1) Directory information: Information contained in an educational record of a student that would not be generally considered harmful or an invasion of the privacy if disclosed. It includes, but is not limited to: The student's name, major field of study, dates of attendance, (~~grade level,~~) enrollment status (e.g., full-time or part-time), participation in (~~officially~~) recognized sports, (~~weight and height of members of athletic teams, degrees,~~) degree or certificate earned, term degree or certificate awarded, and honors (~~and awards~~) received.

(2) Educational record: Those records, except as provided otherwise in (b) of this subsection, directly related to a student and maintained by the college or a party acting for the college.

(a) Education records include, but are not limited to:

(i) Official transcripts of course taken and grade received; records relating to prior educational experience; and admission records;

(ii) Tuition and payment records;

(iii) Student disciplinary records;

(iv) Course records (e.g., examinations, term papers, essays, etc.);

(v) Employment records based on student status (e.g., work study).

(b) Educational records do not include:

(i) Records of instruction, supervisory, and administrative personnel and educational personnel which are in the sole possession of the originator and which are not accessible or revealed to any other person except a substitute or designee;

(ii) Records created and maintained by campus security for law enforcement purposes;

(iii) In the case of persons who are employed by an educational agency or institution, but who are not in attendance at such agency or institution, records made and maintained in

the normal course of business, which relate exclusively to such person's employment, are not available for use for any other purpose;

(iv) Records containing medical or psychological information are not available to anyone other than the individual(s) providing treatment; however, such records may be personally reviewed by a physician or other appropriate professional upon the student's written consent.

(3) Legitimate educational interest: If the information requested by the school official is necessary for the official to perform a task specified in his/her position description or contract agreement including: The performance of a task related to a student's education; the performance of a task related to the discipline of a student; the provision of a service or benefit related to the student or student's family, such as health education, counseling, advising, student employment, financial aid, or other student service related assistance; the maintenance of the safety and security of the campus; and/or the provision of legal assistance regarding a student matter.

(4) Parent: Defined as a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

(5) Personal identifiable information: This includes, but is not limited to: Student's name, the name of the student's parent or other family member; the address of the student or the student's family; a personal identifier such as the student's Social Security number or student identification number; a list of personal characteristics that would make the student's identity easily traceable; other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

(6) Record: Any information recorded in any way, including, but not limited to: Handwriting, print, computer media, video or audio media, microfilm and microfiche.

(7) School official: All of the following who act in the student's educational interests within the limitations of their need to know:

(a) A person employed by Community Colleges of Spokane in an administrative, supervisory, academic, research, support staff, law enforcement or health care service position;

(b) A person serving on the CCS board of trustees;

(c) A student serving on an official CCS committee or assisting another school official in fulfilling their professional responsibilities (examples include, but are not limited to, service on a disciplinary committee and work study students); and

(d) A contractor, consultant, volunteer or other party with whom CCS has contracted to provide a service and/or to assist another school official in conducting official business (examples include, but are not limited to: An attorney, an auditor, a collection agency, or the National Student Clearinghouse, an agency which acts as a clearinghouse for student loan deferment reporting).

(8) Student: Any person, regardless of age, who is or has been officially registered in attendance at CCS at any location at which CCS offers programs/courses with respect to whom CCS maintains educational records.

WSR 21-22-015
PERMANENT RULES
SEATTLE COLLEGES

[Filed October 21, 2021, 6:43 p.m., effective November 21, 2021]

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

Purpose: Amend WAC to be in compliance with HB [2SHB] 2513 and RCW 28B.10.293 stating colleges can no longer withhold transcripts for any purposes system-wide.

Citation of Rules Affected by this Order: New 9; and repealing 13.

Statutory Authority for Adoption: RCW 28B.50.140, 28B.50.090(3).

Adopted under notice filed as WSR 21-13-012 on June 4, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 9, Amended 0, Repealed 13.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 7, 2021.

Shouan Pan
Chancellor

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-010 Purpose of the library's existence. ((The instructional resources center exists to further the objectives of the college.))

The library serves the information needs of students, faculty, staff, and the college community in an environment which nurtures learning and fosters freedom of intellectual activity; the access, retrieval, management, application, and distribution of information are central to the colleges' mission.

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-020 ((Basis of policies and procedures.)) Materials selection. ((Policies and procedures are based on the belief that the needs of the college community as a whole take precedence over the individual convenience.))

Information resources are selected and deselected according to the principles and practices embodied in the library's collection development policy.

AMENDATORY SECTION (Amending WSR 15-02-072, filed 1/6/15, effective 2/6/15)

WAC 132F-162-040 Borrower classification. ((Within the college community there are several readily identifiable library material user groups for which the character and intensity of use differs.)) The primary ((groups)) borrowers are credit and noncredit students, faculty, administrative personnel and nonacademic staff. Borrowers are classified as:

- (1) Credit students;
(2) Employees of the district;
(3) Continuing education, noncredit students.

The ((instructional resources center)) library may extend services on proper identification to persons not affiliated with the college. Borrowing privileges may be extended to such persons if they reside within Seattle College District VI, or if they are a duly enrolled student or faculty member of one of the other state community colleges ((or if they are spouses of College faculty, administrative or nonacademic staff members. The instructional resources center)). The library extends services to other libraries through the "interlibrary loan" process. ((These borrowers are classified as:

- (4) Community patrons;
(5) Reciprocal students and faculty from other state community colleges;
(6) Spouses of borrower class (2);
(7) Retired faculty of College;
(8) Other libraries through the "interlibrary loan" process.))

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-170 ((When fines will be levied.)) Fines and charges. ((Fines may be levied on:

- (1) Circulating material when:
(a) The library materials are not returned when called in for reserve, or there is a HOLD or RECALL and they are or become overdue, such fines are to be calculated from the first day library materials are overdue.

(2) Overdue reserve, reference and other circulating materials from special collections, and equipment, whether or not such material has been requested by another borrower.)) A schedule of fees for late, damaged, and lost items will be available from the library circulation desk.

(1) Damage charges. Damage charges will be levied for the repair of damaged library materials up to the cost of replacement.

(2) Replacement charges. Replacement charges will be levied for nonreturned items, and for damaged items where the cost of repair exceeds the cost of replacement. Replacement charges will be based on the current purchase price of the item or comparable item.

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-180 Failure to return materials, or to pay fines or charges. A failure to return materials or to pay fines or charges may result in:

- (1) Loss or suspension of borrowing privileges.
- (2) ~~((Delay in registration until account is clear~~
- (3) ~~Holds being placed on borrowers in classification 1 (see WAC 132F-162-040) with respect to grades, transcript and college records, and/or~~
- (4) ~~Other appropriate action ((for borrower classifications 2 through 8)) in accordance with regulations and applicable laws.~~

AMENDATORY SECTION (Amending Order 17, filed 5/22/73)

WAC 132F-162-190 Appeals of fines and charges. Appeals of fines or charges, or both, may be filed with the circulation supervisor ~~((by securing appropriate forms from the circulation desk))~~. All disputed appeals are adjudicated by the ~~((director of instructional resources))~~ administrator in charge of the library.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
132F-162-170	132F-162-045
132F-162-180	132F-162-055
132F-162-190	132F-162-065

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132F-162-030	Modification of these regulations.
WAC 132F-162-050	Identification card.
WAC 132F-162-060	Loan time periods.
WAC 132F-162-070	Special collections.
WAC 132F-162-080	Number of items that may be borrowed.
WAC 132F-162-090	Date library materials are due.
WAC 132F-162-100	Renewal of library materials.
WAC 132F-162-110	Holds, recalls, and searches.
WAC 132F-162-120	Return of library materials.
WAC 132F-162-130	Schedule of fines and charges.
WAC 132F-162-140	System-wide applicability of fines.
WAC 132F-162-150	Notice of overdue materials.
WAC 132F-162-160	Accrual date or time of fines.

WSR 21-22-031
PERMANENT RULES
DEPARTMENT OF
ENTERPRISE SERVICES

[Filed October 26, 2021, 10:08 a.m., effective November 26, 2021]

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

Purpose: The purpose of this rule change is to remove the annual print management strategy reporting requirement on state agencies, boards and commissions, and higher education institutions. Statutory print management rule-making requirements on department of enterprise services do not address reporting. Removing the reporting requirement reduces redundancy and frees up state resources better committed to the legislature's goals to increase efficiencies and reduce costs.

Citation of Rules Affected by this Order: Amending WAC 200-380-030 Requirements.

Statutory Authority for Adoption: RCW 43.19.742 Agency management of print operations—Department rules and guidelines.

Adopted under notice filed as WSR 21-17-011 on August 5, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

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

Date Adopted: October 25, 2021.

Jack Zeigler
 Policy and
 Rules Manager

AMENDATORY SECTION (Amending WSR 15-12-099, filed 6/2/15, effective 8/24/15)

WAC 200-380-030 Agency requirements. In order to fully implement the requirements of this chapter:

(1) Agencies must adopt agency wide policies, standards and procedures governing the management of their print operations.

(2) Agencies must determine baseline print costs using life cycle cost analysis as defined by RCW 39.26.010(15). Where applicable, agencies must include the costs of equipment relocation and redeployment.

~~(((3) Agencies must annually submit an agency print management strategy report to the department.))~~

WSR 21-22-043
PERMANENT RULES
DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed October 27, 2021, 12:55 p.m., effective November 27, 2021]

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

Purpose: Chapter 246-918 WAC, physician assistants. The Washington medical commission (commission) has updated chapter 246-918 WAC regarding physician assistants (PA) to more closely align with current industry standards, modernize regulations to align with current national industry standards and best practices, and provide clearer rule language for licensed PAs. The rule also incorporates the requirements of SHB 2378 (chapter 80, Laws of 2020) and amends the rules to be in alignment with the bill. This bill combines the osteopathic PA licensing under the commission effective July 1, 2021, and eliminates the profession of osteopathic physician assistant. The bill instructs the commission to consult with the board of osteopathic medicine and surgery when investigating allegations of unprofessional conduct by a licensee under the supervision of an osteopathic physician. The bill also reduces administrative and regulatory burdens on PA practice by moving practice agreements from an agency-level approval process to employment level process. Employers are required to keep agreements on file. The bill requires the commission to collect and file the agreements. Amendments also change nomenclature from "delegation" to "practice" agreement and from "supervising physician" to "participating physician" agreement.

Citation of Rules Affected by this Order: Repealing WAC 246-918-082, 246-918-095 and 246-918-120; and amending WAC 246-918-005, 246-918-007, 246-918-035, 246-918-050, 246-918-055, 246-918-075, 246-918-080, 246-918-105, 246-918-125, 246-918-126, 246-918-130, 246-918-171, 246-918-175, 246-918-185, 246-918-260, and 246-918-410.

Statutory Authority for Adoption: RCW 18.71A.150, 18.130.050; chapter 18.71A RCW; and SHB 2378.

Adopted under notice filed as WSR 21-17-142 on August 18, 2021.

Changes Other than Editing from Proposed to Adopted Version: In WAC 246-918-055 (4)(b) the proposed language stated that in order for a PA to provide general or intrathecal anesthesia, a valid practice agreement must be in place prior to the adoption date of the section. However, to clarify the language, the subsection was changed to: "Performance of general or intrathecal anesthesia clinical duties pursuant to a valid practice agreement prior to September 22, 2021." The commission voted to adopt the rule at the hearing September 22, 2021. Adding the specific date provides clarity.

A final cost-benefit analysis is available by contacting Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, phone 360-918-6336, TTY 711, email amelia.boyd@wmc.wa.gov, website wmc.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 16, Repealed 3.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 16, Repealed 3.

Date Adopted: September 22, 2021.

Melanie de Leon
Executive Director

AMENDATORY SECTION (Amending WSR 20-08-069, filed 3/26/20, effective 4/26/20)

WAC 246-918-005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Commission" means the Washington medical commission.

(2) "Commission approved program" means a physician assistant program accredited by the committee on allied health education and accreditation (CAHEA); the commission on accreditation of allied health education programs (CAAHEP); the accreditation review committee on education for the physician assistant (ARC-PA); or other substantially equivalent organization(s) approved by the commission.

~~(3) ("Delegation agreement" means a mutually agreed upon plan, as detailed in WAC 246-918-055, between a sponsoring physician and physician assistant, which describes the manner and extent to which the physician assistant will practice and be supervised.~~

~~(4))~~ (4)) "NCCPA" means National Commission on Certification of Physician Assistants.

~~((5))~~ (4) "Osteopathic physician" means an individual licensed under chapter 18.57 RCW.

~~((6))~~ (5) "Physician" means an individual licensed under chapter 18.71 RCW.

~~((7))~~ (6) "Physician assistant" means a person who is licensed under chapter 18.71A RCW by the commission to practice medicine to a limited extent only under the supervision of a physician ~~((as defined in chapter 18.71 RCW))~~ or osteopathic physician.

(a) "Certified physician assistant" means an individual who has successfully completed an accredited and commission approved physician assistant program and has passed the initial national boards examination administered by the National Commission on Certification of Physician Assistants (NCCPA).

(b) "Noncertified physician assistant" means an individual who:

(i) Successfully completed an accredited and commission approved physician assistant program, is eligible for the NCCPA examination, and was licensed in Washington state prior to July 1, 1999;

(ii) Is qualified based on work experience and education and was licensed prior to July 1, 1989;

(iii) Graduated from an international medical school and was licensed prior to July 1, 1989; or

(iv) Holds an interim permit issued pursuant to RCW 18.71A.020(1).

(c) "Physician assistant-surgical assistant" means an individual who was licensed under chapter 18.71A RCW as a physician assistant between September 30, 1989, and December 31, 1989, to function in a limited extent as authorized in WAC 246-918-250 and 246-918-260.

(7) "Practice agreement" means a mutually agreed upon plan, as detailed in WAC 246-918-055, between a supervising physician and physician assistant, which describes the manner and extent to which the physician assistant will practice and be supervised.

~~(8) ("Remote site" means a setting physically separate from the sponsoring or supervising physician's primary place for meeting patients or a setting where the physician is present less than twenty-five percent of the practice time of the licensee.~~

~~(9)) "Supervising physician" means ((a sponsoring or alternate physician providing clinical oversight for a physician assistant.~~

~~(a) "Sponsoring physician" means)) any physician ((licensed under chapter 18.71 RCW and)) or osteopathic physician identified in a ((delegation)) practice agreement as providing primary clinical and administrative oversight for a physician assistant.~~

~~((b)) (9) "Alternate physician" means any physician ((licensed under chapter 18.71 or 18.57 RCW)) or osteopathic physician who provides clinical oversight of a physician assistant in place of or in addition to the ((sponsoring)) supervising physician.~~

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-007 Application withdrawals. An applicant for a license or interim permit may not withdraw ~~((his or her))~~ their application if grounds for denial exist.

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-035 Prescriptions. (1) A physician assistant may prescribe, order, administer, and dispense legend drugs and Schedule II, III, IV, or V controlled substances consistent with the scope of practice in an approved ~~((delegation))~~ practice agreement filed with the commission provided:

(a) The physician assistant has an active DEA registration; and

(b) All prescriptions comply with state and federal prescription regulations.

(2) If a supervising physician's prescribing privileges have been limited by state or federal actions, the physician assistant will be similarly limited in ~~((his or her))~~ their prescribing privileges, unless otherwise authorized in writing by the commission.

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-050 Physician assistant qualifications for interim permits. An interim permit is a limited license. The permit allows an individual who has graduated from a commission approved program within the previous twelve months to practice prior to successfully passing the commission approved licensing examination.

(1) An individual applying to the commission for an interim permit under RCW 18.71A.020(1) must have graduated from an accredited commission approved physician assistant program.

(2) An interim permit is valid for one year from completion of a commission approved physician assistant training program. The interim permit may not be renewed.

(3) An applicant for a physician assistant interim permit must submit to the commission:

(a) A completed application on forms provided by the commission;

(b) Applicable fees as specified in WAC 246-918-990; and

(c) Requirements as specified in WAC 246-918-080.

~~((4) An interim permit holder may not work in a remote site.))~~

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-055 ((Delegation)) Practice agreements. ~~((1) The physician assistant and sponsoring physician must submit a joint delegation agreement on forms provided by the commission. A physician assistant may not begin practicing without written commission approval of a delegation agreement.~~

~~(2) The delegation agreement must specify:~~

~~(a) The names and Washington state license numbers of the sponsoring physician and alternate physician, if any. In the case of a group practice, the alternate physicians do not need to be individually identified;~~

~~(b) A detailed description of the scope of practice of the physician assistant;~~

~~(c) A description of the supervision process for the practice; and~~

~~(d) The location of the primary practice and all remote sites and the amount of time spent by the physician assistant at each site.~~

~~(3) The sponsoring physician and the physician assistant shall determine which services may be performed and the degree of supervision under which the physician assistant performs the services.~~

~~(4) The physician assistant's scope of practice may not exceed the scope of practice of the supervising physician.~~

~~(5) A physician assistant practicing in a multispecialty group or organization may need more than one delegation agreement depending on the physician assistant's training and the scope of practice of the physician(s) the physician assistant will be working with.~~

~~(6) It is the joint responsibility of the physician assistant and the supervising physician(s) to notify the commission in writing of any significant changes in the scope of practice of~~

the physician assistant. The commission or its designee will evaluate the changes and determine whether a new delegation agreement is required.

~~(7) A physician may enter into delegation agreements with up to five physician assistants, but may petition the commission for a waiver of this limit. However, no physician may have under his or her supervision:~~

~~(a) More than three physician assistants who are working in remote sites as provided in WAC 246-918-120; or~~

~~(b) More physician assistants than the physician can adequately supervise.~~

~~(8) Within thirty days of termination of the working relationship, the sponsoring physician or the physician assistant shall submit a letter to the commission indicating the relationship has been terminated.~~

~~(9) Whenever a physician assistant is practicing in a manner inconsistent with the approved delegation agreement, the commission may take disciplinary action under chapter 18.130 RCW.)~~ (1) A practice agreement must meet the requirements in RCW 18.71A.120.

(2) A physician assistant may have more than one supervising physician if the practice agreement is entered into with a group of physicians and the language of the practice agreement designates the supervising physicians.

(3) Pursuant to a practice agreement, a physician assistant may administer anesthesia, except the types of anesthesia described in subsection (4) of this section, without the personal presence of a supervising physician.

(4) Administration of general anesthesia or intrathecal anesthesia may be performed by a physician assistant with adequate education and training under direct supervision of a supervising anesthesiologist. Adequate education and training for administration of general or intrathecal anesthesia is defined as:

(a) Completion of an accredited anesthesiologist assistant program; or

(b) Performance of general or intrathecal anesthesia clinical duties pursuant to a valid practice agreement prior to September 22, 2021.

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-075 Background check—Temporary practice permit. The commission may issue a temporary practice permit when the applicant has met all other licensure requirements, except the national criminal background check requirement. The applicant must not be subject to denial of a license or issuance of a conditional license under this chapter.

(1) If there are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions, including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card, the commission may issue a temporary practice permit allowing time to complete the national criminal background check requirements.

A temporary practice permit that is issued by the commission is valid for six months. A one-time extension of six months may be granted if the national background check report has not been received by the commission.

(2) The temporary practice permit allows the applicant to work in the state of Washington as a physician assistant during the time period specified on the permit. The temporary practice permit is a license to practice medicine as a physician assistant provided that the temporary practice permit holder has a ~~((delegation))~~ practice agreement ~~((approved by))~~ on file with the commission.

(3) The commission issues a license after it receives the national background check report if the report is negative and the applicant otherwise meets the requirements for a license.

(4) The temporary practice permit is no longer valid after the license is issued or the application for a full license is denied.

AMENDATORY SECTION (Amending WSR 21-07-055, filed 3/12/21, effective 4/12/21)

WAC 246-918-080 Physician assistant—Requirements for licensure. (1) Except for a physician assistant licensed prior to July 1, 1999, individuals applying to the commission for licensure as a physician assistant must have graduated from an accredited commission approved physician assistant program and successfully passed the NCCPA examination.

(2) An applicant for licensure as a physician assistant must submit to the commission:

(a) A completed application on forms provided by the commission;

(b) Proof the applicant has completed an accredited commission approved physician assistant program and successfully passed the NCCPA examination;

(c) All applicable fees as specified in WAC 246-918-990; and

(d) Other information required by the commission.

(3) The commission will only consider complete applications with all supporting documents for licensure.

(4) A physician assistant may not begin practicing without ~~((written commission approval of a delegation agreement))~~ first filing a practice agreement with the commission.

(5) A physician assistant licensed under chapter 18.57A RCW prior to July 1, 2021, renewing their license on or after July 1, 2021, must do so with the commission. Individuals licensed under chapter 18.57A RCW and renewing their license after July 1, 2021, will follow the renewal schedule set forth in WAC 246-918-171. The commission shall issue a physician assistant license to the individuals described in this subsection without requiring full application or reapplication, but may require additional information from the renewing physician assistant.

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-105 Practice limitations due to disciplinary action. (1) To the extent a supervising physician's prescribing privileges have been limited by any state or federal authority, either involuntarily or by the physician's agreement to such limitation, the physician assistant will be similarly limited in ~~((his or her))~~ their prescribing privileges, unless otherwise authorized in writing by the commission.

(2) The physician assistant shall notify their (~~(sponsoring)~~) supervising physician whenever the physician assistant is the subject of an investigation or disciplinary action by the commission. The commission may notify the (~~(sponsoring)~~) supervising physician or other supervising physicians of such matters as appropriate.

AMENDATORY SECTION (Amending WSR 07-03-177, filed 1/24/07, effective 3/1/07)

WAC 246-918-125 Use of laser, light, radiofrequency, and plasma devices as applied to the skin. (1) For the purposes of this rule, laser, light, radiofrequency, and plasma devices (hereafter LLRP devices) are medical devices that:

(a) Use a laser, noncoherent light, intense pulsed light, radiofrequency, or plasma to topically penetrate skin and alter human tissue; and

(b) Are classified by the federal Food and Drug Administration as prescription devices.

(2) Because an LLRP device penetrates and alters human tissue, the use of an LLRP device is the practice of medicine under RCW 18.71.011. The use of an LLRP device can result in complications such as visual impairment, blindness, inflammation, burns, scarring, hypopigmentation and hyperpigmentation.

(3) Use of medical devices using any form of energy to penetrate or alter human tissue for a purpose other than the purpose set forth in subsection (1) of this section constitutes surgery and is outside the scope of this section.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) A physician assistant must be appropriately trained in the physics, safety and techniques of using LLRP devices prior to using such a device, and must remain competent for as long as the device is used.

(5) A physician assistant may use an LLRP device so long as it is with the consent of the (~~(sponsoring or)~~) supervising physician, it is in compliance with the practice (~~(arrangement plan approved by)~~) agreement on file with the commission, and it is in accordance with standard medical practice.

(6) Prior to authorizing treatment with an LLRP device, a physician assistant must take a history, perform an appropriate physical examination, make an appropriate diagnosis, recommend appropriate treatment, obtain the patient's informed consent (including informing the patient that a non-physician may operate the device), provide instructions for emergency and follow-up care, and prepare an appropriate medical record.

PHYSICIAN ASSISTANT DELEGATION OF LLRP TREATMENT

(7) A physician assistant who meets the above requirements may delegate an LLRP device procedure to a properly trained and licensed professional, whose licensure and scope of practice allow the use of an LLRP device provided all the following conditions are met:

(a) The treatment in no way involves surgery as that term is understood in the practice of medicine;

(b) Such delegated use falls within the supervised professional's lawful scope of practice;

(c) The LLRP device is not used on the globe of the eye; and

(d) The supervised professional has appropriate training in, at a minimum, application techniques of each LLRP device, cutaneous medicine, indications and contraindications for such procedures, preprocedural and postprocedural care, potential complications and infectious disease control involved with each treatment.

(e) The delegating physician assistant has written office protocol for the supervised professional to follow in using the LLRP device. A written office protocol must include at a minimum the following:

(i) The identity of the individual physician assistant authorized to use the device and responsible for the delegation of the procedure;

(ii) A statement of the activities, decision criteria, and plan the supervised professional must follow when performing procedures delegated pursuant to this rule;

(iii) Selection criteria to screen patients for the appropriateness of treatments;

(iv) Identification of devices and settings to be used for patients who meet selection criteria;

(v) Methods by which the specified device is to be operated and maintained;

(vi) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(vii) A statement of the activities, decision criteria, and plan the supervised professional shall follow when performing delegated procedures, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician assistant concerning specific decisions made. Documentation shall be recorded after each procedure, and may be performed on the patient's record or medical chart.

(f) The physician assistant is responsible for ensuring that the supervised professional uses the LLRP device only in accordance with the written office protocol, and does not exercise independent medical judgment when using the device.

(g) The physician assistant shall be on the immediate premises during any use of an LLRP device and be able to treat complications, provide consultation, or resolve problems, if indicated.

AMENDATORY SECTION (Amending WSR 10-11-001, filed 5/5/10, effective 6/5/10)

WAC 246-918-126 Nonsurgical medical cosmetic procedures. (1) The purpose of this rule is to establish the duties and responsibilities of a physician assistant who injects medication or substances for cosmetic purposes or uses prescription devices for cosmetic purposes. These procedures can result in complications such as visual impairment, blindness, inflammation, burns, scarring, disfiguration, hypopigmentation and hyperpigmentation. The performance of these procedures is the practice of medicine under RCW 18.71.011.

(2) This section does not apply to:

(a) Surgery;

(b) The use of prescription lasers, noncoherent light, intense pulsed light, radiofrequency, or plasma as applied to

the skin; this is covered in WAC 246-919-605 and 246-918-125;

(c) The practice of a profession by a licensed health care professional under methods or means within the scope of practice permitted by such license;

(d) The use of nonprescription devices; and

(e) Intravenous therapy.

(3) Definitions. These definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Nonsurgical medical cosmetic procedure" means a procedure or treatment that involves the injection of a medication or substance for cosmetic purposes, or the use of a prescription device for cosmetic purposes. Laser, light, radiofrequency and plasma devices that are used to topically penetrate the skin are devices used for cosmetic purposes, but are excluded under subsection (2)(b) of this section, and are covered by WAC 246-919-605 and 246-918-125.

~~(b) ("Physician" means an individual licensed under chapter 18.71 RCW.~~

~~(c) "Physician assistant" means an individual licensed under chapter 18.71A RCW.~~

~~(d))~~ "Prescription device" means a device that the federal Food and Drug Administration has designated as a prescription device, and can be sold only to persons with prescriptive authority in the state in which they reside.

PHYSICIAN ASSISTANT RESPONSIBILITIES

(4) A physician assistant may perform a nonsurgical medical cosmetic procedure only after the commission approves a practice plan permitting the physician assistant to perform such procedures. A physician assistant must ensure that the supervising ~~((or sponsoring))~~ physician is in full compliance with WAC 246-919-606.

(5) A physician assistant may not perform a nonsurgical cosmetic procedure unless ~~((his or her))~~ their supervising ~~((or sponsoring))~~ physician is fully and appropriately trained to perform that same procedure.

(6) Prior to performing a nonsurgical medical cosmetic procedure, a physician assistant must have appropriate training in, at a minimum:

(a) Techniques for each procedure;

(b) Cutaneous medicine;

(c) Indications and contraindications for each procedure;

(d) Preprocedural and postprocedural care;

(e) Recognition and acute management of potential complications that may result from the procedure; and

(f) Infectious disease control involved with each treatment.

(7) The physician assistant must keep a record of ~~((his or her))~~ their training in the office and available for review upon request by a patient or a representative of the commission.

(8) Prior to performing a nonsurgical medical cosmetic procedure, either the physician assistant or the delegating physician must:

(a) Take a history;

(b) Perform an appropriate physical examination;

(c) Make an appropriate diagnosis;

(d) Recommend appropriate treatment;

(e) Obtain the patient's informed consent including disclosing the credentials of the person who will perform the procedure;

(f) Provide instructions for emergency and follow-up care; and

(g) Prepare an appropriate medical record.

(9) The physician assistant must ensure that there is a written office protocol for performing the nonsurgical medical cosmetic procedure. A written office protocol must include, at a minimum, the following:

(a) A statement of the activities, decision criteria, and plan the physician assistant must follow when performing procedures under this rule;

(b) Selection criteria to screen patients for the appropriateness of treatment;

(c) A description of appropriate care and follow-up for common complications, serious injury, or emergencies; and

(d) A statement of the activities, decision criteria, and plan the physician assistant must follow if performing a procedure delegated by a physician pursuant to WAC 246-919-606, including the method for documenting decisions made and a plan for communication or feedback to the authorizing physician concerning specific decisions made.

(10) A physician assistant may not delegate the performance of a nonsurgical medical cosmetic procedure to another individual.

(11) A physician assistant may perform a nonsurgical medical cosmetic procedure that uses a medication or substance that the federal Food and Drug Administration has not approved, or that the federal Food and Drug Administration has not approved for the particular purpose for which it is used, so long as the physician assistant's ~~((sponsoring or))~~ supervising physician is on-site during the entire procedure.

~~((12))~~ ~~((A physician assistant may perform a nonsurgical medical cosmetic procedure at a remote site. A physician assistant must comply with the established regulations governing physician assistants working in remote sites, including obtaining commission approval to work in a remote site under WAC 246-918-120.~~

~~((13))~~ A physician assistant must ensure that each treatment is documented in the patient's medical record.

~~((14))~~ ~~((13))~~ A physician assistant may not sell or give a prescription device to an individual who does not possess prescriptive authority in the state in which the individual resides or practices.

~~((15))~~ ~~((14))~~ A physician assistant must ensure that all equipment used for procedures covered by this section is inspected, calibrated, and certified as safe according to the manufacturer's specifications.

~~((16))~~ ~~((15))~~ A physician assistant must participate in a quality assurance program required of the supervising or sponsoring physician under WAC 246-919-606.

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-130 Physician assistant identification.

(1) A physician assistant must clearly identify himself or herself as a physician assistant and must appropriately display

on ~~((his or her))~~ their person identification as a physician assistant.

(2) A physician assistant must not present himself or herself in any manner which would tend to mislead the public as to ~~((his or her))~~ their title.

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-171 Renewal and continuing medical education cycle. (1) Under WAC 246-12-020, an initial credential issued within ninety days of the physician assistant's birthday does not expire until the physician assistant's next birthday.

(2) A physician assistant must renew ~~((his or her))~~ their license every two years on ~~((his or her))~~ their birthday. Renewal fees are accepted no sooner than ninety days prior to the expiration date.

(3) Each physician assistant will have two years to meet the continuing medical education requirements in WAC 246-918-180. The review period begins on the first birthday after receiving the initial license.

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-175 Retired active license. (1) To obtain a retired active license a physician assistant must comply with chapter 246-12 WAC, ~~((Part 5,))~~ excluding WAC 246-12-120 (2)(c) and (d).

(2) A physician assistant with a retired active license must have a ~~((delegation))~~ practice agreement ~~((approved by))~~ on file with the commission in order to practice except when serving as a "covered volunteer emergency worker" as defined in RCW 38.52.180 (5)(a) and engaged in authorized emergency management activities or serving under chapter 70.15 RCW.

(3) A physician assistant with a retired active license may not receive compensation for health care services.

(4) A physician assistant with a retired active license may practice under the following conditions:

(a) In emergent circumstances calling for immediate action; or

(b) Intermittent circumstances on a part-time or full-time nonpermanent basis.

(5) A retired active license expires every two years on the license holder's birthday. Retired active credential renewal fees are accepted no sooner than ninety days prior to the expiration date.

(6) A physician assistant with a retired active license shall report one hundred hours of continuing education at every renewal.

AMENDATORY SECTION (Amending WSR 17-07-044, filed 3/8/17, effective 4/8/17)

WAC 246-918-185 Training in suicide assessment, treatment, and management. (1) A licensed physician assistant must complete a one-time training in suicide assessment, treatment, and management. The training must be at

least six hours in length and may be completed in one or more sessions.

(2) The training must be completed by the end of the first full continuing education reporting period after January 1, 2016, or during the first full continuing education period after initial licensure, whichever occurs later, or during the first full continuing education reporting period after the exemption in subsection (6) of this section no longer applies. The commission accepts training completed between June 12, 2014, and January 1, 2016, that meets the requirements of RCW 43.70.442 as meeting the one-time training requirement.

~~((3))~~ ~~((Until July 1, 2017, the commission must approve the training. The commission will approve an empirically supported training in suicide assessment, suicide treatment, and suicide management that meets the requirements of RCW 43.70.442.~~

~~((4))~~ ~~((Beginning July 1, 2017,))~~ The training must be on the model list developed by the department of health under RCW 43.70.442. The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.

~~((5))~~ (4) The hours spent completing training in suicide assessment, treatment, and management count toward meeting applicable continuing education requirements in the same category specified in WAC 246-918-180.

~~((6))~~ (5) The commission exempts any licensed physician assistant from the training requirements of this section if the physician assistant has only brief ~~((or))~~, limited ~~((patient contact))~~, or no patient contact.

AMENDATORY SECTION (Amending WSR 15-04-122, filed 2/3/15, effective 3/6/15)

WAC 246-918-260 Physician assistant-surgical assistant (PASA)—Use and supervision. The following section applies to the physician assistant-surgical assistant (PASA) who is not eligible to take the NCCPA certification exam.

(1) Responsibility of PASA. The PASA is responsible for performing only those tasks authorized by the supervising physician(s) and within the scope of PASA practice described in WAC 246-918-250. The PASA is responsible for ensuring ~~((his or her))~~ their compliance with the rules regulating PASA practice and failure to comply may constitute grounds for disciplinary action.

(2) Limitations, geographic. No PASA may be used in a place geographically separated from the institution in which the PASA and the supervising physician are authorized to practice.

(3) Responsibility of supervising physician(s). Each PASA shall perform those tasks ~~((he or she is))~~ they are authorized to perform only under the supervision and control of the supervising physician(s). Such supervision and control may not be construed to necessarily require the personal presence of the supervising physician at the place where the services are rendered. It is the responsibility of the supervising physician(s) to ensure that:

(a) The operating surgeon in each case directly supervises and reviews the work of the PASA. Such supervision and review shall include remaining in the surgical suite until the surgical procedure is complete;

(b) The PASA shall wear identification as a "physician assistant-surgical assistant" or "PASA." In all written documents and other communication modalities pertaining to (~~his or her~~) their professional activities as a PASA, the PASA shall clearly denominate (~~his or her~~) their profession as a "physician assistant-surgical assistant" or "PASA";

(c) The PASA is not presented in any manner which would tend to mislead the public as to (~~his or her~~) their title.

AMENDATORY SECTION (Amending WSR 16-06-009, filed 2/18/16, effective 3/20/16)

WAC 246-918-410 Sexual misconduct. (1) The following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Patient" means a person who is receiving health care or treatment, or has received health care or treatment without a termination of the physician assistant-patient relationship. The determination of when a person is a patient is made on a case-by-case basis with consideration given to a number of factors, including the nature, extent and context of the professional relationship between the physician assistant and the person. The fact that a person is not actively receiving treatment or professional services is not the sole determining factor.

(b) "Physician assistant" means a person licensed to practice as a physician assistant under chapter 18.71A RCW.

(c) "Key third party" means a person in a close personal relationship with the patient and includes, but is not limited to, spouses, partners, parents, siblings, children, guardians and proxies.

(2) A physician assistant shall not engage in sexual misconduct with a current patient or a key third party. A physician assistant engages in sexual misconduct when he or she engages in the following behaviors with a patient or key third party:

- (a) Sexual intercourse or genital to genital contact;
- (b) Oral to genital contact;
- (c) Genital to anal contact or oral to anal contact;
- (d) Kissing in a romantic or sexual manner;
- (e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;
- (f) Examination or touching of genitals without using gloves, except for examinations of an infant or prepubescent child when clinically appropriate;
- (g) Not allowing a patient the privacy to dress or undress;
- (h) Encouraging the patient to masturbate in the presence of the physician assistant or masturbation by the physician assistant while the patient is present;
- (i) Offering to provide practice-related services, such as medications, in exchange for sexual favors;
- (j) Soliciting a date;
- (k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the physician assistant.

(3) A physician assistant shall not engage in any of the conduct described in subsection (2) of this section with a former patient or key third party if the physician assistant:

(a) Uses or exploits the trust, knowledge, influence, or emotions derived from the professional relationship; or

(b) Uses or exploits privileged information or access to privileged information to meet the physician assistant's personal or sexual needs.

(4) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.-030.

(5) To determine whether a patient is a current patient or a former patient, the commission will analyze each case individually, and will consider a number of factors(;) including, but not limited to, the following:

- (a) Documentation of formal termination;
- (b) Transfer of the patient's care to another health care provider;
- (c) The length of time that has passed;
- (d) The length of time of the professional relationship;
- (e) The extent to which the patient has confided personal or private information to the physician assistant;
- (f) The nature of the patient's health problem;
- (g) The degree of emotional dependence and vulnerability.

(6) This section does not prohibit conduct that is required for medically recognized diagnostic or treatment purposes if the conduct meets the standard of care appropriate to the diagnostic or treatment situation.

(7) It is not a defense that the patient, former patient, or key third party initiated or consented to the conduct, or that the conduct occurred outside the professional setting.

(8) A violation of any provision of this rule shall constitute grounds for disciplinary action.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-918-082 Requirements for obtaining an allopathic physician assistant license for those who hold an active osteopathic physician assistant license.

WAC 246-918-095 Scope of practice—Osteopathic alternate physician.

WAC 246-918-120 Remote site.

WSR 21-22-045

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed October 27, 2021, 4:19 p.m., effective November 27, 2021]

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

Purpose: The agency amended these rules to update the grouper from all patient diagnosis-related group (DRG) to all patient refined DRG and remove references to version 23.

Citation of Rules Affected by this Order: Amending WAC 182-550-4800.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 21-19-105 on September 20, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 27, 2021.

Wendy Barcus
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-04-004, filed 1/23/19, effective 3/1/19)

WAC 182-550-4800 Hospital payment methods—State-administered programs. This section does not apply to out-of-state hospitals unless they are border hospitals (critical or noncritical).

(1) The medicaid agency:

(a) Pays for services provided to a client eligible for a state-administered program (SAP) based on SAP rates;

(b) Establishes SAP rates independently from the process used in setting the medicaid payment rates;

(c) Calculates a ratable each year to adjust each hospital's SAP rates for their percentage of community-based dollars to the total revenues for all hospitals;

(d) Calculates an equivalency factor (EF) to keep the SAP payment rates at the same level before and after the medicaid rates were rebased.

(2) The agency has established the following:

(a) SAP diagnosis-related group (DRG) conversion factor (CF) for claims grouped under DRG classifications services;

(b) SAP per diem rates for claims grouped under the following specialty service categories:

(i) Chemical-using pregnant (CUP) women;

(ii) Detoxification;

(iii) Physical medicine and rehabilitation (PM&R); and

(iv) Psychiatric.

