

**WSR 16-14-078**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)  
 [Filed July 1, 2016, 11:02 a.m., effective August 1, 2016]

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

Purpose: The department is revising this rule in order to address Center for Medicare and Medicaid Services, Home and Community Based Services (HCBS) and stakeholder concerns with implementation of the requirements stated therein.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-107-0930; and amending WAC 388-107-0001, 388-107-0020, 388-107-0080, 388-107-0100, 388-107-0110, 388-107-0120, 388-107-0130, 388-107-0140, 388-107-0150, 388-107-0160, 388-107-0180, 388-107-0190, 388-107-0200, 388-107-0210, 388-107-0240, 388-107-0280, 388-107-0370, 388-107-0390, 388-107-0400, 388-107-0410, 388-107-0420, 388-107-0430, 388-107-0560, 388-107-0770, 388-107-0810, 388-107-0830, 388-107-0890, 388-107-0940, 388-107-0960, 388-107-1000, and 388-107-1190.

Statutory Authority for Adoption: RCW 70.97.230.

Other Authority: HCBS Final Rule 42 C.F.R.

Adopted under notice filed as WSR 15-24-037 on November 20, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-107-0110, wording change needed to ensure the responsibility of development of the initial person-centered service plan is that of the enhanced services facility, not the person-centered service team.

WAC 388-107-0120, wording change needed to ensure the responsibility of development of the individual comprehensive service plan is that of the enhanced services facility, not the person-centered service team.

WAC 388-107-0130, wording change needed to ensure the responsibility of development of the ongoing comprehensive person-centered service plan is that of the enhanced services facility, not the person-centered service team.

WAC 388-107-0140, wording change needed to ensure the responsibility of implementing of the person-centered service plan is that of the enhanced services facility, not the person-centered service team.

WAC 388-107-0150, wording change to streamline the responsibilities of the facility and the department case manager.

WAC 388-107-0160, wording change needed to ensure the responsibility of development and implementation of the behavioral support plan is that of the enhanced services facility, not the person-centered service team.

WAC 388-107-0190(7), rights of residents was reworded to help simplify the understanding of modification need when addressing 42 C.F.R. Sec. 441.301 (c)(4)(vi)(A) through (D).

A final cost-benefit analysis is available by contacting Penelope Rarick, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3210, fax (360) 725-2642, e-mail raricpp@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 31, Repealed 1.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 31, Repealed 1.

Date Adopted: July 1, 2016.

Patricia K. Lashway  
Acting Secretary

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0001 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

**"Abandonment"** means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse is also defined in RCW 74.34.020. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints except as described in section 388-107-0420;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

**"Activities of daily living"** means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

**"Administrative hearing"** is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

**"Administrator"** means an enhanced services facility administrator who must be in active administrative charge of the enhanced services facility as required in this chapter. Unless exempt under RCW 18.88B.041, the administrator must complete long-term care worker training and home care aide certification.

**"Advance directive,"** as used in this chapter, means any document indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future such as power of attorney health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

**"Aggressive behavior"** means actions by the individual that constitute a threat to the individual's health and safety or the health and safety of others in the environment.

**"Antipsychotic medications"** means that class of medications primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

**"Applicant"** means the individual or entity, as defined in this section(3) that has submitted, or is in the process of submitting, an application for an enhanced services facility license.

**"Capacity"** means the maximum amount an enhanced services facility can serve is sixteen residents.

**"Caregiver"** means the same as "long-term care worker" as defined in RCW 74.39A.009, as follows: "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care agencies to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed enhanced services facilities, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

**"Challenging behavior"** means a persistent pattern of behaviors that inhibit the individual's functioning in public

places, in the facility and integration within the community, or uncontrolled symptoms of a physical or mental condition. These behaviors may have been present for long periods of time or have manifested as an acute onset.

**"Chemical dependency"** means alcoholism, medication addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter 70.96A RCW.

**"Chemical dependency professional"** means a person certified as a chemical dependency professional by the department of health under chapter 18.205 RCW.

**"Deficiency"** means an enhanced services facility's practice, action, or inaction that violates any or all of the requirements of chapter 70.97 RCW or this chapter.

**"Department"** means the department of social and health services.

**"Direct supervision"** means oversight by a person on behalf of the enhanced services facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

**"Enhanced services facility" or "ESF"** means a facility licensed under chapter 70.97 RCW that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter 71.05 RCW.

**"Facility"** means an enhanced services facility.

**"Financial exploitation"** means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

**"Holding technique"** means using the least amount of force necessary to manually hold all or part of a person's body in a way that restricts the person's free movement; also includes any approved controlling maneuvers identified in the ~~((individual treatment))~~ person-centered service plan. Examples include holds taught in approved training for deescalation techniques and control of self-harm or aggressive behavior. This definition does not apply to briefly holding, without force, a person in order to calm the person, or holding a person's hand to escort the person safely from one area to another.

**"Infectious"** means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

**"Inspection"** means the process by which department staff evaluates the enhanced services facility licensee's compliance with applicable statutes and regulations.

**"License suspension"** is an action taken by the department to temporarily revoke an enhanced services facility license in accordance with RCW 70.97.120 and this chapter.

**"Licensee"** means the individual or entity, as defined in this chapter, to whom the department issues the enhanced services facility license.

**"Licensed physician"** means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

**"Likelihood of serious harm"** means a substantial risk that:

(1) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(2) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(3) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

**"Long-term care worker"** as defined in RCW 74.39A.009, has the same meaning as the term "caregiver."

**"Management agreement"** means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

**"Mandated reporter":**

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, Assisted living facility; chapter 18.51 RCW, Nursing homes; chapter 70.128 RCW, Adult family homes; chapter 72.36 RCW, Soldiers' homes; chapter 71A.20 RCW, Residential habilitation centers; chapter 70.97 RCW, Enhanced services facility or any other facility licensed by the department.

**"Medically fragile"** means a chronic and complex physical condition which results in prolonged dependency on specialized medical care that requires frequent daily skilled nursing interventions. If these medically necessary interventions are interrupted or denied, the resident may experience irreversible damage or death. Examples of specialized medical care and treatment for medically fragile residents include but are not limited to: IV therapies requiring monitoring of vital signs and dose titration dependent on lab values; wound care requiring external vacuum or other mechanical devices for debridement; complicated wound care requiring other specialized or extensive interventions and treatment; ventilator or other respiratory device dependence and monitoring; dependence on licensed staff for complex respiratory support; and peritoneal or hemodialysis (on-site).

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

**"Medication service"** means any service provided either directly or indirectly by an enhanced services facility related to medication administration medication assistance, or resident self-administration of medication.

**"Mental disorder"** means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

**"Mental health professional"** means a psychiatrist, psychologist, psychiatric nurse, licensed mental health counselor, licensed mental health counselor-associate, licensed marriage and family therapist, licensed marriage and family therapist-associate, licensed independent clinical social worker, licensed independent clinical social worker-associate, licensed advanced social worker, or licensed advanced social worker-associate and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter 71.05 RCW.

**"Misappropriation of resident property"** means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

**"Neglect"** means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Permanent restraining order"** means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 5 years), after which it expires.

**"Prescriber"** means a health care practitioner authorized by Washington state law to prescribe medications.

**"Professional person"** means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

**"Psychopharmacologic medications"** means a class of prescription medications that affect the mind, emotions, and behavior, including but not limited to antipsychotics, antianxiety medication, and antidepressants.

**"Reasonable accommodation"** and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the enhanced services facility must:

(a) Not impose an admission criterion that excludes individuals unless the criterion is necessary for the provision of enhanced services facility services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the enhanced services facility; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

**"RCW"** means Revised Code of Washington.

**"Records"** means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

**"Registration records"** include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

**"Resident"** means a person admitted to an enhanced services facility.

**"Resident's representative"** means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the enhanced services facility and to receive information from the enhanced services facility if there is no legal representative. The resident's representative may not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

**"Secretary"** means the secretary of the department or the secretary's designee.

**"Significant change"** means:

(1) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(2) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for discharge or for treatment in a less intensive or less secure setting.

**"Significant medication error"** includes any failure to administer or receive a medication according to an authorized health care provider's order, or according to the manufacturer's directions for nonprescription medications, that results

in an error involving the wrong medication, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration.

**"Social worker"** means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320-010.

**"Staff" or "staff person"** means any person who:

(1) Is employed or used by an enhanced services facility, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements of chapter 388-112 WAC.

**"Stop placement" or "stop placement order"** is an action taken by the department prohibiting enhanced services facility admissions, readmissions, and transfers of patients into the enhanced services facility from the outside.

**"Temporary restraining order"** means restraining order or order of protection that expired without a hearing, was terminated following an initial hearing, or was terminated by stipulation of the parties in lieu of an initial hearing.

**"Treatment"** means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, physical therapy, restorative nursing, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling.

**"Violation"** ~~(is an enhanced services facility failed practice, action or inaction that violates any or all of the following:~~

~~(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and~~

~~(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations))~~ means the same as "deficiency" as defined in this section.

**"Volunteer"** means an individual who interacts with residents without reimbursement.

**"Vulnerable adult"** includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any enhanced services facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

(8) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

**"WAC"** means Washington Administrative Code.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0020 Department authority.** (1) Chapter 70.97 RCW authorizes the department to develop rules to implement the chapter, and to license enhanced services facilities. At a minimum the rules are to be written to promote safe treatment and necessary care of individuals residing in each facility, to provide for safe and clean conditions and to establish licensee qualifications, licensing and enforcement standards, and license fees sufficient to cover the cost of licensing and enforcement.

(2) The department, in its sole discretion and after taking into consideration the circumstances of a particular facility such as size or location, may approve alternate staffing, administration, physical plant, or other arrangements that have been proposed in writing by an ESF applicant or licensee. An ESF's failure to comply with a department-approved alternate plan is a violation of this chapter and may result in enforcement actions under WAC 388-107-1430.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0080 Ongoing comprehensive assessments.** The enhanced services facility must:

(1) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in the resident's condition or at least every 180 days if there is no significant change in condition;

(2) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(b) When the resident's ~~((individual treatment))~~ person-centered service plan no longer addresses the resident's current needs and preferences; and

(c) When the resident has an injury requiring the intervention of a practitioner~~((:))~~;

(3) Review each resident's needs to evaluate discharge or transfer options when the resident:

(a) No longer needs the level of behavioral support provided by the facility; or

(b) Expresses the desire to move to a different type of community based setting;

(4) Ensure that the person-centered service planning team discusses all available placement options; and

(5) Ensure the staff person performing the ongoing assessments is a qualified ~~((to perform them))~~ assessor.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0100 ~~((Enhanced services facility))~~ Person-centered service planning team.** The enhanced services facility ~~((will identify a team for each resident. The team will))~~ must develop and maintain a person-centered service planning team for each resident. The ESF must:

(1) ~~((Include))~~ Ensure the person-centered service planning team includes the resident, the resident's representative

when applicable, individuals chosen ~~((and any support persons identified))~~ by the resident, ~~((as well as))~~ a mental health professional, nursing staff, the medicaid client's department case manager, and other persons ~~((identified by the facility))~~ as needed;

(2) Provide the necessary information and support to ensure that the resident has an opportunity to identify team members, make informed choices and decisions regarding care and treatment, and direct the person-centered service planning process as much as possible;

(3) Ensure the person-centered service planning team has a coordinated approach to the development, implementation, and evaluation of the ~~((individual treatment))~~ comprehensive person-centered service plan for the resident; and

~~((3) Meets))~~ (4) Ensure the person-centered service planning team meets at least monthly and more often as needed, at times and locations convenient to the resident, to review and modify the ~~((individual treatment))~~ comprehensive person-centered service plan as needed.