(c) SAP ratio of costs-to-charges (RCC) for claims grouped under transplant services.

(3) This subsection describes the SAP DRG CF and payment calculation processes used by the agency to pay claims using the DRG payment method. The agency pays for services grouped to a DRG classification provided to clients eligible for a SAP based on the use of a DRG CF, a DRG relative weight, and a maximum service adjustor. This process is

similar to the payment method used to pay for medicaid and CHIP services grouped to a DRG classification.

(a) The agency's SAP DRG CF calculation process is as follows:

(i) The hospital's specific DRG CF used to calculate payment for a SAP claim is the medicaid DRG CF multiplied by the applicable EF multiplied by the ratable;

(ii) For hospitals that do not have a ratable or an EF, the SAP CF is the hospital's specific medicaid CF multiplied by the average EF and the average ratable; and

(iii) For noncritical border hospitals, the SAP DRG CF is the lowest in-state medicaid DRG CF multiplied by the average ratable and the average EF.

(b) The agency calculates the SAP DRG EF as follows:

(i) The hospital-specific current SAP DRG CF is divided by the rebased medicaid DRG CF and then divided by the ratable factor to compute the preliminary EF.

(ii) The current SAP DRG payment is determined by multiplying the hospital-specific SAP DRG CF by the ((~~AP-DRG version 23~~) APR-DRG relative weight.

(iii) The current aggregate DRG payment is determined by summing the current SAP DRG payments for all hospitals.

(iv) The hospital projected SAP DRG payment is determined by multiplying the hospital-specific current SAP DRG CF by the APR-DRG relative weights and the maximum service adjustor.

(v) The projected aggregate DRG payment is determined by summing the projected SAP program DRG payments for all hospitals.

(vi) The aggregate amounts derived in (b)(iii) and (v) of this subsection are compared to identify a neutrality factor that keeps the projected aggregate SAP DRG payment (based on ((~~DRG-APR~~) APR-DRG relative weights) at the same level as the previous aggregate SAP DRG payment (based on APR-DRG relative weights ((~~version 23-0~~))).

(vii) The neutrality factor is multiplied by the hospital-specific preliminary EF to determine the hospital-specific final EF that is used to determine the SAP DRG conversion factors for the rebased system implementation.

(c) The agency calculates the DRG payment for services paid under the DRG payment method as follows:

(i) The agency calculates the allowed amount for the inlier portion of the SAP DRG payment by multiplying the SAP DRG CF by the DRG relative weight and the maximum service adjustor.

(ii) SAP claims are also subject to outlier pricing. See WAC 182-550-3700 for details on outlier pricing.

(4) This subsection describes how the agency calculates the SAP per diem rate and payment for CUP, detoxification, PM&R, and psychiatric services.

(a) The agency calculates the SAP per diem rate for in-state and critical border hospitals by multiplying the hospital's specific medicaid per diem by the ratable and the per diem EF.

(b) The agency calculates the SAP per diem rate for non-critical border hospitals by multiplying the lowest in-state medicaid per diem rate by the average ratable and the average per diem EF.

(c) For hospitals with more than twenty nonpsychiatric SAP per diem paid services during SFY 2011, the agency cal-

culates a per diem EF for each hospital using the individual hospital's claims as follows:

(i) The agency calculates a SAP average payment per day by dividing the total current SAP per diem payments by the total number of days associated with the payments.

(ii) The agency calculates a medicaid average payment per day by dividing the aggregate payments based on the rebased medicaid rates by the total number of days associated with the aggregate payments (same claims used in (c)(i) of this subsection).

(iii) The agency divides the hospital estimated SAP average payment per day in (a) of this subsection by the hospital medicaid average payment per day in (b) of this subsection.

(iv) The agency divides the result of (c)(iii) of this subsection by the hospital-specific ratable factor to determine the EF.

(d) For hospitals with twenty or less nonpsychiatric SAP per diem paid services during SFY 2011, the EF is an average for all hospitals. The agency uses the following process to determine the average EF:

(i) The agency calculates a SAP average payment per day by dividing the total current SAP per diem payments for all hospitals by the total number of days associated with the aggregate payments.

(ii) The agency calculates a medicaid average payment per day by dividing the aggregate payments based on the rebased medicaid rates by the total number of days associated with the aggregate payment (same claims used in (d)(i) of this subsection).

(iii) The agency divides the SAP average per day in (a) of this subsection by the medicaid average payment per day in (b) of this subsection.

(iv) The agency divides the result of (d)(iii) of this subsection by the hospital-specific ratable factor to determine the EF. The EF is an average based on claims for all the hospitals in the group.

(e) The agency uses a psychiatric EF to keep SAP psychiatric rates at the level required by the Washington state legislature. The agency's SAP psychiatric rates are eighty-five and four one hundredths of a percent (85.04%) of the agency's medicaid psychiatric rates. The factor is applied to all hospitals.

(f) The agency calculates the SAP per diem allowed amount for CUP, detoxification, PM&R, and psychiatric services by multiplying the hospital's SAP per diem rate by the agency's allowed patient days.

(g) The agency does not apply the high outlier or transfer policy to the payment calculations for CUP, detoxification, PM&R, and psychiatric services.

(5) The agency calculates the SAP RCC by multiplying the medicaid RCC by the hospital's ratable.

(6) The agency annually establishes the hospital-specific ratable factor used in the calculation of SAP payment rate based on the most current hospital revenue data available from the department of health (DOH). The agency uses the following process to determine the hospital ratable factor:

(a) The agency adds the hospital's medicaid revenue, medicare revenue, charity care, and bad debts as reported in DOH data.

(b) The agency determines the hospital's community care dollars by subtracting the hospital's low-income disproportionate share hospital (LIDSH) payments from the amount derived in (a) of this subsection.

(c) The agency calculates the hospital net revenue by subtracting the hospital-based physician revenue (based on information available from the hospital's medicare cost report or provided by the hospitals) from the DOH total hospital revenue report.

(d) The agency calculates the preliminary hospital-specific ratable by dividing the amount derived in (b) of this subsection by the amount derived in (c) of this subsection.

(e) The agency determines a neutrality factor by comparing the hospital-specific medicaid revenue (used in (a) of this subsection) multiplied by the preliminary ratable to the hospital-specific medicaid revenue (used in (a) of this subsection) multiplied by the prior year ratable. The neutrality factor is used to keep the projected SAP payments at the same current payment level.

(f) The agency determines the final hospital-specific ratable by multiplying the hospital-specific preliminary ratable by the neutrality factor.

(g) The agency applies to the allowable for each SAP claim all applicable adjustments for client responsibility, any third-party liability, medicare payments, and any other adjustments as determined by the agency.

(7) The agency does not pay ~~((and))~~ a SAP claim paid by the DRG method at greater than the billed charges.

(8) SAP rates do not apply to the critical access hospital (CAH) program's weighted cost-to-charges, to the long-term acute care (LTAC) program's per diem rate, or to the certified public expenditure (CPE) program's RCC (except as the RCC applies to the CPE hold harmless described under WAC 182-550-4670).

WSR 21-22-047
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed October 28, 2021, 7:01 a.m., effective November 28, 2021]

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

Purpose: To clarify the sources of funds that may be used to purchase a defined benefit annuity.

Citation of Rules Affected by this Order: Amending WAC 415-02-178 May I purchase an annuity?

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 21-19-148 on September 22, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: October 27, 2021.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 20-01-145, filed 12/17/19, effective 1/17/20)

WAC 415-02-178 May I purchase an annuity? (1) Am I eligible to purchase an annuity? You are eligible to purchase a defined benefit plan annuity at the time of retirement if you are a member of TRS (RCW 41.32.067), WSPRS (RCW 43.43.315), LEOFF Plan 1 (RCW 41.26.105), LEOFF Plan 2 (RCW 41.26.463), PERS (RCW 41.40.131), SERS (RCW 41.35.235), or PSERS Plan 2 (RCW 41.37.295). This annuity provides a lifetime increase to your monthly benefit. (For purchasing an annuity from your Plan 3 defined contribution account, refer to WAC 415-111-320.)

(2) Can I purchase an annuity if I take a lump sum payment? You may not purchase an annuity if you elect a lump sum payment instead of a monthly benefit.

(3) Are there limits to the annuity amount I may purchase? There is no maximum limit on the purchase amount. If you are a LEOFF or WSPRS member the minimum purchase amount is \$25,000. If you are a PERS, SERS, or PSERS member, the minimum purchase amount is \$5,000. There is no minimum required for TRS members.

(4) When can I apply to purchase an annuity? You must submit your request to purchase an annuity to the department at the time you apply for retirement.

(5) How much will my monthly benefit increase if I purchase an annuity? The increase in your monthly benefit will be calculated using the following formula:

$$\text{Purchase Annuity Amount} \times \text{Annuity Factor} = \text{Increase to Monthly Benefit}$$

The annuity factor is determined by your age on the later of your retirement date or the date your retirement application is submitted to the department.

Example: John is a member of LEOFF Plan 2. He applies for retirement and requests to purchase an annuity for \$45,000. For illustration purposes in this example only, we will use 0.0051025 as the corresponding annuity factor (factors change periodically). John's monthly benefit will increase by \$229.61 per month, calculated as follows:

$$\text{Purchase Annuity Amount} \times \text{Annuity Factor} = \text{Increase to Monthly Benefit}$$

$$\$45,000 \times 0.0051025 = \$229.61$$

(6) How and when do I pay for the annuity? The department will generate a bill to you for the cost of the annuity after we receive your request to purchase.

(a) For all TRS members, payment may be made by making a one-time personal payment (however, IRS regulations limit the amount of after-tax dollars you may use); or you may roll over funds from another tax-deferred retirement account.

(b) For LEOFF, WSPRS, PERS, SERS, and PSERS members, the annuity must be purchased by rolling over funds from an "eligible retirement plan" which is a tax qualified plan offered by a governmental employer (like the state of Washington's deferred compensation program) or rolling over tax-deferred funds that originated with a governmental employer.

(c) For PERS Plan 1 or TRS Plan 1 members, post-thirty year contributions withheld under the provisions of RCW 41.40.191 or 41.32.4986 respectively, may not be used to purchase the annuity.

(d) Payment must be made in full by ninety days after the later of your retirement date or bill issue date. Your annuity will begin once your payment is received and your retirement is processed. The effective date for the start of this benefit is the later of your retirement date or the payment in full date plus one day.

(7) What are the survivor options for my annuity? The survivor option you designate for your retirement benefit will also be used for your annuity purchase, with the exception of WSPRS Plan 1 Option A and LEOFF Plan 1.

If you are a WSPRS Plan 1 member who chose Option A or you are a LEOFF Plan 1 member, your annuity will be paid for your lifetime only. Under these two survivor options, even though the retirement benefit may be paid over two lifetimes, there is no actuarial reduction. No actuarial reduction can be applied to the annuity, therefore the annuity can only be treated as if a single life option was chosen.

If you choose a benefit option with a survivor feature and your survivor dies before you, your monthly annuity payment will increase to the amount it would have been had you not selected a survivor option.

(8) Will I receive a cost of living adjustment (COLA) on the portion of my benefit that is based on the purchased annuity? If you are eligible for an annual COLA adjustment on your monthly benefit, you will receive the same COLA percentage on this annuity.

(9) If I purchase an annuity and then return to work, how will the annuity portion of my benefit be affected? You will continue to receive the annuity portion of your monthly benefit payment even if you return to work, or return to membership.

(10) If I retire then return to membership and rereire, may I purchase another annuity? Yes. You may purchase another annuity when you rereire provided you are rereiring from an eligible plan that allows an annuity purchase.

(11) May I purchase an annuity from more than one retirement plan?

(a) If you are a dual member under chapter 415-113 WAC, Portability of public employment benefits, and you combine service credit to retire as a dual member, you may purchase an annuity from each dual member plan that allows an annuity purchase.

(b) If you are not a dual member and retire separately from more than one plan you may purchase an annuity from each eligible plan that allows an annuity purchase.

(12) **What happens to my annuity upon my death (and the death of my survivor, if applicable)?**

System Plan	Benefit Option	Annuity Payment Upon Death
TRS 1	Maximum Option	At the time of your death the annuity payment stops.
TRS 1, TRS 2, TRS 3, LEOFF 2, WSPRS 2, PERS 1, PERS 2, PERS 3, SERS 2, SERS 3, and PSERS 2	Option 1 (single life)	At the time of your death the annuity payments stop. The original amount you paid for your annuity, less any payments you have received, will be paid to your designated beneficiary.
WSPRS 1	Option A	
LEOFF 1	Automatic Survivor	
TRS 1, TRS 2, TRS 3, LEOFF 2, WSPRS 2, PERS 1, PERS 2, PERS 3, SERS 2, SERS 3, and PSERS 2	Option 2, 3, 4 (joint life)	At the time of your death, payments will continue to your survivor. At the time of your survivor's death, the original amount you paid for your annuity, less any payments you and your survivor have received, will be paid to your designated beneficiary.
WSPRS 1	Option B (joint life)	

**WSR 21-22-048
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS**

[Filed October 28, 2021, 7:01 a.m., effective November 28, 2021]

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

Purpose: In accordance with RCW 41.50.180, this amendment will allow the department of retirement systems to initiate refunds of contributions to inactive, nonvested members with account balances less than \$1,000.

Citation of Rules Affected by this Order: Amending WAC 415-02-750 How does the department comply with Internal Revenue Code distribution rules?

Statutory Authority for Adoption: RCW 41.50.050 and 41.50.180.

Adopted under notice filed as WSR 21-19-150 on September 22, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

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

Date Adopted: October 27, 2021.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 10-24-099, filed 12/1/10, effective 1/1/11)

WAC 415-02-750 How does the department comply with Internal Revenue Code distribution rules? (1) All benefits paid from the retirement plan shall be distributed in accordance with a reasonable and good faith interpretation of the requirements of section 401 (a)(9) of the Internal Revenue Code, as applicable to a governmental plan within the meaning of section 414(d) of the Internal Revenue Code. In order to meet these requirements, the retirement plan shall be administered in accordance with the following provisions:

(a) If a plan member separates from service prior to attaining eligibility for a future benefit and the balance of the member's accumulated contributions is less than \$1,000, the department may initiate a refund of the member's accumulated contributions following written notification to the member.

(i) A refund of the accumulated contributions initiated by the department under the terms of this section shall terminate all rights to benefits in the retirement plan.

(ii) If the member is reemployed in an eligible position, service credits earned prior to the refund may be restored upon repayment according to the provisions of the plan.

(b) Distribution of a member's benefit must begin by the later of April 1st following the calendar year in which a member attains age seventy and one-half or April 1st of the year following the calendar year in which the member retires;

~~((b))~~ (c) Unless distributed in a lump sum, the member's entire interest must be distributed over the member's life or the lives of the member and a designated beneficiary, or over a period not extending beyond the life expectancy of the member or of the member and designated beneficiary;

~~((c))~~ (d) The life expectancy of a member or the member's spouse or beneficiary may not be recalculated after the benefits commence;

~~((d))~~ (e) If a member dies before the required distribution of the member's benefits has begun, the member's entire interest must be either:

(i) Distributed (in accordance with federal regulations) over the life or life expectancy of the designated beneficiary, with the distributions beginning no later than December 31st of the calendar year following the calendar year of the member's death; or

(ii) Distributed within five years of the member's death.

~~((e))~~ (f) The amount of an annuity paid to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirement of section 401 (a)(9)(G) of the Internal Revenue Code, and the minimum distribution incidental benefit rule under Treasury Regulation section 1.401 (a)(9)-6, Q&A 2; and

~~((f))~~ (g) If a member dies after the distribution of the member's benefits has begun, the remaining portion of the member's interest will be distributed at least as rapidly as under the method of distribution being used for the member as of the date of the member's death.

(2) The retirement system pursuant to a valid dissolution order as defined in RCW 41.50.500 may establish separate benefits for a member and nonmember.

(3) The death and disability benefits provided by the plan are limited by the incidental benefit rule set forth in section 401 (a)(9)(G) of the Internal Revenue Code and Treasury Regulation section 1.401-1 (b)(1)(i) or any successor regulation thereto. As a result, the total death or disability benefits payable may not exceed twenty-five percent of the cost for all of the members' benefits received from the plan.

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 27, 2021.

Tracy Guerin
Director

AMENDATORY SECTION (Amending WSR 18-13-078, filed 6/15/18, effective 7/16/18)

WAC 415-104-482 How are the different LEOFF Plan 2 disability benefits calculated? (1) Line of duty: As a line of duty disability retiree, you may choose between:

(a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments made to restore service credit after the five-year deadline will be paid at one hundred percent; or

(b) A monthly disability benefit equal to:

(i) Ten percent of your final average salary (FAS), which is nontaxable; and

(ii) Two percent of your FAS for each year of service beyond five years.

Calculation of monthly disability benefit:

Example 1: Chris was approved for line of duty disability. The final average salary (FAS) was \$10,000. Chris had 20 years of service credit at the time of retirement. To determine the line of duty disability benefit amount:

1. $10\% \times \text{FAS} = \text{Nontaxable amount}$
 $.10 \times \$10,000 = \$1,000$
2. $2\% \times \text{FAS} \times \text{Number of Service Years beyond Five Years} = \text{Taxable amount}$
 $.02 \times \$10,000 \times 15 = \$3,000$
3. $\text{Nontaxable amount} + \text{Taxable amount} = \text{Total benefit}$
 $\$1,000 + \$3,000 = \$4,000$

Example 2: Pat was approved for line of duty disability. The final average salary (FAS) was \$10,000. Pat had 2 years of service credit at the time of retirement. To determine the line of duty disability benefit amount:

1. $10\% \times \text{FAS} = \text{Nontaxable amount}$
 $.10 \times \$10,000 = \$1,000$
2. $2\% \times \text{FAS} \times \text{Number of Service Years beyond Five Years} = \text{Taxable amount}$
 $.02 \times \$10,000 \times 0 = \0
3. $\text{Nontaxable amount} + \text{Taxable amount} = \text{Total benefit}$
 $\$1,000 + \$0 = \$1,000$

WSR 21-22-049

PERMANENT RULES

DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed October 28, 2021, 7:02 a.m., effective November 28, 2021]

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

Purpose: To clarify that adjustments to offset workers' compensation and Social Security disability benefits will be prospective.

Citation of Rules Affected by this Order: Amending WAC 415-104-482 How are the different LEOFF Plan 2 disability benefits calculated?

Statutory Authority for Adoption: RCW 41.50.050.

Adopted under notice filed as WSR 21-19-149 on September 22, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making:

(2) **Catastrophic duty disability:** As a catastrophic duty disability retiree, you may choose between:

(a) A nontaxable, one-time lump sum payment equal to one hundred fifty percent of your retirement contributions; except that, any payments made to restore service credit after the five-year deadline will be paid at one hundred percent. Under this option you waive your right to the medical insurance premium reimbursement; or

(b) A monthly disability benefit equal to:

(i) Seventy percent of your final average salary (FAS), which is nontaxable, reduced by any temporary disability benefits provided under Title 51 RCW and federal Social Security disability benefits, if necessary to ensure that the total combined benefits do not exceed one hundred percent of the member's final average salary (FAS). Any such adjustment will be applied prospectively from the time the Title 51 RCW or Social Security determination is made, even if the Title 51 RCW or Social Security disability benefits are retroactively adjusted.

(ii) The reduced benefit cannot be less than the earned service retirement benefit.

Calculation of monthly disability benefit:

Example 1: Terry was approved for catastrophic disability. The final average salary (FAS) was \$10,000. Terry was not receiving benefits from LNI or Social Security disability insurance (SSDI). Terry had 20 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

1. $70\% \text{ of FAS} = \text{Monthly disability benefit}$
 $.70 \times \$10,000 = \$7,000$
2. $2\% \times \text{FAS} \times \text{Service Years} = \text{Earned benefit}$
 $.02 \times \$10,000 \times 20 = \$4,000$

Since there is no offset and the monthly disability benefit is greater than the earned benefit, Terry's benefit will be \$7,000 a month.

Example 2: Pat was approved for catastrophic disability. The final average salary (FAS) was \$10,000. Pat was receiving benefits from LNI and Social Security disability insurance (SSDI) in the amounts of \$5,000 and \$2,000. Pat had 2 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

1. $70\% \text{ of FAS} = \text{Monthly disability benefit}$
 $.70 \times \$10,000 = \$7,000$
2. $\text{Monthly disability benefit} + \text{LNI benefits} + \text{SSDI benefit} = \text{Total of all benefits}$
 $\$7,000 + \$5,000 + \$2,000 = \$14,000$
3. $\text{Total of all benefits} - \text{FAS} = \text{Reduction amount}$
 $\$14,000 - \$10,000 = \$4,000$

4. $\text{Monthly disability benefit} - \text{Reduction Amount} = \text{Reduced monthly benefit}$
 $\$7,000 - \$4,000 = \$3,000$
5. $2\% \times \text{FAS} \times \text{Service Years} = \text{Earned benefit}$
 $.02 \times \$10,000 \times 2 = \400

Since the reduced monthly benefit amount is greater than the earned benefit, Pat's benefit will be \$3,000 a month.

Example 3: Chris was approved for catastrophic disability. The final average salary (FAS) was \$10,000. Chris was receiving benefits from LNI (Title 51 RCW) and Social Security disability insurance (SSDI) in the amounts of \$5,000 and \$2,000 respectively. Chris had 20 years of service credit at the time of retirement. To determine the catastrophic benefit amount:

1. $70\% \text{ of FAS} = \text{Monthly disability benefit}$
 $.70 \times \$10,000 = \$7,000$
2. $\text{Monthly disability benefit} + \text{LNI benefits} + \text{SSDI benefit} = \text{Total of all benefits}$
 $\$7,000 + \$5,000 + \$2,000 = \$14,000$
3. $\text{Total of all benefits} - \text{FAS} = \text{Reduction amount (to not exceed 100\% of FAS)}$
 $\$14,000 - \$10,000 = \$4,000$
4. $\text{Monthly disability benefit} - \text{Reduction Amount} = \text{Reduced monthly benefit}$
 $\$7,000 - \$4,000 = \$3,000$
5. $2\% \times \text{FAS} \times \text{Service Years} = \text{Earned benefit}$
 $.02 \times \$10,000 \times 20 = \$4,000$

Chris is entitled to the greater of the catastrophic retirement calculation or the earned benefit. Since the earned benefit is greater than the reduced catastrophic benefit, Chris' benefit will be \$4,000 a month.

(3) **Nonduty disability:** As a nonduty disability retiree, you receive a benefit of two percent times your final average salary times your service credit years. This disability benefit will be actuarially reduced to reflect the difference in age at the time of disability retirement and age fifty-three.

Calculation of monthly disability benefit:

Example 1 - Full actuarial reduction:

Chris, age 47, was approved for a nonduty disability. The final average salary (FAS) was \$10,000. Chris had 20 years of service credit at the time of retirement. To determine the nonduty disability benefit amount:

$$2\% \times \text{FAS} \times \text{Service Years} \times \text{early retirement factor (2018 table)} = \text{Benefit amount}$$

$$.02 \times \$10,000 \times 20 \times 0.5980 = \$2,392$$

WSR 21-22-051
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed October 28, 2021, 7:46 a.m., effective November 28, 2021]

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

Purpose: The agency amended these rules [to] align with SSB 5976. Specifically, the agency removed the age limitation of five and younger and added coverage for clients under the age of 13 who have one or more disabilities as defined by RCW 74.09.390. The agency also clarified that if the client is enrolled in an agency-contracted managed care organization (MCO), dental providers must bill the agency's directly under the fee-for-service payment system for access to baby and child dentistry (ABCD) services. Medical providers must bill the MCO directly for ABCD program services. If the client is not enrolled in an MCO, dental providers and medical providers must bill the agency directly under the fee-for-service payment system for ABCD program services. Only ABCD-certified dental providers and primary care providers certified in ABCD are paid an enhanced fee.

Citation of Rules Affected by this Order: Amending WAC 182-535-1245.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160; SSB 5976, chapter 242, Laws of 2020 Access to baby and child dentistry program—Eligibility.

Adopted under notice filed as WSR 21-19-106 on September 20, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 28, 2021.

Wendy Barcus
Rules Coordinator

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

WAC 182-535-1245 Access to baby and child dentistry (ABCD) program. The access to baby and child den-

tistry (ABCD) program ~~((is a program established to))~~ increases access to dental services for certain medicaid-eligible clients ~~((ages five and younger))~~.

~~((Client eligibility))~~ A client is eligible for the ABCD program ((is as follows)) if the client is:

~~((Clients must be age five and younger. Once enrolled in the ABCD program, eligible clients are covered until their sixth birthday.~~

~~((Clients))~~ Eligible ((under)) for one of the following medical assistance programs ((are eligible for the ABCD program)):

- (i) Categorically needy program (CNP);
 - (ii) Limited casualty program-medically needy program (LCP-MNP);
 - (iii) Children's health program; or
 - (iv) State children's health insurance program (SCHIP);
- and

(b) Follow the age requirements:

(i) Under age six; or

(ii) Under age 13 and has one or more disabilities as defined by RCW 74.09.390.

(2) If the eligible client is enrolled in an agency-contracted managed care organization (MCO):

(a) Dental providers must bill the agency's fee-for-service payment system for ABCD program services.

(b) Medical providers must bill the MCO for ABCD program services.

(3) If the eligible client is not enrolled in an agency-contracted managed care organization (MCO):

(a) Dental providers must bill the agency's fee-for-service payment system for ABCD program services.

(b) Medical providers must bill the agency's fee-for-service payment system for ABCD program services.

~~((c) ABCD program services provided by a dental provider for eligible clients who are enrolled in an agency-contracted managed care organization (MCO) are paid through the fee-for-service payment system.~~

~~((d) ABCD program services provided by a medical provider for eligible clients who are enrolled in an agency-contracted managed care organization (MCO) must be billed directly through the client's MCO.~~

~~((2))~~ (4) Health care providers and community service programs identify and refer eligible clients to the ABCD program. If ~~((enrolled,))~~ the eligible client is treated by an ABCD certified provider, the client and an adult family member may receive:

(a) Oral health education;

(b) "Anticipatory guidance" (expectations of the client and the client's family members, including the importance of keeping appointments); and

(c) Assistance with transportation, interpreter services, and other issues related to dental services.

~~((3))~~ (5) Only ABCD-certified ~~((dentists and other agency-approved certified))~~ dental providers and primary care providers certified in ABCD are paid an enhanced fee for furnishing ABCD program services. ABCD program services include, when appropriate:

(a) Family oral health education. An oral health education visit:

(i) Is limited to one visit per day per family, up to two visits per ~~((child))~~ client in a ~~((twelve-month))~~ 12-month period, per provider or clinic; and

(ii) Must include ~~((documentation of the following))~~ all of the following services, provision of which must be documented in the client's record:

- (A) "Lift the lip" training;
- (B) Oral hygiene training;
- (C) Risk assessment for early childhood caries;
- (D) Dietary counseling; and
- (E) ~~((Discussion))~~ Benefits of fluoride ~~((supplements;~~

and

~~((F) Documentation in the client's record to record the activities provided at the oral education visit)).~~

(b) Comprehensive oral evaluations as defined in WAC 182-535-1050, once per client, per provider or clinic, as an initial examination. The agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years;

(c) Periodic oral evaluations as defined in WAC 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation;

(d) Topical application of fluoride varnish;

(e) Amalgam, resin, and glass ionomer restorations on primary teeth, as specified in the agency's current published documents;

(f) Interim therapeutic restorations (ITRs) for primary teeth ~~((, only for clients age five and younger))~~. The agency pays an enhanced rate for these restorations to ABCD-certified, ITR-trained dentists as follows:

(i) A one-surface, resin-based composite, or glass ionomer restoration with a maximum of five teeth per visit; and

(ii) Restorations on a tooth can be done every ~~((twelve))~~ 12 months ~~((through age five,))~~ or until the client can be definitively treated for a restoration.

(g) Therapeutic pulpotomy;

(h) Prefabricated stainless steel crowns on primary teeth, as specified in the agency's current published documents;

(i) Resin-based composite crowns on anterior primary teeth; and

(j) Other dental-related services, as specified in the agency's current published documents.

~~((4) The client's record must show documentation of the ABCD program services provided.))~~

WSR 21-22-053

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 28, 2021, 9:57 a.m., effective November 28, 2021]

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

Purpose: The department is adopting amendments to WAC 388-484-0006 TANF/SFA time limit extensions. These amendments add a time limit extension hardship category (under RCW 74.08A.010 (5)(a)(1)) to support the oper-

ating budget: SB [ESSB] 5092 (chapter 334, Laws of 2021) effective July 1, 2021, and a time limit extension hardship category to implement 2SSB 5214 (chapter 239, Laws of 2021) effective July 25, 2021 (90 days after session ended). Upon the effective date, this permanent filing supersedes the emergency rule filed as WSR 21-21-067.

Citation of Rules Affected by this Order: Amending WAC 388-484-0006.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, and 74.08A.-010.

Other Authority: SB [ESSB] 5092 (chapter 334, Laws of 2021), 2SSB 5214 (chapter 239, Laws of 2021).

Adopted under notice filed as WSR 21-17-111 on August 16, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 28, 2021.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-12-077, filed 5/28/21, effective 7/1/21)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive sixty or more months of TANF/SFA cash assistance?

After you receive sixty or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) Who is eligible for a hardship TANF/SFA time limit extension?

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a Social Security disability insurance recipient; or

(ii) Are at least sixty-five years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(iii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(iv) Are working in unsubsidized employment for thirty-two hours or more per week; or

(v) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(vi) Are homeless by reason of hardship, including when your family includes a child or youth who is without a fixed regular, and adequate nighttime residence as described in the federal McKinney-Vento Homeless Assistance Act (Title 42, U.S.C. 11434a(2), chapter 119, subchapter VI, part B) as it existed on January 1, 2020(-); or

(vii) Are an active TANF recipient from July 1, 2021 through June 30, 2022; or

(viii) Do not qualify for other time limit extension criteria in this section and received TANF during a month on or after March 1, 2020, when the state's unemployment rate was at seven percent or above. The extension provided for under this subsection (2)(b)(viii) is equal to the number of months that you received TANF on or after March 1, 2020, when the state's unemployment rate was at seven percent or above.

(3) Who reviews and approves a hardship time limit extension?

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

(4) When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) How long will a hardship TANF/SFA time limit extension last?

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a), (b)(i) or (ii) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b)(iii), (iv), (v), or (vi) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.

WSR 21-22-057

PERMANENT RULES

OFFICE OF THE

INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2021-21—Filed October 28, 2021, 12:57 p.m., effective November 28, 2021]

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

Purpose: The existing language in WAC 284-43-8130 includes an outdated reference to a WAC section that was recodified, so that reference needs to be replaced with the updated WAC section number.

Citation of Rules Affected by this Order: Amending WAC 284-43-8130.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.733.

Adopted under notice filed as WSR 21-17-128 on August 17, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 28, 2021.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 19-22-032, filed 10/30/19, effective 11/30/19)

WAC 284-43-8130 Association health plan compliance with statutory or regulatory changes. (1) Issuers must file a group health plan, other than a small group health plan, rate and form filing as provided in RCW 48.43.733. An issuer offering plans through an association or member-governed group must implement all new applicable federal or state health plan market requirements when they become effective. Replacement requirements for this section apply based on whether the purchaser is classified as an individual, small group, or large group purchaser. These requirements also apply to employer member groups of less than two or to individual member purchasers.

(2) An issuer providing plans of the type referenced in subsection (1) of this section must discontinue a noncompliant plan, and offer replacement plans effective on the renewal date of the master group contract for large groups, and on the group's anniversary renewal date for nongrandfathered small group and individual plans.

(3) If the association is a large group as defined in WAC ((284-43-0330(1) [284-43-8140(1)]) 284-43-8140(1), the same renewal date must apply to all employer members and individual employer members, and the replacement coverage must take effect on the same date for each participant. The purchaser's anniversary date must not be used in lieu of this uniform renewal date for purposes of discontinuation and replacement of noncompliant coverage.

(4) If the association is not a large group as defined in WAC ((284-43-0330(1) [284-43-8140(1)]) 284-43-8140(1), and the master group contract and an employer member's contract do not have the same renewal date, an issuer must provide notice of the discontinuation and replacement of the plan to the affected employer member or plan sponsor, and each enrollee in the affected employer member plan, not fewer than ninety days prior to the employer member's anniversary renewal date.

(5) If an issuer does not have a replacement plan approved by the commissioner to offer in place of a discontinued plan, the issuer must assist each enrollee in identifying a replacement option offered by another issuer.

(6) For purposes of this section, "purchaser" means the group or individual whose eligibility for the plan is based in

whole or in part on membership in the association or member-governed group.

(7) For purposes of this section, the "anniversary renewal date" means the initial or first date on which a purchasing group's health benefit plan coverage became effective with the issuer, regardless of whether the issuer is subject to other agreements, contracts or trust documents that establish requirements related to the purchaser's coverage in addition to the health benefit plan.

(8) An issuer must not adjust the master contract renewal or anniversary date to delay or prevent application of any federal or state health plan market requirement.

WSR 21-22-070

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed October 29, 2021, 9:15 a.m., effective November 29, 2021]

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

Purpose: Lead-based paint - lowering dust wipe clearance standards for floors and window sills including language updates for clarity.

Citation of Rules Affected by this Order: Amending WAC 365-230-010, 365-230-020, 365-230-035, 365-230-100, 365-230-160, 365-230-170, 365-230-190, 365-230-200, 365-230-210, 365-230-360, and 365-230-380.

Statutory Authority for Adoption: Chapter 70A.420 RCW.

Adopted under notice filed as WSR 21-15-007 on July 7, 2021.

Changes Other than Editing from Proposed to Adopted Version:

- Includes inspectors, risk assessors, supervisors, lead-based paint workers, renovators, and dust sampling technicians as individuals who can be certified by the department, subsection (9).
- Updates language for "clearance examination standards" to "clearance dust standards," subsection (13), and includes the newly lowered EPA dust standards for "dust-lead hazard," subsection (32) which currently reference the older standard.
- Updates the concentration measurement standard from "micrograms per gram or parts per million by weight" to "micrograms per square foot or micrograms per gram or parts per million by weight," subsection (17).
- Clarifies that a supervisor is licensed by the construction contractors' board, subsection (79) and removes the same requirement for workers, subsection (90).
- Updates references from "clearance examination standards" to "clearance dust standards" in WAC 365-230-200 and 365-230-210 to align with changes in WAC 365-230-020.
- Change to rule language to improve clarity and usability.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 10, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 10, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 29, 2021.

Dave Pringle
Policy Advisor
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-010 Authority, purpose and scope. (1) The authority for these regulations is chapter ~~((70.103))~~ 70A.420 RCW.

(2) Purpose.

(a) These regulations address Washington's need for a qualified and properly trained work force to perform lead-based paint activities, and lead-based paint renovation work, as defined in these rules, to safeguard the environment and protect human health, especially for children under six years of age and other high-risk groups from lead-based paint hazards.

(b) These regulations prescribe the accreditation requirements for training providers offering lead-based paint activities and lead-based paint renovation training courses to qualify individuals for lead-based paint certification and will require that all lead-based paint training courses be offered or provided only by accredited training providers.

(c) These regulations prescribe the certification requirements of individuals and firms engaged in lead-based paint activities and renovation in target housing and child occupied facilities.

(d) These regulations establish work practice standards for the performance of lead-based paint abatement, inspection, risk assessment, renovation, dust sampling by individuals and firms, and will require that only certified individuals and the certified firms employing such individuals perform these lead-based paint activities and lead-based paint renovations.

(3) Scope.

(a) These rules apply to all individuals and firms that are engaged in lead-based paint activities and lead-based paint renovation as defined in these regulations, (WAC 365-230-200 and 365-230-330) except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(b) These rules establish the requirement that lead-based paint activities and renovation be performed only by certified individuals and the certified firms employing such individuals.

(c) These rules prescribe the requirements for, and the manner of, certifying competency of applicants for certification of lead-based paint inspector, risk assessor, renovator, dust sampling technician, supervisor, project designer, and abatement worker, and of legally registered firms employing such individuals.

(d) These rules prescribe work practice standards for lead-based paint abatement and renovation, and for the performance of lead-based paint inspection, risk assessment, renovation, dust sampling, and those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the department may deny, suspend, revoke, or modify certification.

(e) These rules establish application fees for certification and accreditation.

(f) These rules establish a procedure by which training providers may apply for and obtain accreditation to offer initial and refresher lead-based paint courses in any of the following disciplines: Inspector, risk assessor, renovator, dust sampling technician, supervisor, project designer, and abatement worker.

(g) These rules prescribe the requirements for training programs to provide, offer, or claim to provide accredited lead-based paint activities and renovation courses.

(h) These rules prescribe those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the department may deny, suspend, revoke or modify accreditation.

(i) These rules describe the actions or failures to act that constitute violations of these rules and for which the department may issue fines.

(j) These rules establish a schedule of penalties for failure to comply with these rules.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-020 Definitions. As used in these rules unless otherwise required by context:

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards including, but not limited to:

(a) The removal of paint and dust, the permanent enclosure or the encapsulation of lead-based paint with an EPA-approved encapsulant, the replacement of painted surfaces or fixtures, or the removal or covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

(b) All preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures.

Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or

child-occupied facility that results in permanent elimination of lead-based paint hazards or designed to permanently eliminate lead-based paint hazards and described in (a) and (b) of this subsection.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified and licensed firms or individuals, unless such projects are covered under (c) of this subsection.

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities, unless such projects are covered under (c) of this subsection.

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accreditation" means the process whereby the department has reviewed and approved a training provider's written application with associated materials for accreditation, and has conducted an on-site audit finding the training program is in compliance as specified in these rules.

(3) "Accredited training program" means a training program accredited by the department, either directly or through a reciprocity agreement with other jurisdictions, to provide training for individuals engaged in lead-based paint activities, renovation, or dust sampling.

(4) "Accredited training course" means either an initial or a refresher training course accredited by the department, either directly or through a reciprocity agreement with other jurisdictions, that provides training for individuals engaged in lead-based paint activities and renovation.

(5) "Accredited training provider" means an individual, corporation, partnership or other unincorporated association or public entity to which the department has approved accreditation to offer one or more lead-based paint courses.

(6) "Approved" means approved in writing by the department.

(7) "Arithmetic mean" means the algebraic sum of data values divided by the number of data values (e.g., the sum of the concentration of lead in several soil samples divided by the number of samples).

(8) "Business day" means Monday through Friday with the exception of legal Washington state holidays.

(9) "Certified" means issued a certificate by the department based on meeting requirements for the appropriate discipline. Those requirements include, but are not limited to, the following:

(a) Successful completion of a training program accredited by the department; and

(b) Receiving a passing score on a certification examination administered by the department for inspectors, risk assessors or supervisors, or for lead-based paint workers, renovators and dust sampling technicians, a passing score on an examination administered by the training firm (~~in the certification of lead-based paint workers, renovators, and dust sampling technicians~~); and

(c) Satisfaction of any other requirements for the appropriate discipline; and

(d) Submittal and approval of the appropriate application by the department for inspection, risk assessment, supervisor or ((abatement)) worker activities in target housing and child-occupied facilities; and

(e) Submittal and approval of the appropriate renovator or dust sampling technician application by the department.

Note: Guidance policy is written to grandfather in all Washington state residents previously certified by EPA as renovators, dust sampling technicians, or Washington renovation firms into the department. Out-of-state residents are required to submit appropriate renovator, dust sampling technician, or renovation firm application and fee to the department.

(10) "Certified firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs lead-based paint activities to which the department has issued a certificate under these rules.

(11) "Child-occupied facility" means a building, or a portion of a building, constructed prior to 1978, visited regularly by the same child, under the age of six, on at least two different days within any week (Sunday through Saturday period), provided that each day's visit lasts at least three hours and the combined weekly visit lasts at least six hours, and the combined annual visits last at least ~~((sixty))~~ 60 hours. Child-occupied facilities may include, but are not limited to, day care centers, preschools and kindergarten classrooms. Child-occupied facilities may be located in target housing or in public or commercial buildings. With respect to common areas in public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only those common areas that are routinely used by children under age six, such as restrooms and cafeterias. Common areas that children under age six only pass through, such as hallways, stairways, and garages are not included. In addition, with respect to exteriors of public or commercial buildings that contain child-occupied facilities, the child-occupied facility encompasses only the exterior sides of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under age six.

(12) "Clearance levels" are values that indicate the ~~((maximum))~~ amount of lead ~~((permitted))~~ in dust on a surface following the completion of an abatement activity. To achieve clearance when dust sampling is required, values below these levels must be achieved.

(13) "Clearance ~~((examination standards))~~ dust levels" means ~~((a maximum of 40 micrograms of lead in dust per square foot))~~ less than 10 $\mu\text{g}/\text{ft}^2$ on floors, ((250 micrograms of lead in dust per square foot)) 100 $\mu\text{g}/\text{ft}^2$ on interior window sills, and 400 ((micrograms of lead in dust)) $\mu\text{g}/\text{ft}^2$ on window troughs.

(14) "Common area" means a portion of a building that is generally accessible to all occupants that may include, but

that is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

(15) "Common area group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to, hallways, stairwells, and laundry rooms.

(16) "Component or building component" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as: Ceilings, crown molding, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built in cabinets, columns, beams, bathroom vanities, counter tops, and air conditioners; and exterior components such as: Painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, lattice work, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, window sills or stools and troughs, casings, sashes and wells, and air conditioners.

(17) "Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per square foot ($\mu\text{g}/\text{ft}^2$) or micrograms per gram ($\mu\text{g}/\text{g}$) or parts per million by weight (ppm)) in a sample of dust or soil.

(18) "Containment" means a process to protect workers and the environment by controlling exposures to the lead-contaminated dust and debris created during an abatement or renovation.

(19) "Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

(20) "Course test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

(21) "Course completion date" means the final date of classroom instruction and/or student examination of an accredited lead-based paint training course.

(22) "Course completion certificate" means documentation issued by an accredited training provider to an individual as proof of successful completion of a department-approved lead-based paint course or initial training course. All course completion certificates for lead-based paint activities are valid for six months from the course completion date.

(23) "Course test blueprint" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

(24) "Demonstration testing" means the observation and scoring of a student's job task and equipment use skills taught during an initial or refresher training course.

(25) "Department" means the department of commerce.

(26) "Deteriorated paint" means any interior or exterior paint or other coating that is peeling, chipping, chalking or

cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

(27) "Director" means the director of the department of commerce.

(28) "Discipline" means one of the specific types or categories of lead-based paint activities or renovation identified in these rules for which individuals may receive training from accredited programs and become certified by the department. For example, "abatement worker" is a discipline.

(29) "Distinct painting history" means the application history, as indicated by the visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

(30) "Documented methodologies" are the methods or protocols used to sample for the presence of lead in paint, dust, and soil.

(31) "Dripline" means the area within three feet surrounding the perimeter of a building.

(32) "Dust-lead hazard" means surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding ~~((40))~~ 10 $\mu\text{g}/\text{ft}^2$ on floors or ((250)) 100 $\mu\text{g}/\text{ft}^2$ on interior window sills or 400 $\mu\text{g}/\text{ft}^2$ on window troughs based on wipe samples.

(33) "Elevated blood lead level (EBL)" means an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 $\mu\text{g}/\text{dl}$ (micrograms of lead per deciliter of whole blood) for a single venous test or of 15-19 $\mu\text{g}/\text{dl}$ in two consecutive tests taken three to four months apart.

(34) "Encapsulant" means an EPA-approved substance that forms a barrier between lead-based paint and the environment using a liquid applied coating (with or without reinforcement materials) or an adhesively bonded covering material.

(35) "Encapsulation" means the application of an encapsulant.

(36) "Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

(37) "EPA" means the Environmental Protection Agency.

(38) "Firm" means a sole proprietorship, corporation, association, firm, partnership, or joint stock company legally registered with the Washington department of licensing to conduct business in the state of Washington.

(39) "Friction surface" means an interior or exterior surface that is subject to abrasion or friction((-)) including, but not limited to, certain window, floor, and stair surfaces.

(40) "Guest instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

(41) "Hands-on training" means training during which students practice skills that they will be expected to perform at the worksite.

(42) "Hands-on skills assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in WAC 365-230-

200 or 365-230-330 as well as any other skill taught in a training course.

(43) "Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

(44) "Initial training course" means a full, accredited lead-based paint training course required for certification. It is different than a refresher course.

(45) "Inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing, explaining the results of the investigation.

(46) "Inspector" means an individual who is certified by the department to conduct in target housing and child-occupied facilities a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report, in writing; and conduct clearance procedures in accordance with WAC 365-230-200. An inspector may also collect dust and soil samples to perform clearance testing. An inspector may cite the applicable standard for the medium being sampled, but may not evaluate the results or assess risk.

(47) "Interim controls" mean a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including specialized cleaning, repairs, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

(48) "Interior window sill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

(49) "Landlord" means an individual or company who owns the property, maintains and manages the property by themselves, and they do not outsource the management of the property to a third party.

(50) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter, 5000 parts per million, or 0.5 percent by weight.

~~((50))~~ (51) "Lead-based paint activities" mean, in the case of target housing and child-occupied facilities, inspection, risk assessment, and abatement, as defined in these rules.

~~((51))~~ (52) "Lead-based paint activities courses" mean training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training providers.

~~((52))~~ (53) "Lead-based paint hazard" means hazardous lead-based paint, dust-lead hazard or soil-lead hazard as identified in these rules.

~~((53))~~ (54) "Lead-hazard screen" is a limited risk assessment activity that involves limited paint and dust sampling as described in WAC 365-230-200.

~~((54))~~ (55) "Licensed" means a person who has been certified by the department in one or more disciplines.

~~((55))~~ (56) "Living area" means any area of a residential dwelling used by one or more children under the age of six(6) including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children's bedrooms.

~~((56))~~ (57) "Loading" means the quantity of specific substance present per unit of surface area, such as the amount

of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

~~((57))~~ (58) "Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

~~((58))~~ (59) "Multifamily housing" means a housing property consisting of more than four dwelling units.

~~((59))~~ (60) "Paint-lead hazard" means any of the following:

(a) Any lead-based paint on a friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, or floor) are equal to or greater than the dust-lead hazard levels identified in these rules.

(b) Any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door knob that knocks into a wall or a door that knocks against its door frame).

(c) Any chewable lead-based painted surface on which there is evidence of teeth marks.

(d) Any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

~~((60))~~ (61) "Permanent" means having an expected design life of ~~((twenty))~~ 20 years.

~~((61))~~ (62) "Person" means any natural or judicial person including any individual, corporation, partnership, or association; any Indian tribe, state, or political subdepartment thereof; any interstate body; and any department, agency, or instrumentality of the federal government.

~~((62))~~ (63) "Play area" means an area of frequent soil contact by children of less than six years of age as indicated by, but not limited to, such factors including the following: The presence of play equipment (e.g., sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, care givers, or property owners.

~~((63))~~ (64) "Preliminary clearance" means clearance of interior living areas according to which an inspector or risk assessor determines that residual lead levels (as determined by laboratory analysis) do not exceed clearance levels.

~~((64))~~ (65) "Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

~~((65))~~ (66) "Proficiency test" means any alternative to a conventional written examination that is used to measure a trainee's mastery of course content. An oral examination offered to a trainee with a manual disability is an example of a proficiency test.

~~((66))~~ (67) "Project designer" means an individual who is certified by the department to interpret lead inspection or risk assessment reports and to develop plans, specifications, and project procedures for large lead abatement projects in target housing and child-occupied facilities, including occupant notification and protection, cleanup and clearance, and abatement reports.

~~((67))~~ (68) "Property manager" or "hired service" means an individual or company hired by the property owners to manage the property. Property managers may or may not have their own maintenance staff who work on these properties.

(69) "Refresher training course" means a minimum of eight training hours, or four training hours for project designer, renovator, or dust sampling technician accredited by the department to update an individual's knowledge and skills in the discipline in which training is offered.

~~((68))~~ (70) "Renovator courses" means certified renovator or certified dust sampling technician courses accredited by the department.

~~((69))~~ (71) "Residential dwelling" means:

(a) A detached single-family dwelling unit, including attached structures such as porches and stoops; or

(b) A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be occupied, in whole or in part, as the home or residence of one or more persons.

~~((70))~~ (72) "Risk assessment" means an on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and the provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards.

~~((71))~~ (73) "Risk assessor" means an individual who is certified by the department to conduct in target housing and child-occupied facilities on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards, and to provide a report explaining the results of the investigation and options for reducing lead-based paint hazards; and who may conduct a lead-hazard screen, in accordance with WAC 365-230-200.

~~((72))~~ (74) "Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened-in porch that is used as a living area is a room.

~~((73))~~ (75) "Sample quality control" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or film samples. Sample quality control also includes provisions for representative sampling and control samples.

~~((74))~~ (76) "Scope of work" means a written description of all of the abatement activities to be conducted at a specific abatement project site.

~~((75))~~ (77) "Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead equal to or exceeding 250 parts per million or, (mg/kg) based on soil samples.

~~((76))~~ (78) "Soil sample" means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples for Lead Determination by Atomic Spectrometry Techniques," or equivalent

method. ASTM standards can be obtained from ASTM International, P.O. Box C700, West Conshohocken, PA 19428-2929, via phone at 610-832-9525, or electronically at www.astm.org

~~((77))~~ (79) "Supervisor" means an individual who is certified by the department to either conduct or oversee and direct the work-site conduct of lead-based paint abatement (~~and clearance~~) activities in target housing and child-occupied facilities, and to prepare occupant protection plans and abatement reports in accordance with WAC 365-230-200.

~~((78))~~ (80) "Target housing" means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any one or more children under the age of six resides or is expected to reside in such housing for the elderly or persons with disabilities) or any 0-bedroom dwelling).

~~((79))~~ (81) "These rules" means Washington Administrative Code (WAC) 365-230-010 through 365-230-385.

~~((80))~~ (82) "Train-the-trainer course" means a course that includes, but is not limited to, instruction in the planning and teaching of adult education, adult learning principles, designing training objectives, selecting and designing training activities, creating an effective learning environment, facilitating group involvement and discussions, and strategies for dealing with difficult training situations and difficult learners.

~~((81))~~ (83) "Training curriculum" means an established set of course topics for instruction in an accredited training program for a particular discipline designed to provide specialized knowledge and skills.

~~((82))~~ (84) "Training hour" means at least ~~(fifty)~~ 50 minutes of actual learning including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, and/or hands-on experience.

~~((83))~~ (85) "Training manager" means the individual responsible for administering a training program and monitoring the performance of principal instructors and guest instructors.

~~((84))~~ (86) "Training provider" means any business entity accredited under WAC 365-230-035 and 365-230-040 that offers lead-based paint activities and renovation courses.

~~((85))~~ (87) "Weighted arithmetic mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface sample is comprised of a single subsample. A composite sample may contain from two to four subsamples of the same area as each other and of each single surface sample in the composite. The weighted arithmetic mean is obtained by summing, for all samples, the product of the sample's result multiplied by the number of subsamples in the sample, and dividing the sum by the total number of subsamples contained in all samples. For example the weighted arithmetic mean of a single surface sample containing 60 $\mu\text{g}/\text{ft}^2$, a composite sample (three subsamples) containing 100 $\mu\text{g}/\text{ft}^2$, and a composite sample (four subsamples) containing 110 $\mu\text{g}/\text{ft}^2$ is 100 $\mu\text{g}/\text{ft}^2$. This result is based on the equation $[60+(3*100)+(4*110)]/(1+3+4)$.

~~((86))~~ (88) "Window trough" means for a typical double-hung window, the portion of the exterior window sill between the interior window sill (or stool), and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window "well."

~~((87))~~ (89) "Wipe sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E 1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust." ASTM standards can be obtained from ASTM International, P.O. Box C700, West Conshohocken, PA 19428-2929, via phone at 610-832-9525, or electronically at www.astm.org

~~((88))~~ (90) "Worker" means an individual who is certified by the department ~~((and licensed by the construction contractors' board))~~ to conduct lead-based paint abatement activities in target housing and child-occupied facilities in accordance with WAC 365-230-200.

AMENDATORY SECTION (Amending WSR 14-03-104, filed 1/20/14, effective 2/20/14)

WAC 365-230-035 Training provider application process. The following are procedures a training program must follow to receive accreditation by the department to offer lead-based paint activities training courses, or renovation and dust sampling technician courses:

(1) A training program seeking accreditation shall submit a complete written application to the department. To be considered complete, the application must be on the appropriate departmental form and include all required documentation and attachments.

(2) Information that must be provided with the application is as follows:

(a) Name, address, and phone number of training provider and training program manager.

(b) A list of course(s) for which accreditation is being applied. For the purposes of this section, courses taught in different languages and electronic learning courses are considered different courses, and each must independently meet the accreditation requirements.

(c) The name and documentation of the qualifications of the training manager.

(d) The name(s) and documentation of qualifications of any principal instructor(s).

(e) A statement signed by the training program manager certifying that the training program meets the requirements under WAC 365-230-040.

(f) If a training program uses EPA-recommended model training materials, or training materials approved by an EPA-authorized state or Indian tribe, the training manager shall include a statement certifying that. If the training program makes any changes or additions to the model curriculum, the training manager shall submit a statement indicating the changes or additions and shall submit a copy of the new or

changed curriculum. It is not necessary to submit unchanged model training curriculum materials.

(g) If a training program does not use model training materials as described in (f) of this subsection, the training manager shall include: A copy of the entire course instruction curriculum~~((s))~~ including, but not limited to: Learning objectives; documentation of course agenda with time allocation for each course topic; the sequence of topics to be covered during the course(s); student and instructor manuals, and any other materials to be used for the course.

(h) When applying for accreditation of a course in a language other than English, a signed statement from a qualified, independent translator that they had compared the course to the English language version and found the translation to be accurate.

(i) All applications for accreditation shall include:

(i) A copy of the course test blueprint describing the portion of test questions devoted to each major course topic.

(ii) A description of the facilities and equipment to be used for lecture and hands-on training, respectively.

(iii) A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

(iv) A copy of the quality control plan developed by the training manager. The plan shall be used to maintain and improve the training program and contain at least the following elements:

(A) Procedures for periodic revision of training materials and course test to be current with innovations in the field.

(B) Procedures for the training manager's annual review of principal instructor competency.

(v) Documentation of accreditation by other state or federal agencies, if applicable.

(vi) A check or money order made out to the department of commerce in the amount as described in WAC 365-230-120.

AMENDATORY SECTION (Amending WSR 14-03-104, filed 1/20/14, effective 2/20/14)

WAC 365-230-100 Notification of lead-based paint training activity. (1) The training manager must provide notification of lead-based paint activities courses or renovator and dust sampling technician courses offered.

(a) The training manager must provide the department with notification of all renovator, dust sampling technician, or lead-based paint activities courses offered. The original notification must be received by the department at least seven business days prior to the start date of any renovator, dust sampling technician, or lead-based paint activities courses.

(b) The training manager must provide the department updated notification when lead-based paint activities or renovator and dust sampling technician courses will begin on a date other than the start date specified in the original notification, as follows:

(i) For lead-based paint activities or renovator and dust sampling technician courses beginning prior to the start date provided to the department an updated notification must be received by the department at least seven business days before the new start date.

(ii) For lead-based paint activities or renovator and dust sampling technician courses beginning after the start date provided to the department, an updated notification must be received at least two business days before the start date provided to the department.

(c) The training manager must update the department of any change in location of lead-based paint activities or renovator and dust sampling technician courses at least seven business days prior to the start date provided to the department.

(d) The training manager must update the department regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by the department at least two business days prior to the start date provided to the department.

(e) Each notice, including updates, shall include the following:

(i) Notification type (original, update, cancellation).

(ii) Training program name, department accreditation number, address, and phone number.

(iii) Course discipline, type (initial/refresher), and the language in which instruction will be given.

(iv) Date(s) and time(s) of training.

(v) Training location(s) phone number and address.

(vi) Principal instructor's name.

(vii) Training manager's name and signature.

(f) Notification must be accomplished using any of the following methods: Written notification or electronic. Notification of lead-based paint activities, renovator, or dust sampling technician course schedules can be accomplished by using either the sample form titled "Pre-Training Notification" or a similar form developed by the training program containing the required information and submitted electronically to the department. ~~((All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.)))~~ Instructions and sample forms can be obtained from the department at 360-586-5323, or on the internet at <http://www.commerce.wa.gov/lead>.

(g) Lead-based paint activities or renovator and dust sampling technician courses must not begin on a date, or at a location other than that specified in the original notice unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.

(h) No training program shall provide lead-based paint activities or renovator and dust sampling technician courses without first notifying the department of such activities in accordance with the requirements of this section.

(2) The training manager must provide notification following completion of lead-based paint activities or renovator and dust sampling technician courses.

(a) The training manager must provide the department with notification after the completion of any lead-based paint activities or renovator and dust sampling technician course

that shall be received by the department no later than ~~((ten))~~ 10 business days following course completion.

(b) The notice must include the following:

(i) Training program name, department accreditation number, address, and phone number.

(ii) Course discipline and type (initial/refresher).

(iii) Date(s) of training.

(iv) The following information for each student who took the course:

(A) Name.

(B) Address.

(C) Course completion certificate number.

(D) Course test score.

(v) Training manager's name and signature.

(c) Notification shall be accomplished using one of the following methods: Written or electronic. Notification following lead-based paint activities, renovator, or dust sampling technician courses can be accomplished by using either the sample form titled "Post-Training Notification" or a similar form developed by the training program containing the required information. All written notices shall be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery. (Persons submitting notification by U.S. Postal Service are reminded that they should allow three additional business days for delivery in order to ensure that the department receives the notification by the required date.) Instructions and sample forms can be obtained from department at 360-586-5323, or on the internet at <http://www.commerce.gov/lead>.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-160 Recertification. (1) To maintain certification in a Lead-Based Paint Activities discipline, a certified individual shall apply to and be recertified by the department in that discipline ~~((either:~~

~~((a)))~~ every three years after the original date of issue if the individual completed a training course with a course test and hands-on assessment ~~((; or~~

~~((b) Every five years if the individual completed a training course with a proficiency test)).~~

(2) An individual shall be recertified if the individual:

(a) Successfully completes the appropriate accredited refresher training course; and

(b) Submits a valid copy of the appropriate refresher course completion certificate; and

(c) Complies with the following application requirements established by the department:

(i) Submit a complete and signed application; and

(ii) Submits ~~((two recent passport-size photographs))~~ a digital photograph; and

(iii) Submit a check or money order made out to the department of ~~((community, trade, and economic development))~~ commerce in the amount as described in WAC 365-230-260.

(3) Application materials can be obtained by mail from Department of Commerce, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by phone, 360-586-5323, or electronically at <http://commerce.wa.gov/lead>.

(4) An individual whose certification expires may obtain certification by completing another initial training class and meeting the requirements described in WAC 365-230-150 and 365-230-130.

AMENDATORY SECTION (Amending WSR 07-07-044, filed 3/13/07, effective 4/13/07)

WAC 365-230-170 Certification of lead-based paint firms. (1) No firm shall perform or offer to perform any of the lead-based paint activities described in WAC 365-230-200 without first being certified by the department. All certified firms shall employ only appropriately certified individuals to conduct lead-based paint activities. The firm is responsible for ensuring that its employees follow the work practice requirements described in WAC 365-230-200.

(2) A firm seeking certification shall submit to the department a complete application (~~as described in this section~~) for lead-based paint activities.

(3) ~~((A firm seeking certification must provide documentation that it either:~~

~~(a) Meets the current minimum requirements of the department of labor and industries regarding a surety bond and insurance; or~~

~~(b) Has in force a business, e.g., liability, errors and omissions, insurance policy in the minimum amount of five hundred thousand dollars.~~

~~(4) A certified firm may not conduct lead-based paint activities, as described in WAC 365-230-200, if, at any time, it does not have in force the minimum bonding or insurance coverage described in this section.~~

~~(5))~~ (5) The firm shall maintain all records pursuant to WAC 365-230-200.

~~((6))~~ (4) Certification is transferable in the instance of acquisition of a certified firm by another entity. The acquiring firm must notify the department within ~~((thirty))~~ 30 days of the change of ownership of any changes to information submitted on the original application.

~~((7))~~ (5) The certification period for firms is three years from the date certification is issued.

~~((8))~~ (6) To retain certification, a firm shall submit to the department an application and documentation as described above prior to the expiration date listed on the firm's certification.

(7) A firm seeking certification shall have at least one certified individual employed with the firm.

AMENDATORY SECTION (Amending WSR 04-10-037, filed 4/29/04, effective 5/30/04)

WAC 365-230-190 Approval or disapproval of certification. (1) The department may disapprove an application for certification for the following reasons((-)) including, but not limited to:

(a) Failure to complete application in accordance with these rules, or department policy or instructions;

(b) Failure to satisfy eligibility requirements for certification;

(c) Failure to satisfy training requirements;

(d) Failure to provide required documentation or information requested by the department;

(e) History of citations or violations of existing regulations or these rules, regulations including execution of a consent agreement in settlement of an enforcement action;

(f) History of revocation of a certificate;

(g) Making false or misleading statements in the application;

(h) Permitting the duplication or use of the individual's own certificate by another;

(i) Having been subject to a final administrative order imposing a civil penalty or a criminal conviction for engaging in a prohibited act under department.

(2) In the case of disapproval, a letter describing the reasons for disapproval shall be sent to the applicant. Prior to disapproval, the department may, at its discretion, work with the applicant to address inadequacies in the application for certification. The department may also request additional materials under the recordkeeping requirements of WAC 365-230-200(8). If an individual or firm's application for certification has been disapproved, the ~~((program))~~ applicant may reapply for certification at any time.

AMENDATORY SECTION (Amending WSR 14-03-104, filed 1/20/14, effective 2/20/14)

WAC 365-230-200 Work practice standards. (1) Only certified individuals and the certified firms employing such individuals shall perform or offer to perform lead-based paint activities.

(2) Documented methodologies that are appropriate for this section are found in the following: The U.S. Department of Housing and Urban Development (HUD) *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing* (Revised, July, 2012); the EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead-Contaminated Soil; the EPA Residential Sampling for Lead: Protocols for Dust and Soil Sampling (EPA report number 7474-R-95-001); regulations, guidance, methods or protocols issued by this department; any other equivalent methods and guidelines.

(3) Clearance levels appropriate for the purposes of this section may be found in subsection (8)(g)(i) and (v) of this section or other equivalent guidelines.

(4) Work practice requirements. Applicable certification, occupant protection, and clearance requirements and work practice standards are found in regulations described in this section, and in regulations issued by the Department of Housing and Urban Development (HUD) at 24 C.F.R. part 35, subpart R.

(a) The work practice standards in those regulations do not apply when treating paint-lead hazards of less than:

(i) Two square feet of deteriorated lead-based paint per room or equivalent;

(ii) Twenty square feet of deteriorated paint on the exterior building; or

(iii) Ten percent of the total surface area of deteriorated paint on an interior or exterior type of component with a small surface area.

(b) When performing any lead-based paint activity described as a lead-based paint inspection, lead hazard screen, risk assessment or abatement, a certified individual

must perform that activity in compliance with these rules, documented methodologies, work practice requirements, and the work practice standards described in this section.

(5) Inspection. Only a person certified by the department as an inspector or risk assessor may conduct an inspection.

(a) Locations shall be selected according to documented methodologies and tested for the presence of lead-based paint as follows:

(i) In target housing and child-occupied facilities, each interior and exterior component with a distinct painting history shall be tested for lead-based paint, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint; and

(ii) In a multifamily dwelling or child-occupied facility, each component with a distinct painting history in every common area shall be tested, except those components determined to have been replaced after 1978 or determined to not contain lead-based paint.

(b) Paint shall be tested for the presence of lead using documented methodologies which incorporate sampling quality control procedures and all paint chip, dust, and soil samples shall be analyzed for detectable levels of lead by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(c) Inspection reports shall be prepared and include at least:

- (i) Inspection date;
- (ii) Building address;
- (iii) Date of construction;
- (iv) Apartment identification (numbers, letters, names if applicable);
- (v) Name, address and telephone number of owner or owners of each unit;
- (vi) Name, signature, and certification number of each inspector or risk assessor conducting testing;
- (vii) Name, address and telephone number of the certified firm employing each inspector or risk assessor;
- (viii) Each testing method and device or sampling procedure employed for paint analysis, including sample quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device; and
- (ix) Specific locations of each painted component tested and the results of the inspection expressed in appropriate units for the sampling method used.

(6) Lead hazard screen. A lead hazard screen shall be conducted only by a person certified by the department as a risk assessor and shall be conducted as follows:

(a) Background information shall be collected about the physical characteristics of the target housing or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under shall be collected.

(b) A visual inspection shall be conducted to determine the presence of any deteriorated paint and locate at least two dust sampling locations.

(c) If deteriorated paint is present, each deteriorated paint surface determined using documented methodologies, and to have a distinct painting history shall be tested for the presence of lead.

(d) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children age six or under are likely to come in contact with dust.

(e) In multifamily dwellings and child-occupied facilities, floor and window composite dust sampling shall be conducted as specified for conducting lead hazard screens in residential dwellings in the Work Practice Standard section of these rules. In addition, composite dust samples shall be collected in common areas where one or more children age six or under are likely to come in contact with dust.

(f) All dust samples shall be collected using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(g) A lead hazard screen report shall be prepared by the risk assessor and include:

(i) Information in a risk assessment report as specified in subsection (7) including (i)(i) through (xiv) and excluding (i)(xv) through (xviii). Additionally, any background information collected pursuant to the lead hazard screen shall be included.

(ii) Any recommendations for follow-up risk assessment and other further actions.

(7) Risk assessment. Only an individual certified by the department as a risk assessor may conduct a risk assessment of target housing or child-occupied facility. A risk assessment shall be conducted as follows:

(a) A visual inspection shall be conducted to locate the existence of deteriorated paint, assess the extent and cause of deterioration, and other potential lead-based hazards.

(b) Background information shall be collected regarding the physical characteristics and occupant use patterns that may cause lead-based paint exposure to one or more children age six years and under.

(c) The following surfaces which are determined, using documented methodologies, to have a distinct painting history, shall be tested for the presence of lead:

(i) Each friction surface or impact surface with visibly deteriorated paint.

(ii) All other surfaces with visibly deteriorated paint.

(d) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, age six and under, are most likely to come in contact with dust.

(e) For multifamily dwellings and child-occupied facilities, the samples required in "residential dwellings" as described in (b) of this subsection shall be taken. In addition, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed for lead concentration in the following locations:

(i) Common areas adjacent to sampled target house or child-occupied facility; and

(ii) Other common areas in the building where the risk assessor determines that one or more children, age six and under, are likely to come in contact with dust.

(f) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and analyzed in each room, hallway or stairwell utilized by one or more children, age six and under, and in other common areas in the child-occupied facility where the risk assessor determines one or more children, age six and under, are likely to come in contact with dust.

(g) Soil samples shall be collected and analyzed for lead concentrations from the following locations:

- (i) Exterior play areas where bare soil is present; and
- (ii) The rest of the yard (i.e., nonplay areas) where bare soil is present.

(h) Any paint, dust or soil sampling or testing shall be conducted using documented methodologies that incorporate sample quality control procedures and analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP) to determine detectable lead.

(i) The certified risk assessor shall prepare a risk assessment report which shall include as a minimum the following information:

- (i) Assessment date.
- (ii) Address of each building.
- (iii) Date of construction of buildings.
- (iv) Apartment identification (numbers, letters, names if applicable).
- (v) Name, address and telephone number of each owner of each building.
- (vi) Name, signature, and certification number of each risk assessor conducting the assessment.
- (vii) Name, address and telephone number of the certified firm employing each risk assessor.
- (viii) Name, address and telephone number of each laboratory conducting analysis of collected samples.
- (ix) Results of the visual inspection.
- (x) Testing method and sampling procedure employed for paint analysis.
- (xi) Specific locations of each painted component tested for the presence of lead.
- (xii) All data collected from on-site testing, including quality control data, and if used, the serial number of any X-ray fluorescence (XRF) device.
- (xiii) All results of laboratory analysis on collected paint, soil, and dust samples.
- (xiv) Any other sampling results.
- (xv) Any background information collected pursuant to subsection background information portion of the risk assessment work practice standard of this section.

(xvi) To the extent used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint related hazards.

(xvii) A description of the location, type, and severity of identified lead-based paint hazards and any other potential lead hazards.

(xviii) A description of interim controls and/or abatement options for each identified lead-based paint hazard and a recommended prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.

(8) Abatement. An abatement project shall be conducted only by certified individuals and the certified firms employing such individuals. Abatement shall be conducted as follows:

(a) A certified supervisor or project designer is required for each abatement project and shall be on-site during all worksite preparation and during post-abatement cleanup of work areas. At all other times, the certified supervisor or project designer shall be on-site or available by telephone, pager, or answering service, and be able to be present at the worksite in no more than two hours.

(b) The certified supervisor or project designer, as well as the certified firm employing that individual shall ensure that all abatement activities are conducted according to the requirements of these rules and all federal, state and local requirements.

(c) A certified project designer may replace and assume the responsibilities of a certified supervisor required for an abatement project. If a certified project designer provides supervision on an abatement project, the project designer shall be responsible for preparing the occupant protection plan and the abatement report.

(d) A written occupant protection plan shall be developed prior to all abatement projects, be prepared by a certified supervisor or project designer, be unique to each target housing or child-occupied facility, describe the measures and management procedures that will be taken during the abatement to protect the building occupants from exposure to any lead-based paint hazards. The written occupant protection plan shall be present at the project site and must be made available on demand for inspection.

(e) A scope of work for the abatement project shall be present at the project site and must be made available on demand for inspection.

(f) These work practices shall be restricted during abatement and paint removal:

(i) Open-flame burning or torching of lead-based paint is prohibited;

(ii) Uncontained hydro blasting or high-pressure washing of lead-based paint is prohibited;

(iii) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint is prohibited unless used with high efficiency particulate air (HEPA) exhaust control which removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency;

(iv) Dry scraping of lead-based paint is permitted only in conjunction with heat guns or around electrical outlets or when treating defective paint spots totaling no more than two square feet in any room, hallway or stairwell or totaling no more than ~~((twenty))~~ 20 square feet on exterior surfaces; and

(v) Operating a heat gun on lead-based paint is permitted only at temperatures below 1100°F.

(g) When soil abatement is conducted, if the soil is removed:

(i) The soil shall be replaced by soil with a lead concentration as close to local background as practicable, but less than 250 parts per million (<250 ppm).

(ii) The soil that is removed shall not be used as top soil at another residential property or child-occupied facility.

(iii) If the soil is not removed, the soil shall be permanently covered so as to be separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement, asphalt or concrete.

(h) Soil interim controls:

(i) Grass, mulch, shrubbery and other landscaping materials are not considered permanent covering, but may be used as interim controls that eliminate contact with bare soils.

(ii) Interim control measures are acceptable in areas where bare soils contain less than the current HUD abatement standard (see 24 C.F.R. part 35.1330 (f)(2)) for lead in soils, except in:

(A) A child's play area, or any bare soil area where a child under six years of age regularly plays. Interim control measures are not acceptable in these areas where soil lead levels exceed 250 ppm.

(B) A garden area, or any other area where bare soils produce edibles intended for human consumption. Interim controls are not acceptable in these areas where soil lead levels exceed 250 ppm.

(iii) On-going monitoring and evaluation of interim soil control measures must adhere to HUD Guidelines, as found in chapter 6.

(i) The following clearance procedures shall be performed only by a certified and licensed inspector or risk assessor and according to the following procedures:

(i) A visual inspection shall be performed to determine if deteriorated painted surfaces and/or visible amounts of dust, debris or residue are still present. If deteriorated painted surfaces or visible amounts of dust, debris or residue are present, these conditions must be eliminated prior to the continuation of the clearance procedures.

(ii) If exterior work on a project cannot be completed due to inclement weather or other factors, the project supervisor or designer may apply in writing to the department for authorization of a preliminary clearance. The application must include the following:

(A) The project address.

(B) The name and certification number of the abatement project supervisor or project designer.

(C) A description of the conditions that justify issuance of a waiver.

(D) A description of the abatement work that remains to be done on the project.

(E) A schedule for completion of the abatement work that remains to be done.

(F) A plan for monitoring and controlling potential lead-based paint contamination until work can be completed.

(G) At the conclusion of all work on a project for which preliminary clearance has been authorized, the project supervisor or designer shall present the department with documentation that clearance testing has been performed on exterior and interior areas according to these rules and that all clearance test results are below clearance levels.

(iii) Following the visual inspection and any post-abatement cleanup required in subsection (8)(i) of this section, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite sampling techniques.

(iv) Dust samples for clearance purposes shall be taken using documented methodologies that incorporate sample quality control procedures and shall be taken a minimum of one hour after completion of final cleanup activities.

(v) Post-abatement clearance activities shall be conducted based upon the extent or manner of work activities conducted in or on the target housing or child-occupied facility as follows:

(j) After conducting an abatement with containment between containment and noncontainment areas, one dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floors of no less than four rooms, hallways or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside the containment area. If there are fewer than four rooms, hallways or stairwells within the containment area, then all rooms, hallways or stairwells shall be sampled.

(i) After conducting abatement with no containment, two dust samples shall be taken from no fewer than four rooms, hallways or stairwells in the residential dwelling or child-occupied facility. One dust sample shall be taken from one interior window sill and from one window trough (if present) and one dust sample shall be taken from the floor of each room, hallway or stairwell selected. If there are fewer than four rooms, hallways or stairwells within the target housing or child-occupied facility then all rooms, hallways or stairwells shall be sampled.

(ii) Following exterior paint abatement, a visual inspection shall be conducted. All horizontal surfaces in the outdoor living area closest to the abated surfaces shall be found to be cleaned of visible dust and debris. The surfaces shall be recleaned when visible dust and debris is present. The visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior abated surface. Paint chips, if present, shall be removed from the site and disposed of according to federal, state and local requirements.

(iii) The rooms, hallways or stairwells selected for sampling shall be selected according to documented methodologies.

(iv) The certified and licensed inspector or risk assessor shall compare residual lead levels (as determined by laboratory analysis) from each single surface dust sample with clearance (~~(examination standards)~~) dust levels as defined in these rules for lead in dust on floors (~~(and)~~), interior window sills, and window troughs, divided by half the number of subsamples in the composite sample. If the residual lead level in a single surface dust sample equals or exceeds the applicable clearance (~~(examination refresher)~~) dust levels or if the residual lead level in a composite dust sample equals or exceeds the applicable clearance (~~(examination refresher)~~) dust levels divided by half the number of subsamples in the composite sample, the components represented by the failed sample shall be recleaned and retested until clearance (~~(examination standards)~~) dust levels are met.

(v) The clearance levels for lead in dust are less than (~~(40)~~) 10 µg/ft² for floors, less than (~~(250)~~) 100 µg/ft² for interior window sills, and less than 400 µg/ft² for window troughs.

(k) In a multifamily dwelling with similarly constructed and maintained residential dwellings, random sampling for the purposes of clearance may be conducted provided:

(i) The certified individuals who work on or clean the residential dwellings do not know which residential dwelling will be selected for the random sample.

(ii) The randomly selected residential dwellings shall be sampled and evaluated for clearance according to subsection (8)(i) of this section.

(iii) A sufficient number of residential dwellings are selected for dust sampling to provide a ~~((ninety-five))~~ 95 percent level of confidence that no more than five percent or ~~((fifty))~~ 50 of the residential dwellings (whichever is smaller) in the randomly sampled population exceeds the appropriate clearance ~~((examination standards))~~ dust levels.

(l) An abatement report shall be prepared by a certified and licensed supervisor or project designer and shall include as a minimum the following information:

(i) Start and completion dates of abatement.

(ii) The name, address and telephone number of each certified firm conducting the abatement and the name of each supervisor or project designer assigned to the abatement project.

(iii) The occupant protection plan.

(iv) The name, address and signature of each certified and licensed inspector or risk assessor conducting clearance sampling and the date(s) that clearance sampling was performed.

(v) The results of clearance sampling and all soil analyses and the name of each laboratory conducting analysis of collected samples.

(vi) A detailed written description of the abatement, including abatement methods, location of rooms and/or components where abatement occurred, reason for selecting particular abatement methods for each component, and any suggested monitoring of encapsulants or enclosures.

(m) A clearance report shall be prepared by a certified inspector or risk assessor. The clearance report shall include the following information:

(i) The property address where the clearance sampling occurred.

(ii) The abatement clean-up completion date and time.

(iii) The date and time of clearance sampling.

(iv) Name and certification number of each inspector or risk assessor conducting the clearance.

(v) The signature of the inspector or risk assessor conducting the clearance.

(vi) Name, address, telephone number, and certification number of the certified firm employing the inspector or risk assessor.

(vii) Results of the visual inspection.

(viii) Identification of containment or noncontainment applications.

(ix) Identification of location(s) where clearance samples were collected.

(x) Name, address, and telephone number of the laboratory analyzing the collected samples.

(xi) All results of laboratory analysis on collected samples, including quality control results.