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

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0110 Initial ~~((individual treatment))~~ person-centered service plan.** The enhanced services facility ~~((team))~~ must develop the initial ~~((individual treatment))~~ person-centered service plan prior to the resident's admission to the ESF, using information from the resident, the resident's representative if the resident has one, the comprehensive assessment reporting evaluation (CARE) assessment for medicaid clients, and the preadmission assessment ~~((prior to admitting the resident to the facility))~~. The ~~((enhanced services facility team))~~ ESF must ensure that each resident has an initial ~~((individual treatment))~~ person-centered service plan that ~~((includes))~~ describes:

(1) The resident's immediate specific ~~((problems and))~~ support needs (physical, mental, and behavioral) identified in the pre-assessment;

(2) Direction to staff and caregivers relating to the resident's immediate needs, capabilities, and preferences;

(3) The means ~~((for))~~ by which the resident ~~((chooses))~~ may choose not to accept ~~((or refuses))~~ care or services;

(4) The resident's informed consent to the person-centered service plan;

(5) What the facility will do to ensure the resident's health and safety related to the refusal of any care or service;

~~((5))~~ (6) Resident defined goals and preferences;

~~((6))~~ (7) How the facility will provide behavioral support to prevent a crisis and maintain placement in the facility while respecting the resident's rights; ~~((and~~

~~((7) While in the community,))~~ (8) What the facility will do to ensure resident and community safety when the resident is in the community; ~~((and~~

~~((8) Identifying))~~ (9) Factors that ~~((will))~~ prevent the resident from accessing less restrictive community based services; and ~~((developing a plan regarding))~~

(10) When and how the resident may ~~((be able to))~~ transfer or transition from the enhanced services facility to a more independent living situation in the community.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0120 Initial comprehensive ~~((individual treatment))~~ person-centered service plan.** ~~((The enhanced services facility team must integrate the information obtained in the resident's preadmission assessment, medicaid client's CARE assessment information from the department's case manager, comprehensive assessment and initial individual treatment plan to develop a written comprehensive individual treatment plan.))~~ (1) The enhanced services facility must ensure that when the person-centered service planning team develops the initial comprehensive person-centered service plan, the team integrates the information contained in the following documents:

- (a) The resident's preadmission assessment;
- (b) Initial comprehensive assessment;
- (c) Initial person-centered service plan; and
- (d) The medicaid client's comprehensive assessment reporting evaluation (CARE) assessment.

(2) The enhanced services facility must ensure strategies for solving conflict or disagreement within the process of the development of the initial comprehensive individual treatment plan, including clear conflict-of-interest guidelines for all planning participants.

(3) The enhanced service facility must ensure the person-centered service planning team:

(a) Completes the initial comprehensive person-centered service plan within fourteen days of the resident's move-in date;

(b) Provide the initial comprehensive person-centered service plan to the resident in a clear and understandable format that is accessible to the resident, including those with disabilities and persons with limited English proficiency;

(c) Ensures the resident, or the resident's representative, when applicable, consents to the initial person-centered service plan in writing and that the plan is signed by all individuals on the person-centered service planning team; and

(d) Distributes a copy of the initial comprehensive person-centered service plan to the resident and all others responsible for the implementation of the plan.

(4) The enhanced services facility must ensure the person-centered service planning team ~~((must ensure each resident's comprehensive individual treatment plan includes))~~ includes the following in each resident's initial comprehensive person-centered service plan:

- ~~((1))~~ (a) A list of the care and services to be provided;
- ~~((2))~~ (b) Identification of who will provide the care and services;
- ~~((3))~~ (c) When and how the care and services will be provided;
- (d) A method for the resident to request updates to the plan as needed;
- (e) A list of services the resident may self-direct;

~~((4))~~ (f) How medications will be managed, including how the resident will receive medications when the resident is not in the facility;

~~((5))~~ (g) The resident's daily activities preferences, spiritual ~~((and))~~ or cultural preferences, or both, interests, strengths and needs and how the facility will meet those within the behavioral challenges of the resident;

~~((6))~~ (h) Other preferences and choices about issues important to the resident, including, but not limited to:

- (a) Food;
- (b) Daily routine;
- (c) Grooming; and
- (d) How the enhanced services facility will accommodate the preferences and choices.) the setting in which the resident resides, food, daily routine, grooming, and how the enhanced services facility will accommodate these preferences and choices;

(i) Communication barriers the resident may have and how the enhanced services facility will use communication techniques and nonverbal gestures to communicate with the resident;

~~((7))~~ A behavioral support plan to prevent crisis and maintain placement in the facility by:

(a) A crisis prevention and response protocol that outlines specific indicators which may signal a potential crisis for the resident;

(b) Specific interventions and pre-crisis prevention strategies for each of the resident's indicators of a potential crisis;

(c) A crisis prevention and response protocol that outlines steps to be taken if the prevention or intervention strategies are unsuccessful in diverting the crisis including the community crisis responder's coordination plan; and

(d) A plan on how to respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal.

~~((8))~~ Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;

~~((9))~~ (j) A hospice care plan if the resident is receiving ~~((services for))~~ hospice care ~~((delivered by))~~ services from a licensed hospice agency(-);

~~((10))~~ (k) Advance directives, if the resident chooses, that are validly executed pursuant to chapters 70.122 and 71.32 RCW, as applicable;

~~((11))~~ (l) A plan ~~((regarding how the facility will work))~~ for working with the department of corrections (DOC) if the resident is under the supervision of DOC, collaborating to maximize treatment outcomes and reduce the likelihood of re-offense(-);

~~((12))~~ (m) A plan ~~((which))~~ that maximizes the opportunities for independence, maintaining health and safety, recovery, employment, the resident's participation in treatment decisions, collaboration with peer-supported services, and care and treatment provided in the least restrictive manner appropriate ~~((to))~~ for the resident and ~~((to))~~ consistent with any relevant court orders with which the resident must comply(-);

~~((13))~~ A discharge plan that addresses factors and barriers that prevent a resident from being placed in a less restrictive community placement and assist the resident in the tran-

sition. This plan will include an assessment of all current medications and the resident's ability to self-medicate in a more independent living situation.

(14) ~~The enhanced services facility must complete the comprehensive individual treatment plan within fourteen days of the resident's move-in date~~) (n) A plan that addresses factors and barriers that prevent the resident from being placed in a less restrictive community placement upon discharge from the ESF;

(o) A plan that identifies factors that support the resident during the resident's transition to the ESF and a future transition to a less restrictive community placement;

(p) A plan that identifies all current medications, including the resident's ability to self-medicate in a more independent living situation; and

(q) A behavioral support plan to prevent crisis and maintain placement in the facility that includes the following:

(i) A crisis prevention and response protocol that outlines specific indicators which may signal a potential crisis for the resident;

(ii) Specific interventions and pre-crisis prevention strategies for each of the resident's indicators of a potential crisis;

(iii) A crisis prevention and response protocol that outlines steps to be taken if the prevention or intervention strategies are unsuccessful in diverting the crisis including the community crisis responder's coordination plan; and

(iv) A description of how to respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0130 Ongoing comprehensive ((~~individual treatment~~)) person-centered service plan.** (1) The enhanced services facility must ensure the person-centered service planning team ((will review)) reviews and ((update)) updates each resident's comprehensive ((individual treatment)) person-centered service plan(;) as follows:

(a) Within a reasonable time consistent with the ((needs of the resident)) resident's needs following any significant change in the resident's physical, mental, emotional, or behavioral functioning; ((and))

(b) Upon request by the resident;

(c) Whenever the comprehensive ((individual treatment)) person-centered service plan no longer adequately addresses the resident's current assessed needs and preferences; ((and))

((e)) (d) Following every full comprehensive assessment and medicaid client's full comprehensive assessment reporting evaluation (CARE) assessment; and

(e) At least once every one hundred eighty days.

(2) ~~((The process of developing and updating the comprehensive individual treatment plan will include the following:~~

(a) The resident;

(b) The resident's representative to the extent he or she is willing and capable, if the resident has one;

(c) Other individuals the resident wants included;

(d) The medicaid client's department case manager; and

(e) Staff designated by the enhanced services facility.

(3) The enhanced services facility team will ensure:

(a) Individuals participating in developing the resident's comprehensive individual treatment plan:

(i) Discuss the resident's assessed needs, capabilities, and preferences; and

(ii) Negotiate, if possible and feasible, an agreed-upon comprehensive individual treatment plan which would support the resident; and

(b) Staff persons document in the resident's record the agreed-upon plan for services)) The enhanced services facility must ensure that when developing the resident's comprehensive person-centered services plan the person-centered service planning team will:

(a) Discuss the resident's assessed needs, capabilities, and preferences;

(b) Negotiate an agreed comprehensive person-centered service plan that supports the resident;

(c) Prevent the provision of unnecessary or inappropriate services and supports; and

(d) Document the agreed comprehensive person-centered service plan in the resident's record.

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

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0140 Implementation of the ((~~individual treatment~~)) person-centered service plan.** (1) The enhanced services facility must provide the care and services as agreed upon or outlined in the initial and comprehensive ((~~individualized treatment~~)) person-centered service plan to each resident unless a deviation from the plan is mutually agreed upon between ((~~the enhanced services facility team;~~)) the medicaid client's department case manager, ((~~and~~)) the resident or the resident's representative, or both, and the person-centered service planning team at the time the care or services are scheduled.