(xii) Documented methodology used for sampling.

(9) Sampling. Any paint chip, dust, or soil samples collected pursuant to this section shall be collected by a certified inspector or risk assessor. Such sampling shall incorporate sample quality control procedures and the samples shall be analyzed by a laboratory accredited under the National Lead Laboratory Accreditation Program (NLLAP).

(10) Composite sample. Composite dust sampling may only be conducted when conducting a lead hazard screen, risk assessment, or post-abatement activities. If conducted, the composite dust samples shall consist of at least two subsamples, every component that is being tested shall be included in the sampling, and shall not consist of subsamples from more than one type of component.

(11) Reports or plans. All lead-based paint activity reports or plans shall be maintained by the certified firms or individual who prepared the report for no fewer than three years and six months.

(a) The following reports must be submitted to the department as specified in WAC 365-230-100 and 365-230-220:

(i) Notification of lead-based paint activities course to take place.

(ii) Notification of lead-based paint activities course that has taken place.

(iii) Notice of abatement.

(b) All reports required by these rules may be submitted on forms available from the department. The exhibit referred to in this rule is not printed in this WAC. Copies are available as follows from department of commerce:

Lead-Based Paint Program(§)

P.O. Box 42525(§)

Olympia, WA 98504-2525

Telephone number: 360-586-5323

Website: www.commerce.wa.gov/lead.

AMENDATORY SECTION (Amending WSR 11-07-067, filed 3/21/11, effective 4/21/11)

WAC 365-230-210 Determinations of lead-based paint and lead-based paint hazards. (1) Lead-based paint is present:

(a) On any surface that is tested and found to contain lead equal to or in excess of 1.0 milligrams per square centimeter, equal to or in excess of 5,000 parts per million, or equal to or in excess of 0.5 percent by weight; and

(b) On any surface similar to a surface tested in the same room equivalent that has a similar painting history and is found to be lead-based paint.

(2) A paint-lead hazard is present:

(a) On any friction surface that is subject to abrasion and where the lead dust levels on the nearest horizontal surface (e.g., the window sill or floor) are equal to or greater than the dust hazard levels identified in the "clearance ~~((examination standards))~~ dust levels" definition of these rules;

(b) On any chewable lead-based paint surface on which there is evidence of teeth marks;

(c) Where there is any damaged or otherwise deteriorated lead-based paint on an impact surface that is caused by impact from a related building component (such as a door

knob that knocks into a wall or a door that knocks against a door frame); and

(d) If there is any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

(3) A dust lead-hazard is present in a residential dwelling or child-occupied facility:

(a) In a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills is equal to or greater than ~~((40))~~ 10 µg/ft² for floors and ~~((250))~~ 100 µg/ft² for interior window sills, respectively;

(b) On floors or interior window sills in an unsampled residential dwelling in a multifamily dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property; and

(c) On floors or interior window sills in an unsampled common area in a multifamily dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively in at least one sampled common area in the same common area group on the property.

(4) A soil-lead hazard is present in a residential dwelling or child-occupied facility when the soil-lead concentration from a composite sample of bare soil is equal to or greater than 250 ppm.

AMENDATORY SECTION (Amending WSR 14-03-104, filed 1/20/14, effective 2/20/14)

WAC 365-230-360 Certification of renovation firms.

(1) No firm may perform, offer, or claim to perform renovations for compensation any of the lead-based paint renovation activities described in WAC 365-230-330 without first being certified by the department. All certified firms shall employ only appropriately certified individuals to conduct lead-based paint renovation activities. The firm is responsible for ensuring that its employees follow the work practice requirements for renovation as described in WAC 365-230-330.

(2) A firm seeking certification shall submit to the department a completed application as described in this section.

(3) The firm shall maintain all records pursuant to WAC 365-230-340.

(4) Certification is transferable in the instance of acquisition of a certified firm by another entity. The acquiring firm must notify the department within ~~((thirty))~~ 30 days of the change of ownership, and of any changes to information submitted on the original application.

(5) The certification period for renovation firms is five years from the date certification is issued. To maintain its renovation firm certification, a firm must be recertified by the department every five years.

(6) To retain certification, a firm shall submit to the department an application as described above prior to the expiration date listed on the firm's certification.

(7) A firm seeking certification shall have at least one certified individual employed with the firm.

AMENDATORY SECTION (Amending WSR 14-03-104, filed 1/20/14, effective 2/20/14)

WAC 365-230-380 Renovator and dust sampling technician certification and recertification. (1) No individual shall perform lead-based paint renovation or dust sampling technician activities as described in this section unless they are certified by the department. Individuals seeking initial certification by the department to engage in lead-based paint renovation activities must successfully complete a dust sampling technician or renovator course accredited by the department. The course completion certificate serves as proof of training. Certified individuals may perform only lead-based paint renovation activities for which they are certified. To become certified as a renovator or dust sampling technician, an individual must:

(a) Submit a completed application to the department as described under WAC 365-230-150 and must provide documentation that the applicant has either:

(i) Met the certification requirements as described in this subsection for renovator or dust sampling technician.

(ii) Hold a valid certification issued by EPA or by a state or tribal program that has been authorized by EPA according to 40 C.F.R. 745.324.

(A) Applicants for certification based on certification from another state or tribal program must ~~((document to))~~ register their certification with the department ~~((that they have read and understand the certification and work practice standards as described in these rules))~~.

(B) Certification based on a valid lead-based paint renovator or renovation dust sampling technician certification issued by EPA or by an EPA-authorized state or tribal program shall be issued with an expiration date not to exceed the date of expiration listed on the EPA or EPA-authorized state or tribal certification.

~~((Submit two passport-size photos. (e)))~~ A signed and dated renovator or dust sampling technician application.

~~((c))~~ (c) A check or money order made out to the department in the amount as described in the certification fees section of these rules.

~~((e))~~ (d) Application materials can be obtained by mail from Department of Commerce, Lead-Based Paint Program, P.O. Box 42525, Olympia, WA 98504-2525, by telephone, 360-586-5323, electronically at <http://www.commerce.wa.gov/lead>.

~~((Individuals who have successfully completed an accredited abatement worker or supervisor course, or individuals who successfully completed an EPA, HUD, or EPA/ HUD model renovation training course before October 4, 2011, may take an accredited refresher renovator training course in lieu of the initial renovator training course to become a certified renovator.~~

~~((Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.~~

~~(4))~~ Individuals may first apply to the department for certification to engage in lead-based paint renovation or dust sampling pursuant to this section on or after the effective date of these rules.

~~((5))~~ (3) Following the submission of an application demonstrating that all the requirements of this section have been met, the department shall certify an applicant as renovator, or dust sampling technician.

~~((6))~~ (4) Upon receiving the department certification, individuals conducting lead-based paint renovator or dust sampling technician activities shall comply with the work practice standards for performing the appropriate lead-based paint renovation activities as established in the work practice standards, WAC 365-230-330.

~~((7))~~ (5) It shall be a violation of these rules for an individual to conduct any of the lead-based paint renovator or dust sampling technician activities described in the work practice standards under WAC 365-230-330 who has not been certified by the department.

~~((8))~~ (6) To maintain renovator certification or dust sampling technician, an individual must complete a renovator refresher course or a dust sampling refresher course accredited by the department within five years of the date the individual completed the initial course as described in subsection (1) of this section, or within five years of the date of his/her last refresher course for the discipline. If the individual does not complete a refresher course within this time, the individual must retake the initial course to become certified again. Individuals who take a renovator refresher course that does not include hands-on training (E-learning Refresher) will be certified for three years from the date they complete the training. Individuals who take a refresher training course that includes hands-on training will be certified for five years. Individuals who take the renovator refresher course without the hands-on training must, for their next refresher course, take a refresher course that includes hands-on training to maintain renovator certification.

WSR 21-22-083
PERMANENT RULES
COUNTY ROAD
ADMINISTRATION BOARD

[Filed November 1, 2021, 3:29 p.m., effective December 2, 2021]

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

Purpose: Amending chapters 136-130, 136-161, 136-163, 136-165, 136-167, and 136-170 WAC to make house-keeping changes, changes requested by the RAP region(s), and clarifying that indirect costs are not eligible for reimbursement.

Citation of Rules Affected by this Order: New WAC 136-170-045; and amending WAC 136-130-020, 136-130-050, 136-130-060, 136-130-080, 136-161-040, 136-161-080, 136-161-090, 136-161-110, 136-163-050, 136-165-020, 136-167-030, 136-070-030, 136-170-040, and 136-170-050.

Statutory Authority for Adoption: Chapter 36.78 RCW.

Adopted under notice filed as WSR 21-19-153 on September 22, 2021.

Date Adopted: October 28, 2021.

Jane Wall
Executive Director

AMENDATORY SECTION (Amending WSR 19-04-047, filed 1/29/19, effective 3/1/19)

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))~~ 50 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))~~ 50 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 bridge or drainage structure(s) cost must be a minimum of 50 percent of the overall project cost.

(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 13-16-105, filed 8/7/13, effective 9/7/13)

WAC 136-130-050 Supplemental rules in northeast region (NER). Each county in the NER may submit projects requesting RATA funds not to exceed ~~((twenty-five))~~ 25 percent of the forecasted NER biennial apportionment.

Bridge projects may be submitted requesting RATA funds under one of the following conditions:

(1) Bridges must be approved for federal bridge funding and RATA funds shall be used only as a match for such federal funding. Bridges will be ranked for RATA funding using the WSDOT priority list and may be added to the NER Category 1 priority array at any time during the biennium upon approval of the bridge for federal bridge funding.

(2) A stand-alone bridge project may be submitted as an ordinary reconstruction or 3R RAP project provided that its priority rating has been computed by the bridge rating method in the NER RAP rating procedures. Such projects shall not be considered for funding from the bridge reserve described above.

~~((3) RAP projects that include bridge improvements where the cost of the bridge improvements do not exceed twenty percent of the total project cost are not considered bridge projects as set out in this section.))~~

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

WAC 136-130-060 Supplemental rules in southeast region (SER). Each county in the SER may submit projects requesting RATA funds not to exceed twice the per county limit of the forecasted SER biennial apportionment as follows:

Asotin County	ten percent
Benton County	fourteen percent
Columbia County	eleven percent
Franklin County	thirteen percent
Garfield County	ten percent
Kittitas County	thirteen percent
Klickitat County	fourteen percent
Walla Walla County	fourteen percent
Yakima County	twenty percent

Federally funded bridges for which counties are seeking matching funds shall receive first consideration for bridge funds. Bridges receiving federal funding may be added to this list at any time during the biennium. Stand-alone bridges may compete for funds in this reserve that remain after all bridges seeking match for federal funds have been funded. Non-NBI drainage structures may compete for funds in this reserve after stand-alone bridges have been funded. Whatever part of the bridge reserve that is not allocated to bridge projects shall be available for allocation to other RAP projects.

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

WAC 136-130-080 Limitation on rating points. In each of the project prioritization procedures and associated approved forms, for purposes of the RAP project prospectus submitted to the county road administration board, ~~((geometric condition points shall be assigned only))~~ if a county desires points for correcting geometric deficiencies, then all geometric deficiencies shall be listed, with points being

assigned for those conditions ~~((which))~~ that will be corrected by construction of the project.

AMENDATORY SECTION (Amending WSR 01-05-009, filed 2/8/01, effective 3/11/01)

WAC 136-161-040 RAP program cycle—Field review by county road administration board. After all preliminary prospectuses are received, the county road administration board will schedule and conduct an on-site field review of each project. During the field review, conducted jointly with the county engineer or his/her designee (unless waived by the county engineer), the assigned county road administration board staff person will review the overall project scope with the county representative and, using that region's priority rating process, determine the rating score of all priority elements which are based on a visual examination. To ensure both uniformity and professional judgment in the visual ratings, the assigned county road administration board staff person shall be a licensed professional civil engineer in the state of Washington, and the same person shall review and rate all projects within a region. All field reviews will be completed, each project's type will be set, and the visual rating scores returned to each submitting county, by July 1st of each even-numbered year prior to a funding period.

AMENDATORY SECTION (Amending WSR 19-04-047, filed 1/29/19, effective 3/1/19)

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 and drainage projects combined 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.

AMENDATORY SECTION (Amending WSR 07-17-020, filed 8/6/07, effective 9/6/07)

WAC 136-161-090 Limitations on use of RATA funds. RATA funds requested and ~~((allocated))~~ allowed to a project are limited to ~~((eighty percent in the NWR for projects approved by the CRABoard on and prior to April 30, 2008, and ninety percent in the NWR for projects approved thereafter, and ninety percent in the PSR, SWR, NER and SER, of the total eligible project development costs, which include preliminary engineering and construction costs in all regions, and))~~ the match requirements established by county road administration board policy following 36.79.120 RCW. The match requirements will be applied to the total eligible project development costs, which include preliminary engineering and construction costs in all regions, and non 2R project type right-of-way costs in the PSR, NWR, NER and SER.

Even though additional and eligible project development costs may be incurred by a county for a specific project, the maximum amount of RATA funds for that project is limited to the amount allocated and shown in the CRAB/county contract (see chapter 136-170 WAC), unless the allocation is increased pursuant to chapter 136-165 WAC.

AMENDATORY SECTION (Amending WSR 07-17-020, filed 8/6/07, effective 9/6/07)

WAC 136-161-110 Use of other funds to match RATA funds. A county with an approved RAP project may use any other funds available for such project including federal, other state, private, and local funds ~~((, provided that the county will be required to use such other funds to match any RATA funds allocated to the project with a minimum of twenty percent other funds in the NWR for projects approved by the CRABoard on and prior to April 30, 2008, and ten percent other funds in the NWR for projects approved thereafter, and ten percent other funds in the PSR, SWR, NER, and SER)).~~ The minimum match of RATA funds allocated to the project shall be set by county road administration board policy following RCW 36.79.120.

AMENDATORY SECTION (Amending WSR 20-04-077, filed 2/4/20, effective 3/6/20)

WAC 136-163-050 Limitations and conditions. All projects for which rural arterial program funding is being requested under this chapter are subject to the following:

(1) The requesting county has the sole burden of making a clear and conclusive showing that the project is emergent as described in this chapter; and

(2) The requesting county shall clearly demonstrate that the need for the project was unable to be anticipated at the time the current six-year transportation program was developed; and

(3) The requesting county agrees to a reduction in the next funding period's maximum RATA eligibility to the county equal to the RATA that may be ~~((provided; however;))~~ awarded. Should that region not have a maximum RATA eligibility for each county, the requesting county agrees to withdraw, amend or delay an existing approved project or portion thereof in an amount equal to the RATA that may be provided for the project.

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

WAC 136-165-020 Requirements for consideration of RATA fund increases. (1) When a county submits its final prospectus as described in WAC 136-161-050, the county road administration board presumes that the amount of RATA funds requested, plus any non-RATA funds that may be designated for the project, are sufficient to fully, and in a timely manner, complete the project as described.

(2) All cost increases during the course of construction shall be the responsibility of the county. In extraordinary circumstances, a county may request an increase in the amount of RATA funds allocated to a project. A county may request an increase in a project's RATA allocation once during the course of a project's development, and such request may occur only after completion of preliminary engineering, but prior to commencing construction. A project shall be considered to have commenced construction if:

(a) The construction contract for the work has been awarded; or

(b) If done by county forces, the work has commenced, except for construction engineering.

Requests for increases in excess of twenty-five percent of the original RATA allocation will not be considered or granted; the county must secure other funds, withdraw or request the termination of the project, or request a change in scope and/or project limits. If current funding sources are not sufficient to cover the costs beyond a twenty-five percent increase, the county may resubmit the same project for funding in the next funding period. Upon funding of the new project by the county road administration board, the previous contract shall become void. All RATA funds expended on the previous contract shall be repaid to the county road administration board unless waived by the county road administration board in keeping with provisions of WAC 136-167-030.

(3) A request by a county for an increase in RATA funds allocated to a project shall demonstrate that:

(a) The county at the time of preparing its final project prospectus considered the factors listed in subsection (4) of this section;

(b) The request for an increased allocation is based on extraordinary and unforeseeable circumstances of the type listed in subsection (5) of this section;

(c) It is not feasible to reduce the scope and/or project limits so the project can be substantially constructed within the initial RATA allocation;

(d) The request is not to pay for an expansion of the originally approved project;

(e) If the work is to be done by contract, the county has supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of, advertisement of the project for construction bids; and

(f) If the work is to be done by county forces, the county has supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of, commencement of the work.

(4) At the time of preparation and submittal of the final project prospectus, a county is expected to consider all information which may affect the cost of the project. In cases where the information is incomplete or poorly defined, the county is to exercise good professional judgment and/or seek outside professional assistance and advice in order to prepare a reasonable RATA fund request. The information which a county is expected to consider includes, but is not limited to, the following:

(a) The availability at the needed time of matching funds and other supplementary funds;

(b) All technical data reasonably available such as topographic maps, reconnaissance reports, surface and subsurface geotechnical data, hydraulic and hydrological data, sources of materials, applicable design standards, and any earlier preliminary engineering;

(c) Required permits, including preproject scoping consultations with the permitting agencies and an estimate of the costs of complying with permit requirements;

(d) Required right of way or other easements, and the time and cost of acquisition;

(e) Availability of qualified contractors to perform the work;

(f) Ownership, type, amount, and time requirements of any required utility relocation;

(g) Historical and projected labor, equipment and material costs; and

(h) The project development timetable leading to completed construction and the interrelation of this project to all other work activities under the control of the county engineer.

(5) The county road administration board will increase RATA funds allocated to a project only if it finds that the request for an increased allocation is based on extraordinary and unforeseeable circumstances, including but not limited to the following:

(a) The county relied on existing technical data which were later found to be in error, and which will necessitate a significant design change prior to proceeding with construction;

(b) Project permit requirements were substantially changed, or new permits were required;

(c) Supplementary funds, such as impact fees, developer contributions, grants, etc., which were forecasted to be available for the project, were withdrawn or otherwise became unavailable;

(d) Design or other standards applicable to the project were changed; and/or

(e) The start of construction will be significantly delayed or additional construction requirements will be added as a direct result of legal action; provided however, that the fail-

ure of a county to exercise its statutory powers, such as condemnation, will not be grounds for increasing RATA funds.

(6) Extraordinary and unforeseeable market-wide fluctuations in standard bid item costs will not be considered a basis for project cost increases by the county road administration board.

AMENDATORY SECTION (Amending WSR 11-05-005, filed 2/3/11, effective 3/6/11)

WAC 136-167-030 Termination of approved project after RATA reimbursement. (1) If a county terminates an uncompleted RATA funded project for which RATA reimbursement has been made, for other than an unanticipated scope change, and is prepared to repay the RATA for all RATA funds received, the county shall, by means of a letter signed by the chair of the board of county commissioners or the county executive as appropriate, inform the county road administration board of its termination of the project. The letter shall state the reasons for termination and commit to repaying all RATA funds received for the project. Upon acknowledgment of such termination by the county road administration board, the county shall repay the county road administration board for all RATA funds paid to the county on that project within ~~((sixty))~~ 60 days of such acknowledgment. After receipt of the RATA repayment, the county road administration board will void the CRAB/county contract and allocate the RATA funds to other projects within the region.

(2) If a county terminates an uncompleted RATA funded project for which RATA reimbursement has been made, for other than an unanticipated scope change, and does not want to be required to repay the county road administration board for all RATA funds received, a letter of request signed by the chair of the board of county commissioners or the county executive as appropriate must be sent to the county road administration board. The request must include:

(a) An explanation of the reasons that the project will not proceed to completion;

(b) A statement of the amount of RATA funds which the county does not want to repay; ~~((and))~~

(c) An explanation of why the county believes full repayment should not be made; and

(d) Agreement to provide supporting documentation for amounts the county does not want to repay.

If the county road administration board grants the request, the county shall repay all RATA funds not exempted from repayment within 60 days of the county road administration board's action, the CRAB/county contract will be amended, and the remaining RATA funds will be allocated to other projects within the region. If the county road administration board denies the request, full repayment shall be made as provided in subsection (1) of this section.

~~((3) If after an engineering design study for the RATA funded project has been completed, and as a result of that study it is found that the project scope submitted the final project prospectus must be significantly altered due to factors not anticipated at the time of final prospectus submittal, a county may voluntarily withdraw the project and resubmit a revised project during a later RAP cycle.~~

~~A county wishing to voluntarily withdraw a project for an unanticipated scope change shall submit a request signed by the chair of the board of county commissioners or the county executive as appropriate, to the county road administration board notifying the board of the county's intention to withdraw the project and the nature of the unanticipated project scope change. The county may retain up to five percent of the RATA request amount, not to exceed seventy-five thousand dollars for the RATA share of the cost to perform the engineering design study. In order to be eligible to retain the RATA share of the cost to perform the engineering design study, the project must have begun the engineering design within one year of project approval by the county road administration board and it must be documented in the request that the changed conditions could not have been reasonably anticipated at the time of final prospectus submittal. The director shall make the determination of eligibility for the following conditions:~~

~~(a) Unanticipated subsurface conditions identified in a geotechnical report resulting from subsurface explorations (i.e., drilling) that would not normally be completed prior to the final prospectus;~~

~~(b) Unanticipated environmental and/or cultural resource issues identified in an environmental or cultural resource discipline report that would not normally be completed prior to the final prospectus submittal;~~

~~(c) Changes in project eligibility resulting from annexation or functional classification changes not anticipated prior to final prospectus submittal;~~

~~(d) Inability to obtain necessary rights of way from agencies/entities that are not subject to eminent domain (i.e., federal or tribal agencies); or~~

~~(e) Major geometric changes required to mitigate impacts identified by the public and/or adjacent property owners as the result of a formal environmental determination, formal public involvement process, or unanticipated costs for utility relocations that were not reasonably anticipated prior to final prospectus submittal.~~

~~Upon a determination of eligibility by the director, the county shall repay the county road administration board for all costs in excess of the eligible amount within sixty days of such acknowledgment, the CRAB/county contract will be amended, and the remaining RATA funds will be allocated to other projects within the region. Any determination made by the director under this subsection may be appealed to the full board for a final determination of eligibility. Nothing in this subsection is intended to limit or restrict a county from making a request to the county road administration board as allowed under subsection (2) of this section.)~~

AMENDATORY SECTION (Amending WSR 13-16-105, filed 8/7/13, effective 9/7/13)

WAC 136-170-030 Terms of CRAB/county contract.

(1) The CRAB/county contract shall include, but not be limited to, the following provisions:

(a) The contract shall be valid and binding, and the county shall be entitled to receive RATA funding in accordance with the vouchering/payment process as described in chapter 136-180 WAC, only if the contract is properly signed

and returned to the county road administration board within forty-five calendar days of its mailing by the county road administration board.

(b) The county certifies that it is in compliance with the provisions of chapter 136-150 WAC.

(c) The project will be constructed in accordance with the scope, design and project limits as described in the final prospectus and in accordance with the plans and specifications approved by the county engineer, and, if applicable, the phased construction plan submitted by the county engineer to the county road administration board.

(d) The county will notify the county road administration board:

(i) If a single construction contract is intended to fully complete the project, at the time of project advertisement, construction contract, and when the project has been completed. Should the small works roster process be utilized, then the initial notice must occur prior to initiating the contractor selection process.

(ii) If county forces are utilized to fully complete the project, at the time of project notice, as required in RCW 36.77.070, commencement of construction activities, and when the project has been completed.

(iii) If the project applies a phased construction methodology, at those times described in a phased construction plan, consistent with subsection (2) of this section.

(e) The county road administration board will reimburse counties on the basis of monthly progress payment vouchers received and approved on individual projects in the order in which they are received in the county road administration board office, subject to the availability of RATA funds apportioned to the region; or subject to a minimum regional balance determined by the CRABoard for the purposes of cash flow; provided however, that if insufficient RATA funds are available or the legislature fails to appropriate sufficient RATA funds, payment of vouchers may be delayed or denied. Counties are ineligible to receive RATA funded construction cost reimbursements prior to satisfaction of the initial project notice requirement described in subsection (1)(d) of this section.

(f) The county will reimburse the RATA in the event a project post-audit reveals ineligible expenditures of RATA funds.

(g) The county may be required to reimburse the RATA in the event of early termination in accordance with the provisions of chapter 136-167 WAC.

(h) The county agrees to amend the contract in cases where:

(i) Additional RATA funds have been requested and approved under chapter 136-165 WAC;

(ii) Other relief from the original scope, design or project limits has been approved by the county road administration board under chapter 136-165 WAC; or

(iii) A project has been terminated without full RATA reimbursement under WAC 136-167-030(2).

(i) The county agrees to provide periodic project development progress reports as requested by the county road administration board.

(2) Counties may implement a phased construction methodology in the completion of RATA funded projects. A

phased construction methodology is described as the process to implement multiple construction contracts through competitive bid and award, contracts awarded through exercise of the small works roster process, or construction by county forces, or a combination of two or more of these three methods, in order to complete a single RATA funded project. If a county elects to use phased construction methodology, construction of at least one of the project phases must commence by the lapsing date and all remaining phases must commence within two years of commencement of the first phase. In the event the county fails to meet either of these timelines, repayment of expended RATA funds for all phases of the project will be required unless waived by the county road administration board in keeping with the provisions of this section.

(a) In order to be considered phased construction, each phase must:

- (i) Be distinct, independent, and nonoverlapping construction activities as to location and type of work;
- (ii) Result in separate function and utility;
- (iii) Be part of related and sequential construction activities that lead to overall project completion;
- (iv) Separately and collectively comply with state laws as to procurement of contract work and use of county forces; and

(v) Not be implemented in a way that would otherwise be considered a split project, as described in WAC 136-170-060, without first obtaining approval as a split project.

(b) In order to satisfy notification requirement of subsection (1)(d) of this section, a phased construction plan must be developed and submitted to the county road administration board at least fifteen calendar days prior to contract bid advertisement, beginning the selection process for a contractor through a small works roster process, or commencement of construction by county forces, whichever occurs first. The phased construction plan must:

- (i) Include a description of each construction phase, the contracting method to be employed or that county forces will be used;
- (ii) Include an estimated cost and begin and end dates for each construction phase; and
- (iii) Describe the relationship between construction phases and ultimate completion of the overall project.

AMENDATORY SECTION (Amending WSR 09-23-044, filed 11/9/09, effective 12/10/09)

WAC 136-170-040 Combining of CRAB/county contracts. In those cases when a county desires to combine two or more adjacent RATA funded projects into a single (~~con-~~struction) contract, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by county forces, must make a formal written request to the county road administration board to combine the projects into a single project, assuring that the original prospectus work will be accomplished as originally proposed or as previously revised by the county road administration board, regardless of the applicable maximum project RATA contribution.

Upon receipt of a letter of request to combine, and consideration and approval by the director of the county road

administration board, a revised CRAB/county contract will be prepared and sent to the county for its execution and returned in the same manner as for the original contract(s). Projects shall be considered adjacent if they have a common terminus.

NEW SECTION

WAC 136-170-045 Bundling of construction projects. In those cases when a county desires to bundle two or more RATA funded projects into a single construction contract, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by county forces, must make a formal written request to the county road administration board to bundle the projects into a single construction contract. This request must describe the benefit to bundling the projects into a single construction contract and demonstrate how the county will separately track each individual project/item cost.

Upon receipt of a letter of request to bundle funded projects for construction, a letter approving or denying the request will be prepared and sent to the county from the county road administration board executive director.

AMENDATORY SECTION (Amending WSR 09-23-044, filed 11/9/09, effective 12/10/09)

WAC 136-170-050 Combining of RATA funded project with non-RATA funded project. In those cases when a county desires to combine a RATA funded project with one or more adjacent non-RATA funded projects, the county, prior to advertising for the construction contract, or prior to commencing construction should any of the projects be scheduled for completion by county forces, shall notify the county road administration board in writing of its plans to combine the projects into a single construction project, assuring in writing that the work items assigned to the RATA funded section will remain distinct and separate through the bid documents and contract plans.

Upon verification that the request is submitted in a timely manner, that the combined project will meet the conditions of the CRAB/county contract and prospectus requirements, and that RATA funded items of work will be sufficiently separated from other work, the CRAB director will respond in writing, to grant the combination. Projects shall be considered adjacent if they have a common terminus.

AMENDATORY SECTION (Amending WSR 99-01-021, filed 12/7/98, effective 1/7/99)

WAC 136-180-030 Voucher approval. The county constructing each RAP project may submit vouchers monthly as the work progresses and shall submit a final voucher after completion of each RAP project for the payment of the RATA share of the project cost. Each voucher shall include total project costs to date, including costs covered by other funding sources. The county shall include with each voucher sufficient documentation to verify costs. Reimbursable costs include all eligible direct costs for the design phase, right-of-way phase in allowed regions, and construction phase. Indi-

rect costs shall not be included. The chair of the county road administration board or his/her designee shall approve such vouchers for payment to the county submitting the voucher.

WSR 21-22-087
PERMANENT RULES
WASHINGTON STATE PATROL

[Filed November 2, 2021, 6:38 a.m., effective December 3, 2021]

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

Purpose: A recent regulatory review performed by the Federal Motor Carrier Safety Administration (FMCSA) noted that many of the C.F.R. adopted in WAC 446-65-010(1) and 446-50-080(1) were out-of-date. Since the rule adoption in 2017, many of the C.F.R.s adopted by reference in the rule have been amended, some to a significant degree.

Failure to update WAC 446-65-010(1) and 446-50-080(1) to incorporate all of the recent amendments to the C.F.R. adopted by reference therein could jeopardize grant funding to the state. Therefore, the adoption of this rule change, which brings all of the C.F.R. incorporated by reference current to October 1, 2020, will allow enforcement of all of the federal regulations contained in WAC and will enable the uninterrupted receipt of grant funds to Washington.

Citation of Rules Affected by this Order: Amending WAC 446-65-010 and 446-50-080.

Statutory Authority for Adoption: RCW 46.32.020 and 46.48.170.

Adopted under notice filed as WSR 21-18-114 on September 1, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: November 2, 2021.

John R. Batiste
Chief

AMENDATORY SECTION (Amending WSR 13-18-068, filed 9/3/13, effective 10/4/13)

WAC 446-50-080 Transportation requirements. (1) The Washington state patrol acting by and through the chief of the Washington state patrol after conferring with the emergency management council under RCW 38.52.040 hereby adopts the following parts of Title 49 Code of Federal Regu-

lations, ~~((in effect on the effective date of this section))~~ as they exist on October 1, 2020, for motor carriers used in intrastate or interstate commerce in their entirety:

(a) The following sections of part 107 Hazardous materials program procedures:

(i) Subpart F - Registration of cargo tank and cargo tank motor vehicle manufacturers, assemblers, repairers, inspectors, testers, and design certifying engineers; and

(ii) Subpart G - Registration of persons who offer or transport hazardous materials.

(b) Part 170 (Reserved).

(c) Part 171 General information, regulations, and definitions.

(d) Part 172 Hazardous materials table, special provisions, hazardous materials communications, emergency response information and training requirements.

(e) Part 173 Shippers—General requirements for shipments and packaging.

(f) Part 177 Carriage by public highway.

(g) Part 178 Specifications for packagings.

(h) Part 180 Continuing qualification and maintenance of packagings.

(i) Part 189 (Reserved).

(2) Title 49 C.F.R., parts 100 through 199, relates to safety in the transportation of hazardous materials upon the public highways. This regulation is intended to apply only to the transportation of hazardous materials by highway in Washington, to the handling and storage operations incident to such transportation, and to the highway portion of an intermodal shipment of hazardous materials.

(3) Copies of Title 49 C.F.R., parts 100 through 199, now in force are on file at the Washington state patrol headquarters, commercial vehicle enforcement section, Olympia. Copies of the C.F.R. may be purchased through the Superintendent of Documents, United States Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20402.

AMENDATORY SECTION (Amending WSR 21-08-002, filed 3/24/21, effective 4/24/21)

WAC 446-65-010 Transportation requirements. (1) The Washington state patrol hereby adopts the following parts of Title 49 Code of Federal Regulations (C.F.R.), as they exist on October 1, ~~((2017))~~ 2020, for motor carriers used in intrastate or interstate commerce in their entirety:

(a) Part 40 Procedures for transportation workplace drug and alcohol testing programs.

(b) Part 325 Compliance with interstate motor carrier noise emission standards.

(c) Part 350 Commercial motor carrier safety assistance program.

(d) Part 355 Compatibility of state laws and regulations affecting interstate motor carrier operations.

(e) Part 365 Rules governing applications for operating authority.

(f) Part 367 Standards for registration with states.

(g) Part 372 Exemptions, commercial zones and terminal areas.

(h) Part 373 Receipts and bills.

(i) Part 376 Lease and interchange of vehicles.

- (j) Part 379 Preservation of records.
- (k) Part 380 Special training requirements.
- (l) Part 381 Waivers, exemptions, and pilot programs.
- (m) Part 382 Controlled substances and alcohol use and testing.
- (n) Part 383 Compliance with commercial driver's license program.
- (o) Part 385 Safety fitness procedures.
- (p) Part 387 Minimum levels of financial responsibility for motor carriers.
- (q) Part 390 General.
- (r) Part 391 Qualification of drivers. Provided that 49 C.F.R. 391 subpart D (Tests), and E (Physical Qualifications and Examinations) do not apply to motor carriers operating vehicles with gross vehicle weight rating between 10,001 lbs. and 26,000 lbs. operating intrastate, and not used to transport hazardous materials in a quantity requiring placarding.
- (s) Part 392 Driving of motor vehicles.
- (t) Part 393 Parts and accessories necessary for safe operation.
- (u) Part 395 Hours of service of drivers: Except if a company has drivers of commercial motor vehicle of any size, hauling logs from the point of production or driving in dump truck operations in intrastate commerce provided that:
 - (i) The driver must:
 - (A) Operate within a one hundred air-mile radius of the location where the driver reports to work and the driver must return to the work reporting location at the end of each duty tour;
 - (B) Have at least ten consecutive hours off duty separating each on-duty period;
 - (C) Not drive:
 - More than twelve hours following at least ten hours off duty; or
 - After the fourteenth hour after coming on duty on at least five days of any period of seven consecutive days; and
 - After the sixteenth hour after coming on duty on no more than two days of any period of seven consecutive days; and
 - After having been on duty for eighty hours in seven consecutive days if the employing motor carrier does not operate commercial motor vehicle every day of the week; or
 - After having been on duty for ninety hours in eight consecutive days if the employing motor carrier operates commercial motor vehicle every day of the week; in any period of seven or eight consecutive days may end with the beginning of any off-duty period of twenty-four or more consecutive hours.
 - (ii) The motor carrier that employs the driver must maintain and retain for a period of twelve months accurate and true time recordings showing:
 - (A) The time the driver reports for duty each day;
 - (B) The total number of hours the driver is on duty each day;
 - (C) The total number of hours the driver drives each day;
 - (D) The time the driver is released from duty each day; and
 - (E) The total time the driver is driving and on duty for the preceding seven days.
 - (v) Part 396 Inspection, repair, and maintenance.

(w) Part 397 Transportation of hazardous materials; driving and parking rules.

(2) As provided in Part 395, exemption for agricultural transporters, the harvest dates are defined in RCW 46.32.130.

(3) Links to the C.F.Rs. are available on the Washington state patrol website at www.wsp.wa.gov. Copies of the C.F.Rs. may also be ordered through the United States Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401.

WSR 21-22-089
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 2, 2021, 8:11 a.m., effective December 3, 2021]

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

Purpose: The purpose of this rule making was to change the length of time that a citation and notice needs to be posted on an employee safety bulletin board; this includes any correspondence related to an employee complaint. The department of labor and industries (L&I) is adopting language to change the amount of time a citation and notice is posted from three working days to seven working days, and added language clarifying that weekends and holidays are not included in the posting time period. L&I also added language giving the employer the option to use electronic means to supplement the safety bulletin board for those employees that don't work where the physical board is located, such as those who telework. These changes were made to address employees who work nonstandard shifts that may not have access to this information due to short amount of time the citation and notice is actually posted. L&I believes worker safety could be improved if all employees have access to corrective action information. Please see below for the adopted amendments.

Amended Sections:

WAC 296-900-13015 Posting citation and notices.

- In subsection (1), updated "three" to "seven" working days, as well as added "excluding weekends and holidays" after "seven working days" to clarify the length of time that the citation and notice should be posted to ensure being viewed by all employees.
- Added new sentence at the end of subsection (1) which gives the employer the option to use electronic means to supplement the safety bulletin board for employees that don't work in the office where the physical bulletin board is present, such as employees that telework.

Citation of Rules Affected by this Order: Amending WAC 296-900-13015.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.120.

Adopted under notice filed as WSR 21-14-077 [21-17-117] on July 6, 2021 [August 17, 2021].

A final cost-benefit analysis is available by contacting Tari Enos, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-5541, fax 360-902-5619, email tari.enos@lni.wa.gov.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: November 2, 2021.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 17-18-075, filed 9/5/17, effective 10/6/17)

WAC 296-900-13015 Posting citation and notices. (1) You must immediately notify employees of a citation and notice by posting it and any correspondence related to an employee complaint on the safety bulletin board for ~~((three))~~ seven working days, excluding weekends and holidays, or until all violations are corrected, whichever time period is longer. As an option, an employer may use electronic means to supplement the bulletin board, such as with telework employees.

(2) You must use any other appropriate means to notify employees who may receive notices posted on the safety bulletin board.

Examples of other appropriate means include sending a copy by mail or electronically to any of the following:

- (a) A designated employee representative.
- (b) Safety representatives.
- (c) The safety committee.

WSR 21-22-090
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed November 2, 2021, 8:12 a.m., effective January 1, 2022]

Effective Date of Rule: January 1, 2022.

Purpose: Classification development's goal is to implement clear rule writing to ensure staff and customers can easily understand and apply the workers' compensation insurance classification and reporting rules. Classification development studied some subclassifications for potential reduction in number; and reviewed classification and reporting rules for improvement and clarification.

The purpose of this rule making is not to make substantive changes to how employers are classified and amendments will not impact employer rates.

As part of this rule making, the department of labor and industries (L&I) also reviewed these chapters for need, clarity, and consistency to make changes where possible to reduce the regulatory burden on employers insured with the state fund.

L&I is required by law to establish and maintain a workers' compensation classification plan that classifies all occupations or industries in accordance with their degree of hazard and in a manner consistent with recognized insurance principles (RCW 51.16.035). We are amending some classifications to increase ease of reporting, and ensure consistent and equitable treatment to businesses.

WAC Numbers	WAC Description	What is Changing	Reason for Change
296-17-31028	Closing accounts	Updating rule to reflect online filing reference.	Rule was written before online filing was an option.
296-17A-0519	Building construction sheet metal work, N.O.C.	Adding clarification that 0519 includes sheet metal work on wood frames.	Staff confusion when applying classification.
296-17A-1003 296-17A-3510 296-17A-3802 296-17A-3906	Pole yards Plastics manufacturing Soft goods manufacturing	Reducing the number of subclassifications.	We are combining subclassifications as part of our plan to reduce the overall number of subclassifications in the classification plan to ease administrative burden for customers and staff.

WAC Numbers	WAC Description	What is Changing	Reason for Change
	Bakeries, cracker, potato chip, ravioli/tamale, pasta, and pizza manufacturing N.O.C.		Some reasons for collapsing: <ul style="list-style-type: none"> • Low number of employers/hours reporting in subclassification (low credibility from actuarial view). • Subclassification does not represent separate risks from overall risk classification • Low loss data. • No longer need to track these subclassifications separately.
296-17A-3701	Hazardous/toxic material; repackaging for disposal	Correct reference in note from 3701-21 to 3701-27.	Typographical error corrected.
296-17A-4903	Marine appraising	Updating format of all subclassifications in the rule with bullets for easier readability.	Improve clarity to promote consistent accurate application of the rules.

Citation of Rules Affected by this Order: Amending WAC 296-17-31028, 296-17A-0519, 296-17A-1003, 296-17A-3510, 296-17A-3701, 296-17A-3802, 296-17A-3906, and 296-17A-4903.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Adopted under notice filed as WSR 21-17-118 on August 17, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 8, Repealed 0.

Date Adopted: November 2, 2021.

Joel Sacks
Director

AMENDATORY SECTION (Amending WSR 98-18-042, filed 8/28/98, effective 10/1/98)

WAC 296-17-31028 Closing accounts. What are my responsibilities when I close my business, or when I no longer have employees? You must notify us in writing when you close your business or when you no longer have employees. You may (~~either~~) send a letter, email, or (~~include a note on~~) request to have your account closed when you file your final quarterly report. We will not close your account from a telephone call.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-0519 Classification 0519.

0519-00 (~~Building construction~~) Sheet metal work(s) in building construction N.O.C.

Applies to contractors engaged in the installation or repair of sheet metal work in building construction, not covered by another classification (N.O.C.). Work contemplated by this classification applies to interior and exterior sheet metal work for residential or commercial buildings (~~and~~); this includes sheet metal work on wood frame, pole buildings, and nonwood frame buildings. This classification

includes the installation of metal siding, gutters and downspouts, nonstructural sheet metal patio covers/carports, metal industrial shelving, stainless steel counter tops, and interior wall panels (such as the back splash behind stoves or sinks). Contractors who operate a sheet metal fabrication shop or prefabricate the gutters, downspouts and posts in a shop away from the construction site are to be assigned classification 3404 for the shop operations. When a contractor's business is assigned classification 3404 for shop operations then classification 5206 "Permanent yard or shop" is no longer applicable to the contractor's business for the storage of materials or repair to equipment.

This classification excludes sheet metal work as part of heating ventilation and air conditioning systems installation which is to be reported separately in classification 0307; the installation of aluminum or sheet metal as part of roof work which is to be reported separately in classification 0507; the installation of light weight sheet metal tool sheds which is to be reported separately in classification 0516; and the installation of commercial metal carports and service station canopies which is to be reported separately in classification 0518.

AMENDATORY SECTION (Amending WSR 07-12-047, filed 5/31/07, effective 7/1/07)

WAC 296-17A-1003 Classification 1003.

((1003-02 Dry kiln operations

Applies to establishments engaged in kiln drying of wood as a service for customers in the wood products industry. They may also purchase and dry wood themselves for later sale to a wood product manufacturer. Operations contemplated by this classification include, but are not limited to, receiving green lumber or logs, peeling (mechanized or manual), any incidental machining or turning, layering on a trolley (with spacers in between to allow for air circulation), drying in the heated kiln, and the incidental application of preservative, fire retardant, or insecticide treatments, storing, and delivery. Preservatives may be oil or water based and may be applied through a heated, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping) or by soaking in tanks. Machinery and equipment includes, but is not limited to, log handling and trimming machinery, kilns, boilers that heat the kilns, autoclaves, storage tanks, trolley cars, fork lifts, hand tools and delivery trucks.

This classification excludes dry kiln operations that are part of a wood, veneer or lumber product manufacturing or remanufacturing operation which are to be reported separately in the classification applicable for the operation being performed; all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.

1003-03 Creosote works; pile and pole treating

Applies to establishments engaged in treating wood poles with creosote or other chemicals to inhibit deterioration. Poles produced by this type of business are intended for use as utility line poles, supports for bridges and trestles, or piles to be driven into the ground as part of the support for a pier or other structure. Operations contemplated by this classification include, but are not limited to, receiving logs, storing, seasoning (either by air or kiln drying), peeling (mechanized or manual), any incidental machining and turning (which may include cutting material into ties or cross arms), the application of creosote or other chemical preservative, and pick up and delivery. Preservative may be applied to seasoned wood through a heated, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping), or soaking in tanks. Machinery and equipment includes, but is not limited to, log handling/trimming/cutting machinery, kilns, boilers that heat the kiln, autoclaves, storage tanks, trolley cars for use in the kiln, fork lifts, hand tools, and trucks.

This classification excludes all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.

1003-04 Pole yards

Applies to establishments engaged in producing wood poles to a customer's specifications or for their own resale. These poles are intended for a variety of uses and are finished to varying requirements. Work contemplated by this classification includes, but is not limited to, receiving logs, storing, seasoning (either by air or kiln drying), peeling (mechanized or manual), incidental machining or turning (which may include cutting some material into cross arms, cutting and boring), the application of creosote or other chemical preservative, and pick up and delivery. Preservative may be applied to seasoned wood through a heated, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping), or soaking in tanks. Machinery and equipment includes, but is not limited to, log handling/trimming/cutting machinery, kilns, boilers that heat the kiln, autoclaves, storage tanks, trolley cars for use in the kiln, fork lifts, hand tools, and trucks.

This classification excludes all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.

1003-05 Masts and spars yards

Applies to establishments engaged in producing wood masts and spars. Masts and spars are the main and secondary supports, respectively, for sails and running rigging on sailing vessels. These businesses may also produce poles for other uses which may need to be more precisely shaped and finished than those produced in 1003-04. Work contemplated by this classification includes, but is not limited to, receiving logs, storing, seasoning (either by air or kiln drying), peeling the logs (mechanized or manual), machining and turning to size (which may include cutting and boring holes), application of chemical preservative, sanding if necessary, and pick up and delivery. The application of wood finish is also included when performed by employees of an employer having operations subject to this classification. Preservative may be applied to seasoned wood through a heated, pressurized vacuum process in an autoclave, by surface application (spraying, brushing, dipping), or soaking in tanks. Machinery and equipment includes, but is not limited to, log handling/trimming/cutting machinery, kilns, boilers that heat the kiln, autoclaves, storage tanks, trolley cars for use in the kiln, fork lifts, wood finishing equipment, hand tools, and trucks. This classification includes the production of finished logs that will be used in the manufacture of log houses or cabins.

This classification excludes all operations conducted in the woods, such as the felling of timber, which are to be reported separately in the applicable logging classification, and work conducted away from the shop or yard, except delivery, which is to be reported separately in the classification applicable for the work being performed.

1003-06 Log home manufacturing

Applies to establishments that receive logs either peeled or unpeeled. Work contemplated by this classification includes the use of hand tools such as, but not limited to, planers, grinders, skids, drawn knives, and slicks to peel or

bring back the new appearance of the logs. Chainsaws and chisels are used to notch out the logs to assemble them together. Equipment such as loaders, forklifts, or cranes are used to maneuver the logs around the yard or to help in the assembly of the log home. Once the shell is assembled, it is numbered. The shell is then unassembled and is shipped to the customer's site to be erected. The erection of the log home shell at the customer's site is to be reported in 0510-00. This classification excludes all other phases of construction which will be reported in the applicable construction classifications.

Log home manufacturing performed in a sawmill environment using dimensional lumber is to be reported in 2903-12.)

1003-03 Creosote works; pile and pole treating, dry kiln operations, pole yards, masts and spars yards and log home manufacturing

Applies to:

Businesses engaged in treating wood poles with creosote or other chemicals to inhibit deterioration, kiln drying of wood as a service for customers or for their own resale, producing wood poles to customer's specifications or for their own resale, producing wood masts and spars, and log home manufacturing/assembly in a yard operation.

Products manufactured or applied with preservatives include, but are not limited to:

- Utility poles;
- Supports for bridges/trestles;
- Piles to be driven into ground for support for a pier or other structure;
- Supports for sails and rigging on sailing vessels;
- Logs for log homes.

Work process/activities include, but are not limited to:

- Receiving in lumber or logs;
- Peeling of logs (mechanized or manual);
- Machining or turning of lumber, including cutting material into ties or cross arms;
- Drying/seasoning in kiln;
- Application of preservative, retardant, or insecticide treatment (heated, pressurized vacuum process in autoclave, or by surface application, spraying, brushing, and dipping, or soaking in tanks);
- Notching logs to assemble them together;
- Delivery.

Machinery and equipment used include, but are not limited to:

- Log handling and trimming/cutting machinery;
- Kilns;
- Autoclaves;
- Storage tanks;
- Wood finishing equipment;
- Hand tools (planers, grinders, skids, drawn knives, slicks, chisels);
- Trolley cars;
- Chain saws;
- Loaders/cranes;
- Fork lifts.

Exclusions:

• Dry kiln operations that are part of a wood, veneer, or lumber product manufacturing or remanufacturing operation are classified in the classification applicable for the operation being performed.

• Worker hours engaged in all operations conducted in the woods, such as the felling of timber, are reported separately in the applicable logging classification.

• Worker hours conducted away from the shop or yard, except delivery, is reported separately in the classification applicable for the work being performed.

• Log home manufacturing performed in a sawmill environment using dimensional lumber is classified in 2903-12.

• Worker hours engaged in the erection of log home shells at the customer's site are reported separately in classification 0510-00.

• All other phases of construction are classified in the applicable construction classification.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3510 Classification 3510.

~~(3510-02 Plastics: Artificial marble manufacturing~~

~~Applies to establishments engaged in the manufacture of plastic articles by molding a calcium carbonate material mixed with feed stock, a catalyst and dyes which are purchased from outside sources. When this material solidifies it resembles marble, and is used to make counter tops, sinks, novelty items such as, but not limited to, soap dishes, clock cases, and statues. Raw materials are mixed in large mixers until it has the consistency of bread dough. A release agent is sprayed onto empty molds so the finished items can be easily removed after they are set; then the mixture is poured directly into molds, placed into molds by hand, or forced into molds under pressure. The materials are cured at room temperature or with moderate heat (up to 140 degrees F). When the material has hardened, items are removed from the molds and trimmed, sanded or otherwise finished. Sanding may be done with power rotary sanders which create clouds of dust and require the use of respirators.~~

This classification excludes establishments engaged in the manufacture of a plastic product by any other method which are to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be reported separately in classification 3510-08; and the manufacture of fiberglass goods which are to be reported separately in classification 3511.

3510-03 Plastics: Extrusion, blow molding

Applies to establishments engaged in the manufacture of plastic articles by blow molding or extruding. Processes vary, but all usually require the heating and melting of feed stock and mixing of other additives purchased from outside sources. Extrusion involves forcing material through dies; blow molding blows a bubble of plastic into the air and processes it through machinery, or forms an object in a mold by

blowing air and material into it. Plastic items such as containers for milk, motor oil, bleach, or other liquids are typically made with a blow molding process, which is a fast, high volume operation. A bubble of molten plastic is blown into a mold and expanded to the shape of the mold with compressed air. The mold is kept cool with a liquid coolant that circulates through its cavities; when hot plastic is pressed against the mold, it cools and hardens in seconds. Sheets of plastic film are usually made by extruding a tube of hot plastic, expanding it with air pressure, then passing it through a series of rollers and cutters which roll it flat and cut it into two separate sheets. Plastic film is used for making plastic bags and other products. This classification includes the manufacture of plastic bags when the extrusion of plastic sheets is performed by employees of the plastic bag manufacturer. Other extrusion processes are used in the manufacture of window frame molding, gutters, pipe, and similar items.

This classification excludes establishments engaged in the manufacture of a plastic product by any other method which are to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be reported separately in classification 3510-08; and the manufacture fiberglass goods which are to be reported separately in classification 3511.

3510-04 Plastics: Vacuum forming

Applies to establishments engaged in the manufacture of plastic goods through a vacuum forming process. Articles manufactured by this method include, but are not limited to, signs, display stands, windshields for boats and motorcycles, boat paddles, skylight windows, trays for packaging food or other items. Sheet goods are heated in an oven or in the molding area, and a vacuum is pulled on the mold, sucking the plastic in to conform to the shape of the mold. Items produced by this method harden and cool in a few minutes. In other techniques, liquid plastic is poured into a mold, a seal of mylar plastic is placed over it, then a vacuum is pulled on the mold forming the liquid to the mold. This method produces a smooth, glossy surface similar to those produced by injection molding, but without the high cost machinery. For either method, once the plastic material hardens, the "flashing" (excess plastic) is trimmed from the formed article. This is called "deflashing" and may be done with a hand-held knife, a router, or a lathe. There is some assembly in certain manufacturing operations such as attaching components with screws, rivets, bolts, or glue, which is incidental to the manufacturing process and is included in the classification.

This classification excludes establishments engaged in the manufacture of a plastic product by any other method which are to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be reported separately in classification 3510-08; and establishments engaged in the manufacture of fiberglass goods which are to be reported separately in classification 3511.

Special note: The painting or lettering of signs is included in the plastic goods manufacturing classification when done by employees of an employer making signs. Establishments that purchase premanufactured plastic "mediums" from others, then paint lettering or designs or attach

vinyl lettering to them in their own shops are to be reported separately in classification 4109.

3510-05 Plastics: Foam molding, rotary molding, liquid molding

Applies to establishments engaged in the manufacture of plastic goods through foam molding, rotary molding or liquid molding processes. Raw materials, which may be received in barrels, drums, or rail cars, include, but are not limited to, small plastic beads, powder, pellets or liquids, and foaming agents. Establishments in this classification will frequently employ laboratory employees such as chemists or chemical engineers to formulate their own plastic compounds to meet specifications as to rigidity, flexibility, or fire retardation. Liquid polymer is mixed with one or more ingredients, in some cases including a foaming agent, then heated to control the foaming action. It may be forced through pipes or hoses from a dispensing machine into the mold, or workers may carry it in buckets from the mixing pot and pour it into the molds. The top of the mold is put in place and secured. Heat and air pressure is applied inside the mold, which causes the foam to rise and form the shape of the object being made. Workers may wear respirator masks during this phase. The mold may be lined with vinyl or other fabric, or wire frames may be placed inside the molds when making items such as armrests, cushions, dashboards for vehicles, boats, or aircraft. Goods usually set overnight, then the flashing (excess plastic) is trimmed off. Liquid plastic, such as urethane, without a foaming agent, is also used to make products that are extremely tough. Products made from this type of liquid mixture include, but are not limited to, parts for aircraft or industrial machinery. Liquid mixtures are poured into molds and cured in ovens. Styrofoam products such as, but not limited to cups or plates, packaging materials are made from small styrofoam beads that are expanded by heating, then forced or blown into a mold and heat expanded to form the product. Logos or brand names may be printed onto the products with a special offset press. Rotary molding is used for large hollow items like garbage cans or buckets. Plastic powder, mixed with color, is poured into molds; molds are closed and moved on a rotating arm through a large oven in a tumbling action while the mold heats. The plastic powder sticks to the inside of the mold and melts. The mold is removed from the oven while still tumbling, and air and/or water cooled. Finished products are then removed from the molds.

This classification excludes establishments engaged in the manufacture of a plastic product by any other method which is to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be reported separately in classification 3510-08; and the manufacture of fiberglass goods which are to be reported separately in classification 3511.

3510-06 Plastics: Injection molding

Applies to establishments engaged in the manufacture of plastic goods through an injection molding process. Articles made by injection molding range widely; they include, but are not limited to, key chain holders, writing pens, combs, medicine bottles, novelty items, sporting goods, and cargo baskets for industrial use. The size of injection molding

machines ranges widely, depending on the products being made. Raw materials, which are usually in the form of tiny plastic beads, are received from outside sources in barrels, drums or rail cars. The pellets are placed in a dryer to remove any moisture, then fed through a hopper on the injection molding machine into an air-free chamber where they are melted at high temperatures, then forced with an auger-type screw, ram piston or similar device, into the mold. The mold is cooled by a coolant to allow the plastic to solidify rapidly. When solidified, the item is ejected from the mold by air pressure, hydraulics, or a mechanical ram. Items may be trimmed, polished, assembled, plated, or otherwise finished. Establishments in this classification may make molds for their own use, or the customer brings molds for specific items they order. The manufacture or repair of their own or their customer's molds is included within the scope of this classification when done by employees of an employer subject to this classification.

This classification excludes establishments engaged in the manufacture of a plastic product by any other method which are to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be reported separately in classification 3510-08; and the manufacture of fiberglass goods which are to be reported separately in classification 3511.

3510-07 Plastics: Manufacture, N.O.C.

Applies to establishments engaged in the manufacture of plastic goods not covered by another classification (N.O.C.) using several of the operations described in the other plastics manufacturing classifications, but not having one predominate process. This classification *could* include the application of fiberglass resins with a brushing or spreading technique (sometimes referred to as "lay-up"). In the lay-up method, fabric is fitted over molds, then layers of fiberglass resins, hardeners, and fillers are applied over the fabric with a brush or trowel. In some applications, a thin foam material is fitted into a mold, then covered with fiberglass resins and hardeners; when the product is removed from the mold, the other side is coated, producing an exceptionally strong, lightweight product. Once removed from the molds, items are heated in ovens to harden and set. This classification also includes establishments that make pellets (feed stock) from recyclable plastic goods. Scraps or recyclable goods are ground or pulverized, then formed into pellets which can be used again in manufacturing processes, or further processed into oil by other manufacturers.

This classification excludes establishments engaged in the manufacture of a plastic product by any other method which are to be reported separately in the appropriate classification; establishments engaged in the manufacture of graphite composite goods which are to be reported separately in classification 3510-08; and establishments engaged in the manufacture of fiberglass goods which are to be reported separately in classification 3511.

Special notes: When the manufacture of plastic goods includes *any* fiberglass work using the spraying technique with a chopper gun, the entire operation is to be reported separately in classification 3511. Incidental hand brushing or troweling of fiberglass resins or epoxy over a fabric or foam

material, is sometimes an integral part of manufacturing processes covered under other manufacturing classifications. A review of the manufacturing process must be made to determine the proper classification applicable to that manufacturing process.

3510-08 Graphite composite goods: Manufacturing

Applies to establishments engaged in the manufacture of fiber reinforced plastic goods. Products manufactured by establishments subject to this classification include, but are not limited to, golf club shafts, fishing poles and rod blanks, garden carts, hose reels, wind board sail masts, bicycle frames, tennis rackets, snow skis and auto parts. While the classification specifies graphite composite goods, other fiber reinforced plastics are used to make similar products and are covered by this classification. Graphite composites are also known as carbon reinforced composites. Irrespective of the product made, the processes used to produce the end products are similar. For example, the making of tube-like products such as, but not limited to, golf shafts, wind board sail masts, and fishing poles, consists of cutting a fabric-like material which is purchased from others to the specified dimension needed to make the product; rolling the material onto a mandrel (rod) or wrapping the material around a mold; securing the fabric material with a plastic (cellophane) tape; curing the product in an oven; removing the cellophane wrap; removing the mandrel or mold; sanding the product to remove the lines left by the cello wrap; and applying the finish.

This classification excludes the manufacture of nonfiber reinforced plastic goods or products which are to be reported separately in classification 3510 as applicable; fiberglass reinforced goods or products which are to be reported separately in classification 3511; and plastic goods manufacturing from premanufactured components including the cutting, bending and milling of plastic which are to be reported separately in classification 3512.

Special note: Care should be taken when encountering the term "graphite composite." Graphite is a material common to many products such as, but not limited to, lead pencils, paints, lubricants and protective coatings, none of which are covered by classification 3510.)

3510-05 Plastics: Foam molding, rotary molding, liquid molding

Applies to:

Businesses engaged in manufacturing plastics using the foam molding, rotary molding, or liquid molding process.

Processes used include:

- Foam molding - Liquid polymer is mixed with one or more ingredients, including a foaming agent, then heated to control the foaming action. It may be forced through pipes or hoses from a dispensing machine into the mold, or workers may carry it in buckets from the mixing pot and pour it into the molds. The top of the mold is put in place and secured. Heat and air pressure is applied inside the mold, which causes the foam to rise and form the shape of the object made. The mold may be lined with vinyl or other fabric, or wire frames may be placed inside the molds. Goods usually set overnight, and then the flashing (excess plastic) trimmed off.

- Liquid molding - Liquid plastic, such as urethane, without a foaming agent, is used to make products that are

extremely tough. Liquid mixtures are poured into molds and cured in ovens.

- Styrofoam molding - Small styrofoam beads that expand by heating, then forced or blown into a mold and heat-expanded to form the product.

- Rotary molding - Rotary molding is used for large hollow items like garbage cans or buckets. Plastic powder, mixed with color, is poured into molds. The molds are closed and moved on a rotating arm through a large oven in a tumbling action while the mold heats. The plastic powder sticks to the inside of the mold and melts. The mold is removed from the oven while still tumbling, and air and/or water-cooled. Finished products are removed from the molds.

Product manufactured include, but are not limited to:

- Aircraft or machinery parts;
- Armrests, cushions, or dashboards for vehicles, boat, or aircraft;

- Styrofoam cups or plates;
- Styrofoam packing materials;
- Garbage cans;
- Buckets.

Raw materials usually received in barrels, drums or rail cars.

Materials used include, but are not limited to:

- Plastic beads;
- Pellets;
- Powders;
- Liquids;
- Foaming agents.

Equipment includes, but is not limited to:

- Conveyors;
- Delivery trucks;
- Eye protection;
- Face masks;
- Forklifts;
- Hearing protection;
- Molds;
- Respirators;
- Sanders.

Work activities include, but are not limited to:

- Laboratory personnel formulate plastic compounds to meet specifications such as rigidity, flexibility, or fire retardation;

- Workers may carry materials in buckets to the molds;
- Workers secure and seal the tops of molds;
- Flashing (seams and excess plastic) trimmed;
- Brand names may be printed onto the product using a special offset press;
- Finished products are removed from molds.

Exclusions:

- Worker hours engaged in any other method of manufacturing plastics are reported separately in the appropriate classification.

- Manufacturing graphite composite goods is classified in 3510-07.

- Worker hours or businesses engaged in fiberglass goods manufacturing are reported separately in classification 3511.

3510-06 Plastics: Injection molding

Applies to:

Businesses engaged in manufacturing plastics using the injection molding process.

Note: Businesses in this classification may manufacture molds used in injection molding or they may use molds supplied by their customers. Repairing molds is included in this classification.

Processes used include:

- Injection molding - Plastic pellets are placed in a dryer to remove any moisture, then fed through a hopper on the injection molding machine into an air-free chamber where they are melted at high temperatures, then forced with an auger-type screw, ram piston or similar device, into the mold. A coolant to allow the plastic to solidify rapidly cools the mold. When solidified, the item is ejected from the mold by air pressure, hydraulics, or a mechanical ram. Items may be trimmed, polished, assembled, plated, or otherwise finished.

Products manufactured include, but are not limited to:

- Cargo baskets for industrial use;
- Combs;
- Key chain holders;
- Medicine bottles;
- Novelty items;
- Sporting goods;
- Writing pens.

Raw materials, usually in the form of plastic beads, arrive in barrels, drums, or rail cars.

Materials used include, but are not limited to:

- Plastic beads;
- Pellets.

Equipment includes, but is not limited to:

- Conveyors;
- Delivery trucks;
- Eye protection;
- Face masks;
- Forklifts;
- Hearing protection;
- Injection molding machines;
- Molds;
- Respirators;
- Sanders.

Exclusions:

- Worker hours engaged in any other method of manufacturing plastics are reported separately in the appropriate classification.

- Manufacturing graphite composite goods is classified in 3510-07.

- Worker hours or businesses engaged in fiberglass goods manufacturing are reported separately in classification 3511.

3510-07 Plastics manufacture, N.O.C.**Applies to:**

Businesses engaged in all other forms of plastics manufacturing including, but not limited to:

- Artificial marble manufacture;
- Extrusion, blow molding manufacture;
- Graphite composite goods manufacture;
- Vacuum forming manufacture;
- Plastics manufacturing using multiple methods, but

foam molding, liquid molding, rotary molding, or injection molding are not the primary method.

Products manufactured include, but are not limited

to:

- Boat paddles;
- Clock cases;
- Counter tops;
- Display stands;
- Fiber reinforced plastic goods such as:
 - Auto parts;
 - Bicycle frames;
 - Fishing poles;
 - Garden carts;
 - Golf club shafts;
 - Hose reels;
 - Rod blanks;
 - Snow skies;
 - Tennis racquets;
 - Wind board sail masts.
- Novelty items;
- Plastic bags;
- Plastic bleach containers;
- Plastic film;
- Plastic feed stock from recyclable plastic goods;
- Plastic gutters;
- Plastic milk containers;
- Plastic motor oil containers;
- Plastic pipe;
- Plastic window frames;
- Signs;
- Sinks;
- Skylight windows;
- Soap dishes;
- Statues;
- Trays for packing food or other items;
- Windshields for boats and motorcycles.

These businesses:

Materials processed to resemble marble, to manufacture plastic articles through the blow molding or extrusion process, to manufacture plastic articles through the vacuum form process, or to manufacture fiber-reinforced goods or to manufacture through a fiberglass resin process.

Mold a (for example calcium carbonate) material mixed with feed stock.

Processes vary but all use the heating and melting of feed stock.

Some processes involve the addition of additives.

Processes include, but are not limited to:

Artificial marble manufacturing - Molding calcium carbonate material is mixed with feedstock, catalyst, and dyes to

resemble marble when it solidifies. A release agent is sprayed into empty molds to allow the release of the item. Raw materials are mixed in large mixers. The mixture is poured directly into molds, placed into molds by hand, or forced into molds under pressure. The materials harden at room temperature. Items are removed from the molds and sanded, trimmed, or finished.

Blow molding - Plastic feedstock is melted and mixed with other additives. A bubble of molten plastic is blown into a mold and expanded to the shape of the mold with compressed air. The mold is kept cool with a liquid coolant that circulates through its cavities. When hot plastic is pressed against the mold, it cools and hardens in seconds. Blow molding is usually a fast, high-volume operation.

Extrusion molding - Plastic feedstock is melted and mixed with other additives and then extruded through dies. Sheets of plastic film are usually made by extruding a tube of hot plastic, expanding it with air pressure, then passing it through a series of rollers and cutters, which roll it flat and cut it into two separate sheets. Plastic film is used for making plastic bags and other products.

Fiberglass molding using lay-up method - In the lay-up method, fabric is fitted over molds, then layers of fiberglass resins, hardeners, and fillers are applied over the fabric with a brush or trowel. In some applications, a thin foam material is fitted into a mold, and covered with fiberglass resins and hardeners. When the product is removed from the mold, the other side is coated, producing an exceptionally strong, light-weight product. Once removed from the molds, items are heated in ovens to harden and set.

Fiber reinforced plastic goods - The processes used to produce the product are similar regardless of the product made. For example: The making of tube-like products consist of cutting a fabric-like material, which is purchased from others. It is cut to the specified dimension needed to make the product. The process rolls the material onto a mandrel (rod) or wraps the material around a mold, secures the fabric material with a plastic (cellophane) tape. The product cures in an oven. The cellophane wrap and mold or mandrel are removed. The product sanded to remove the lines left by the cellophane wrap and the finish applied.

Making feedstock from recyclable plastic goods - Scraps or recyclable goods are ground or pulverized and formed into pellets. The pellets can be used again in manufacturing or further processed into oil by other manufacturers.

Vacuum forming - Sheet goods are heated in an oven or in the molding area, and a vacuum is pulled on the mold, sucking the plastic in to conform to the shape of the mold. Items produced by this method harden and cool in a few minutes. In another technique, liquid plastic poured into a mold, a seal of plastic placed over the item, and a vacuum pulled on the mold forming the liquid to the mold. This method produces a smooth, glossy surface. For either method, once the plastic material hardens, the "flashing" (excess plastic) is trimmed from the formed article. This process is "deflashing." It is done with a hand-held knife, a router, or a lathe. There is some assembly in certain manufacturing operations such as attaching components with screws, rivets, bolts, or glue, which is incidental to the manufacturing process and is included in the classification.

Special note: The painting or lettering of signs is included within the vacuum forming industry when done by employees of the employer assigned this classification. Businesses within this classification who purchase premanufactured signs from others, then paint lettering or designs or who then attach vinyl lettering within their own shops report separately in classification 4101 for their shop operations.

Materials used include, but are not limited to:

- Calcium carbonate;
- Catalysts;
- Dyes;
- Fiberglass resins;
- Liquid hardeners;
- Plastic feed stock;
- Plastic sheets;
- Recyclable plastic goods;
- Reinforcement fabrics;
- Release agents.

Equipment includes, but is not limited to:

- Conveyors;
- Delivery trucks;
- Eye protection;
- Face masks;
- Forklifts;
- Hearing protection;
- Molds;
- Respirators;
- Sanders.

Exclusions:

• Worker hours engaged in any other method of manufacturing plastics are reported separately in the appropriate classification.

• Plastic manufacturing through the foam molding, rotary molding, or liquid molding processes, classified in 3510-05.

• Plastic manufacturing through the injection molding process classified in 3510-06.

• Worker hours or businesses engaged in fiberglass goods manufacturing are reported separately in classification 3511. Any fiberglass application of the spraying technique using a chopper gun requires the entire business is reported separately within classification 3511. Incidental hand brushing or troweling of fiberglass resins or laying of epoxy over fabric occurs among other manufacturing industries. There should be a complete review of the manufacturing process in assigning the correct classification.

AMENDATORY SECTION (Amending WSR 20-20-108, filed 10/6/20, effective 1/1/21)

WAC 296-17A-3701 Classification 3701.

3701-06 Chemicals, N.O.C.: Manufacturing chemical mixing, blending, and repackaging nitrate recovery from X-ray and photo films

Applies to:

Businesses engaged in manufacturing:

- Acetylene gas;
- Acid;

- Ammonia;
- Ammonia nitrate;
- Borax;
- Carbonic acid gas, also known as phenol;
- Chemicals using a nitration, alkylation or oxidation process;

- Dry ice;
- Dyes, including dye and chemicals used for tinting candles;
- Fireworks;
- Nitrogen;
- Oxygen and hydrogen;
- Potash;
- Salt.

Businesses engaged in:

- Recovering nitrate or silver from X-ray and photo films.
- Mixing, blending or repackaging chemicals, but not manufacturing the ingredients.

Products manufactured and processes used include, but are not limited to:

• Acetylene gas - Highly flammable but nontoxic gas that is manufactured by reacting calcium carbide with water in a pressure generator, which combines carbon and lime to form the product.

• Ammonia - Colorless gas used as a component in fertilizer, medicines and cleaning compounds manufacturing. Involves combining hydrogen and nitrogen gases with a catalyst, which causes a reaction between the two gases when heated in a generator.

• Ammonia nitrate - Crystalline compound used mainly in fertilizers, explosives and propellants. Involves combining ammonia and nitric acid in a reactor.

• Borax - Used in manufacture of glass, glazes, soap, and boric acid. Produced by separating it from the potash by a rapid cooling process. Evaporated by heating in a partial vacuum to produce crystals or granules which are dried.

• Carbonic acid gas, also known as phenol - Caustic poisonous gas used in manufacturing resins, plastics, and disinfectants. The manufacture of phenol involves a compression and refrigeration process.

• Chemicals using a nitration, alkylation or oxidation process:

- Alkylation - Involves combining alkyls with other substances to form products used in the production of paper pulp, hard soap and petroleum products.

- Nitration - Involves the combining of nitrate with an organic compound to produce nitrobenzene used in solvents, fertilizers and acids.

- Oxidation - Involves the combining of oxygen with other substances to produce products such as; but not limited to, hydrogen peroxide, protective metal coatings, and pharmaceutical preparations.

- Dry ice - Carbon dioxide in a solid form.
- Dyes, including dye and chemicals used for tinting candles - Made from organic and inorganic compounds. Manufacturing methods include weighing raw materials, pumping them into vats, heating, agitating, cooling, filtering through presses, and packaging. May also include drying and grinding into powder or may be left in liquid or paste forms.

- Fireworks.
- Mixing, blending or repackaging chemicals, but not manufacturing the ingredients - Mixed by hand or through a mechanical process.
 - Nitrogen - Colorless gas that is obtained from the air and processed by compressing air in a pressurized tank, removing impurities, and separating nitrogen and oxygen through heating.
 - Oxygen and hydrogen - Involves the recovery of these gaseous elements from the air by compression, expansion and cooling operations until it liquefies. Liquid air then goes to a fractionator where the oxygen is separated from the hydrogen along with other gases such as neon and helium.
 - Potash - Used in fertilizer. Refined by adding an amine to the brine, which causes the salts to float to the surface where they are skimmed off. Evaporated by heating in a partial vacuum to produce crystals or granules, which are dried.
 - Salt - Used in chemicals and food processing. Salt ores are dissolved in water to produce a brine of the desired concentration. Refined into common salt by adding caustic soda and soda ash. Evaporated by heating in a partial vacuum to produce crystals or granules, which are dried.
 - Recovering nitrate or silver from X-ray and photo films - Placing films in developing solutions, ionizing the solution and separating the elements.

Equipment includes, but is not limited to:

- Pressurized tanks;
- Vats;
- Screens;
- Ovens;
- Grinding machines;
- Mixing and blending machinery;
- Filling and packaging machinery;
- Fork lifts;
- Trucks.

Exclusions:

- Technicians who set up and carry out fireworks displays are classified in 6207.
- The production of salt ores used in the manufacture of salt, borax, and potash.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3701-08 Cosmetic, pharmaceutical, serum: Manufacturing

Applies to:

Businesses engaged in the manufacture of cosmetics, pharmaceuticals, serums, antitoxins or viruses.

Products include, but are not limited to:

- Soaps;
- Shampoo/conditioners;
- Creams, gels or lotions;
- Baby powder;
- Lipstick;
- Nail polish;
- Bath oils/salts;
- Tablets/pills;

- Ointments;
- Liquids/powders (pharmaceutical);
- Serums.

Work activities include, but are not limited to:

- Mixing of premanufactured ingredients.
- Mixing or blending of base medicinal ingredients and additives such as, but not limited to, sugars, starches, flavorings and waxes used for coatings.
- Bottling/packaging/labeling and laboratory equipment.
- Pulverizing, distilling, heating and drying product.
- Microscopic laboratory work.
- Working with animals, injecting with bacteria and viruses (eventually killing animal).

Killing of the animals is included in this classification as it is incidental and necessary to perform the operation to extract the serum from the glands and to separate the red blood cells from the blood.

Equipment includes, but is not limited to:

- Storage tanks;
- Mixers;
- Heating devices;
- Bottling/packaging/labeling equipment;
- Laboratory equipment.

Exclusions:

- Manufacture of ingredients used in the mixing of the cosmetics.
- Manufacture or harvest of ingredients used in the manufacture of the pharmaceuticals.
- Retail compounding pharmacy stores are classified in 6406-16.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3701-14 Extract, alcohol, perfume manufacturing; mint, including distillation of essential oils N.O.C.

Applies to:

- Businesses engaged in manufacturing or distilling:
- Alcohol - Not for ingestion.
 - Extracts - Extracts are the concentrated forms of the essential components of a food or a plant.
 - Mint.
 - Perfumes.

Processes used include, but are not limited to:

- Alcohol - All use a distillation process, which involves the heating of liquids and resulting condensation of vapors to purify or create a substance contained in the original wood or grain product.
- Extracts - The process for obtaining extracts involves pressing, cooking, steaming, or distillation from plants, herbs, or fruit peelings. Extracts may be mixed or blended with other ingredients for greater strength, color, or consistency. Products are bottled or canned.
- Mint - Mint distillation may begin with the use of mint oil distilled by a supplier or with the distillation of the mint into mint oil. Mint leaves are chopped and blown into a steamer, which lifts the moisture and oils. Steam then passes

through a series of condensation lines. Water is added to bring the oil to the top of the liquid. The mint oil is heated for purification and fragrance. Various mint oils may be blended together to produce distinctive products such as spearmint or peppermint.

- Perfumes - The process may involve distillation, cooking, grinding, compounding, drying, blending or liquidizing of ingredients. Ingredients may include extracts, oils, colors, and binders.

Products include, but are not limited to:

- Methanol (wood alcohol);
- Ethanol (grain alcohol);
- Denatured alcohol (combination of methanol and ethanol);
- Solvents;
- Germicides;
- Pesticides;
- Antiseptics;
- Materials intended for use in other products such as varnish or shellac;
- Flavorings, including mint, spearmint, and peppermint;
- Perfumes used to manufacture other products such as scented candles;
- Personal fragrances;
- Essential oils;
- Sachet powders;
- Ingredients for skin conditioners;
- Hop extracts used in the brewing of beer.

Equipment includes, but is not limited to:

- Distillation equipment;
- Steam cookers;
- Presses;
- Filters;
- Grinders;
- Vats;
- Vapor extraction equipment;
- Storage tanks;
- Mixers;
- Heating equipment;
- Forklifts;
- Laboratory equipment;
- Bottling, packaging, labeling equipment;
- Delivery trucks.

Exclusions:

- Manufacturing of spirituous liquor for ingestion is classified in 3702.
- Candle manufacturing is classified in 3701-22.
- Worker hours engaged in gasohol manufacturing or refining are reported separately in classification 3407.
- Worker hours engaged in hop pellet manufacturing are reported separately in classification 2101.
- Worker hours engaged in mint raising or harvesting are reported separately in classification 4811.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3701-22 Pigment solutions or emulsion: Manufacturing

Applies to:

Businesses engaged in manufacturing a variety of chemical products including, but not limited to:

- Candles;
- Crayons;
- Dressings, see polish;
- Enamel, see paint;
- Glue;
- Ink, all types;
- Lacquer, see paint;
- Paint;
- Paint removers and thinners;
- Paste, see glue;
- Polish, also known as dressings include, but are not limited to:
 - Shoe polish;
 - Leather polish;
 - Furniture polish;
 - Automobile polish;
 - Metal polish.
- Putty;
- Shellac, see paint;
- Synthetic resin, see putty;
- Varnish.