(2) The ((~~details of any deviation from the plan must be clearly documented in the resident record~~)) enhanced services facility must document the details of any deviation from the initial or comprehensive person-centered service plan in the resident's record and ensure this deviation is supported with documentation by the medicaid client's department case manager, the resident or the resident's representative, or both, and the person-centered service planning team.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0150 Comprehensive ((~~individual treatment~~)) person-centered service plan sent to the state.** When ((~~a resident's services are paid for by~~)) the department is paying for a resident's services, the enhanced services facility must give the department case manager a copy of the comprehensive ((~~individual treatment~~)) person-centered service plan each time it is completed or updated ((~~and after it has been signed and dated. The department's case manager will:~~

- (1) ~~Review the individual treatment plan;~~
- (2) ~~Sign, date, and return the individual treatment plan to the facility;~~
- (3) ~~Document the review in the resident record, indicating it was signed and approved; and~~
- (4) ~~Schedule a department reassessment).~~ The ESF must keep a copy of the person-centered service plan that has been signed and dated by the department case manager, in the resident's file.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0160 Behavioral support plan.** The enhanced services facility ~~((will))~~ must ensure that each resident's ~~((individual treatment))~~ person-centered service plan has interventions for behavioral support that are used ~~((first))~~ immediately when a resident's behavior ~~((is escalating at home))~~ escalates in the ESF or ((in the)) community((; including but not limited to)). The behavioral support plan must include, at the minimum the following:

- (1) Resident strengths ((the individual holds)) that support strategies for prevention and intervention((-);
- (2) Specific indicators ((which)) that may signal a potential crisis for the ((individual)) resident or ((that left unaddressed in the past has)) led to a behavioral crisis((- Examples) in the past, which may include ((but are not limited to typical challenging behaviors the individual displays when escalating, actions the resident may typically take before a behavioral outburst, or words or phrases the individual has been known to express during a time of escalation.)) the resident's typical challenging behavior he or she displays during escalation, the resident's typical actions before a behavioral outburst, and words or phrases that the resident has used in the past during escalation;
- (3) Specific interventions and pre-crisis prevention strategies for each of the indicators identified above((-);
- (4) Steps to be taken by each of the facility ((team members)) staff if the prevention or intervention strategies are unsuccessful in diverting the ((individual)) resident from a behavior or action that leads to crisis((-);
- (5) A description of holding techniques that are safe and effective for the resident;
- ~~((5))~~ (6) A plan to ensure coordination with community crisis responders in regard to each resident's ((treatment)) person-centered service plan as part of a regular, routine protocol for crisis prevention and intervention((-); and
- ~~((6))~~ (7) A statement that the resident may not be secluded or isolated as part of the behavior support plan.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0180 Self-determination and participation rights.** Except ~~((when the health or safety of the individual or other residents or members of the community would be endangered and consistent with the individual treatment plan))~~ where the right conflicts with the resident's person-centered service plan or when it endangers the health or safety of the resident, other residents, or members of the community, each resident has the right to:

- (1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and ~~((individual treatment))~~ person-centered service plan;
- (2) Interact with members of the community both inside and outside the enhanced services facility;
- (3) Make choices about aspects of his or her life in the facility that are significant to the resident; and
- (4) Participate in social, religious, and community activities that do not interfere with the rights of other residents in the enhanced services facility.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0190 Rights of residents.** (1) Each resident of an enhanced services facility is entitled to all the rights set forth in this chapter~~((;))~~ and chapters 71.05 and 70.96A RCW, and ~~((must retain))~~ retains all rights not denied him or her under these chapters.

- (2) The enhanced services facility ~~((with))~~ may only consider a resident's competence as determined or withdrawn under the provisions of chapters 10.77 or 11.88 RCW.
- (3) The facility must give each resident, at the time of his or her ~~((treatment))~~ person-centered service planning meeting, a written statement setting forth the substance of this section.
- (4) Every resident of an enhanced services facility has the right to ~~((adequate))~~ appropriate care and individualized treatment, interventions, and support that will not harm the resident.

(5) The provisions of this chapter must not be construed to deny to any resident treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

~~((Each resident of an enhanced services facility must have, in addition to other rights not specifically withheld by law, the rights enumerated in (a) through (m) below, unless exercise of these rights creates a danger to the resident or to others. The facility must prominently post a list of these rights in a place accessible to residents and must make this list available to residents without need of request. The resident has the right))~~ In addition to other rights not specifically withheld by law, each resident of an enhanced services facility has the rights enumerated in subsections (6)(a) through (6)(o) of this section unless the exercise of which creates a danger to the resident or others. The facility must prominently post a list in a place accessible to residents of the rights enumerated in subsections (6)(a) through (6)(o) of this section and make the list readily available to residents. The resident has the right to:

- (a) ~~((To))~~ Wear his or her own clothes and ~~((to))~~ keep and use his or her ~~((own))~~ personal possessions((-except when deprivation of same is essential to protect the safety of the resident or other persons));
- (b) ~~((To))~~ Have access to fluids and snacks of his or her choice at any time;
- (c) ~~((To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases))~~ Control his or her personal finances;



(d) ~~((Tø))~~ Have access to individual locked storage space for his or her private use;

(e) ~~((Tø))~~ Have visitors at ~~((reasonable))~~ times convenient to the resident and in accordance with his or her person-centered service plan;

(f) ~~((Tø))~~ Have ~~((reasonable))~~ twenty-four hour access to a telephone~~((both))~~ to make and receive confidential calls~~((consistent with an effective treatment program));~~

(g) ~~((Tø))~~ Have ready access to letter-writing materials, including stamps~~((;))~~ and ~~((tø))~~ send and receive uncensored correspondence through the ~~((mails))~~ mail;

(h) ~~((Tø))~~ Discuss and actively participate in ~~((treatment plans))~~ the development of his or her person-centered service plan and decisions with professional persons;

(i) ~~((Tø))~~ A clean~~((;))~~ and comfortable ~~((and))~~ home ~~((like))~~ environment;

(j) Furnish and decorate his or her sleeping room in accordance with his or her person-centered service plan.

(k) ~~((tø))~~ Not ~~((tø))~~ have psychosurgery performed on him or her under any circumstances;

(l) Refuse antipsychotic medication consistent with RCW 70.97.050;

~~((tø))~~ (m) Dispose of property and sign contracts unless the resident has been ~~((adjudicated an))~~ found incompetent in a court proceeding ~~((directed to))~~ regarding that ~~((particular))~~ issue; and

~~((l))~~ To complain about rights violations or conditions and request the assistance of a mental health ombuds or representative of Washington protection and advocacy. The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice. (n) Complain about right violations or conditions at the enhanced services facility and request the assistance of an ombuds, disability rights Washington representative, or another representative of the resident's choice without interference from the enhanced services facility; and

~~((m))~~ ~~((Tø))~~ (o) Receive a minimum of thirty days written notice if there are any changes to the scope of services identified in the ~~((individual treatment))~~ resident's person-centered service plan.

(7) A modification of the resident rights described in 42 C.F.R. Sec. 441.301 (c)(4)(vi)(A) through (D) may only be made based upon a resident's specific assessed need that is determined following a person-centered service planning team review. The rights to which this requirement applies include, but are not limited to, the following: a legally enforceable agreement that includes protections from eviction; privacy in the resident's sleeping or living unit; freedom to control his or her own schedules and activities; access to food at any time; and access to have visitors at any time. The team review required under this subsection must be conducted and documented in accordance with the following:

(a) The resident's specific individualized assessed need;

(b) The positive interventions and supports used prior to any modification;

(c) Less intrusive methods of meeting the needs that have been tried but did not work;

(d) A clear description of the condition that is directly related to the resident's specific assessed need;

(e) Regular collection and review of data to measure the ongoing effectiveness of the modification;

(f) Established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

(g) The resident's or resident's representative's informed consent for the modification; and

(h) An assurance that interventions and supports will cause no harm to the resident.

~~((7))~~ (8) Nothing contained in this chapter ~~((must))~~ may prohibit a resident, resident's representative, or both from petitioning by writ of habeas corpus for release.

~~((8))~~ (9) Nothing in this section permits any person to knowingly violate a no-contact order ~~((or a))~~ condition of an active judgment and sentence, or active supervision by the department of corrections.

~~((9))~~ (10) A resident has ~~((a))~~ the right to refuse placement in an enhanced services facility. No person ~~((must))~~ may be denied other department services solely on the grounds that he or she ~~((has made such a refusal))~~ refused placement in an enhanced services facility.

~~((10))~~ (11) A resident has ~~((a))~~ the right to appeal the ~~((decision of the department))~~ department's decision that he or she is eligible for placement at an enhanced services facility~~((; and must be given notice of the right to appeal in a format that is accessible to the resident with instructions regarding what to do if the resident wants to appeal)).~~ The department must give the resident notice of his or her right in a format accessible to the resident with instructions on how to appeal.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0200 Quality of care.** (1) ~~((Consistent with resident rights,))~~ The enhanced services facility must provide each resident with the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, self-care, and independence consistent with resident rights and in accordance with his or her comprehensive assessment and ~~((individual treatment))~~ person-centered service plan.

(2) Based on the ~~((comprehensive assessment of a resident))~~ resident's comprehensive assessment, the enhanced services facility must ensure that:

(a) ~~((A))~~ The resident's abilities in activities of daily living do not decline unless circumstances of the resident's clinical condition demonstrate that the decline was unavoidable~~((; This includes)),~~ including but not limited to the resident's ability to:

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) Use speech, language, or other functional communication systems~~((;))~~;

(b) ~~((A))~~ The resident is given the appropriate treatment and services to maintain or improve the resident's abilities in activities of daily living specified in subsection (2)(a) of this section; and

(c) ~~((A))~~ The resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(3) The enhanced services facility must ensure that the appropriate care and services are provided to the resident in a minimum of the following areas, as applicable in accordance with the resident's individualized assessments and ~~((individual treatment))~~ person-centered service plan:

- (a) Mental health treatment;
  - (b) Chemical dependency treatment;
  - (c) Vision and hearing;
  - (d) Skin;
  - (e) Continence;
  - (f) Range of motion;
  - (g) Mental and psychosocial functioning and adjustment;
  - (h) Nutrition;
  - (i) Hydration;
  - (j) Special needs, including but not limited to:
    - (i) Injections;
    - (ii) Parenteral and enteral fluids;
    - (iii) Colostomy, urostomy, or ileostomy care;
    - (iv) Tracheostomy care and/or tracheal suctioning;
    - (v) Respiratory care;
    - (vi) Dental care;
    - (vii) Foot care; and
    - (viii) Prostheses~~(-)~~;
  - (k) Independent living skills; and
  - (l) Medications, including freedom from:
    - (i) Unnecessary medications; and
    - (ii) Significant medication errors~~(; and~~
- ~~(4) Independent living skills).~~

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0210 Care and services.** The enhanced services facility must develop and implement a program to meet the needs of each resident and to ensure each resident receives:

(1) The care and services identified in the ~~((individualized treatment))~~ resident's person-centered service plan~~(-)~~;

(2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status, and potential for improvement or decline~~(-)~~;

(3) Services by the appropriate professionals based upon the resident's assessment and person-centered service plan; and

(4) The care and services in a manner and in an environment that:

(a) Actively supports, maintains or improves ~~((each))~~ the resident's quality of life;

(b) Actively supports the ~~((safety of each resident))~~ resident's safety; and

(c) Reasonably accommodates ~~((each))~~ the resident's individual needs and preferences except when the accommodation endangers the health or safety of the ~~((individual))~~ resident, another resident, or a member of the community.