Processes used include, but are not limited to:

- Candles - Wax is heated. Wicks are dipped in the wax either by hand or machine. Fragrances are added for scented candles. When the candles are dried, their wicks are cut and they are placed in molds to shape the base. Color may be added by hand or by machine. The candles are inspected, wrapped, packaged, and labeled.

- Crayons - Similar to candles, but crayons are molded instead of dipped.

- Dressings or polish - Ingredients and processes vary dependent upon the product. Process may be simple and involve only mixing, or process may be detailed and involve heating or cooking and forming into a mold or stick form.

- Paint, enamel, lacquer, shellac - Involves a series of mixing and grinding operations. Solid pigments are blended with liquid resins. Paint extender may be added. Paint is pumped into filling stations. Containers of paint are packaged, labeled and shipped.

- Glue or paste - Involves mixing and cooking the ingredients in steel tanks and pumping the product to a filling area where it is packaged, labeled and capped.

- Ink - Involves cooking of oils and resin. Pigments and dryers are blended into the resin, which is then diluted to the proper consistency.

- Putty or synthetic resin - Putty is a finely powdered chalk mixed with linseed oil. Putty and synthetic resins have the same ingredients. Both are made by grinding and mixing.

- Varnish - Similar to paint manufacturing process. Manufacturing varnish also includes a cooking process.

Ingredients used include, but are not limited to:

- Beeswax;
- Paraffin;
- Stearin;
- Wicks;

- Powder or granule Arabic gum;
- Modified starch received from others;
- Pigments or coloring;
- Oils;
- Other waxes;
- Resins;
- Detergents;
- Methanol;
- Solvents;
- Water;
- Ground chalk;
- Limestone;
- Calcite;
- Preservatives.

Equipment includes, but is not limited to:

- Weighing and measuring scales;
- Mixers;
- Stoves;
- Molding apparatus;
- Automatic filing, labeling, and packaging machines;
- Forklifts;
- Delivery trucks.

Exclusions:

- The production of raw materials used to manufacture listed products.
- Worker hours engaged in glue manufacturing from animal substances are reported separately in classification 4301.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3701-27 Hazardous/toxic material: Repackaging for disposal

Applies to:

Businesses engaged in identifying and repackaging hazardous/toxic materials for disposal.

Note: This class is distinguished from classification 4305-20, in that classification ((3701-21)) 3701-27 applies to the identifying and repackaging for disposal of such materials as drugs, pesticides, chemicals, and toners that contain toxic or hazardous materials, while classification 4305-20 includes the processing or handling of such materials as medical or septic tank waste, drug lab or hazardous spill cleanup, and reprocessing or handling of low-level radioactive materials.

Work activities include, but are not limited to:

- Visual inspection of materials.
- Sending sample of materials to lab for analysis.
- Identifying components of material.
- Labeling of containers, by appropriate groupings.
- Materials are put into drums with protective material to prevent breakage.
- Complete paperwork required by various governmental agencies.
- Transport of material to disposal site.
- Lab analysis - Businesses may have their own lab facilities or may send to outside lab.

Protective clothing and equipment includes:

- Respirators;

- Steel toed boots;
- Protective gloves;
- Safety glasses;
- Protective clothing.

Exclusions:

- Worker hours engaged in hazardous/toxic materials processing or handling, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup, reprocessing or handling of low-level radioactive materials must be reported separately in classification 4305-20.
- Worker hours engaged in the replacement of nontoxic toner in cartridges used in business machines are reported separately in classification 4107.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3802 Classification 3802.

~~**(3802-13 Handbag or pack: Manufacturing**~~

~~Applies to establishments engaged in the manufacture of a variety of bags on a mass production or quantity basis. Types of bags include, but are not limited to, handbags, backpacks, fanny packs, picnic bags, softside luggage, and other bags normally carried on the person, and such items as literature or document pockets used in airplanes or automobiles. The screen printing or embroidering of the manufacturers' own products is included in this classification when performed by employees of an employer having operations subject to this classification. Materials include, but are not limited to, natural or synthetic fabric, leather, webbing or strapping for handles, buttons, hooks, buckles, Velcro, and other sewing notions purchased from outside sources. Operations include cutting to size or pattern, hand or machine sewing, finishing, labeling, pressing. Tools and equipment include hand or power cutting tools, clicker die cutters, sewing machines that perform a variety of functions, eyelet punchers, and household irons.~~

~~This classification excludes establishments engaged in the manufacture of industrial bags from natural or synthetic cloth used to package commodities such as bulk flour, sugar, produce, fertilizer, building materials, which are to be reported separately in classification 3708; establishments engaged in the manufacture of paper bags which are to be reported separately in classification 6908; establishments engaged in the manufacture of plastic bags which are to be reported separately in classification 3510; and establishments engaged in the manufacture of hard-sided luggage or carrying cases which are to be reported separately in classification 3708.~~

~~**3802-28 Millinery: Manufacturing; Artificial feather or flower, N.O.C.: Manufacturing**~~

~~Applies to establishments engaged in the manufacture of hats made of felt, wool, or other textiles, fur, or leather received from outside sources. Other materials received from outside sources include woven hat bodies, braided straw,~~

sweatbands, linings, rims or brims, ribbons, artificial flowers, feathers, or other trimmings. For fabric hats, fabric is cut to standard hat sizes, sewn, steamed on molds or blocked in hydraulic presses, and trimmings attached. For straw hats, straw stripping is roughly sewn into crowns and brims and stitched to the woven straw body. Finishing operations involve sizing, hand blocking, iron and machine blocking in hydraulic presses, then hand sewing bands and trimming onto them. For felt hats, bodies are steamed, sized, shaped, ironed or press blocked under hydraulic presses; trims are usually sewn on by hand. This classification also applies to establishments engaged in the manufacture of artificial feathers or flowers whose operations are not covered by another classification. Crepe paper, fabric, covered paper stakes, glue, and wire are received from outside sources. Paper or fabric is cut, hand rolled and assembled with wire to form the product.

This classification excludes establishments engaged in the manufacture of hats knitted to form on knitting machines which are to be reported separately in classification 3802-42 and establishments engaged in the dressing of fur or the tanning of leather which are to be reported separately in classification 4301.

3802-29 Wig: Manufacturing

Applies to establishments engaged in the manufacture of wigs and hair pieces made from real hair or synthetic hair. Human hair is usually purchased from beauty shops. After being washed in hot disinfectant, hair is dried in ovens. The strands are bleached in peroxide or ammonia, then colored with dyes to desired shades. Strands are secured to webbed caps with sewing machines or woven into the cap and cemented by hand. The final steps include clipping, curling, and styling. Materials include human hair, synthetic hair, disinfectants, adhesives and webbing fabrics. Tools and equipment include, but are not limited to, scissors, combs, brushes, curling irons, washing, bleaching and dyeing vats, drying ovens, and sewing machines.

3802-34 Screen printing of cloth or garments

Applies to establishments that provide screen printing services to others on cloth items such as, but not limited to, shirts, jackets, caps, and aprons. Most screen printing establishments display a limited quantity of garments as samples from which customers can order to outfit a team, club, or other group. The screen print shop may order the garments from their suppliers, perform the screen printing, and sell the garments to their customers, or the customers may provide their own garments. However, the principal business operation is the *service of screen printing*. Screen printing of individual garments may be done by hand or with a machine. Screen printing businesses will create designs in their art department, or customers can furnish their own design. The process begins with the transfer of a design onto a framed silk screen. A light sensitive material is coated over the silk screen, then exposed to light. The screens are placed on a multipoint machine with a number of press boards onto which garments, such as shirts, jackets, hats, aprons are loaded at one time. One color of ink is squeezed over the screen and as the machine revolves, the color for that portion of the design is applied to each garment. When the first color of the design is applied, garments move on a conveyor through a dryer

oven to set the ink. This process is repeated with other colors until the complete design is reproduced on each garment. Screens are washed and cleaned so they can be reused. To screen print designs on lengths of cloth, the process is similar, but machinery for this type of application resembles commercial printing presses used in print shops. Materials include art supplies, colored ink, paint thinners, cleaning solvents. Tools and equipment include, but are not limited to, ink dispensers and squeegees, hand cutting tools, frames and screens, manual and automatic presses, dryer ovens with conveyors, drying racks, pressure spray washer units or sinks, and work tables.

Special notes: The screen printing of a manufacturer's product, when done as part of the manufacturing process by employees of the manufacturer, is included in the classification applicable to the product being produced.

Establishments in classification 6305 that are primarily engaged in the retail sale of clothing such as tee-shirts, athletic sweat suits, or hats, may custom screen print or apply iron-on transfers on individual garments sold. Individualized printing or application of transfers is an incidental part of the sales operation and is included in the store classification.

Wholesale distributors of clothing or cloth goods who perform *incidental* screen printing on a small portion of their own product are to be reported separately in classification 6407. Care must be taken when considering classification 6407 to ensure that the nature of the business is the wholesale operation, not a screen print service, and that screen printing is only incidental to the sales operation.

3802-37 Hand carved or inlaid rug: Manufacturing

Applies to establishments engaged in the manufacture of custom-designed inlaid or hand-carved rugs or carpets from carpeting purchased from outside sources. These are usually small businesses whose primary customers are interior designers or architects who want one-of-a-kind rugs to complement the design of a room. The designer pieces can be installed as wall-to-wall carpets or used as area rugs or wall hangings. Materials include, but are not limited to, pattern paper, netting, monk cloth, binding or fusing tape, fringed edging, carpet rolls, latex glue, and thread. Tools and equipment include small cutting tools such as hot knives, tracing wheels, rulers, glue guns, air spray guns, seamers for attaching the metallic tape, carpet carvers, and sewing machines. Carpet carvers resemble a household canister vacuum cleaner. A suction hose joins the carving blades to the canister so the fibers are vacuumed as they are cut.

Inlaid: First, a design is drawn onto pattern paper, then traced onto a piece of carpet with a tracing wheel. Powder rubbed across the paper goes through the perforations to form the design on the carpet. This step is repeated for each different colored piece in the design. The complete design is also cut out of the main carpet piece. The pattern pieces are cut out with a hot knife and placed into the main carpet backing piece which will become the finished rug. The pieces are glued to the backing with fusing tape or joined with metallic seaming tape. (Carpet designers refer to this as quilting.) Hand carving (clipping around the edges of the design with the carpet carver) adds dimension. Netting is attached with latex to the back side of the design to secure it. Monk cloth or similar fabric is applied as a backing.

Hand Carved: The pattern is transferred directly onto the main carpet piece and carved along the edges of the design to give it dimension.

This classification excludes establishments engaged in the manufacture of carpets or rugs by tufting or weaving which are to be reported separately in classification 3708 and establishments engaged in the installation of carpets which are to be reported separately in classification 0502.

3802-38 Embroidery services; lace: Manufacturing

Applies to establishments that provide embroidery services to others on cloth items such as, but not limited to, shirts, jackets, caps, aprons, and patches. Most embroidery establishments display a limited quantity of garments as samples from which customers can order to outfit a team, club, or other group. The embroidery shop may order the garments from their suppliers, perform the embroidery, and sell the garments to their customers, or the customers may provide their own garments. Their principal business operation, however, is the embroidery service. Paper templates, computer tapes, natural or synthetic thread, backing materials, fabrics for patches, are received from outside sources. Designs or logos are punched onto paper strips. The strips are fed through the embroidery machines which simultaneously stitch the design onto numerous garments or cloth items which have been positioned on the machine. In computerized machines, the design is programmed onto paper computer tapes which are placed in the embroidery machine instead of the paper strips. The rest of the operations are the same. To make patches, the design is embroidered numerous times on a length of fabric. Individual patches are cut out and the edges finished on a serger sewing machine. This classification also applies to establishments engaged in the manufacture of lace. Natural or synthetic threads are received in skeins from outside sources. The thread is wound upon spools and bobbins which are placed onto the shuttles of the looms. The designs in the lace are created by various harness and shuttle movements of the loom, controlled electronically or by perforated pattern cards. After removal from the loom, the lace is inspected, mended by hand or sewing machine if needed, washed, bleached, dried, trimmed, starched, and ironed.

Special notes: The embroidery of a manufacturer's own product, when done as part of the manufacturing process by employees of the manufacturer, is to be included in the classification applicable to the garment or product being made.

Establishments in classification 6305 who are primarily engaged in the retail sale of clothing such as tee shirts, athletic sweat suits, hats, may embroider designs or lettering on individual garments sold. Individualized embroidery is an incidental part of the sales operation and is included in the store classification.

Wholesale distributors of clothing or cloth goods who perform *incidental* embroidery on a small portion of their own product are to be reported separately in classification 6407. Care must be taken when considering classification 6407 to ensure that the nature of the business is the wholesale operation, not an embroidery service, and that embroidery is only incidental to the sales operation.

3802-39 Household furnishings: Manufacturing

Applies to establishments engaged in the manufacture of household furnishings such as, but not limited to, draperies, pillows and cushions, futons, sleeping bags or comforters. Businesses that make draperies may make other window treatments such as swags, valances, cornice boards, pull-down roller shades (window blinds) and other accessory items such as, but not limited to, throw pillows, and slip covers. If the window coverings are custom made, the shop usually includes a showroom displaying samples of drapery fabric, drapery rods, window coverings, accessories, floor coverings, wall paper or other household furnishings. These accessory items are not usually stocked, but are obtained from suppliers or manufacturers as customers order them. The sale of these items by establishments engaged in the manufacture of household furnishings is included in this classification. A separate store classification is not applicable in these situations. Draperies and curtains are cut to size, pleated, sewn, and finished by steaming or ironing. Vinyl pull-down shades or blinds are cut to size; one end is stapled to a wooden roller, then the shade is wound around the roller. The other end is creased and stitched to form a hem into which a wood slat is placed to give the blind a solid edge. Pulls, tassels, fringes, or other trims are attached. Sleeping bags, comforters, futons, and pillows are cut, sewn, and stuffed with padding materials purchased elsewhere. This classification also includes the manufacture of lamp shades. Plain or pleated fabric or laminated parchment and metal frames are purchased from outside sources. Material is cut to pattern, then attached to frames by gluing or sewing bindings around the frame and fabric. Materials include, but are not limited to, various fabrics, vinyl-coated cloth, transparent vinyl, parchment, linings, stuffings, trims, drapery hooks, rods, wooden rollers and slats, pulls or handles, hinges, wire frames for lamp shades, and sewing notions which are purchased from outside sources. Tools and machinery include scissors or other hand or power cutting tools, irons, sewing machines that perform a variety of functions such as straight stitching, hemming, serging, pleating, or tacking, drapery-folding devices, lighted surface to inspect cloth for flaws prior to cutting draperies, work tables for cutting or with a padded surface for ironing, pressing machines or irons. Drapery manufacturers may have a jig saw, saber saw or miter saw for the incidental cutting of cornice boards which is included in this classification.

This classification excludes establishments engaged in the manufacture of batting, wadding, or waste which are to be reported separately in classification 3708 and establishments engaged in the installation of draperies which are to be reported separately in classification 0607.

3802-40 Garments, slippers, accessories, miscellaneous soft goods, N.O.C.: Manufacturing

Applies to establishments engaged in the manufacture of garments, wet suits, accessories, slippers, and miscellaneous soft goods not covered by another classification (N.O.C.); including, but not limited to, tie downs or animal restraints made from fabric strapping, art and craft or novelty items, stuffed toys, award ribbons, medical supports, umbrellas, and parachutes on a mass production or quantity basis. The production involves cutting to size or pattern, sewing, gluing,

fabric welding, inserting stuffing materials, labeling, pressing, inspecting and packaging. Screen printing or embroidering of the manufacturer's own products, and finishing processes such as dyeing or bleaching is included in this classification when performed by employees of an employer having operations subject to this classification. Manufacture of these items often includes primarily hand work or hand work incidental to machine operations. Items are produced from all types of natural or synthetic cloth or fibers; some of the trims or patches may be leather or other pliable materials. Materials include, but are not limited to, natural fabrics, synthetic fabrics such as neoprene, fur, leather, strapping or webbing, yarn, sewing notions, glue, decorative trims, ribbons or patches, imitation eyes for toys, stuffing materials, buttons, buckles, hooks, or handles which are purchased from outside sources. Tools include household irons, scissors or cutting wheels, measuring tapes, tracing wheels, brushes, power cutting tools (some types have hot blades or wires to seal frayed edges of cut pieces), glue guns, staplers, and clamps. Machinery includes, but is not limited to, cutting tables, sewing machines that perform a variety of functions such as straight or zigzag stitching, pleating, tacking or serging, clicker die cutters, iron presses, packaging equipment and various tabletop or foot operated devices such as eyelet punchers, button covering machines, and hot-stamping foil presses.

This classification excludes establishments engaged in the manufacture of batting, wadding, or waste which are to be reported separately in classification 3708; establishments engaged in manufacturing operations using large factory machinery that performs functions such as, but not limited to, winding/rewinding, blowing, spinning, twisting, braiding, weaving, picking, tufting, quilting, shredding, or grinding, which are to be reported separately in classification 3708; and establishments engaged in the tanning of leather or dressing of fur which are to be reported separately in classification 4301.

3802-41 Gloves, N.O.C.: Manufacturing

Applies to establishments engaged in the manufacture of gloves not covered by another classification (N.O.C.) made of fabric or leather on a mass production or quantity basis. Fabric, leather, and sewing notions are purchased from outside sources. Manufacturers may quilt lining materials to the glove fabric on quilting machines. Glove pieces are cut from numerous layers of fabric or leather with a die cutter; printing of a logo or brand name may be applied to pieces prior to stitching. Seamstresses sew the pieces together inside out, adding cuffs or trims. After stitching, each finger is individually turned right side out on a turner which is a table-mounted device with a vertically moving rod. Gloves are then placed onto heated, hand-shaped molds for steaming and shaping.

This classification excludes establishments engaged in the manufacture of gloves knitted to form on knitting machines which are to be reported separately in classification 3802-42; establishments engaged in the manufacture of rubber gloves made by molding or mixing rubber which are to be reported separately in classification 3513; and establishments engaged in the tanning of leather which are to be reported separately in classification 4301.

3802-42 Knitted fabric or garments or hosiery: Manufacturing

Applies to establishments engaged in the fabrication of knitted cloth, the subsequent manufacture of garments from the knitted cloth, and the manufacture of gloves, mittens, and hats knitted to form on knitting machines on a mass production or quantity basis. Natural or synthetic yarn (also referred to as thread), buttons or other fasteners are received from outside sources. The knit cloth is produced on looms either mechanically or electronically controlled. Circular or flat knitting machines (some of which resemble sewing machines) are also used. The manufacturer of the knitted cloth may make wearing apparel from it, or may sell the knitted cloth to other manufacturers. Garments, such as sweaters, may be knitted to form, or pieces may be cut from the cloth and sewn together. Gloves or mittens are knitted to basic shapes on special machines. Tips of fingers are sewn closed, the glove is turned right side out, then shaped and steamed on electrically heated forms. This classification also applies to the manufacture of hosiery on a mass production or quantity basis. Skeins of natural or synthetic yarn, generally dyed, are received from outside sources. The yarn is unwound onto bobbins or cones, then placed in small circular automatic knitting machines which form the leg and heel. The leg/heel pieces are sewn into a continuous piece, then toes and tops added with looper machines. Hosiery is then washed, dried, shaped. This classification also applies to establishments that perform finishing operations on hosiery that is manufactured by others.

Special note: The looms and knitting machines used to make knitted cloth are generally smaller than the weaving and spinning machines used for the manufacture of woven textile fabrics which are formed into long, continuous lengths and sold in large bolts to cloth goods manufacturers.

3802-43 Leather goods, N.O.C.: Manufacture or repair

Applies to establishments engaged in the manufacture or repair of leather goods not covered by another classification (N.O.C.) including, but not limited to, belts, tack, holsters and other gun-carrying accessories, knife sheaths, sports balls, or belts. Products manufactured in this classification can usually be worn or carried on the person and are often made individually. Tanned leather or imitation leather, glue, buckles, hooks, snaps and other fasteners, are purchased from outside sources. Leather may be skived (split) to desired thickness. Items are cut out on small die cutters or by hand, and the edges sanded and smoothed. Depending on the item being made, the leather is bent into shape, glued or sewn either by machine or hand. Imitation leather or vinyl products are sometimes joined by heat sealing instead of gluing or sewing. Items may be dyed, which involves dipping in vats of dye for about 15 or 20 minutes, hanging until dry, then rubbing with rags. Guns are placed inside custom-made holsters and laid in a forming press to form the leather around the gun for a precise fit. Next, items are placed in dryers to dry and cure; then snaps, grommets or other finishing pieces are attached with hand tools. Tools and equipment include cutting blades, edge beveling tools, mallets, snap setters, and other hand tools, die cutters, sanders, sewing machines, forming presses, and small dryers. This classification also applies to establishments engaged in the manufacture and repair of

sports balls such as footballs, soccer balls, and basketballs. Leather or vinyl, lining material, bladders (deflated balloon shapes made of synthetic rubber material with valves inserted), twine, thread, foil ribbon, paint, spray cleaners are received from outside sources. Pieces are cut from leather or vinyl on die cutters, sewn together inside out forming a shell, then eyelets are inserted with eyelet punches. Logos or names may be stamped on with a hot foil stamping machine. The seams are pounded out with mallets to smooth them, then the shell is turned right side out on table-mounted turners. The shells are placed onto table-mounted, ball-shaped molds, the bladders inserted, and air blown into the bladders with air compressors, forming the balls. The balls are placed onto holders, laced and closed with twine. Further designs may be applied with paint; balls are cleaned with a spray cleaner before packaging.

This classification excludes the tanning of leather which is to be reported separately in classification 4301 and the manufacture of bladders by rubber mixing or molding which is to be reported separately in classification 3513.

3802-44 Shoe or boot: Manufacturing or repair

Applies to establishments engaged in the manufacture of boots or shoes from raw materials such as leather, imitation leather, lining materials, rubber heels and soles, padding, thread and string, eyelets, tacks, buckles, rubber cement, dyes, waxes and polishes purchased from outside sources. Shoe or boot manufacturers may purchase shoe parts already cut to pattern, or may cut out their own patterns either by hand or on small dies. There are only a few shoemakers in Washington, most of whom make custom, hand-crafted boots or shoes. Operations include measuring feet to make molds or patterns, sewing by hand or machine, gluing, attaching eyelets or studs, tacking the upper pieces to the soles and heels, smoothing edges with grinders, dyeing, waxing, buffing, brushing and cleaning. Tools and equipment include tack hammers, awls, lasts (foot forms), hand cutting and punching tools, sewing machines, shoe jacks, foot-operated eyelet punching presses, sole stitchers (to stitch soles onto upper pieces), belt sanders and brush finishers. This classification also applies to shoe repair shops which use the same type of materials, tools and equipment used to make shoes and boots. Most shoe repair shops sell shoe accessories such as laces, insoles, polishes, which are usually displayed at the front of the shop; the sale of those items is included within the scope of this classification. The shops usually employ only one or two persons and are often located in malls or strip malls.

This classification excludes the manufacture of molded rubber shoe parts such as heels, soles, which is to be reported separately in classification 3513; establishments engaged in tanning leather which are to be reported separately in classification 4301; and the manufacture of any other materials used in making shoes or boots which is to be reported separately as applicable.

3802-45 Rubber or pliable goods: Manufacturing by cutting or gluing

Applies to establishments engaged in the manufacture of rubber or pliable goods from premanufactured materials by hand cutting, die cutting, gluing, or heat bonding. Items manufactured in this classification include, but are not limited to,

gaskets, seals, bindings for skis, grips for pens or handle bars on bicycles or motorcycles. Raw materials which are light weight, flexible and generally do not exceed about 3/8" thickness or 1" in diameter, include, but are not limited to, neoprene (a man-made rubber), cork, or other compressed sheets made of materials such as felt, paper, foam, plastic, graphite, Teflon, strips of extruded rubber. Many of the products are made simply by die cutting flat materials into the desired shapes. Other products, such as O-rings, are made by cutting lengths of extruded rubber and joining the ends by gluing or heat bonding them together to form a circle. Grips for pens or handle bars can be made by cutting rubber tubing to length and grinding the ends for a smooth finish.

This classification excludes establishments engaged in the manufacture of rubber products by molding processes which are to be reported separately in classification 3513.

3802-46 Tent, tarp, awning or shade, boat cover or sail: Manufacturing

Applies to establishments engaged in the manufacture or repair of tents, awnings or outside window shades, boat or automobile tops and covers, sails, fruit picking bags, or similar items made from canvas, duck and synthetic water resistant fabrics. Other materials purchased from outside sources include grommets, hooks, tie rope, netting, binding, trimmings, strapping, pipe or tubing, and metal tops for fruit picking bags. Operations include cutting, sewing or fabric welding which joins pieces by heat sealing the edges, attaching grommets, and bending pipe or rods for frames. Tools and equipment include hand cutting or punching tools, powered material cutters, sewing machines, grommet punchers, pipe cutters and benders, and staplers.

This classification excludes establishments engaged in the welding of metal awning frames or supports and establishments engaged in the manufacture of metal awnings which are to be reported separately in the applicable metal goods classification; and the installation of any product manufactured in this classification which is to be reported separately in the classification applicable to the work being performed.)

3802-34 Embroidery or screen printing services on fabric products or garments; knitted fabric; knitted garments; or wigs: Manufacturing

Applies to:

• Businesses whose principle operation is the service of screen printing or embroidery for others on cloth items such as, but not limited to, shirts, jackets, caps, aprons and patches.

• Businesses manufacturing knitted cloth.

• Businesses manufacturing garments from cloth that the same business knitted.

• Businesses manufacturing knitted garments or accessories to form on knitting machines.

• Businesses manufacturing hosiery or performing finishing operations on hosiery that is manufactured by others.

• Businesses manufacturing wigs or hair pieces made from real or synthetic hair.

• Businesses manufacturing lace.

Businesses included in this subclassification perform work mainly by hand or by using machines other than sewing

machines including, but not limited to, knitting machines or screen printing equipment.

Note: The screen printing of a manufacturer's product, when done as part of the manufacturing process by employees of the manufacturer, is included in the classification applicable to the product being produced.

Products manufactured include, but are not limited

to:

- Embroidered garments;
- Garments made from cloth that were knitted under this subclassification;
- Knitted cloth;
- Knitted gloves, mittens, hosiery, or hats; and
- Screen printed garments.

Processes include, but are not limited to:

- Bleaching;
- Cutting and styling wigs;
- Disinfecting fibers;
- Dying;
- Embroidery;
- Ironing;
- Screen printing on cloth;
- Sewing; and
- Starching.

Material used include, but are not limited to:

- Cleaning solvents;
- Colored ink;
- Disinfectants;
- Fasteners;
- Glues;
- Natural or synthetic hair;
- Natural or synthetic yarn or thread;
- Paint thinners;
- Paper templates; and
- Webbing fabric.

Tool and machinery used include, but are not limited

to:

- Circular or flat knitting machines or looms;
- Combs and brushes;
- Curling irons;
- Cutting tools;
- Dryer ovens;
- Drying racks;
- Embroidery machines;
- Framed screens;
- Ink dispensers;
- Lace looms;
- Manual or automatic presses;
- Pressure spray washer units;
- Screen printing machines, single or multiport;
- Sewing machines; and
- Squeegees.

Note: The looms and knitting machines used to make knitted cloth are generally smaller than the weaving and spinning machines used for manufacturing woven textile fabrics, which are formed into long, continuous lengths and sold in large bolts to cloth good manufacturers. Businesses manufacturing woven textile fabrics sold in bolts are classified in 3708.

Exclusions:

• Manufacturing woven textile fabrics is classified in 3708.

• Retail clothing sales with incidental custom screen printing, embroidery, or application of iron-on transfers is classified in 6305.

• Wholesale clothing or cloth goods distribution with incidental screen printing or embroidery on a small portion of their own product is classified in 6407. Care must be taken when considering classification 6407 to ensure that the nature of the business is the wholesale operation, not a screen print service, and that screen printing is only incidental to the sales operation.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3802-40 Miscellaneous soft goods manufacturing: Hand or machine sewing N.O.C.

Applies to:

• Businesses manufacturing soft goods not covered by another classification (N.O.C.).

Businesses included in this subclassification perform significant sewing by hand or by sewing machine.

Screen printing or embroidering of the manufacturer's own products and finishing processes such as dying or bleaching are included in this subclassification when performed by employees of an employer having operations subject to this subclassification.

Products manufactured include, but are not limited

to:

- Art, craft, or novelty items;
- Awnings;
- Backpacks or other bags normally carried on the person;
- Boat tops or covers;
- Comforters;
- Draperies - Including window treatments such as: Swags, valances, cornice boards, pull-down roller shades or blinds;
- Fashion accessories;
- Fruit picking bags;
- Futons;
- Garments;
- Gloves;
- Handbags;
- Leather goods such as belts, tack, holsters or sports balls;
- Outdoor window shades;
- Parachutes;
- Pillows;
- Sails;
- Sleeping bags;
- Slippers;
- Soft luggage;
- Stuffed toys;
- Tarps;
- Tents;
- Tie downs or animal restraints made from fabric strap-

ping; and

- Wet suits.

Note: Businesses that manufacture window coverings sometimes have showrooms displaying samples of drapery fabric, drapery rods, window coverings, accessories, floor coverings, wallpaper or other household furnishings. These accessory items are not usually stocked, but are obtained from suppliers or manufacturers when customers order them. The sale of these items by businesses engaged in the manufacture of household furnishings is included in this subclassification. A separate store classification is not applicable unless the conditions of the general reporting rules covering the operation of multiple enterprises have been met.

Processes include, but are not limited to:

- Bending pipe or tubing for frames;
- Cutting materials to size or pattern;
- Fabric welding;
- Gluing;
- Inserting stuffing materials;
- Inspecting;
- Labeling;
- Leather skiving;
- Packaging;
- Pressing;
- Sewing; and
- Steaming.

Materials used include, but are not limited to:

- Bladders for sports balls;
- Canvas;
- Decorative trims;
- Drapery hooks;
- Fabrics;
- Fur;
- Glue;
- Imitation eyes for toys;
- Leather or imitation leather;
- Natural fabrics;
- Pipe or tubing;
- Rods;
- Sewing notions;
- Strapping or webbing;
- Stuffing materials;
- Thread;
- Velcro;
- Vinyl;
- Vinyl-coated cloth;
- Wooden rollers for shades; and
- Yarn.

Tool and machinery used include, but are not limited

to:

- Cutting tables;
- Die cutters;
- Drapery folding devices;
- Jig saws, saber saws, or miter saws;
- Dryers;
- Forming presses;
- Glue guns;
- Hot blades or wires for cutting or sealing frayed edges of cut pieces;
- Household irons;

- Iron presses;

- Lighted surfaces to inspect cloth for flaws;
- Mallets;
- Measuring tools;
- Molds;
- Packaging equipment;
- Pipe cutters and benders;
- Quilting machines;
- Scissors or cutting wheels;
- Sergers or overlocking machines;
- Sewing machines;
- Sewing needles;
- Snap setters;
- Staplers;
- Table-top or foot operated devices such as eyelet punchers, or hot-stamping foil presses; and
- Tracing wheels.

Exclusions:

- Worker hours engaged in tanning leather or dressing of fur are reported separately in classification 4301.
- Worker hours engaged in manufacturing metal awnings or welding of metal awning frames or supports are reported separately in the applicable metal goods classifications.
- Worker hours engaged in the installation of draperies are reported separately in classification 0607.
- Worker hours engaged in the installation of any product manufactured in this classification are reported separately in the classification applicable to the work being performed.
- Screen printing or embroidery for others on cloth items manufactured by others is classified in 3802-34.
- Manufacturing gloves knitted to form on knitting machines is classified in 3802-34.
- Manufacturing mattresses is classified in 3708.
- Manufacturing garments from cloth that was first knitted by the same business is classified in 3802-34.
- Manufacturing rubber gloves made by molding or mixing rubber is classified in 3513.
- Manufacturing bladders for sports balls by rubber mixing or molding is classified in 3513.
- Manufacturing of batting, wadding, or waste is classified in 3708.
- Manufacturing operations using large factory machinery that performs functions such as, but not limited to, winding/rewinding, blowing, spinning, twisting, braiding, weaving, picking, tufting, quilting, shredding, or grinding, are classified in 3708.
- Manufacturing industrial bags used to package commodities such as bulk flour, sugar, produce, fertilizer, or building materials is classified in 3708.
- Custom dressmaking, tailoring, or clothing alteration services are classified in 6305.
- Manufacturing paper bags is classified in 6908.
- Manufacturing plastic bags is classified in 3510.
- Manufacturing hard sided luggage or carrying cases is classified in 3708.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

3802-44 Shoe, boot, hat, artificial feather, artificial flower, hand-carved rug or inlaid rug: Manufacturing; Rubber or pliable goods manufacturing by cutting or gluing, N.O.C.

Applies to:

• Businesses manufacturing rubber or pliable goods from premanufactured materials by hand cutting, die cutting, gluing or heat bonding, not covered by another classification (N.O.C.).

- Businesses manufacturing or repairing shoes or boots.
- Businesses manufacturing hats (millinery).
- Businesses manufacturing artificial feathers or flowers whose operations are not covered by another classification.
- Businesses manufacturing custom-designed inlaid or hand-carved rugs from carpeting purchased from outside sources.

Businesses included in this subclassification perform significant hand or machine cutting or gluing.

Products manufactured include, but are not limited to:

- Artificial feathers;
- Artificial flowers;
- Bindings for skis;
- Boots;
- Custom hand-carved rugs or carpets;
- Custom inlaid rugs or carpets;
- Gaskets;
- Grips for pens;
- Grips for handle bars;
- Hats; and
- Shoes.

Note: Most shoe repair shops sell shoe accessories such as laces, insoles, and polishes. The sale of these types of items is included in this classification.

Processes include, but are not limited to:

- Attaching eyelets or studs;
- Blocking hats;
- Cutting to shape or length;
- Die cutting;
- Dying;
- Gluing;
- Grinding;
- Heat bonding;
- Making molds and patterns;
- Sewing;
- Smoothing;
- Steaming; and
- Waxing.

Material used include, but are not limited to:

- Artificial flowers, feathers, or other trimmings;
- Binding or fusing tape;
- Braided straw;
- Buckles;
- Carpet rolls;
- Cork;
- Crepe paper;
- Edging;
- Eyelets;

- Felt;
- Foam;
- Fur;
- Glue;
- Graphite;
- Hat rims or brims;
- Leather or imitation leather;
- Lightweight, flexible rubber;
- Lining materials;
- Monk cloth;
- Neoprene;
- Netting;
- Paper;
- Paper covered stakes;
- Plastic;
- Ribbons;
- Rubber cement;
- Rubber heels and soles;
- Strips of extruded rubber;
- Teflon;
- Wire;
- Wool; and
- Woven hat bodies.

Tool and machinery used include, but are not limited to:

- Awls;
- Belt sanders;
- Brush finishers;
- Carpet carvers;
- Eyelet punching presses;
- Glue guns;
- Hand cutting and punching tools;
- Hot knives;
- Hydraulic presses for machine blocking hats;
- Lasts (foot forms);
- Sewing machines;
- Shoe jacks;
- Sole stitchers (to stitch soles onto upper pieces); and
- Tack hammers.

Exclusions:

- Worker hours engaged in manufacturing molded rubber shoe parts such as heels or soles are reported separately in classification 3513.
- Worker hours engaged in tanning leather or dressing of fur are reported separately in classification 4301.
- Worker hours engaged in manufacturing other components, such as eyelets, used in making shoes or boots are reported separately in the applicable classification.
- Worker hours engaged in the installation of carpet are reported separately in classification 0502.
- Manufacturing hats knitted to form is classified in 3802-34.
- Manufacturing rugs or carpets by tufting or weaving is classified in 3708.
- Manufacturing rubber products by using a molding process is classified in 3513.

Note: For rules on assigning and reporting in more than one basic classification, see WAC 296-17-31017 Multiple classifications.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

WAC 296-17A-3906 Classification 3906.

~~(3906-00 Bakeries, N.O.C.~~

~~Applies to establishments engaged in the manufacture of baked goods not covered by another classification (N.O.C.) such as, but not limited to, bread, rolls, tarts, pies, cakes, cookies, bread stuffing and bread crumbs, for sale to supermarkets, restaurants, distributors, and other wholesale customers. Processes for making baked goods vary somewhat, but most are similar to that of baking bread. To make bread, ingredients such as, but not limited to, flour, water, salt, leavening, eggs, milk, sugar, shortening, and preservatives are mixed by machine or by hand and formed into dough. The dough is fed into a hopper which further kneads it and shapes it into a ball. Molders shape the dough balls into cylinders that are ready to be placed in pans. Automatic loaders move the pans through tunnel ovens. After baking, products are mechanically sliced and wrapped, then shipped to customers as quickly as possible due to the relatively short shelf life of baked goods. Machinery includes, but is not limited to, dough troughs, cake depositors, filler and icing machines, conveyors, deep fryers, bun machines, molders, ovens, mixers, flour dust collectors, and racks.~~

~~This classification excludes retail bakeries which are to be reported separately in classification 3901; route delivery drivers who are not employees of the bakery who are to be reported separately in classification 1101; and establishments engaged in the manufacture of other foods which are to be reported separately as applicable.~~

3906-01 Cracker: Manufacturing N.O.C.

Applies to establishments engaged in the manufacture of crackers, and other "dry" bakery products not covered by another classification (N.O.C.) such as, but not limited to, biscuits, wafers, and pretzels for sale to supermarkets, restaurants, distributors and other wholesale customers. Depending on the specific product being made, ingredients such as, but not limited to, flour, sugar, water, salt, soda, yeast, flavorings, and additives are mixed together and formed into dough. The dough is fed through a hopper into a roller, then shaped into product and baked in ovens. Machinery includes, but is not limited to, mixers, ovens, conveyors, packaging and package handling equipment.

This classification excludes retail bakeries which are to be reported separately in classification 3901 and route delivery drivers who are not employees of the dry bakery goods manufacturer who are to be reported separately in classification 1101.

3906-02 Potato chip: Manufacturing N.O.C.

Applies to establishments engaged in the manufacture of potato chips and similar snack foods not covered by another classification (N.O.C.) such as, but not limited to, fried corn or cheese chips for sale to wholesale customers. To make potato chips, potatoes are washed, sliced, salted, and fried in cooking vats. Automatic rakes stir the potato slices to ensure uniform cooking. As chips emerge from the vats onto conveyors, they are inspected for color and quality. Burned, discolored, or broken chips are discarded; the rest are packaged

for sale. Other types of fried chips are made by mixing dry ingredients which are then deep fried, inspected and packaged. Machinery includes, but is not limited to, slicing equipment, mixers, deep fryers or cooking vats, pan greasers, ovens, conveyors, packaging and package handling equipment. This classification includes delivery of the product when done by employees of an employer subject to this classification.

This classification excludes route drivers who are not employees of the chip manufacturer who are to be reported separately in classification 1101.

3906-03 Ravioli and tamale: Manufacturing

Applies to establishments engaged in the manufacture of ravioli, tamales, tortellini or similar frozen or ready-to-cook foods, for sale to wholesale customers. Ingredients include, but are not limited to, cornmeal, flour, ground meats, cheeses, seasonings, tomatoes or tomato paste, sauces, and corn husks. Depending on the specific product being made, ingredients are mixed together, placed in shells, pasta or corn husks, or otherwise prepared, cooked, inspected, wrapped, packaged and, in some cases, frozen. Machinery includes, but is not limited to, mixing or blending machines, deep fryers or cooking vats, ovens, conveyors, packaging and package handling equipment, and freezers.

This classification excludes route drivers who are not employees of the food product manufacturer who are to be reported separately in classification 1101.

3906-04 Pasta: Manufacturing

Applies to establishments engaged in the manufacture of pasta products such as, but not limited to, macaroni, spaghetti, or noodles for sale to supermarkets, restaurants, distributors and other wholesale customers. Ingredients such as, but not limited to, flour, sugar, salt, seasonings, preservatives, oils, and water are mixed in mixing machines to form the dough. The dough is further mixed and kneaded, pressed through rollers to regulate thickness, cut with machinery or by hand to desired size and shape, then wrapped in cellophane or packaged in cartons. Machinery includes, but is not limited to, dough mixers, dough kneaders, rollers, cutting and slitting machines, hydraulic presses, ovens, conveyors, and packaging and package handling equipment.

This classification excludes route drivers who are not employees of the manufacturer who are to be reported separately in classification 1101.

3906-05 Confectionery, chewing gum or cough drop: Manufacturing

Applies to establishments engaged in the manufacture of confectionery products, chewing gum or cough drops for sale to wholesale customers. Confections include, but are not limited to, candies such as creams, caramels, mints, hard candies, gum drops, glazed fruits, nut brittle, a wide variety of chocolate candy, and molded sugar cake decorations, such as, but not limited to, rosettes, candle holders, and colorful edible images used to decorate cakes or cookies. This classification includes both cooked and uncooked confection products. Because of the variety of candies and confections included in this classification, preparation and finishing processes which individualize the product may vary widely. Ingredients include, but are not limited to, sugar, flour, starch, nuts, milk,

water, flavorings, cocoa, and coloring. Depending on specific product being made, ingredients are weighed, mixed or beat. Further processing may include heating, pressure cooking, baking, or forming uncooked mixtures (referred to as "paste" or frosting) into products by twirling, pressing, molding, or otherwise shaping. Confection products may be individually wrapped or packed in boxes, cans, trays, or other containers. Machinery includes, but is not limited to, ranges, burners, various sized kettles, pots, pressure cookers, trays, mixing, cutting, or filling machines, hoppers, conveyors, die cutters, presses, coolers, and packaging and package handling equipment. The manufacture of chewing gum and cough drops is similar although ingredients vary somewhat.

This classification excludes route drivers who are not employees of the confection manufacturer who are to be reported separately in classification 1101; candy store operations with on-premise manufacturing which are to be reported separately in classification 3905-13; and candy store operations with no manufacturing which are to be reported separately in classification 6406.

3906-07 Pizza: Manufacturing, N.O.C.

Applies to establishments engaged in the manufacture of frozen or ready-to-bake pizza not covered by another classification (N.O.C.) for sale to wholesale customers. Dough is mixed and rolled out to form the crust; sauce and a variety of toppings such as meats, cheese, vegetables are arranged on top of the crust. Pizzas are wrapped in plastic wrap, packaged, and stored in freezers prior to delivery. Machinery includes, but is not limited to, mixers, rolling devices, ovens, conveyors, packaging and package handling equipment, and freezers.

This classification excludes route drivers who are not employees of the pizza manufacturer who are to be reported separately in classification 1101; pizza parlors which are to be reported separately in classification 3905; and U-bake pizza stores which are to be reported separately in classification (6403-)

3906-00 Bakeries, cracker, potato chip, ravioli/tamale, pasta, and pizza: Manufacturing N.O.C.

Applies to:

Businesses engaged in manufacture of baked goods, pastas, tamales, pizza, dry bakery products, and variety of snack foods. These businesses primarily sell to wholesale customers like supermarkets, restaurants, and distributors.

Products manufactured include, but are not limited

to:

- Biscuits;
- Breads;
- Bread stuffing/bread crumbs;
- Cakes/cookies;
- Crackers;
- Pasta products (macaroni, spaghetti, or noodles);
- Pies;
- Pizza (frozen or ready to bake);
- Potato chips/snack foods;
- Pretzels;
- Ravioli, tamales, tortellini or similar frozen or ready to cook foods;
- Tarts;

- Wafers.

Ingredients include, but are not limited to:

- Eggs;
- Flour/cornmeal;
- Ground meats/cheeses/vegetables/sauces;
- Milk;
- Potatoes;
- Preservatives/flavorings;
- Salt;
- Shortening;
- Soda/yeast;
- Sugar;
- Water.

Work activities include, but are not limited to:

- Mixing ingredients by machine or hand and forming into dough;
- Feeding dough into hoppers, which kneads and shapes product;
- Placing mixed ingredients into shells, pasta or corn husks;
- Rolling dough to form products;
- Adding sauce and variety of toppings such as meats, cheeses and vegetables;
- Cooking, inspecting, wrapping and packaging product;
- Mechanically slicing and wrapping product;
- Slicing and frying potatoes or similar snacks in cooking vats;
- Shipping product.

Machinery and equipment used include, but are not limited to:

- Bun machines;
- Cake depositors;
- Conveyors;
- Cutting and slicing equipment;
- Deep fryers;
- Dough troughs;
- Filling and icing machines;
- Hydraulic presses;
- Mixers/blending/rolling machines;
- Mold machines;
- Ovens;
- Packaging and handling equipment.

Exclusions:

- Retail bakeries are classified in 3901;
- Pizza parlors are classified in 3905;
- U-Bake pizza stores are classified in 6403;
- Route delivery drivers who are not employees of the food product manufacturer are classified in 1101;
- Businesses engaged in the manufacture of other foods are classified separately in the applicable classification.

3906-05 Confectionery, chewing gum or cough drop: Manufacturing

Applies to:

Businesses engaged in the manufacture of confectionery products, chewing gum or cough drops.

Products manufactured include, but are not limited**to:**

- Candies:
- Caramels:
- Chocolate candies:
- Creams:
- Glazed fruits:
- Gum drops:
- Hard candies:
- Nut brittle:
- Chewing gum:
- Cough drops:
- Molded sugar cake decorations:
- Candle holders:
- Edible images used to decorate cakes or cookies:
- Rosettes:

Ingredients include, but are not limited to:

- Cocoa:
- Coloring:
- Flavorings:
- Flour:
- Milk:
- Nuts:
- Starch:
- Sugar:
- Water:

Work activities include, but are not limited to:

- Weighing, mixing and beating ingredients:
- Heating, pressure cooking, baking, and forming uncooked mixtures into products by twirling, pressing, molding, or shaping:
- Wrapping and packaging product.

Machinery and equipment used include, but are not limited to:

- Burners/ranges:
- Coolers:
- Conveyors:
- Die cutters:
- Filling/cutting/mixing machines:
- Hoppers:
- Kettle/pots:
- Packaging and package-handling equipment:
- Presses:
- Pressure cookers.

Exclusions:

- Candy store operations with on-premise retail manufacturing are classified in 3905:
- Candy store operations with no manufacturing are classified in 6406:
- Route delivery drivers who are not employees of the confection manufacturer are classified in 1101.

AMENDATORY SECTION (Amending WSR 19-11-109, filed 5/21/19, effective 7/1/19)

WAC 296-17A-4903 Classification 4903.**4903-06 Marine appraising****Applies to ((establishments engaged in)):**

Businesses providing marine appraisal and inspection services to prospective buyers or to insurance companies for determining the value of a piece of property or for evaluating damage.

Types of property appraised includes, but ((is) are not limited to((, boats, yachts, marinas, wharves, and dry-docks. This service may be provided to a prospective buyer or to insurance companies for determining the value of a piece of property or for evaluating damage.

This classification excludes):

- Boats:
- Dry-docks:
- Marinas:
- Wharves; and
- Yachts.

Exclusions:

• Maritime appraisers ((who provide) providing their service exclusively to insurance companies ((who) are ((to be reported separately)) classified in ((classification)) 4903-09((; and)).

• Nonmaritime building appraisers ((who) are ((to be reported separately)) classified in the classification applicable to the employer's business.

Note: This subclassification to be assigned only after consulting the maritime underwriter.

4903-07 Boiler inspecting, N.O.C.**Applies to ((establishments engaged in)):**

Businesses providing boiler inspection services not covered by another classification (N.O.C.). Inspections will generally be conducted at the request of a manufacturer or an insurance company. These ((establishments)) businesses inspect equipment such as, but not limited to:

• Boilers and other pressurized vessels, ((including)) such as air tanks and liquefied gas tanks((, in addition to boilers. The inspections involve determining)).

Inspections determine if a vessel conforms to safety standards in regard to ((their)):

- Design((;)):
- Fabrication((;)):
- Installation((;)):
- Operation; and
- Repair ((and operation. The inspections may take place

at a manufacturer's plant or where the vessel has been installed. These inspections will generally be conducted at the request of a manufacturer or an insurance company)).

Note: Inspections may take place at a manufacturer's plant or where the vessel is installed.

Work activities ((of the inspectors)) include, but are not limited to((;)):

- Calculating allowable limits of pressure:
- Inspecting the safety devices and welding((;)):
- Investigating accidents involving pressurized vessels:
- Performing tests to verify the condition((, calculating allowable limits of pressure,)): and

• Recommending changes to correct unsafe conditions and investigating accidents involving pressurized vessels. This classification excludes).

Exclusions:

• Boiler inspectors employed by a state agency or municipality (who) are (to be reported separately) classified in the (appropriate) applicable state agency or municipality classification(§).

• Boiler manufacturing, repair or installation (which) is (to be reported separately) classified in the (appropriate) applicable manufacturing, repair or installation classification(§).

• Inspectors of (the) a manufacturing company (who) are (to be reported separately) classified in the classification applicable to the employer's business(§ and establishments who provide).

• Businesses providing inspections exclusively for insurance companies (who) are (to be reported separately in classification) classified in 4903-09.

4903-08 Elevator inspecting

Applies to (establishments engaged in):

Businesses providing elevator inspection services. (Types of) Inspections are usually conducted at the request of a manufacturer or an insurance company. Inspections determine if the device conforms to safety standards in connection with:

- Design;
- Fabrication;
- Installation;
- Operation; and
- Repair.

Note: The inspections may take place at the manufacturing plant or where the conveyance device is installed.

Devices inspected include, but are not limited to(§):

- Amusement rides;
- Elevators(§);
- Escalators(§);
- Moving sidewalks; and
- Ski lifts(, amusement rides and moving sidewalks).

(The inspections involve determining if the device conforms to safety standards in connection with their design, fabrication, installation, repair and operation. The inspections may take place at the manufacturing plant or where the conveyance device has been installed. These inspections are usually conducted at the request of a manufacturer or an insurance company.)

Work activities (of the inspectors) include, but are not limited to(§):

- Computing allowable load;
- Conducting time tests for speed;
- Inspecting the cables and guide rails;
- Inspecting the mechanical and electrical features;
- Investigating accidents involving conveyance devices;
- Reviewing the design(, inspecting the mechanical and electrical features, inspecting the cables and guide rails, conducting time tests for speed, computing allowable load.);

• Observing running and drop tests to determine if brakes and safety devices are working properly(§); and

• Recommending changes to correct unsafe conditions and investigating accidents involving conveyance devices. This classification excludes).

Exclusions:

• Elevator inspectors employed by a state agency or municipality (who) are (to be reported separately) classified in the (appropriate) applicable state agency or municipality classification(§).

• Repair or service to the elevator or conveyance device which is (to be reported separately) classified in the (appropriate) applicable repair classification assigned to the type of conveyance device(§).

• Inspectors employed by the manufacturer (who) are (to be reported) classified in the (appropriate) applicable manufacturing classification(§ and establishments who provide).

• Businesses providing inspections exclusively for insurance companies (who) are (to be reported separately) classified in (classification) 4903-09.

4903-09 Inspection for insurance or valuation

Applies to (establishments engaged in):

Businesses providing inspection and valuation services exclusively for insurance companies. These (establishments) businesses inspect damaged goods or property for loss valuation or to determine the value of an article or property the insurance company is underwriting.

(The) **Property inspected includes, but is not limited to(§):**

- Manufactured goods;
- Personal property(§); and
- Real estate(, and manufactured goods. This classification excludes).

Exclusions:

• Inspectors employed by a state agency or municipality (who) are (to be reported separately) classified in the (appropriate) applicable state agency or municipality classification (and).

• Boiler, elevator, or building inspectors or maritime appraisers who do not provide service to insurance companies exclusively (who) are (to be reported separately) classified in (classifications) 4903-07, 4903-08, 4903-10 or 4903-06 as applicable (and employees of).

• Inspectors employed by insurance companies (who) are (to be reported separately) classified in the applicable insurance company classifications (and).

• Independent appraisal businesses not working exclusively for insurance companies (which) are (to be reported) classified in (classification) 6303.

4903-10 Inspection of buildings

Applies to (establishments engaged in):

Businesses providing building inspection services. (These establishments inspect all types of) Inspections may be provided for, but not limited to:

- Contractors to assist in interpreting legal requirements and recommending procedures for compliance;

- Insurance companies in assessing damages; and
- Prospective buyers to determine the condition of the building.

Buildings ((including)) inspected include, but are not limited to:

- Commercial;
- Multifamily;
- New or existing residential((, commercial,));
- Industrial((, multifamily, and)); and
- Temporary structures. ((The inspections may be provided for prospective buyers to determine the condition of the building, for contractors to assist in interpreting legal requirements and recommending procedures for compliance, or for insurance companies in assessing damages.))

Work activities ((of the inspectors)) include, but are not limited to, inspecting all components of a building for ((structural soundness,);

- Compliance with grading, zoning, and safety laws;
- Dry rot((:));
- Energy efficiency;
- Pest problems((, energy efficiency, and compliance with grading, zoning and safety laws. This classification excludes)); and
- Structural soundness.

Exclusions:

- Building inspectors employed by a state agency or municipality ((who)) are ((to be reported separately)) classified in the ((appropriate)) applicable state agency or municipality classification ((and establishments who provide)).
- Businesses providing inspections exclusively for insurance companies ((who)) are ((to be reported separately)) classified in ((classification)) 4903-09.

**WSR 21-22-092
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS**

[Filed November 2, 2021, 8:47 a.m., effective December 3, 2021]

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

Purpose: Review and revision of existing rules were initiated because of the 2019 legislation making the board of registration for professional engineers and land surveyors an independent state agency, which lead to an overall review and update to Title 196 WAC. Updates to chapter 196-09 WAC, Board practices and procedures, include amendments to current language, such as adjudicative proceedings and board member limitations. New language for various agency processes such as definitions, complaint processing approach, right to administrative review, public records, and change of address were added to the current language.

Citation of Rules Affected by this Order: New WAC 196-09-012, 196-09-015, 196-09-018, 196-09-150 and 196-09-160; and amending 196-09-010, 196-09-020, 196-09-050, 196-09-055, 196-09-060, 196-09-100, 196-09-110, 196-09-130, 196-09-131, and 196-09-135.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 21-16-027 on July 26, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 10, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 5, Amended 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 10, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 10, Repealed 0.

Date Adopted: October 21, 2021.

Ken Fuller
Director

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-09-010 Declaration of purpose. This chapter contains rules and administrative procedures for regular and special meetings, adjudicative proceedings ((held by)) hearings and reviews, public records and other activities of the board, board members and board staff in executing ((its)) their responsibilities under chapters 18.43 and 18.210 RCW.

NEW SECTION

WAC 196-09-012 Definitions. The following definitions shall apply to this chapter:

(1) "Adjudicative proceedings" are processes of administrative review provided by the board and may be either a formal hearing before the full board including witness testimony or a simplified review by a single presiding officer without witness testimony.

(2) "Administrative review" means an objective review of an initial enforcement or licensing decision made by board staff, to which any person adversely affected by such a decision is entitled by law.

(3) "Board administrative staff" or "board staff" means staff who perform the day-to-day operations and administration for the board and who may make preliminary decisions on licensing and enforcement matters.

(4) "Case manager" means a board member who provides expertise and works with board staff on a specific licensing or enforcement matter and who will not participate in a judicial capacity on that matter.

(5) "Presiding officer" means a member of the board who may preside over a full board hearing, conduct prehearing conferences, or perform a brief adjudicative proceeding.

(6) "Respondent" means the person who has been named in a complaint and may request an administrative review of a board staff decision as described herein.

NEW SECTION**WAC 196-09-015 Complaint processing approach.**

The board processes complaints as follows:

(1) Anyone may submit a complaint against a licensed or unlicensed person alleging unprofessional conduct, unlicensed practice, or any other violations of chapter 18.43 or 18.210 RCW. Complaints must be sworn to in writing and should include documentation of the alleged conduct.

(2) Upon receipt of the complaint, board staff will send an acknowledgment of the complaint to the complainant. If the subject of the complaint ("respondent") is a licensee, the board will notify the licensee respondent that a complaint was filed against them and include a copy of the complaint documents.

(3) Board staff will conduct an initial review of the complaint to determine whether the complaint raises a potential violation that would fall within the jurisdiction and purview of a potential board action.

(a) If board staff determines there are no violations, the complaint is administratively closed, and the parties are notified.

(b) If board staff determines there is a potential violation, a formal investigation is opened, and an investigator and case manager are assigned. The respondent is notified, and a response to the allegations is requested.

(4) The case manager will evaluate all documentation or comments received (the investigation file), may ask questions, or call for further investigation. When the case manager completes their review of the documentation, they will draft a written report, which will result in either case closure, remedial counseling, expedited resolution, or issuance of statement of charges.

(5) The board may resolve a complaint or investigation at any time during this process.

NEW SECTION**WAC 196-09-018 Right to administrative review.**

When the board makes an enforcement or licensing decision that negatively affects a licensee, applicant, or unlicensed practitioner under chapters 18.43 and 18.210 RCW, that person is entitled to request administrative review of the decision pursuant to the Administrative Procedure Act, chapters 34.05 RCW and 10-08 WAC.

AMENDATORY SECTION (Amending WSR 98-12-045, filed 5/29/98, effective 7/1/98)

WAC 196-09-020 Adjudicative proceedings. The Administrative Procedure Act, chapters 34.05 RCW and 10-08 WAC apply to all adjudicative proceedings under the jurisdiction of the board. ((The procedures described in Washington superior court civil rules 26 through 32, 34, 36 and 37 also apply.))

Administrative review is performed by one of the following types of adjudicative proceedings:

(1) A formal adjudicative hearing before the entire board with the presentation of witness testimony and/or documentary evidence; or

(2) A brief adjudicative proceeding (BAP) before a single presiding officer, which may be used for the review of simple matters where no witness testimony is needed.

(3) An emergency adjudicative proceeding under RCW 34.05.479, which may be used when there is an immediate danger to the public health, safety, or welfare requiring immediate board action.

AMENDATORY SECTION (Amending WSR 18-21-028, filed 10/5/18, effective 11/5/18)

WAC 196-09-050 Brief adjudicative proceedings. (1) The board ~~((will))~~ may conduct brief adjudicative proceedings as provided ~~((for))~~ in RCW 34.05.482 through 34.05.494 of the Administrative Procedure Act. ~~((Brief adjudicative proceedings may be used whenever a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleges violations of chapters 18.43, 18.210, and 18.235 RCW, administrative rules in Title 196 WAC or any statutes or rules that specifically govern the defined practices of engineering, land surveying and on-site wastewater treatment system designs. Brief adjudicative proceedings may also be used in place of formal adjudicative hearings whenever the board issues a statement of charges, notice of intent to issue a cease and desist order, or temporary cease and desist order alleging that an applicant or licensee's conduct, act(s), or condition(s) constitute unlicensed practice or unprofessional conduct as that term is defined under chapter 18.235 RCW, the Uniform Regulation of Business and Professions Act.))~~

(2) Brief adjudicative proceedings may only be ~~((used to determine))~~ allowed when a respondent challenges the following ~~((issues, including, but not limited to))~~ categories of board decisions:

(a) ~~((Whether an applicant has satisfied terms for reinstatement of a license after a period of license restriction, suspension, or revocation;))~~ A denial of application for licensure, including renewal, reinstatement, or denial of eligibility to take examinations;

(b) ~~((Whether an applicant is eligible to sit for a professional licensing examination;~~

(c) ~~Whether a sanction proposed by the board is appropriate based on the stipulated facts;~~

(d) ~~Whether an applicant meets minimum requirements for an initial or renewal application;~~

(e) ~~Whether an applicant has failed the professional licensing examination;~~

(f) ~~Whether))~~ A finding that a licensee has ((sufficient)) failed to meet continuing ((education credits when the licensee submits a renewal application)) professional development requirements;

~~((g) Whether an applicant or licensee failed to cooperate in an investigation by the board;~~

(h) ~~Whether an application or licensee was convicted of a crime that disqualifies the applicant or licensee from holding the specific license sought or held;~~

(i) ~~Whether an applicant or))~~ (c) A finding that a licensee has violated the terms of a final order or agreed order issued by the board or the board's designee;

~~((j) Whether)) (d) A finding that a person has engaged in false, deceptive, or misleading advertising, or ~~((k) Whether a person has)) engaged in unlicensed practice.~~~~

~~((3) In addition to the situations enumerated in subsection (2) of this section, the board may conduct brief adjudicative proceedings instead of formal adjudicative hearings whenever the parties have stipulated to the facts and the only issues presented are issues of law, or whenever issues of fact exist but witness testimony is unnecessary to prove or disprove the relevant facts.))~~

AMENDATORY SECTION (Amending WSR 18-21-028, filed 10/5/18, effective 11/5/18)

WAC 196-09-055 Records required for brief adjudicative proceeding. The records for the brief adjudicative proceeding ~~((shall))~~ may include, but are not limited to:

(1) ~~((Renewal or reinstatement of))~~ License related denials:

~~((a))~~ (a) All correspondence, including emails, between the applicant or respondent and the board ~~((about the renewal or reinstatement;~~

~~*))~~ staff regarding an initial determination including copies of applications, renewal notice(s) (sent by the department of licensing to the licensee;

~~*)~~, denials, or appeals;

(b) All documents received by the board from or on behalf of the applicant, licensee or respondent relating to information, payments, or explanations that have been provided to the board~~((:);~~

~~((2) Applicants for certification/licensing:~~

~~*)~~ Original complete application with all attachments as submitted by the applicant;

~~*)~~ (c) Copies of all supplementary information related to application or complaint review by staff or board member;

~~((a))~~ (d) All documents relied upon by board staff in reaching the initial determination ~~((of ineligibility;~~

~~*)~~ All correspondence between the applicant and the board about the application or appeal.

~~((3));~~

(e) Any other information that may be of assistance to the presiding officer in deciding the case.

(2) Determination of compliance with previously issued board order:

~~((a))~~ (a) The previously issued final order or agreement;

~~((a))~~ (b) All reports or other documents submitted by, or at the direction of, the license holder, in full or partial fulfillment of the terms of the final order or agreement;

~~((a))~~ (c) All correspondence between the license holder and the ~~((program))~~ board regarding compliance with the final order or agreement; and

~~((a))~~ (d) All documents relied upon by the ~~((program))~~ board showing that the license holder has failed to comply with the previously issued final order or agreement.

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-09-060 Procedures for brief adjudicative proceedings. A brief adjudicative proceeding ~~((shall be held under the supervision of))~~ is conducted by a presiding officer

as designated by the board chair. The presiding officer shall have knowledge and experience in the administrative processes of the board and the requirements of the provisions for a brief adjudicative proceeding as provided ~~((for))~~ in chapter 34.05 RCW and WAC 196-09-050 through 196-09-060, but shall not have participated in the determination or action under review. Except as may be otherwise required by the presiding officer, the following procedures shall apply:

(1) ~~((The petitioner))~~ Both parties shall (present petitioner's position in writing in accordance with the process and schedule established) provide any written statements, explanations, documents, emails, and other information they feel might be relevant as instructed by the presiding officer.

(2) In unique circumstances, during the administrative review, the presiding officer may (accept oral) ask questions and take testimony (and/or argument) of the respondent and the board staff, as necessary to supplement the record.

(3) No other witnesses may appear to testify. If the presiding officer determines that witnesses are needed to make a decision, the proceeding will be converted into a formal hearing.

(4) ~~((In addition to the written record,))~~ The presiding officer may (employ agency expertise as a basis for the decision) convert the brief adjudicative proceeding into a formal hearing if they determine, for any reason, that a formal hearing is needed.

(5) At the time any unfavorable action is taken, the presiding officer (will not issue an oral order at the time of the brief adjudicative proceeding) may serve upon each party a preliminary brief statement of the reasons for the decision. Within ten days of the (final date established by) preliminary statement, the presiding officer (for receipt of additional materials and/or oral arguments, if any, the presiding officer will enter) shall give the parties a written (initial) order containing the findings and conclusions supporting the decision and information about any internal administrative review available.

(6) The brief written statement is an initial order. If no review is taken of the initial order as authorized by RCW 34.05.488 and 34.05.491, the initial order shall be the final order.

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-09-100 Investigative cost reimbursement.

The reimbursement of investigative costs may be ordered by the board if the adjudicative process has resulted in a ~~((finding by the board that identifies conduct which is considered misconduct or malpractice and has resulted in the suspension or revocation of the license to practice))~~ board order. Costs subject to reimbursement are those expenses paid by the board during the investigation process, such as expert or consultant witness contracts.

In addition, the disciplinary authority may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which a person engaged in the unlicensed practice of a profession or operation of a business for which a

license is required by one or more of the chapters specified in RCW 18.235.020; chapters 18.43 and 18.210 RCW.

AMENDATORY SECTION (Amending WSR 04-04-001, filed 1/21/04, effective 2/21/04)

WAC 196-09-110 Cooperation with board investigation. In the course of an investigation and request by the board under its authority in chapter 18.43 RCW, a licensee or registrant must provide access to any papers, records, or documents in their possession or accessible to them that pertain to the allegations in a complaint or investigation, and may provide a written explanation addressing such complaint/investigation or other information requested by the board. A facility related to a complaint or investigation shall be made accessible by the licensee during regular business hours.

AMENDATORY SECTION (Amending WSR 06-22-032, filed 10/25/06, effective 11/25/06)

WAC 196-09-130 Board member limitations—Contract selection. (1) When a member of the board of registration for professional engineers and land surveyors (Board) is beneficially interested, directly or indirectly, in a contract, sale, lease, purchase or grant that may be made by, through, or is under the supervision of the board in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such contract, sale, lease, purchase or grant, the member must:

- (a) Exclude him or herself from the board discussion regarding the specific contract, sale, lease, purchase or grant;
- (b) Exclude him or herself from the board vote on the specific contract, sale, lease, purchase or grant; and
- (c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific contract, sale, lease, purchase or grant.

(2) The prohibition against discussion set forth in sections (a) and (c) may not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

~~((3) Under subsection (1), "any other person" has a beneficial interest in a contract, sale, lease, purchase or grant when the other person bids or otherwise seeks to be awarded the contract, sale, lease, purchase or grant.~~

EXAMPLE:

The board is composed of licensed professional engineers (PE) and professional land surveyors (PLS). A licensed PE member of the board is employed by a company, which conducts forensic evaluations for the purpose of determining whether an engineering design was properly performed. The board is in the process of selecting a contractor to conduct an evaluation of said engineering design for the board's use during disciplinary activities. The company that employs the PE member of the board has responded to the board's RFP.

The PE member of the board may use his general expertise regarding the performance of forensic evaluations to educate the board as to the general elements of such review. The member is prohibited from participating in the board's discussion, decision and vote for selecting a contractor.)

AMENDATORY SECTION (Amending WSR 06-22-032, filed 10/25/06, effective 11/25/06)

WAC 196-09-131 Board member limitations—((Transactions)) Board actions. (1) When a member of the board of registration for professional engineers and land surveyors (Board) either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual, which is ~~((engaged in a transaction involving the))~~ subject to a board action, the member must:

- (a) ~~((Exclude))~~ Recuse him or herself from the board discussion regarding the specific ~~((transaction))~~ action;
- (b) ~~((Exclude))~~ Recuse him or herself from the board vote on the specific ~~((transaction))~~ action; and
- (c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific ~~((transaction))~~ action.

(2) The prohibition against discussion and voting set forth in sections (a) and (c) may not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

~~(3)((a) "Transaction" involving the board means a)~~ "Board action" may include any of the following:

- (a) An investigation or adjudicative proceeding((:));
- (b) Application((:)) or submission((:));
- (c) Request for a ruling or other determination((,- contract, claim, case, or other similar matter that the member in question believes, or has reason to believe:
 - (i) Is, or will be, the subject of board action; or
 - (ii) Is one to which the board is or will be a party; or
 - (iii) Is one in which the board has a direct and substantial proprietary interest.

~~(b) "Transaction" involving the board does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. Rule making is not a "transaction" as described in this subsection.~~

~~(4) "Board action" means any action on the part of the board including, but not limited to:~~

- ~~(a) A) decision, ((determination,)) finding, ruling, or order; ((and~~
- ~~(b) A) or~~
- (d) Monetary grant, payment, or award((,- license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

EXAMPLE:

The board may discipline engineers or land surveyors for incompetence in their practice in Washington. The board is conducting an investigation involving questionable surveying services provided by a county engineer's office. One of the members of the board sits on that county's planning commission. The member must exclude him or herself from any board investigation, discussion, deliberation and vote with respect to disciplinary actions arising from the investigation.)

AMENDATORY SECTION (Amending WSR 06-22-032, filed 10/25/06, effective 11/25/06)

WAC 196-09-135 Reporting of board member recusal. ((+)) If exclusion or recusal occurs pursuant to WAC 196-09-130 or 196-09-131, the member of the board should disclose to the public the reasons for his or her exclusion or recusal from any board action whenever ((recusal)) it occurs. The board staff should record each instance of exclusion or recusal and the basis for ((the exclusion)) it in the minutes of the board meetings.

NEW SECTION

WAC 196-09-150 Public records. All public records of the board are available for public inspection and copying pursuant to these rules and applicable state law (chapter 42.56 RCW), as follows:

(1) Inspection of records. Public records are available for inspection and copying during normal business hours of the office of the Washington state board of registration for professional engineers and land surveyors. Records may be inspected at the board's office when the requestor has been notified of the availability of the requested documents and an appointment is made with the public records officer.

(2) Records index. An index of public records, consisting of the retention schedules applicable to those records, is available to members of the public at the board's office.

(3) Organization of records. The board maintains its records in a reasonably organized manner. The board will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original records from the board's office. A variety of records are also available on the board's website at <https://brpels.wa.gov/>. Requestors are encouraged to view the documents available on the website prior to submitting a public records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records should make the request using the board's public records request form available on the board's website or in writing by letter or email addressed to the public records officer. Written request must include the following information:

(i) Date of the request.

(ii) Name of the requestor.

(iii) Address of the requestor and other contact information, including telephone number and any email addresses.

(iv) Clear identification of the public records requested to permit the public records officer or designee to identify and locate the records.

(b) The public records officer may also accept requests for public records by telephone or in person. If the public records officer or designee accepts an oral or telephone request, he or she will confirm receipt of the request and the details of the records requested, in writing, to the requestor.

(c) If the requests received in (a) or (b) of this subsection are not sufficiently clear to permit the public records officer to identify the specific records requested, the public records officer will request clarification from the requestor in writing.

(d) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should

make that preference clear in the request. Copies will be made by the board's public records officer or designee.

(e) When fulfilling public records requests, the board will perform its public records responsibilities in the most expeditious manner consistent with the board's need to fulfill its other essential functions.

(f) By law, certain records and/or specific content of any specific record or document may not be subject to public disclosure. Accordingly, a reasonable time period may occur between the date of the request and the ability of the public records officer to identify, locate, retrieve, remove content not subject to disclosure, prepare a redaction log that includes the specific exemption, a brief explanation of how the exemption applies to the records or portion of the records being withheld, and produce the records for inspection and/or copying. The requestor will be kept informed of the expected delivery timetable.

(g) If the request includes a large number of records, the production of the records for the requestor may occur in installments. The requestor will be informed, in writing, of the board's anticipated installment delivery timetable.

(h) In certain instances, the board may notify affected third parties to whom the record relates. This notice allows the affected third party to seek an injunction within fifteen days from the date of the written notice. The notice further provides that release of the records to the requestor will be honored unless timely injunctive relief is obtained by the affected third party on or before the end of the fifteen-day period.

(i) Requests for lists of credentialed individuals by educational organizations and professional associations: In order to obtain a list of individuals under the provisions of RCW 42.56.070(8), educational organizations and professional associations must provide sufficient information to satisfy the board that the requested list of individuals is primarily for educational and professionally related uses.

Board forms are available on the board's website or upon request.

NEW SECTION

WAC 196-09-160 Change of address—Board notification. All licensees in this state must notify the board in writing within thirty days of any change of mailing address or email address. Corporations and LLCs licensed in this state must notify the board of any opening, closing, or relocation of the main office or a branch office in this state.

WSR 21-22-093

PERMANENT RULES

**BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS**

[Filed November 2, 2021, 8:54 a.m., effective December 3, 2021]

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

Purpose: The title of this chapter was changed to better reflect the subject matter it covers. The proposed title is fundamentals of engineering exam and engineers-in-training.

Changes were made to existing rules to clarify eligibility requirements to take the fundamentals of engineering examination and applying for certification as an engineer-in-training in Washington.

Citation of Rules Affected by this Order: New WAC 196-20-007; repealing WAC 196-20-020 and 196-20-030; and amending WAC 196-20-005, 196-20-010, and 196-20-045.

Statutory Authority for Adoption: RCW 18.43.035.

Adopted under notice filed as WSR 21-16-029 on July 26, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 3, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, Repealed 2.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 2.

Date Adopted: October 21, 2021.

Ken Fuller
Director

Chapter 196-20 WAC

FUNDAMENTALS OF ENGINEERING EXAM AND ENGINEERS-IN-TRAINING

AMENDATORY SECTION (Amending WSR 04-10-067, filed 5/3/04, effective 6/3/04)

WAC 196-20-005 Declaration and purpose. This chapter contains rules and procedures for applications ~~(s)~~ and eligibility ~~((and))~~ to take the fundamentals of engineering examination ~~((s to be enrolled as engineers in training))~~ and to apply for an engineer-in-training certificate.

NEW SECTION

WAC 196-20-007 Fundamentals of engineering exam. Approval to sit for the fundamentals-of-engineering examination (FE) is based upon satisfactory evidence that the applicant has completed a minimum of four years of practical engineering experience or four years of engineering education or a combination of both, as approved by the board.

(1) Experience: Qualifying practical experience should include some or all of the following:

(a) Preparation of technical reports and specifications, including graphics;

(b) Application of mathematical techniques to problem solving;

(c) Application of the basic physical sciences (chemistry, physics, statics, and dynamics, etc.) in tasks;

(d) Performing assignments, experiments and tests to general specifications;

(e) Compilation and interpretation of data (statistical analysis, etc.);

(f) Executing engineering tasks according to instructions;

(g) Effective communication with associates and presenting recommendations and conclusions to supervisor;

(h) Knowledge of the impacts of the products of technology on society (i.e., energy/environmental considerations).

(2) Education: A baccalaureate in engineering from an ABET accredited program meets the four-year requirement. Other education will be evaluated by the board.

(3) Any qualifying practical engineering experience may be combined with education to meet the four-year requirement as approved by the board.

(4) Approval to take the FE exam cannot be relied upon for approval to take the professional engineer (PE) examination.

AMENDATORY SECTION (Amending WSR 14-07-106, filed 3/19/14, effective 4/19/14)

WAC 196-20-010 ~~((How do I become eligible and register to take the))~~ Fundamentals-of-engineering exam~~(?)~~ registration process. ~~(1) ((In order to be eligible to take the fundamentals of engineering exam, you must complete four years of education and/or experience as delineated in WAC 196-20-020.~~

~~(2))~~ If you have completed a baccalaureate degree program which is accredited by the ~~((engineering accreditation commission (EAC) of the))~~ accreditation board for engineering and technology (ABET) or have achieved senior standing within that program, you ~~((may use the expedited process for FE exam registration as approved by the board))~~ should apply directly to NCEES to take the FE examination.

~~((3))~~ ~~(2)~~ Applicants ~~((that do not meet the EAC educational credit described above must))~~ with education and/or experience other than an ABET accredited degree should submit ~~((the full))~~ their application to the board describing the education and/or experience that would meet the requirements in WAC ~~((196-20-020))~~ 196-20-007 and then obtain written approval from the board prior to registering for the FE exam.

~~(3)~~ Foreign education: Unless exempted by the board, all applicants with foreign degrees must have a transcript evaluation by a transcript evaluation service as approved by the board. The cost of the evaluation and the information needed to be evaluated is the responsibility of the applicant.

AMENDATORY SECTION (Amending WSR 14-07-106, filed 3/19/14, effective 4/19/14)

WAC 196-20-045 ~~((How do I obtain))~~ Obtaining certification as an engineer-in-training in Washington~~(?)~~. In order to obtain a certification as an engineer-in-training in Washington ((is only available to those applicants who designate Washington as their practice state when registering to take the FE exam and who also)), you must pass the FE

exam(~~(- Those that meet the above conditions must)~~), and submit an application (~~((for certification as an engineer in training))~~) to the board that shows you meet the requirements listed in WAC 196-20-007.

WAC 196-20-020 How is experience and education applied toward FE exam eligibility?

WAC 196-20-030 Fundamentals of engineering examination.

REPEALER

The following sections of the Washington Administrative Code are repealed:

**WSR 21-22-094
PERMANENT RULES
HEALTH CARE AUTHORITY**

[Filed November 2, 2021, 11:01 a.m., effective December 3, 2021]

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

Purpose: In response to the current public health emergency (PHE) for COVID-19, as declared by the Secretary of Health and Human Services (HHS) under section 319 of the Public Health Service Act (42 U.S.C. § 247d), the health care authority (HCA) is creating these new rules to identify income and resources that HCA does not count when determining apple health eligibility.

Citation of Rules Affected by this Order: New WAC 182-521-0100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: 42 U.S.C. § 247d.

Adopted under notice filed as WSR 21-18-079 on August 27, 2021.