~~((4) Services by the appropriate professionals based upon the resident's assessment and individualized treatment plan.)~~

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0240 Staffing ~~((ratios))~~ levels.** (1) The enhanced services facility must ensure that:

(a) Sufficient numbers of appropriately qualified and trained staff are available to safely provide necessary care and services consistent with residents' ~~((negotiated service agreements safely))~~ person-centered service plans under routine conditions, as well as during fire, emergency, and disaster situations; and

(b) At least two staff are awake and on duty in the facility at all times if there are any residents in the facility.

(2) A ~~((licensed))~~ registered nurse must be ~~((on duty in the facility at all times.))~~ available to meet the needs of the residents as follows:

(a) On duty in the facility at least twenty hours per week; and

(b) When not present, available on-call and able to respond within thirty minutes by phone or in person.

~~((a))~~ (3) A ~~((registered))~~ licensed nurse must be on duty in the facility ~~((at least eight hours per day; and))~~ whenever a registered nurse is not on site.

~~((b) A registered nurse must be on call during any shift that a licensed practical nurse is on duty in the facility.)~~

~~((3))~~ (4) A mental health professional must be ~~((on-site))~~ available to meet the needs of the residents as follows:

(a) On duty in the facility at least ~~((sixteen))~~ eight hours per day; and

(b) When not present, available on-call and able to respond within thirty minutes by phone or in person.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0280 Transfer and discharge.** (1) ~~((Upon completion of the annual reassessment and/or significant change assessment by both case management and enhanced services facility staff, the enhanced services team will review each resident for possible discharge. The team will determine if the resident:~~

(a) ~~No longer needs the level of behavioral support provided by the enhanced services facility;~~

(b) ~~Behaviors are now mitigated by changed medical or personal care needs;~~

(c) ~~Expresses the desire to move to a different type of community based setting and has demonstrated the ability or capacity to be successful; or~~

(d) ~~Is a good candidate for relocation and recommends other community based programs to the resident.~~

(2) ~~The enhanced services facility, with input from the person-centered service planning team, will meet with case management staff to identify residents ~~((with potential for discharge or transfer to a less restrictive program, and will participate in discharge planning for each resident who meets the above criteria for potential discharge from the facility.~~~~

(3) The enhanced services facility must provide a thirty day notice before discharging a resident unless the situation is emergent and the case manager is involved in the decision)) who want to be discharged from the facility or transfer to a less restrictive residential setting. Once the facility identifies these residents, it will hold a discharge planning meeting for each resident.

(2) The facility may not transfer or discharge a resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The safety of individuals in the facility is endangered;

(c) The health of individuals in the facility would otherwise be endangered;

(d) The resident has failed to make the required payment for his or her stay; or

(e) The facility ceases to operate.

(3) Before transferring or discharging a resident, the facility must:

(a) To avoid transfer or discharge through reasonable accommodation, unless agreed to by the resident;

(b) Notify the resident, the resident's representative, and all members of the resident's person-centered service planning team of the transfer or discharge and the reasons for the move in writing and in a language and manner the resident understands;

(c) Record the reasons for the transfer or discharge in the resident's record; and

(d) Include in the notice the items described in subsection (6) of this section.

(4) Except as specified in subsection (5) of this section, the facility must notify the resident as specified in subsection (3)(b) of this section, at least thirty days before the resident is transferred or discharged;

(5) The facility must notify the resident as specified in subsection (3)(b) of this section as soon as practicable when:

(a) The safety of individuals in the facility would be endangered;

(b) The health of individuals in the facility would be endangered;

(c) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(d) The resident has not resided in the facility for thirty days.

(6) The written notice specified in subsection (3)(b) of this section must include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombuds; and

(e) The mailing address and telephone number of disability rights Washington, a protection and advocacy system for individuals with disabilities.

(7) The facility must provide sufficient preparation and orientation for residents to ensure their safe and orderly transfer or discharge from the facility.

(8) A resident discharged in violation of this section has the right to be readmitted immediately upon the first availability of appropriate space in the facility.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0370 Treatment services.** The enhanced services facility must:

(1) Provide for diagnostic and therapeutic services prescribed by the attending clinical staff that meet all of the resident needs identified in the ~~((individual treatment))~~ person-centered service plan, to include mental health and chemical dependency treatment;

(2) Ensure that each resident's ~~((individual treatment))~~ person-centered service plan has interventions for behavioral support in accordance with WAC 388-107-0160;

(3) Ensure that all services are provided by specific program professionals, such as mental health professionals and chemical dependency professionals.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0390 Use of routine psychopharmacologic medications.** When the resident is using a ~~((psychopharmacological))~~ psychopharmacologic medication on a routine basis, the facility must ensure that ~~((the))~~:

(1) The medication is prescribed by a physician or health care professional with prescriptive authority;

(2) The resident's ~~((individual treatment))~~ person-centered service plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) Changes in medication only occur when the prescriber decides it is medically necessary;

(4) The resident's record includes documentation about the specific symptom or behavior that caused the physician to order the medication and what ~~((the resident needs to be able to do or stop doing in order to discontinue the medication-))~~ is required of the resident before the medication may be discontinued;

(5) ~~((Documentation includes))~~ The resident's record includes documentation that the resident, guardian, or legal representative, if any, was informed of the need for the psychopharmacologic medication(-); and

(6) Antipsychotic medications are administered in a manner consistent with RCW 70.97.040 and 70.97.050.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0400 Use of as needed psychopharmacologic medications.** If the physician has ordered an as-needed psychopharmacologic medication for a resident, the facility must ensure that ~~((the))~~:

(1) The order details the circumstances under which the medication may be used and the medication is given only as specifically ordered;

(2) The resident's ~~((individual treatment))~~ person-centered service plan includes behavioral intervention strategies

and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) ~~((Documentation))~~ There is documentation in the resident record ~~((is done on))~~ about the specific symptom or behavior that caused the need for the medication and ~~((what))~~ the results of ~~((the use is))~~ its use; ~~((and))~~

(4) There is documentation ~~((includes that))~~ in the resident record that the resident, guardian or legal representative, if any, was informed of the need for the medication~~((:))~~;

(5) The resident, guardian, or legal representative has given informed consent for the medication; and

(6) Antipsychotic medications are administered in a manner consistent with RCW 70.97.040 and 70.97.050.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0410 Management of escalating behaviors.** (1) An enhanced services facility must have a specific procedure for deescalating, preventing, and redirecting aggressive and challenging behavior. This protocol must always be the first approach and strategy in resolving behavioral issues~~((The protocol))~~ and must include:

(a) Training on prevention of escalation of behavior before it reaches the stage of physical assault;

(b) Techniques for staff to use in response to challenging client behaviors;

(c) Evaluation of the safety of the physical environment;

(d) Issues of respect and dignity of the resident; and

(e) Use of the least restrictive physical and behavioral interventions depending upon the situation~~((:))~~.

(2) If the facility uses holding techniques ~~((as a last resort))~~ to physically restrain residents in emergency situations and as part of behavioral intervention protocols, the facility must:

(a) Ensure that all staff authorized to use holding techniques receive department-approved training on specific techniques prior to using them;

(b) Describe the types of holding techniques that are safe and effective for the individual in the resident's person-centered service plan;

(c) Use other established resident-specific behavioral interventions first to attempt to deescalate the situation;

~~((b))~~ (d) Limit the holding technique to specific emergent situations where behavioral interventions have not been successful in deescalating a situation and the resident is at imminent risk of harm to self or others due to aggressive behavior;

~~((e))~~ (e) Limit the ~~((time used))~~ duration of the holding technique to only until the arrival of emergency personnel ~~((and))~~ or the emergency ceases;

~~((d))~~ (f) Release residents from the holding technique as soon as possible;

~~((e))~~ (g) Instruct observers on how to ~~((support))~~ recognize signs of~~((:~~

~~((i))~~ distress by the ~~((client; and~~

~~((ii))~~ resident and fatigue by the staff~~((:)); and~~

~~((f))~~ (h) Document:

(i) The reason for use of the holding technique;

(ii) Other behavioral interventions attempted prior to the use of the holding technique;

(iii) The duration of the use of the holding technique; ~~((and))~~

(iv) The assessment by a qualified assessor; and

(v) The condition of the resident at the time of release from the holding technique.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0420 Physical restraints for medical purposes only.** (1) For the purposes of this section, "physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, required to treat the resident's medical symptoms. The enhanced services facility must ensure:

(2) Each resident has the right to be free from physical and chemical restraints used for discipline, behavioral intervention, or staff convenience;

(3) That physical restraints are used only during infrequent and episodic occurrences for the protection of the ~~((individual))~~ resident during delivery of medical care or treatment~~((:))~~;

(4) That before using the physical restraint, the least restrictive alternatives have been tried and documented, and such restraint is deemed required to temporarily protect the resident from harming ~~((themselves))~~ himself or herself or others during the medical care or treatment;

(5) That before physical restraints are used, the resident has been assessed as needing the restraint to treat the emergent medical symptoms or provide the medical care, and to prevent the resident from self-harm~~((; and))~~ and all of the following has been met:

(a) The resident or resident representative has given informed consent for the use of physical restraints for medical purposes;

(b) The ~~((treatment))~~ person-centered service team has been consulted and evaluated the resistance to medical care; and

~~((b))~~ (c) The ~~((documentation has been updated to include))~~ use of positive interventions and supports ~~((used:))~~ has been documented;

(6) That if physical restraints are used, the restraints are episodic and infrequently applied and ~~((immediately supervised on-site by a))~~ that any of the following licensed health professionals is in the facility and are quickly and easily available:

(a) Licensed registered nurse;

(b) Licensed practical nurse; or

(c) Licensed physician; and

~~((d) For the purposes of this subsection, immediately supervised means that the licensed person is in the facility, quickly and easily available;))~~

(7) When any physical restraint is used ~~((per (3) above))~~ in accordance with this section, the following is required:

(a) A staff person who is ~~((in the presence of))~~ either a licensed or registered nurse, mental health professional, cer-

tified nursing assistant, or certified home care aide, must be with the resident at all times when the restraint is in use;

~~(b) ((A physician's order is obtained within one hour))~~ The facility must obtain a physician's order within one hour authorizing the use of restraint and the order includes treatments to resolve the emergency situation and eliminate the need for the restraint;

~~(c) ((The order must include treatments to assist in resolving the emergency situation and eliminating the need for the restraint;~~

~~(d))~~ Behavioral consultation ~~((is))~~ must be obtained within two hours;

~~((e))~~ (d) Resident ((is)) must be released immediately upon the cessation of the behavior that preceded the need for restraint((-);

~~((f))~~ (e) The restraint ((is)) must be removed immediately at the conclusion of the medical emergency, treatment, or procedure;

~~((g))~~ (f) The enhanced services facility must immediately self-report((s within twenty-four hours the use of the physical restraint for medical purposes to the complaint resolution unit; and)) the use of the physical restraint for medical purposes to the complaint resolution unit (CRU) and for the purposes of this regulation "immediately" means there should be no delay between staff awareness of the occurrence and reporting to the CRU unless the situation is unstable in which case reporting should occur as soon as the safety of all residents is assured;

~~((h))~~ (g) The use of the physical restraint ((is)) must be documented with the following:

(i) ~~((n))~~ A description that the specific medical issue ((that)) caused the need for restraint and what the resident needs to do or stop doing in order to discontinue the use of the restraint; and

(ii) ~~((that))~~ A statement that demonstrates that the resident, guardian or legal representative, if any, was informed of the need for restraint; and

~~((i))~~ (h) The ((treatment)) person-centered service planning team ((will)) must consult within ((twenty-four)) seventy-two hours to determine less intrusive methods to meet the resident's needs for future care.