Changes Other than Editing from Proposed to Adopted Version:

Proposed/ Adopted	WAC Subsection	Reason
WAC 182-521-0100(2)		
Proposed	For all apple health programs, including both modified adjusted gross income-based (MAGI) and nonmodified adjusted gross income-based (non-MAGI) programs, the agency does not count as income for medicaid determinations of eligibility or cost-sharing calculations any of the following:	To clarify which program eligibility the rule is specifying.
Adopted	For all apple health programs, including both modified adjusted gross income-based (MAGI) and nonmodified adjusted gross income-based (non-MAGI) programs, the agency does not count as income for medicaid <u>Apple Health</u> determinations of eligibility or cost-sharing calculations any of the following:	
WAC 182-521-0100 (2)(e)		
Proposed	Pandemic Recovery Rebates (stimulus checks) except that for non-MAGI programs, any unspent portion of such rebates may be counted as a resource starting twelve months after receipt; and	To clarify what pandemic recovery rebates are and to alleviate confusion caused by combining information on income and resources.
Adopted	Pandemic Recovery Rebates (stimulus checks) except that for non-MAGI programs, any unspent portion of such rebates may be counted as a resource starting twelve months after receipt; and <u>Pandemic Recovery Rebates (also known as stimulus checks or economic impact payments) except that for non-MAGI programs, any unspent portion of such rebates may be counted as a resource starting twelve months after receipt; and</u>	
WAC 182-521-0100 (2)(g) NEW		
Proposed	Nothing	To respond to a stakeholder's request. Created subsection (2)(g) to add pandemic-related changes to federal refundable tax credits to the list of income disregards.
Adopted	Pandemic-related changes to federal refundable tax credits, including but not limited to the child tax credit, the earned income tax credit, and the child and dependent tax care credit.	

Proposed/ Adopted	WAC Subsection	Reason
WAC 182-521-0100(3)		
Proposed	For non-MAGI programs, the agency does not count any unemployment compensation received during the public health emergency, except for individuals eligible solely under "special income disregard" categories as described in WAC 182-512-0880. For these individuals, the agency counts unemployment compensation to determine continued eligibility for that coverage, except payments described in subsection (2) of this section. If the result is medically needy program coverage, then all unemployment income is not counted in calculating spend-down.	To respond to a stakeholder's request. Removed the exception for individuals eligible solely under "special income disregard" categories as described in WAC 182-512-0880. This eligibility category is listed in Title 42 U.S.C. Sec. 1902 (r)(2).
Adopted	For non-MAGI programs, the agency does not count any unemployment compensation received during the public health emergency, except for individuals eligible solely under "special income disregard" categories as described in WAC 182-512-0880. For these individuals, the agency counts unemployment compensation to determine continued eligibility for that coverage, except payments described in subsection (2) of this section. If the result is medically needy program coverage, then all unemployment income is not counted in calculating spend-down.	
WAC 182-521-0100(6)		
Proposed	The agency does not count as a resource the value of property essential for self-support (PESS) described in 20 C.F.R. 416.1222 that is subject to the requirement of producing net annual income of at least six percent of the PESS value for non-MAGI groups.	To align with recently revised Social Security Administration guidance as suggested by a stakeholder. Consolidated disregarded resources into WAC 182-521-0100(6); indicated the period for the PESS disregard; and added other federal disaster assistance that is disregarded as resources.
Adopted	<u>For non-MAGI programs, the agency does not count as a resource:</u> <u>(a) The value of property essential for self-support (PESS) described in 20 C.F.R. 416.1222 that is subject to the requirement of producing net annual income of at least six percent of the PESS value for non-MAGI groups during the period of the Presidential and Secretarial emergency declarations related to the COVID-19 outbreak;</u> <u>(b) Pandemic Recovery Rebates and all other assistance described in Social Security Administration guidance; and</u> <u>(c) Assistance, including but not limited to the Temporary Expansion of the Child Tax Credit of 2021 that is not counted as income and treated under Social Security Administration guidance as not counted as resources for a period of 12 months after receipt.</u>	
WAC 182-521-0100		
Proposed	Nothing (newly added subsection to replace proposed subsection (7)).	To respond to a stakeholder's comment. Added this new subsection as WAC 182-521-0100(7) to indicate how the agency will deal with future federal disaster assistance as it applies to counting resources for determining client eligibility.
Adopted	The agency reviews cases on an individual basis and does not count as resources any disaster assistance identified as excludable under federal law for an indefinite period.	

Proposed/ Adopted	WAC Subsection	Reason
WAC 182-521-0100(7)		
Proposed	(7) The agency does not count as income any other payments for pandemic assistance not described in this section to the fullest extent provided for under state or federal law.	To add that the agency does not count resources as well in WAC 182-521-0100(8).
Adopted	(8) The agency does not count as income <u>or resources</u> any other payments for pandemic assistance not described in this section to the fullest extent provided for under state or federal law.	
WAC 182-521-0100 (8)-(10)		
Proposed	Subsections were numbered as subsections (8), (9), and (10).	To revise numbers which changed due to the addition of WAC 182-521-0100(7).
Adopted	Subsections were renumbered as subsections (9), (10), and (11).	

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: November 2, 2021.

Wendy Barcus
Rules Coordinator

Chapter 182-521 WAC

PUBLIC HEALTH EMERGENCY RULES

NEW SECTION

WAC 182-521-0100 Noncountable income and resources during the COVID-19 public health emergency.

(1) This section describes certain types of income and resources received as a result of the COVID-19 public health emergency that the health care authority (agency) does not count as income or resources when determining apple health eligibility. This includes certain unemployment income; any Federal Pandemic Unemployment Compensation (FPUC) or Recovery Rebates authorized under the Coronavirus Aid, Relief, and Economic Security (CARES) Act; and other needs-based and disaster-related benefits authorized as a result of the COVID-19 public health emergency. The non-countable income and resources in this section are in addition to other noncountable income and resources in this title, such as those described in WAC 182-509-0320, 182-512-0860, and 182-513-1340.

(2) For all apple health programs, including both modified adjusted gross income-based (MAGI) and nonmodified

adjusted gross income-based (non-MAGI) programs, the agency does not count as income for Apple Health determinations of eligibility or cost-sharing calculations any of the following:

(a) Federal pandemic unemployment compensation benefits of six hundred dollars per week issued for the period of March 18, 2020, through July 31, 2020;

(b) Federal pandemic unemployment compensation benefits of three hundred dollars per week issued for the period of December 26, 2020, through September 6, 2021;

(c) Lost wages assistance unemployment compensation benefits of three hundred dollars per week issued for the period of weeks ending August 1, 2020, through September 6, 2021, due to the federal Disaster Relief Fund authorized for states to offset lost wages due to the COVID-19 pandemic, known as Lost Wage Assistance (LWA);

(d) Payments from the pandemic relief payment program as authorized by Governor Jay Inslee on December 27, 2020;

(e) Pandemic Recovery Rebates (also known as stimulus checks or economic impact payments);

(f) Needs-based and disaster-related benefits from other agencies, organizations, or tribal entities including, but not limited to:

(i) Federal Emergency Management Agency (FEMA) programs, such as FEMA COVID-19 Funeral Assistance;

(ii) State programs, such as disaster cash assistance and the Washington immigrant relief fund; and

(iii) Local/municipal programs, such as the city of Seattle hospitality workers relief fund and disaster relief fund for immigrants; and

(g) Pandemic-related changes to federal refundable tax credits including, but not limited to, the child tax credit, the earned income tax credit, and the child and dependent tax care credit.

(3) For non-MAGI programs, the agency does not count as income any unemployment compensation received during the public health emergency.

(4) The agency does not count for apple health premium calculations all income not counted for eligibility determinations for apple health programs. The agency waives monthly premiums until the first of the month following the calendar quarter in which the COVID-19 public health emergency ends.

(5) All income the agency does not count for eligibility determinations for non-MAGI programs, the agency also does not count in post-eligibility treatment of income (PETI) calculations for long-term services and supports. The agency does not count such income whether it is paid to the community spouse or to the spouse seeking or receiving long-term services and supports. The agency does not count such income when determining the spousal allowance or in any other part of the post-eligibility calculation process.

(6) For non-MAGI programs, the agency does not count as a resource:

(a) The value of property essential for self-support (PESS) described in 20 C.F.R. 416.1222 that is subject to the requirement of producing net annual income of at least six percent of the PESS value during the period of the presidential and secretarial emergency declarations related to the COVID-19 outbreak;

(b) Pandemic recovery rebates and all other assistance described in Social Security Administration guidance; and

(c) Assistance including, but not limited to, the Temporary Expansion of the Child Tax Credit of 2021 that is not counted as income and treated under Social Security Administration guidance as not counted as resources for a period of 12 months after receipt.

(7) The agency reviews cases on an individual basis and does not count as resources any disaster assistance identified as excludable under federal law for an indefinite period.

(8) The agency does not count as income or resources any other payments for pandemic assistance not described in this section to the fullest extent provided for under state or federal law.

(9) Any income received as unemployment compensation not described within this section is otherwise countable and the agency counts it when determining MAGI-based apple health eligibility, unless otherwise specified under state or federal law.

(10) The agency does not terminate an enrollee's eligibility due to changes to an enrollee's income or resources.

(11) These rules are in effect until the later of:

(a) The date the client is receiving any benefits described in this rule; or

(b) The end of the month the Secretary of the U.S. Department of Health and Human Services declares the COVID-19 public health emergency to be over.

those in education which teachers are eligible for out-of-endorsement placements.

Citation of Rules Affected by this Order: Amending WAC 181-82-110.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-18-087 on August 30, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: November 2, 2021.

Sophia Keskey
Rules Coordinator

AMENDATORY SECTION (Amending WSR 21-08-024, filed 3/29/21, effective 4/29/21)

WAC 181-82-110 School district response and support for nonmatched endorsements to course assignment of teachers. (1) Individuals with initial, residency, endorsed continuing, professional, or emergency teacher certificates who are employed with a school district (~~under RCW 28A.405.210~~) may be assigned to classes other than in their areas of endorsement. If teachers are so assigned, the following shall apply:

(a) A designated representative of the district and any teacher so assigned shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

(b) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned.

(2) Special education preendorsement waiver:

(a) A teacher who has completed two hundred forty continuing education credit hours under WAC 181-85-030 of course work applicable to a special education, early childhood special education, teacher of the visually impaired, ~~(or)~~ deaf education, or deaf education with ASL proficiency endorsement shall be eligible for a preendorsement waiver from the special education office under chapter 392-172A WAC. Individuals with a preendorsement waiver are considered to have met the requirements for "substantial professional training" for the appropriate endorsement under WAC 392-172A-02090.

WSR 21-22-104

PERMANENT RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed November 2, 2021, 3:50 p.m., effective December 3, 2021]

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

Purpose: This proposed rule clarifies the language for teachers serving on an out-of-endorsement basis. It also clarifies the language on which endorsements are eligible for a preendorsement waiver. These nonsubstantive changes include language clarification. This will make it more clear to

(b) All remaining requirements for the special education, early childhood special education, teacher of the visually impaired, ~~((or))~~ deaf education, or deaf education with ASL proficiency endorsement shall be completed within five years.

(3) Teachers are not subject to nonrenewal or probation based on evaluation of their teaching effectiveness in the out-of-endorsement assignments under this section.

WSR 21-22-108

PERMANENT RULES

BIG BEND

COMMUNITY COLLEGE

[Filed November 2, 2021, 4:25 p.m., effective December 3, 2021]

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

Purpose: WAC 132R-190-035 Availability of directory information, to align availability of directory information with the Washington community and technical college (WACTC)-approved Global FERPA Directory for all schools in the WACTC system.

Citation of Rules Affected by this Order: Amending WAC 132R-190-035 Availability of directory information.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 21-19-119 on September 20, 2021.

Date Adopted: October 29, 2021.

Melinda Dourte
Executive Assistant
to President

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

WAC 132R-190-035 Availability of directory information. The following personally identifiable information contained in a student's education record shall be deemed "directory information" and unless restricted by the student may be disclosed without a student's prior written consent: Student's name, ~~((address, electronic mail address, telephone listing, date of birth, enrollment status (full-time or part-time)))~~ major field of study, participation in officially recognized ~~((activities and))~~ sports, ~~((weight and height of members of athletic teams))~~ enrollment status, dates of attendance, honors ~~((or H))~~, degrees ~~((and awards received))~~ or certificates earned, and ~~((the most recent previous educational agency or institution attended by the student))~~ term degree or certificate awarded. The college will give public notice to students annually of the matters contained in the above-designated "directory information." Each student will have ten days from the day of registration to decide if he or she wishes to have directory information released without written consent.

WSR 21-22-118

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 3, 2021, 11:54 a.m., effective December 4, 2021]

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

Purpose: WAC 246-247-001, 246-247-002, 246-247-010, 246-247-075, 246-247-080, and 246-247-100, Radiation protection—Air emissions. The adopted rule updates chapter sections that reference the Code of Federal Regulations most recent publication date and amends chapter sections that reference state statutory references from Title 70 RCW to the newly codified Title 70A RCW per SHB 2246, chapter 20, Laws of 2020. The adopted rule also amends other rule sections to update outdated effective dates of federal rules and state rules to the most recent version. The amendments make no changes to any requirements previously adopted.

Citation of Rules Affected by this Order: Amending WAC 246-247-001, 246-247-002, 246-247-010, 246-247-075, 246-247-080, and 246-247-100.

Statutory Authority for Adoption: RCW 70A.388.040, 70A.388.050(5); and SHB 2246.

Adopted under notice filed as WSR 21-19-107 on September 20, 2021.

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

Number of Sections Adopted at the Request of a Non-governmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

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

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

Date Adopted: November 3, 2021.

Lauren Jenks
Assistant Secretary

AMENDATORY SECTION (Amending WSR 94-07-010, filed 3/4/94, effective 4/4/94)

WAC 246-247-001 Purpose. The purpose of this chapter is to establish application requirements and procedures for the issuance of a radioactive air emissions license and for the regulation of those emissions by the department of health (hereinafter referred to as "the department") to assure compliance with the standards for radioactive air emissions set by the department of ecology pursuant to RCW ~~((70.94.331))~~ 70A.15.3000, promulgated in chapter 173-480 WAC, and with the rules and regulations of this chapter.

AMENDATORY SECTION (Amending WSR 94-07-010, filed 3/4/94, effective 4/4/94)

WAC 246-247-002 Authority. (1) Rules and regulations set forth herein are adopted and enforced by the department pursuant to the provisions of chapter ((70-98)) 70A.388 RCW which:

(a) Designate the department as the state's radiation control agency having sole responsibility for the administration of the regulatory, licensing, and radiation control provisions of chapter ((70-98)) 70A.388 RCW;

(b) Vest in the department the authority to formulate, adopt, promulgate, and repeal codes, rules, and regulations related to the control of sources of ionizing radiation;

(c) Authorize the department to implement an independent statewide program to monitor radioactive air emissions from sources within the state;

(d) Authorize the department to conduct inspections of facilities, both private and public, to determine whether or not there is compliance with or violation of the provisions of chapter ((70-98)) 70A.388 RCW and rules and regulations issued thereunder; and

(e) Authorize the department to require registration of sources of ionizing radiation.

(2) In addition, RCW ((70-94.422)) 70A.15.3130 (Washington Clean Air Act) grants to the department the enforcement powers contained in that chapter.

AMENDATORY SECTION (Amending WSR 18-01-083, filed 12/15/17, effective 1/15/18)

WAC 246-247-010 Applicability. (1) The standards and requirements of this chapter apply statewide at the following types of facilities that emit radionuclides to the air:

(a) Facilities licensed by the department or by the United States Nuclear Regulatory Commission (NRC);

(b) United States Department of Energy (DOE) facilities;

(c) Non-DOE federal facilities;

(d) Uranium fuel cycle facilities;

(e) Uranium mills that are processing material; and

(f) Any other facility that the department determines emits or has the potential to emit radionuclides to the ambient air.

(2) The standards and requirements of this chapter apply to point sources, nonpoint sources, and fugitive emissions.

(3) The standards and requirements of this chapter apply to stationary and mobile emission units, whether temporary or permanent.

(4) The control technology standards and requirements of this chapter apply to the abatement technology and indication devices of facilities and emission units subject to this chapter. Control technology requirements apply from entry of radionuclides into the ventilated vapor space to the point of release to the environment.

(5) In accordance with RCW ((70-94.161)) 70A.15.2260 (10), air operating permits issued under chapter 173-401 WAC shall incorporate all applicable requirements of this chapter. Therefore, all facilities listed in subsection (1) of this section that are also subject to the operating permit regulations in chapter 173-401 WAC shall be considered in compli-

ance with the requirements of this chapter if they comply with all the applicable requirements of the air operating permit issued under chapter 173-401 WAC. These applicable requirements shall be contained in the radioactive air emissions license which shall be incorporated as part of the air operating permit. In accordance with RCW ((70-94.422)) 70A.15.3130(1), the department shall enforce all the requirements contained in the radioactive air emissions license.

(6) Should any of the federal regulations that have been adopted by reference in this chapter be rescinded, the affected facilities shall nonetheless comply with all other applicable requirements of this chapter.

(7) An applicant may view any document referenced in this chapter by contacting the department's office of radiation protection, radioactive air emissions section at 509-946-0363. Mail reports, applications, and other written correspondence to the Radioactive Air Emissions Section at 309 Bradley Boulevard, Suite 201, Richland, Washington, 99352. An applicant may send reports, applications, and other written correspondence to AIRRichland@doh.wa.gov.

AMENDATORY SECTION (Amending WSR 18-01-083, filed 12/15/17, effective 1/15/18)

WAC 246-247-020 Exemptions. (1) The following types of facilities or sources of radiation are exempt from the requirements of this chapter because they release no airborne radioactivity, or they prima facie comply with the standards in WAC 246-247-040, or they are already adequately regulated under other requirements:

(a) Users of only sealed sources;

(b) Sealed sources;

(c) Accelerators less than 200 MeV;

(d) Nuclear-powered vessels underway or moored dock-side unless under a maintenance condition with a potential-to-emit;

(e) Uranium mill tailings piles disposed of under 40 C.F.R. Part 192 (effective July 1, ((2017)) 2021).

(2) Exemption determinations.

(a) Any exemptions shall be consistent with 40 C.F.R. 61. No exemptions from the standards in WAC 246-247-040 will be granted.

(b) A nonfederal facility may request exemption from some of the requirements of WAC 246-247-060 and 246-247-075 if the potential-to-emit, for the emission unit(s) under consideration, results in compliance at level I of the COMPLY computer code or level I of the NCRP's Commentary No. 3, or equivalent as approved by the department.

(c) A federal facility may request exemption from some of the requirements of WAC 246-247-060 and 246-247-075 if the potential-to-emit, for the emission unit(s) under consideration, results in a TEDE to the MEI from all pathways less than 0.1 mrem/yr.

(d) The facility shall submit all the data necessary to make the exemption determinations of (b) and (c) of this subsection. The department shall determine if any exemptions apply.

(e) Commercial nuclear power plants may request exemption from some of the requirements of this chapter in order to minimize dual regulation with the NRC.

(3) The department may require a facility with exempt emission units to submit a radioactive air emissions report to confirm compliance with applicable standards. The department reserves the right to conduct inspections and audits of the facility to confirm the status of its exempt emission units.

(4) Naturally occurring airborne radionuclides are exempt from the requirements of this chapter unless the concentrations or rates of emissions have been enhanced by industrial processes.

AMENDATORY SECTION (Amending WSR 18-01-083, filed 12/15/17, effective 1/15/18)

WAC 246-247-030 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section and WAC 246-220-010, apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Abatement technology" means any mechanism, process or method that has the potential to reduce public exposure to radioactive air emissions. Abatement control features include automatic mechanisms and administrative controls used in the operation and control of abatement technology from entry of radionuclides into the ventilated vapor space to release to the environment.

(2) "Administrative control" means any policy or procedure that limits the emission of radionuclides.

(3) "ALARA" means as low as reasonably achievable making every reasonable effort to maintain exposures to radiation as far below the dose standards in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to benefits to the public health and safety, and other socioeconomic considerations, and in relation to the utilization of nuclear energy, ionizing radiation, and radioactive materials in the public interest. See WAC 246-220-007.

(4) "As low as reasonably achievable control technology" (ALARACT) means the use of radionuclide emission control technology that achieves emission levels that are consistent with the philosophy of ALARA. ALARACT compliance is demonstrated by evaluating the existing control system and proposed nonsignificant modifications in relation to applicable technology standards and other control technologies operated successfully in similar applications. In no event shall application of ALARACT result in emissions of radionuclides that could cause exceedance of the applicable standards of WAC 246-247-040. See the definition of ALARA in this section. Note that ALARACT is equivalent to, but replaces, RACT in the (~~May 7, 1986~~) June 23, 2007, version of chapter 173-480 WAC.

(5) "Annual possession quantity" means the sum of the quantity of a radionuclide on hand at the beginning of the calendar year and the quantity of that radionuclide received or produced during the calendar year.

(6) "Best available radionuclide control technology" (BARCT) means technology that will result in a radionuclide emission limitation based on the maximum degree of reduction for radionuclides from any proposed newly constructed or significantly modified emission units that the licensing

authority determines is achievable on a case-by-case basis. A BARCT compliance demonstration must consider energy, environmental, and economic impacts, and other costs through examination of production processes, and available methods, systems, and techniques for the control of radionuclide emissions. A BARCT compliance demonstration is the conclusion of an evaluative process that results in the selection of the most effective control technology from all known feasible alternatives. In no event shall application of BARCT result in emissions of radionuclides that could exceed the applicable standards of WAC 246-247-040. Control technology that meets BARCT requirements also meets ALARACT requirements. See WAC 173-480-030 and 246-247-120.

(7) "Committed effective dose equivalent" (CEDE) means the sum of the products of absorbed dose from internally deposited radionuclides and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man over a fifty-year period.

(8) "Construction" means fabrication, erection, or installation of a new building, structure, plant, process, or operation within a facility that has the potential to emit airborne radionuclides. Construction includes activities of a permanent nature aimed at completion of the emission unit, such as pouring concrete, putting in a foundation, or installing utilities directly related to the emission unit. It does not include preliminary activities such as tests to determine site suitability, equipment procurement and storage, site clearing and grading, and the construction of ancillary buildings.

(9) "Decommissioning" means actions taken to reduce or eliminate the potential public health and safety impacts of a building, structure, or plant that has permanently ceased operations, including, but not limited to, actions such as decontamination, demolition, and disposition.

(10) "Emission unit" means any single location that emits or has the potential to emit airborne radioactive material. This may be a point source, nonpoint source, or source of fugitive emissions.

(11) "Facility" means all buildings, structures, plants, processes, and operations on one contiguous site under control of the same owner or operator.

(12) "Fugitive emissions" are radioactive air emissions which do not and could not reasonably pass through a stack, vent, or other functionally equivalent structure, and which are not feasible to directly measure and quantify.

(13) "Indication device" means any method or apparatus used to monitor, or to enable monitoring, the operation of abatement controls or the potential or actual radioactive air emissions.

(14) "License" means a radioactive air emissions license issued by the department with requirements and limitations listed therein. Compliance with the license requirements are determined and enforced by the department. The license will be incorporated as an applicable requirement in the air operating permit issued by the department of ecology or a local air pollution control authority when the department of ecology or a local air pollution control authority issues an air operating permit.

(15) "Maximally exposed individual" (MEI) means any member of the public (real or hypothetical) who abides or

resides in an unrestricted area, and may receive the highest TEDE from the emission unit(s) under consideration, taking into account all exposure pathways affected by the radioactive air emissions.

(16) "Modification" means any physical change in, or change in the method of operation of, an emission unit that could increase the amount of radioactive materials emitted or may result in the emission of any radionuclide not previously emitted. This definition includes the cleanup of land contaminated with radioactive material, the decommissioning of buildings, structures, or plants where radioactive contamination exists, and changes that will cause an increase in the emission unit's operating design capacity. This definition excludes routine maintenance, routine repair, replacement-in-kind, any increases in the production rate or hours of operation, provided the emission unit does not exceed the release quantities specified in the license application or the operating design capacity approved by the department, addition of abatement technology as long as it is not less environmentally beneficial than existing, approved controls, and changes that result in an increase in the quantity of emissions of an existing radionuclide that will be offset by an equal or greater decrease in the quantity of emissions of another radionuclide that is deemed at least as hazardous with regard to its TEDE to the MEI.

(17) "Monitoring" means the measurement of radioactive material released to the ambient air by means of an in-line radiation detector, or by the withdrawal of representative samples from the effluent stream. Ambient air measurements may be acceptable for nonpoint sources and fugitive emissions.

(18) "Nonpoint source" is a location at which radioactive air emissions originate from an area, such as contaminated ground above a near-surface waste disposal unit, whose extent may or may not be well-defined.

(19) "Notice of construction" (NOC) is an application submitted to the department by an applicant that contains information required by WAC 246-247-060 for proposed construction or modification of a registered emission unit(s), or for modification of an existing, unregistered emission unit(s).

(20) "Point source" is a discrete, well-defined location from which radioactive air emissions originate, such as a stack, vent, or other functionally equivalent structure.

(21) "Potential-to-emit" means the rate of release of radionuclides from an emission unit based on the actual or potential discharge of the effluent stream that would result if all abatement control equipment did not exist, but operations are otherwise normal. Determine the potential-to-emit by one of the following methods:

(a) Multiply the annual possession quantity of each radionuclide by the release fraction for that radionuclide, depending on its physical state. Use the following release fractions:

- (i) 1 for gases;
- (ii) 10^{-3} for liquids or particulate solids; and
- (iii) 10^{-6} for solids.

Determine the physical state for each radionuclide by considering its chemical form and the highest temperature to which it is subjected. Use a release fraction of one if the radionu-

clide is subjected to temperatures at or above its boiling point; use a release fraction of 10^{-3} if the radionuclide is subjected to temperatures at or above its melting point, but below its boiling point. If the chemical form is not known, use a release fraction of one for any radionuclide that is heated to a temperature of one hundred degrees Celsius or more, boils at a temperature of one hundred degrees Celsius or less, or is intentionally dispersed into the environment. Other release fractions may be used only with the department's approval; or

(b) Perform a back-calculation using measured emission rates and *in situ* measurements of the control equipment efficiencies, as approved by the department; or

(c) Measure the quantities of radionuclides captured in each control device, coupled with *in situ* measurements of the control equipment efficiencies, as approved by the department; or

(d) Sample the effluent upstream from all control devices, as approved by the department; or

(e) Use an alternative method approved by the department.

(22) "Replacement-in-kind" means the substitution of existing systems, equipment, components, or devices of an emission unit's control technology with systems, equipment, components, or devices with equivalent, or better, performance specifications that will perform the same function(s).

(23) "Routine" means:

(a) Maintenance, repair, or replacement-in-kind performed on systems, equipment, components, or devices of an emission unit's abatement technology as a planned part of an established inspection, maintenance, or quality assurance program that does not increase the emission unit's operating design capacity; or

(b) Normal, day-to-day operations of a facility.

(24) "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix, or radioactive material in airtight containers, designed to prevent release and dispersal of the radioactive material under the most severe conditions encountered in normal use and handling.

(25) "Significant" means the potential-to-emit airborne radioactivity at a rate that could increase the TEDE to the MEI by at least 1.0 mrem/yr as a result of a proposed modification.

(26) "Total effective dose equivalent" (TEDE) means the sum of the dose equivalent due to external exposures and the CEDE due to internal exposures.

(27) "Uranium fuel cycle" means the operations of milling uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity in a nuclear power plant that uses uranium fuel, and reprocessing of spent uranium fuel, to the extent that these operations solely support the production of electrical power for public use. Excluded are mining operations, waste disposal sites, transportation of any radioactive material, and the reuse of recovered nonuranium special nuclear and by-product materials from the cycle.

AMENDATORY SECTION (Amending WSR 19-23-039, filed 11/12/19, effective 12/13/19)

WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions. (1) In addition to other requirements of this chapter, the following federal standards, as in effect on July 1, ((2019)) 2021, are adopted by reference except as provided in subsection (2) of this section.

(a) For federal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.

(iii) 40 C.F.R. Part 61, Subpart I - National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

(iv) 40 C.F.R. Part 61, Subpart Q - National Emission Standards for Radon Emissions From Department of Energy Facilities.

(b) For nonfederal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart B - National Emission Standards for Radon Emissions From Underground Uranium Mines.

(iii) 40 C.F.R. Part 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants.

(iv) 40 C.F.R. Part 61, Subpart R - National Emissions Standards for Radon from Phosphogypsum Stacks.

(v) 40 C.F.R. Part 61, Subpart T - National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings.

(vi) 40 C.F.R. Part 61, Subpart W - National Emission Standards for Radon Emissions From Operating Mill Tailings.

(2) References to "Administrator" or "EPA" in 40 C.F.R. Part 61 include the department of health except in any section of 40 C.F.R. Part 61 for which a federal rule or delegation indicates that the authority will not be delegated to the state.

AMENDATORY SECTION (Amending WSR 19-04-042, filed 1/29/19, effective 3/1/19)

WAC 246-247-075 Monitoring, testing, and quality assurance. (1) The department may, upon request by a nonfederal licensee, authorize provisions specific to that nonfederal licensee, other than those already set forth in WAC 246-247-075 for nonfederal emission unit monitoring, testing, or quality assurance, so long as the department finds reasonable assurance of compliance with the performance objectives of this chapter.

(2) Equipment and procedures used for the continuous monitoring of radioactive air emissions shall conform, as applicable, to the guidance contained in ANSI N13.1, ANSI N42.18, ANSI N323, ANSI N317, reference methods 1, 1A, 2, 2A, 2C, 2D, 4, 5, and 17 of 40 C.F.R. Part 60 (effective July 1, 2021), Appendix A, 40 C.F.R. Part 52 (effective July 1, 2021), Appendix E, and any other methods approved by the department.

(3) The operator of an emission unit with a potential-to-emit of less than 0.1 mrem/yr TEDE to the MEI may estimate those radionuclide emissions, in lieu of monitoring, in accordance with 40 C.F.R. Part 61, Appendix D (effective July 1, 2021), or other procedure approved by the department. The department may require periodic confirmatory measurements (e.g., grab samples) during routine operations to verify the low emissions. Methods to implement periodic confirmatory monitoring shall be approved by the department.

(4) The department may allow a nonfederal facility to use alternative monitoring procedures or methods if continuous monitoring is not a feasible or reasonable requirement.

(5) The following types of facilities shall determine radionuclide emissions in accordance with either a methodology referenced in subsections (1) through (4) of this section or the respective document referenced below:

(a) Nuclear power reactors licensed by the NRC: Offsite Dose Calculation Manual;

(b) Fuel fabrication plants licensed by the NRC: NRC's Regulatory Guide 4.16, dated December 1985;

(c) Uranium mills that are processing material: NRC's Regulatory Guide 4.14, dated April 1980.

(6) Licensed facilities shall conduct and document a quality assurance program. Except for those types of facilities specified in subsection (5) of this section, the quality assurance program shall be compatible with applicable national standards such as ANSI/ASME NQA-1-1988, ANSI/ASME NQA-2-1986, QA/R-2, and QA/R-5.

(7) Those types of facilities specified in subsection (5) of this section shall conduct and document a quality assurance program compatible with either the applicable national standards referenced in subsection (6) of this section or the NRC's Regulatory Guide 4.15, dated February 1979.

(8) Facilities shall monitor nonpoint and fugitive emissions of radioactive material.

(9) The department may conduct an environmental surveillance program to ensure that radiation doses to the public from emission units are in compliance with applicable standards. The department may require the operator of any emission unit to conduct stack sampling, ambient air monitoring, or other testing as necessary to demonstrate compliance with the standards in WAC 246-247-040.

(10) The department may require the owner or operator of an emission unit to make provision, at existing emission unit sampling stations, for the department to take split or collocated samples of the emissions.

(11) The planning for any proposed new construction or significant modification of the emission unit must address accidental releases with a probability of occurrence during the expected life of the emission unit of greater than one percent.

(12) All facilities must be able to demonstrate that appropriate supervisors and workers are adequately trained in the use and maintenance of emission control and monitoring systems, and in the performance of associated test and emergency response procedures.

(13) All facilities must be able to demonstrate the reliability and accuracy of the radioactive air emissions monitoring data.

(14) A facility owner or operator, or any other person may not render inaccurate any monitoring device or method required under chapter ~~((70-98))~~ 70A.388 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

AMENDATORY SECTION (Amending WSR 18-01-083, filed 12/15/17, effective 1/15/18)

WAC 246-247-080 Inspections, reporting, and recordkeeping. (1) The department reserves the right to inspect and audit all construction activities, equipment, operations, documents, data, and other records related to compliance with the requirements of this chapter. The department may require a demonstration of ALARACT at any time.

(2) All reporting and recordkeeping requirements of 40 C.F.R. 61(~~(, subparts H and I,))~~ (effective July 1, 2021) are adopted by reference, as applicable as specified by the referenced subparts. The department may, upon request by a nonfederal licensee, authorize provisions specific to that nonfederal licensee, other than those already set forth in WAC 246-247-080 for nonfederal emission unit inspections, reporting, or recordkeeping, so long as the department finds reasonable assurance of compliance with the performance objectives of this chapter.

(3) The facility shall annually submit to the department the information requirements adopted in subsection (2) of this section, as applicable, along with the following additional information, as applicable:

(a) The results of emission measurements for those emission units subject only to periodic confirmatory measurements;

(b) Wind rose or joint frequency table;

(c) Annual average ambient temperature;

(d) Annual average emission unit gas temperature, if available;

(e) Annual total rainfall;

(f) Annual average emission unit flow rate and total volume of air released during the calendar year.

If this additional information is available in another annual report, the facility may instead provide a copy of that report along with the information requirements in this subsection. Annual reports are due by June 30th for the previous calendar year's operations.

(4) Any report or application that contains proprietary or procurement-sensitive information shall be submitted to the department with those portions so designated. The department shall hold this information confidential, unless required to release the information pursuant to laws, regulations, or court order.

(5) The facility shall notify the department within twenty-four hours of any shutdown, or of any transient abnormal condition lasting more than four hours or other change in facility operations which, if allowed to persist, would result in emissions of radioactive material in excess of applicable standards or license requirements. If requested by the department, the facility shall submit a written report within ten days including known causes, corrective actions taken, and any preventive measures taken or planned to minimize or eliminate the chance of recurrence.

(6) The facility shall file a report of closure with the department whenever operations producing emissions of radioactive material are permanently ceased at any emission unit (except temporary emission units) regulated under this chapter. The closure report shall indicate whether, despite cessation of operations, there is still a potential for radioactive air emissions and a need for an active or passive ventilation system with either an emission control or monitoring devices. If decommissioning is planned and will constitute a modification, a NOC is required, as applicable, in accordance with WAC 246-247-060.

(7) The facility shall maintain a log for each emission unit that has received categorical approval under WAC 246-247-060(8). The log shall contain records of important operations parameters including the date, location, and duration of the release, measured or calculated radionuclide concentrations, the type of emissions (liquid, gaseous, solid), and the type of emission control and monitoring equipment.

(8) The facility shall maintain readily retrievable storage areas for all records and documents related to, and which may help establish compliance with, the requirements of this chapter. The facility shall keep these records available for department inspection for at least five years.

(9) The facility shall ensure all emission units are fully accessible to department inspectors. In the event the hazards associated with accessibility to a unit require training, restrictions, or other requirements for entry, the facility owner or operator shall inform the department, prior to arrival, of those restrictions or requirements. The owner or operator shall be responsible for providing the necessary training, escorts, and support services to allow the department to inspect the facility.

(10) The facility shall make available, in a timely manner, all documents requested by the department for review. The facility shall allow the department to review documents in advance of an inspection. The facility shall allow access to classified documents by representatives of the department with the appropriate security clearance and a demonstrable need-to-know.

(11) The facility shall respond in writing in a timely manner, or within a time limit set by the department, to inspection results which require the facility to implement corrective actions or any other actions so directed by the department.

(12) A facility owner or operator, or any other person may not make any false material statement, representation, or certification in any form, notice, or report required under chapter ~~((70-98))~~ 70A.388 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

AMENDATORY SECTION (Amending WSR 18-01-083, filed 12/15/17, effective 1/15/18)

WAC 246-247-085 Compliance determination for existing emission units and facilities. (1) All procedures for determining compliance with the dose equivalent standards of 40 C.F.R. 61(~~(, subparts H and I,))~~ (effective July 1, 2021) are adopted by reference, as applicable as specified by the referenced subparts. The department may, upon request of a nonfederal licensee, authorize provisions specific to that non-

federal licensee, other than those already set forth in WAC 246-247-085 for determining compliance with appropriate dose equivalent standards by nonfederal emission units, so long as the department finds reasonable assurance of compliance with the performance objectives of this chapter.

(2) Facilities subject to 40 C.F.R. 61 shall use computer codes or procedures approved by the EPA to determine the TEDE to the MEI; all other facilities shall use computer codes or procedures approved by the department.

(3) The determination of compliance with the dose equivalent standard of WAC 246-247-040 shall include all radioactive air emissions resulting from routine and nonroutine operations for the past calendar year.

AMENDATORY SECTION (Amending WSR 18-01-083, filed 12/15/17, effective 1/15/18)

WAC 246-247-100 Enforcement actions. (1) In accordance with RCW ((~~70.94.422~~) 70A.15.3130, the department may take any of the following actions to enforce compliance with the provisions of this chapter:

(a) Notice of violation and compliance order (RCW ((~~70.94.332~~) 70A.15.3010).

(b) Restraining order or temporary or permanent injunction (RCW ((~~70.94.425~~) 70A.15.3140; also RCW ((~~70.98-140~~) 70A.388.160).

(c) Penalty: Either fine or imprisonment, or both, for each separate violation (RCW ((~~70.94.430~~) 70A.15.3150).

(d) Civil penalty: Up to ten thousand dollars for each day of continued noncompliance (RCW ((~~70.94.431~~) 70A.15.-3160 (1) through (7)).

(e) Assurance of discontinuance (RCW ((~~70.94.435~~) 70A.15.3170).

(2) The department, in accordance with RCW ((~~70.98-050~~) 70A.388.040 (4)(1), may issue subpoenas in order to compel either the attendance of witnesses or production of records, or both, in connection with any adjudicative or other administrative proceeding.

(3) The department, in accordance with RCW ((~~70.98-160~~) 70A.388.180, may impound sources of ionizing radiation.

(4) The secretary of the department, in accordance with RCW 43.70.190, is authorized to bring an action to prohibit a violation or a threatened violation of any department rules or regulation, or to bring any legal proceeding authorized by law to a county superior court.

(5) Any party, against which an enforcement action is brought by the department, has the right to submit an application for the adjudicative process in accordance with chapter 246-10 WAC and chapter 34.05 RCW.