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

**AMENDATORY SECTION** (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0430 Food services.** The enhanced services facility must provide or contract out food services for residents. If the facility chooses to contract out the food service, the contracted services must meet all of the applicable food codes and requirements.

(1) The enhanced services facility must:

(a) Provide a minimum of three meals a day;

(b) Provide snacks(;

~~(;))~~ between meals and in the evening at regular intervals((-and

~~((;))~~ with no more than fourteen hours between the evening meal and breakfast(;) unless the ((enhanced services))

facility provides a nutritious snack after the evening meal and before breakfast((-);

(c) Provide access to fluids and snacks at all times;

(d) Provide sufficient time and staff support for residents to consume meals;

(e) Ensure all menus:

(i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in subsection (1)(h) of this subsection;

(ii) Indicate the date, day of week, month, and year;

(iii) Include all food and snacks served that contribute to nutritional requirements;

(iv) Are kept at least six months;

(v) Provide a variety of foods;

(vi) Provide foods at safe and appropriate temperatures; and

(vii) Are not repeated for at least three weeks, except ~~((that))~~ breakfast menus ~~((in enhanced services facilities))~~ that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle((-);

(f) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC regarding food service;

(g) Serve nourishing, palatable, and attractively presented meals adjusted for(;) age, gender and activities, unless medically contraindicated, and individual preferences to the extent reasonably possible;

~~((i) Age, gender and activities, unless medically contraindicated; and~~

~~((ii) Individual preferences to the extent reasonably possible.))~~

(h) Substitute foods of equal nutrient value(;) when changes in the current day's menu are necessary(;) and record changes on the original menu;

(i) Make available and give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value(;-); however the enhanced services facility is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

(j) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

(k) Maintain a dining area or areas approved by the department with a seating capacity for seventy-five percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The enhanced services facility must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual~~((The enhanced services facility must))~~ and ensure the diet manual is:

(i) Available to and used by staff persons responsible for food preparation;

(ii) Approved by a dietitian; and  
 (iii) Reviewed and updated as necessary or at least every five years~~(-); and~~

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The enhanced services facility may provide to a resident at his or her request and as agreed upon in the resident's comprehensive ~~((individual treatment))~~ person-centered service plan, nonprescribed:

- (a) Modified or therapeutic diets; and
- (b) Nutritional concentrates or supplements.

(4) The enhanced services facility must have a means for those residents whose ~~((individual treatment))~~ person-centered service plan indicates they have the ability to make or select their own snacks and beverages an opportunity to do so without having to ask a staff member for assistance.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0560 Resident records—Clinical records.** (1) The enhanced services facility must:

(a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

- (i) Complete;
- (ii) Accurately documented;
- (iii) Readily accessible; and
- (iv) Systematically organized.;

(b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and

(c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

- (i) Transfer to another health care institution;
- (ii) Law; or
- (iii) The resident.

(2) The enhanced services facility must ensure the clinical record of each resident includes ~~((at least))~~ a minimum of the following:

(a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;

- (b) Medical information;
- (c) Physician's orders;
- (d) Assessments;
- (e) ~~((Individual treatment))~~ Person-centered service plans;

- (f) Services provided;
- (g) Progress notes;
- (h) Medications administered;
- (i) Consents, authorizations, releases;
- (j) Allergic responses;
- (k) Laboratory, X ray, and other findings; and
- (l) Other records as appropriate.

(3) The enhanced services facility must maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including chapters 70.02 and 70.96A 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.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0770 Environment of care.** The enhanced services facility must ensure that:

(1) The facility is designed to provide ~~((the level of))~~ safety and security appropriate for the specific type of service or program provided as well as the age level, acuity, and risk of the residents served ~~((e.g.,))~~ for geriatric, acute psychiatric, or forensic~~(-))~~ residents; and

(2) ~~((Facility spaces accessible to residents must be designed to minimize locations where residents are out of the line of sight of staff.~~

~~(3))~~ All rooms with lockable doors, including but not limited to resident sleeping rooms and bathrooms, have a readily accessible means of rapid access for ~~((all))~~ appropriate staff.

~~((4) Perimeter security addresses elopement prevention, prevention of contraband smuggling, visitor access control, and exit process and procedures.~~

~~(5) Openings in the perimeter security system (e.g., windows, doors, and gates) are controlled by locks (manual, electric, or magnetic) when required by the functional program.)~~

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0810 Resident room.** The facility must ensure that each resident sleeping room:

(1) ~~((Meets the following standards:~~

~~(a))~~ Has a maximum capacity of one resident~~(-);~~

~~((b))~~ (2) May be locked by the resident provided that:

(a) Appropriate staff have a readily accessible means to unlock the room when the door is locked; and

(b) An unlocked door is not an identified need in the person-centered service plan;

~~((i) Unless otherwise indicated by an identified need in the individual treatment plan; and~~

~~(ii) All staff have a readily accessible means of unlocking the room when the door is locked.~~

~~(e))~~ (3) Has a minimum clear floor area of ~~((100))~~ eighty square feet~~(-)~~ and meets the needs of the resident;

~~((d))~~ (4) Has one or more outside windows that:

~~((i))~~ (a) If used for ventilation, are easily opened;

~~((ii))~~ (b) Have ~~((break-away))~~ adjustable shades, blinds, or equivalent installed for visual privacy and are designed to meet the safety needs of the resident; ~~((and~~

~~(2))~~ (5) Is adjacent to bathing and toilet facilities;

~~((3))~~ (6) Is designed to offer visual privacy from casual observation by other residents and visitors~~(-)~~ and the design for privacy must not restrict resident access to the entrance, handwashing station, or toilet~~(-);~~

~~((4))~~ (7) Is accessible, clean, and well-maintained with sufficient space, light, and comfortable furnishings for sleeping and personal activities including, but not limited to:

(a) A minimum of a three-foot clear access aisle from the entry door, along at least one side of the bed, and in front of all storage equipment;

(b) Enough room for medical equipment and for a resident to move about freely with mobility aides, such as wheelchairs, if applicable as assessed by resident need; ~~(and)~~

(c) Direct access to a hallway, living room, lounge, the outside, or other common use area without going through a laundry or utility area, a bath or toilet room, or another resident's bedroom(-); and

~~((5))~~ (8) Is equipped with:

(a) One or more waste containers;

(b) Furniture appropriate for the age and physical condition of each resident, including but not necessarily limited to:

(i) A chair, which may be used in either the bedroom or a group room interchangeably;

(ii) A bed of appropriate length and size that is thirty-six or more inches wide with a mattress that fits the bed frame, is in good condition, and is at least four inches thick unless otherwise requested or necessary for resident health or safety; and

(iii) A lockable storage space accessible to each resident for storage of small personal items, upon request.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0830 Resident bathing facilities.** The facility must provide access to a bathtub or shower for every resident. ~~((The facility will ensure that bathing facilities are designed and located for resident convenience and privacy.))~~ The facility must ensure:

(1) Bathing facilities are designed and located for resident convenience and privacy;

(2) At least one bathing unit for every four residents, or fraction thereof, who are located in a resident room without an adjoining bathroom;

~~((2))~~ (3) Access to at least one bathing device for immersion;

~~((3))~~ (4) Access to at least one roll-in shower or equivalent on each resident care unit:

(a) Designed and equipped for unobstructed ease of shower chair entry and use;

(b) With a spray attachment equipped with a backflow prevention device;

(c) ~~((One))~~ With one-half inch or less threshold that may be a collapsible rubber water barrier; and

(d) ~~((A))~~ With a minimum nominal (rough-framed) size of thirty-six inches by forty-eight(-);

~~((4))~~ (5) Resident bathing equipment is smooth, cleanable, and able to be disinfected after each use(-);

~~((5))~~ (6) In each bathing unit containing more than one bathing facility:

(a) Each bathtub, shower, or equivalent, is located in a separate room or compartment with three solid walls;

(b) The entry wall may be a ~~((break-away "shower" type))~~ shower curtain or equivalent that is designed to meet the safety needs of the resident;

(c) The area for each bathtub and shower is sufficient to accommodate a shower chair, an attendant, and provide visual privacy for bathing, drying, and dressing;

(d) All shower and tub surfaces are slip-resistant; and

(e) All bathing areas are constructed of materials that are impervious to water and cleanable(-);

~~((6))~~ (7) Common bathing facilities must comply with the state building code requirements for accessible bathing facilities(-);

~~((7) Grab bar(s))~~ (8) One or more grab bars must be installed to prevent fall and injury in bathing facilities in non-accessible resident rooms(-); and

~~((8) Grab bar(s))~~ (9) One or more grab bars in accessible bathing rooms must be installed according to the state building code requirements for accessible bathing rooms.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0890 Outdoor recreation space and walkways.** (1) ~~((A))~~ The enhanced services facility must provide a safe, protected outdoor area for resident use.

(2) The facility must ensure the outdoor area:

(a) Has areas protected from direct sunshine and rain throughout the day;

(b) ~~((Is accessible from the floor or story))~~ Can be accessed by the resident ((resides on and));

~~((c))~~ Has walking surfaces ((which)) that are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between the sidewalk and adjoining landscape areas;

~~((e))~~ (d) Has sufficient space and outdoor furniture provided with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids;

~~((f))~~ (e) Contains nonpoisonous shrubs, natural foliage, and trees;

~~((e))~~ (f) Is surrounded by walls or fences at least seventy-two inches high; and

~~((f))~~ (g) If used as a resident courtyard, the outdoor area must not be used for public or service deliveries.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0940 Resident safety ~~((and suicide prevention))~~.** (1) The enhanced services facility must be designed to prevent injury and ~~((suicide prevention, with special design considerations to details, finishes, and equipment. The facility must ensure:))~~ promote resident safety.

~~((1) Ceilings))~~ (2) The facility must ensure that:

(a) ~~((In resident bathrooms are secured to prevent resident access. Ceiling systems of a nonsecured (nonclipped down) lay-in ceiling tile design are not permitted.~~

~~((b) In resident bedrooms and bathrooms, are designed to eliminate tie-off point(s) or at nine feet in height to prevent resident access.~~

~~((2) Doors and door hardware:))~~

~~((a))~~ Doorways are at least ~~((36"))~~ thirty-six inches wide;

(b) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access(-);

~~((+)) (c) Door closers ((with)) are not be used unless required by the building code(-) and if required on the resident room door, the closer ((with)) must be mounted on the public side of the door rather than the private resident's side of the door(-);~~

~~((3) Door hinges:~~

~~(a) Are designed to minimize points for hanging (i.e., cut hinge type); and~~

~~(b) Are consistent with the level of care for the resident.~~

~~(4) Door lever handles are specifically designed anti-ligature hardware.~~

~~(5) All hardware has tamper-resistant fasteners(-)~~

~~((6) Windows:~~

~~(a) Located in areas accessible to residents are designed to limit the opportunities for breakage;~~

~~(b) All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equal;~~

~~(c) Use of tempered glass for interior windows is permitted.~~

~~(d) Break away window coverings for visual privacy; and~~

~~(e) The anchorage of windows and window assemblies, including frames, is designed to resist impact loads applied from the inside and must be tested in accordance with American National Standards Institute (ANSI) Z97.1. Where operable windows are used, the hinges and locking devices must also be tested;~~

~~(7) Bathroom hardware and accessories:~~

~~((+)) (d) Special design considerations for resident safety and injury ((and suicide)) prevention ((must be)) are given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders(-); and~~

~~((+)) (e) Grab bars(-)~~

~~(i) Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other nonpublic space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point.~~

~~(8) An overall design for anti-ligature including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions.~~

~~(9) Towel bars and shower curtain rods are not permitted.~~

~~(10) In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access.~~

~~(11) In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tamper-resistant type(-)), where provided, are securely fastened to withstand a minimum three hundred pounds of force.~~

## NEW SECTION

**WAC 388-107-0945 Resident suicide and self-harm prevention.** When an enhanced services facility's functional program states that it plans to admit a resident, or the licensee or applicant identifies a current resident who is at risk of suicide or self-harm, or both the licensee or applicant must submit a risk assessment to the department of health construction

review services, identifying the risks in the physical environment. The licensee or applicant must ensure that the facility meets all or part of the following standards as determined by the department of health's review of the risk assessment:

(1) Ceilings in resident bathrooms are secured to prevent resident access and ceiling systems of a non-secured (non-clipped down) lay-in ceiling tile design are not permitted;

(2) Ceilings in resident bedrooms and bathrooms are designed to eliminate tie-off point(s) or are at least nine feet in height;

(3) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access;

(4) Door closers are not used unless required by the building code and if required on the resident room door, the closer must be mounted on the public side of the door rather than the private resident's side of the door;

(5) Door hinges are designed to minimize points for hanging, such as cut hinge type, and are consistent with the level of care for the resident;

(6) Door lever handles are specifically designed anti-ligature hardware and all hardware has tamper-resistant fasteners;

(7) Windows located in areas accessible to residents are designed to limit the opportunities for breakage;

(8) All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equivalent;

(9) Use of tempered glass for interior windows is permitted;

(10) Break-away window coverings are used for visual privacy;

(11) Special design considerations for injury and suicide prevention must be given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders;

(12) Towel bars and shower curtain rods are not permitted;

(13) Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other nonpublic space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point; and

(14) The facility must include an overall design for anti-ligature including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions that meet the following criteria:

(a) In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access;

(b) In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tamper-resistant type;

(c) Call system may not use cords; and

(d) All hardware fixtures that are fastened with exposed fasteners must use tamper resistant screws.

**AMENDATORY SECTION** (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0960 Plumbing—Water supply.** The facility must provide the following:

(1) ~~((Provide:~~



~~(a))~~ Water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

~~((b))~~ (2) Hot and cold water under adequate pressure readily available throughout the enhanced services facility;

~~((c))~~ (3) Labels or color codes for nonpotable water supplies as "unsafe for domestic use";

~~((2) Provide)~~ (4) Faucet controls in lavatories and sinks with:

(a) ~~((Either antiligature fixtures or fixtures))~~ Fixtures with at least four-inch wrist blades or single-levers based on a risk assessment made by the facility;

(b) Sufficient space for full open and closed operation; and

(c) Color-coding and labels to indicate "hot" and "cold";

~~((3) Ensure that all)~~ (5) Lavatories and sinks that have gooseneck spouts, ~~(, without aerators in areas requiring infection control. Locations determined by the facility's risk assessment must be permitted to have antiligature devices.)~~ and do not have aerators in areas that require infection control; and

~~((4) Provide shower heads that are of the flash-mounted type))~~ (6) Flush-mounted shower heads.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-1000 Mechanical—Ventilation systems.** The facility must ensure:

(1) Ventilation of all rooms is designed to prevent objectionable odors, condensation, and direct drafts on the residents;

(2) All habitable space is mechanically ventilated including air supply and air exhaust systems;

(3) ~~((Installation of air handling duct systems according to the requirements of the International Mechanical Code and))~~ All heating, ventilation, and air conditioning equipment complies with the requirements of the state building code, chapter 51-52 WAC;

~~((4))~~ ~~((Installation of supply registers and return air grilles at least three inches above the floor;~~

~~((5) Installation of exhaust grilles on or near the ceiling; and~~

~~((6))~~ Outdoor air intakes are located a minimum of twenty-five feet from the exhaust from any ventilating system, combustion equipment, or areas which may collect vehicular exhaust and other noxious fumes, and a minimum of ten feet from plumbing vents; ~~and~~

(5) The facility must locate the bottom of outdoor air intakes serving central systems a minimum of three feet above the adjoining grade level or, if installed through the roof, three feet above the highest adjoining roof level.

~~((7) Minimum ventilation requirements meet the pressure relationship and ventilation rates per the following table:~~

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas <sup>1,2</sup>	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
RESIDENT CARE				
Resident room (holding room)	±			
Resident corridor	±			
Toilet room	N			
Resident gathering (dining, activity)	±	2	4	Optional
DIAGNOSTIC AND TREATMENT		Optional	2	Optional
Examination room	±	Optional	10	Yes
Physical therapy <sup>3</sup>	N	2	4	Optional
Occupational therapy <sup>3</sup>	N			
Soiled workroom or soiled holding	N	2	6	Optional
Clean workroom or clean holding	P	2	6	Optional
STERILIZING AND SUPPLY		2	6	Optional
Sterilizer exhaust room	N	2	10	Yes
Linen and trash chute room	N	2	4	Optional
Laundry, general <sup>3</sup>	±			

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas <sup>1,2</sup>	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
Soiled linen sorting and storage	N	Optional	10	Yes
Clean linen storage	P	Optional	10	Yes
SERVICE		2	10	Yes
Food preparation center <sup>3</sup>	±	Optional	10	Yes
Warewashing room <sup>3</sup>	N	Optional	2	Yes
Dietary day storage	±			
Janitor closet	N	2	10	Yes
Bathroom	N	Optional	10	Yes
Personal services (barber/salon)	N	Optional	2	Yes

<sup>1</sup>P=Positive N=Negative ± = Continuous directional control not required.

<sup>2</sup>Whether positive or negative, pressure must be a minimum of seventy cubic feet per minute (CFM).

<sup>3</sup>The volume of air may be reduced up to fifty percent in these areas during periods of nonuse. The soiled holding area of the general laundry must maintain its full ventilation capacity at all times.)

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-1190 Administrator responsibilities.**

The licensee must ensure the administrator:

- (1) Directs and supervises the overall twenty-four hour per day operation of the enhanced services facility;
- (2) Ensures residents receive the care and services identified in their ~~((individual treatment))~~ person-centered service plans and assessments;
- (3) Is readily accessible to meet with residents;
- (4) Complies with the enhanced services facility's policies; and
- (5) When not available ~~((on the premises, either:~~
  - ~~(a) Is available by telephone or electronic pager; or~~
  - ~~(b) Designates a person approved by the licensee to act in place of the administrator. The designee must be))~~ at the facility, is either available by telephone or has designated a person approved by the licensee to act in place of the administrator who is:
    - ~~((+))~~ (a) Qualified by experience to assume designated duties; and
    - ~~((+))~~ (b) Authorized to make necessary decisions and direct operations of the enhanced services facility during the administrator's absence.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-107-0930 Nursing and nutrition station.

**WSR 16-16-001  
PERMANENT RULES  
RECREATION AND CONSERVATION  
OFFICE**

(Recreation and Conservation Funding Board)  
[Filed July 20, 2016, 12:09 p.m., effective August 20, 2016]

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

Purpose: The purpose of the rule making is to modify grant program requirements for the recreation and conservation funding board. The modifications include changes to the application requirements, evaluation process, grant program deadlines, decision making, and eligible grant costs.

Citation of Existing Rules Affected by this Order: Repealing WAC 286-04-065, 286-013-030 and 286-13-080; and amending WAC 286-13-010, 286-13-020, 286-13-040, 286-13-050, 286-13-085, and 286-13-100.

Statutory Authority for Adoption: RCW 34.05.220, 42.56.040, 46.09.530, 79A.15.030, 79A.15.060, 79A.15.070, 79A.15.120, 79A.15.130, 79A.25.210.

Adopted under notice filed as WSR 16-12-084 on May 31, 2016.

Changes Other than Editing from Proposed to Adopted Version: There are three changes between the text as proposed and adopted.

1. WAC 286-13-040(1), the term "Excepted" is replaced with "The only exceptions" at the beginning of the third sentence.

2. WAC 286-13-020, subsections (2) to (5) are renumbered.

3. WAC 286-13-040(2), text not adopted as proposed.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 6, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 3.

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: July 13, 2016.

Leslie Connelly  
Natural Resource  
Policy Specialist  
Rules Coordinator

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 286-04-065 Project evaluations.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-010 (~~What is the purpose of this~~) Scope of chapter(?)** (1) This chapter contains general rules (~~ffecting~~) for grant program eligibility, applications, and projects funded with money from or through the board.

(2) Further rules are in chapter 286-26 WAC (Nonhighway and off-road vehicle activities program), chapter 286-27 WAC (Washington wildlife and recreation program), chapter 286-30 WAC (Firearms and archery range recreation program), chapter 286-35 WAC (Initiative 215 boating facilities program), chapter 286-40 WAC (Land and water conservation fund program) and chapter 286-42 WAC (Aquatic lands enhancement account program).

(3) The director may apply the rules in this chapter to programs administered by the office that are not subject to the board's approval.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-020 Application(s) requirements and the evaluation process.** (~~(1) All grant requests must be completed and submitted in the format prescribed by the director.~~

(2) ~~If the director determines that the applicant is eligible to apply for federal funds administered by the board, the applicant must execute the forms necessary for that purpose.~~ (1) The board shall adopt a competitive evaluation process to guide it in allocating funds to grant applicants. The board may also adopt a technical review process to assist applicants in preparing for evaluation of their applications.

(2) The board's technical review and evaluation process for applications shall:

(a) Be developed, to a reasonable extent, through the participation of a grant program advisory committee and interested parties;

(b) Consider applicant, local, regional, and statewide needs, a project's technical merits, and other evaluation criteria;

(c) Be adopted by the board in open public meetings;

(d) Be made available in published form to interested parties;

(e) Be designed for use by an advisory committee selected for this purpose; and

(f) Be in accord with chapters 46.09, 79A.15, 79A.25, 79A.35 RCW, and RCW 79.105.150 and all other applicable statutes and federal laws and rules.

(3) The office shall administer the technical review and evaluation process adopted by the board. The office shall inform all applicants of the application requirements and the technical review and evaluation process.

(4) All applications completed in the format prescribed and submitted to the office that meet the application requirements and deadlines in this chapter will be referred to an advisory committee for evaluation.

(5) The results of the evaluation of applications from an advisory committee shall be referred to the director. The director shall use the results of the evaluation process to make funding recommendations to the board.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-040 (~~What are the~~) Grant program deadlines (~~and how can the deadlines be waived?~~)** (1) (~~Compliance with the following deadlines is required to be eligible for grant funding and to receive grant funding.~~

(a)) Applications must be submitted at least four calendar months before the meeting of the board at which the applicant's project is first considered. Applications must be completed in final form and on file with the office (~~at least one calendar month before the meeting of the board at which the applicant's project is first considered. Excepted~~) by the deadline established by the director. The only exceptions are applications for programs where the director specifically establishes another deadline to accomplish new or revised statutory direction, board direction, or to meet a federal grant application deadline.

((b)) (2) Plans required for participation in board grant programs must be complete and on file with the office at least three calendar months before the meeting of the board at which the applicant's project is first considered. On the director's acceptance of the plan, the applicant shall be granted eligibility to submit applications for a period of up to six years.

((c)) (3) To develop the director's funding recommendations, written assurance must be provided whenever matching resources are to be considered as a part of an application. This assurance must be provided by the applicant to the office at least one calendar month before the meeting of the board at which the project is to be considered for funding.

~~((4))~~ (4) To prepare a project agreement, ~~((certain))~~ other documents or materials in addition to the application may be required by the office. These documents or materials must be provided by the applicant to the office at least two calendar months after the date the board or director approves funding for the project or earlier to meet a federal grant program requirement. After this period, the board or director may rescind the offer of grant funds and reallocate the grant funds to another project(s).

~~((5))~~ (5) An applicant has three calendar months from the date the office sends the project agreement to sign and return the agreement to the office. After this period, the board or director may reject any agreement not signed and returned and reallocate the grant funds to another project(s).

~~((6))~~ (6) Sponsors must submit a request for reimbursement at least once each year as described in the agreement.

(7) Sponsors must submit final project deliverables at the completion of the project as described in the agreement.

(8) Compliance with the deadlines is required unless ((a waiver is granted)) an extension is approved by the board or director. ((Such waivers)) Requests to extend a deadline must be submitted to the office before the deadline. Extensions are considered based on several factors which may vary with the type of ((waiver)) extension requested, including any one or more of the following:

- (a) Current status and progress made to meet the deadline;
- (b) The reason the established deadline could not be met;
- (c) When the deadline will be met;
- (d) Impact on the board's evaluation process;
- (e) Equity to other applicants; and
- (f) Such other information as may be relevant.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-050 ((Funding)) Final decision.** (1) The board ~~((will review))~~ shall consider recommendations from the director for grant projects at regularly scheduled public meetings.

(2) The board retains the authority and responsibility to accept or deviate from ~~((these))~~ the director's recommendations and make the final decision concerning the funding of an application or a change to a funded project.

(3) Unless otherwise precluded by law, the board's decision is the final decision.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-085 Retroactive, preagreement, and increased costs.** (1) Before execution of an agreement, the office shall not approve the disbursement of funds for project costs.

(2) The office will only reimburse costs that occur within the period of performance in the project agreement except for costs in subsections (3) and (4) of this section.

~~((3))~~ (3) The director may grant a waiver of retroactivity for acquiring real property whenever an applicant asserts, in writing, the justification for the critical need to purchase the property in advance of the project agreement along with

any documentation required by the director. When evidence warrants, the director may grant the applicant permission to proceed by issuing a written waiver. This waiver of retroactivity will not be construed as approval of the proposed project. If the project is subsequently approved, however, the costs incurred will be eligible for grant funding. If the project is to remain eligible for funding from federal funds, the director shall not authorize a waiver of retroactivity to the applicant until the federal agency administering the federal funds has issued its own waiver of retroactivity as provided under its rules and regulations. A waiver may be issued for more than one grant program.

~~((4))~~ (4) The only retroactive acquisition, development, and restoration costs eligible for grant funding are preagreement costs as defined by the board.

~~((5))~~ (5) Cost increases for approved projects may be granted by the board or director if financial resources are available and within the appropriation authorized by the legislature.

(a) Each cost increase request will be considered on its merits and the board's grant program policies.

(b) The director may approve a cost increase ~~((request so long as the cost increase amount does not exceed ten percent of the project's approved initial grant funding amount))~~ with authority delegated by the board.

(c) The director's approval of an acquisition project cost increase is limited to a parcel-by-parcel appraised and reviewed value.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

**WAC 286-13-100 Nonconformance and repayment.**

Any project cost deemed by the board or director to conflict with applicable statutes, rules and/or related manuals, or the agreement, must be repaid, upon written request by the director, to the appropriate state account per the terms of the project agreement. Such repayment requests may be made in consideration of an applicable report from the state auditor's office.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 286-13-030 Application review.

WAC 286-13-080 What rules govern expenses incurred before execution of a project agreement?

**WSR 16-16-002  
PERMANENT RULES  
DEPARTMENT OF REVENUE**

[Filed July 20, 2016, 1:59 p.m., effective August 20, 2016]

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

Purpose: WAC 458-20-151 (Rule 151) Dentists, audiologists, and other health care providers, dental laboratories

and dental technicians. Rule 151 explains the application of B&O tax, retail sales tax, and use tax to the business activities of dentists, audiologists, dental laboratories, dental technicians, and other health care providers.

The department revised Rule 151 to specifically provide taxability information for audiologists. The rule was also updated to remove outdated statutory information and some subsections were reorganized. The title was revised to include "audiologists."

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-151 Dentists, audiologists, and other health care providers—Dental laboratories and dental technicians.

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

Adopted under notice filed as WSR 16-11-026 on May 9, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: July 20, 2016.

Kevin Dixon  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-069, filed 2/25/10, effective 3/28/10)

**WAC 458-20-151 Dentists, audiologists, and other health care providers**~~(§)~~**—Dental laboratories**~~(§)~~ **and dental technicians.** (1) **Introduction.** This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the business activities of dentists ~~((and other health care providers))~~, audiologists, dental laboratories, ~~((and))~~ dental technicians~~((For purposes of this rule, a "health care provider" is a person who is licensed under the provisions of Title 18 RCW to provide health care services to humans in the ordinary course of business or practice of a profession. The department of revenue (department) has adopted other rules dealing with the taxability of various activities relating to the provision of health care. Readers may want to refer to the following rules for additional information:)), and other health care providers.~~

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

(b) Other rules that may apply. Readers may also want to refer to other rules for additional information, including those in the following list:

(i) WAC 458-20-102 Reseller permits;

(ii) WAC 458-20-150 ((§)Optometrists, ophthalmologists, and opticians(§));

((§)) (iii) WAC 458-20-168 ((§)Hospitals, nursing homes, ((boarding homes)) assisted living facilities, adult family homes and similar health care facilities(§));

((§)) (iv) WAC 458-20-178 Use tax and the use of tangible personal property; and

(v) WAC 458-20-18801 ((Prescription drugs, prosthetic and orthotic devices, ostomic items, and medically prescribed oxygen); and

(d) WAC 458-20-233 (Tax liability of medical and hospital service bureaus and associations and similar health care organizations)) Medical substances, devices, and supplies for humans—Drugs prescribed for human use—Medically prescribed oxygen—Prosthetic devices—Mobility enhancing equipment—Durable medical equipment.

(c) Definitions. For the purposes of this rule the following definitions apply:

(i) Audiologists. "Audiologists" diagnose, manage, and treat a patient's hearing, balance, or related ear problems.

(ii) Gross income. "Gross income" means compensation for the rendition of health care services, and includes any separate charge for drugs, medicines, and other substances administered or provided to a patient as part of the health care services delivered to the patient. Gross income also includes any separate charges for prosthetic devices, including dental prostheses and hearing aids that are provided as part of the health care services delivered to patients.

(iii) Health care provider. A "health care provider" is a person licensed under the provisions of Title 18 RCW to provide health care services to humans in the ordinary course of business or practice of a profession.

(iv) Prosthetic device. "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to artificially replace a missing portion of the body, prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body. RCW 82.08.0283. Dental appliances, devices, restorations, substitutes, or other dental laboratory products are also referred to as "dental prostheses" throughout this rule.

(2) **Tax-reporting information for dentists, audiologists, and other health care providers.** This subsection provides specific tax-reporting information for dentists, audiologists, and more generalized tax-reporting information for other health care providers. Dentists who employ dental technicians to produce or fabricate dental appliances, devices, restorations, substitutes, or other dental laboratory products should refer to subsection (3)((b) and (d)) of this rule for additional information. ~~((Dental appliances, devices, restorations, substitutes, or other dental laboratory products are also referred to as "dental prostheses" throughout this rule.~~

~~(a) **Taxability of dental and other health care services.**)~~

(a) Business and occupation tax. Dentists, audiologists, and other health care providers are subject to the service and

other activities B&O tax on their gross income from performing dental and other health care services. ~~((The term "gross income" includes any separate charge for drugs, medicines, and other substances administered or provided to a patient as part of the dental or other health care services delivered to the patient. "Gross income" also includes any separate charges for prosthetic devices, including dental prostheses, that are provided as part of the dental or other health care services delivered to patients.~~

For purposes of this rule, "prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to artificially replace a missing portion of the body, prevent or correct a physical deformity or malfunction, or support a weak or deformed portion of the body. ~~RCW 82.04.290.~~

(b) **Sales of tangible personal property (~~apart from dental and other health care services~~)**. A dentist, audiologist, or other health care provider may make sales of tangible personal property such as hearing aid batteries, drugs, medicines, and bandages as a convenience to a buyer apart from any health care services provided to the buyer. These are sales of tangible personal property only when the dentist, audiologist, or other health care provider does not supply or administer the drug, medicine, or other item in the course of delivering health care services to the buyer. The gross proceeds of these retail sales of tangible personal property are subject to the retailing B&O tax. In addition, the dentist, audiologist, or other health care provider must collect and remit retail sales tax, unless the sale is specifically exempt by law. ~~((See WAC 458-20-1880))~~ For detailed information regarding retail sales tax exemptions available for sales of items commonly associated with health care services refer to WAC 458-20-18801. Adequate records must be kept by the dentist, audiologist, or other health care provider to distinguish items of tangible personal property ~~((that are))~~ supplied or administered to patients as part of health care services from those ~~((that are))~~ sold apart from health care services delivered to the buyer.

Purchases of tangible personal property for resale without intervening use are not subject to the retail sales tax. A dentist, audiologist, or other health care provider purchasing tangible personal property for resale must furnish a ~~((resale certificate for purchases made before January 1, 2010, or a))~~ reseller permit ~~((for purchases made on or after January 1, 2010))~~ to the seller to document the wholesale nature of the sale ~~((as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014))~~. For information on reseller permits, see WAC 458-20-102.

(c) **Equipment and supplies used by dentists, audiologists, and other health care providers**. Purchases of equipment and supplies used by dentists, audiologists, and other health care providers in performing diagnostic, dental, or other health care services are purchases at retail and subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the dentist, audiologist, or other health care provider must remit the retail sales tax

(commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. ~~Deferred sales or use tax ((should be reported on the buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax))~~ liability should be reported on the use tax line of the buyer's excise tax return. For detailed information regarding the use tax, ~~((refer to))~~ see WAC 458-20-178 ((Use tax)).

Dental prostheses are exempt from retail sales and use taxes if the dental prosthesis meets the definition of "prosthetic device," ~~((in subsection (2)(a) of this rule. RCW 82.08.0283 and 82.12.0277.))~~ Exempt items include, but are not limited to, full and partial dentures, crowns, inlays, fillings, braces, retainers, collars, wire, screws, bands, splints, night guards, gold, silver, alloys, acrylic materials, filling material, relined material, cement, cavity liners, pins, and endoposts.

(d) **Itemization of gross income**. Audiologists who itemize invoices to their patients showing charges for tests and evaluations separate from charges for sales of hearing aids may separately report their income under the service and other activities B&O tax classification and the retailing B&O tax classification, respectively. Audiologists who do not separately charge for their services and sales of hearing aids must report their gross income under the service and other activities B&O tax classification.

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

(i) **Example 1**. Dr. A is a physician who specializes in the treatment of allergies. Dr. A treats many patients with injections of allergy extracts (antigens). Dr. A separately itemizes the charges for the antigen, the administration of the injection, and the office call in patients' billings. Dr. A is subject to service and other activities B&O tax on the entire charge for the antigen, administration of the injection, and office call. Even though Dr. A separately itemizes the charges for antigens, these are not retail sales because Dr. A administers the antigens to the patients.

(ii) **Example 2**. Dr. B made mail-order purchases of a computer, books, and magazines for use in Dr. B's dental practice. Dr. B did not pay retail sales tax to the sellers on these purchases. Therefore, Dr. B must remit to the department deferred retail sales or use tax on the computer, books, and magazines.

(3) **Tax-reporting information for dental laboratories and dental technicians**. This subsection provides tax-reporting information for dental laboratories and dental technicians.

(a) **Producing or fabricating dental prostheses for sale**. The production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by dental laboratories and dental technicians is a manufacturing activity. RCW 82.04.120. Thus, dental laboratories and dental technicians are subject to manufacturing B&O tax on the value of the dental prostheses they manufacture. The value of products manufactured is generally the

gross proceeds of sales of such manufactured products. For additional information about the manufacturing B&O tax, ~~((refer to))~~ see WAC 458-20-136 ~~((Manufacturing, processing for hire, fabricating))~~.

(i) **Sales of dental prostheses manufactured by dental laboratories and dental technicians.** Dental laboratories and dental technicians ~~((who))~~ that make sales within this state of dental prostheses they have manufactured are subject to either the retailing or wholesaling B&O tax, as the case may be. In such cases, the dental laboratory or dental technician must report under the manufacturing B&O tax classification as well as the wholesaling ~~((and/or))~~ or retailing B&O tax classification~~((s))~~. However, a multiple activities tax credit (MATC) may be claimed. For detailed information about the MATC, ~~((refer to))~~ see WAC 458-20-19301 ~~((Multiple activities tax credits))~~. Dental laboratories or dental technicians making wholesale sales must obtain a ~~((resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a))~~ reseller permit ~~((WAC 458-20-102) for sales made on or after January 1, 2010,))~~ from the buyer to document the wholesale nature of the sale.

As noted ~~((above))~~ in subsection (2)(c) of this rule, sales of dental prostheses including, but not limited to, full and partial dentures, crowns, inlays, fillings, braces, and retainers are exempt from retail sales tax if the dental prosthesis meets the definition of a "prosthetic device," ~~((in subsection (2)(a) of this rule. RCW 82.08.0283.))~~

(ii) **Dental casts, models, and other articles of tangible personal property manufactured by dental laboratories and dental technicians for commercial or industrial use.** Dental laboratories and dental technicians may manufacture dental casts, models, or other articles of tangible personal property that they use ~~((in producing or fabricating))~~ to produce or fabricate dental prostheses. In such cases, the dental laboratory or dental technician is manufacturing a product for commercial or industrial use and is subject to the manufacturing B&O tax on the value of the dental cast, model, or other article of tangible personal property. ~~((See WAC 458-20-112 (Value of products)))~~ For information regarding the value of products~~((s))~~, see RCW 82.04.450 and WAC 458-20-112. As the consumer of the dental cast, model, or other article of tangible personal property manufactured for commercial or industrial use, the dental laboratory or dental technician is also liable for use tax on the value of the dental cast, model, or other article of tangible personal property, unless the use is specifically exempt by law.

(b) **In-house manufacturing of dental prostheses by dentists.** As noted in this rule, the production or fabrication of dental prostheses by dental laboratories and dental technicians is a manufacturing activity. However, the production or fabrication of dental prostheses by dentists in the course of providing dental care services to their patients is not a manufacturing activity under the law and, therefore, manufacturing B&O tax does not apply to ~~((this))~~ that activity. A dentist may personally produce or fabricate dental prostheses, or the dentist may have an employee who is a dental technician produce or fabricate the dental prostheses. These dental prostheses are considered a tangible representation of professional services provided to the dentist's patients. Dentists who manufacture impressions, dental casts, models, or other articles of tangible

personal property that they use ~~((in producing or fabricating))~~ to produce or fabricate dental prostheses should refer to subsection (3)(a)(ii) of this rule for tax reporting instructions applicable to this activity.

~~((The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.))~~

(i) **Example 3.** Jane Doe, an employee of Dentist A, fabricates dental prostheses. Dentist A provides these products to patients in the course of rendering dental care services. Dentist A is subject to service and other activities B&O tax on the gross income received for providing dental care services, including any charge for the dental prostheses even if Dentist A separately charges patients for the dental prostheses. ~~((See subsection (2)(a) of this rule.))~~

(ii) **Example 4.** The facts are the same as in the previous example except that Dentist A also sells to Dentist B dental prostheses produced by Jane Doe in the course of Jane's employment with Dentist A. For these sales of dental prostheses to Dentist B, Dentist A is acting as a dental laboratory and, therefore, is liable for both manufacturing B&O tax and retailing B&O tax with respect to the manufacture and sale of dental prostheses to Dentist B. Dentist A may also claim a MATC ~~((s))~~. See subsection (3)(a) and (a)(i) of this rule. ~~((s))~~ The sales to Dentist B are exempt from retail sales tax under RCW 82.08.0283 if the items qualify as a "prosthetic device" as defined ~~((above))~~ in subsection ~~((2)(a))~~ (1)(c)(iv) of this rule.

(c) **Equipment and supplies used by dental laboratories and dental technicians.** Purchases of equipment and supplies by dental laboratories and dental technicians for use in manufacturing dental prostheses are generally purchases at retail and subject to retail sales tax unless specifically exempt by law. If the seller does not collect retail sales tax, the dental laboratory or dental technician must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. Deferred sales or use tax should be reported on the ~~((buyer's excise tax return. However, the excise tax return does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the))~~ use tax line of the buyer's excise tax return. For detailed information regarding use tax, ~~((refer to))~~ see WAC 458-20-178.

(i) **Components of dental prostheses produced for sale.** Purchases of supplies that become components of dental prostheses ~~((that are))~~ produced for sale are purchases at wholesale and are not subject to retail sales tax, if the buyer provides the seller with a ~~((properly completed resale certificate (WAC 458-20-102A) for purchases made before January 1, 2010, or a))~~ reseller permit ~~((WAC 458-20-102) for purchases made on or after January 1, 2010,))~~ to document the wholesale nature of the transaction.

(ii) **Example 5.** ~~((The following example identifies a number of facts and then states a conclusion. This example should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.))~~ A dental lab purchases equip-

ment and supplies including gold, silver, alloys, artificial teeth, cement, and tools. The purchases of gold, silver, alloys, artificial teeth, and cement that become components of dental prostheses are wholesale purchases and are not subject to retail sales tax if the buyer provides the seller with a ~~((resale certificate (WAC 458-20-102A) for purchases made before January 1, 2010, or a))~~ reseller permit ~~((WAC 458-20-102) for purchases made on or after January 1, 2010))~~. The tools are subject to retail sales or use tax unless they qualify for the manufacturing machinery and equipment sales and use tax exemptions. Additional information about ~~((this))~~ these exemptions is provided ~~((below))~~ in subsection (3)(d) of this rule.

(d) **Sales and use tax exemptions for manufacturing machinery and equipment.** ~~((A))~~ RCW 82.08.02565 and 82.12.02565 provide retail sales and use tax exemptions ~~((is provided by RCW 82.08.02565 and 82.12.02565))~~ for sales to or use by manufacturers of certain machinery and equipment used directly in a manufacturing operation. ~~((This exemption is))~~ These exemptions are limited to machinery and equipment used to manufacture products for sale as tangible personal property. Thus, dental laboratories and dental technicians manufacturing dental prostheses for sale may be eligible for ~~((this))~~ these exemptions. The ~~((exemption is))~~ exemptions are not available if these products are produced or fabricated by a dentist or an employee of a dentist and are provided to patients in the course of delivering dental care services to the patients (as is the case in ~~((the example provided in subsection (3)(b)(i) of this rule). Refer to WAC 458-20-13601 (Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment))~~ Example 3). See WAC 458-20-13601 for detailed information regarding ~~((this))~~ these exemptions.

**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.

### WSR 16-16-003

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed July 20, 2016, 2:36 p.m., effective August 20, 2016]

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

Purpose: WAC 458-20-190 (Rule 190) Sales to and by the United States and certain entities created by the United States—Doing business on federal reservations—Sales to foreign governments, explains the tax reporting responsibilities of persons making sales to the United States and to foreign governments, this rule also explains the tax reporting responsibilities of persons engaging in business activities within federal reservations and cleaning up radioactive waste and other by-products of weapons production for the United States.

Rule 190 was revised to include information on which purchases made with Red Cross funds or FEMA funds are subject to tax. This information is currently available in ETA 3156. General information regarding documentation of elec-

tronic funds transfers and sales to foreign governments was also added.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-190 Sales to and by the United States and certain entities created by the United States—Doing business on federal reservations—Sales to foreign governments.

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

Adopted under notice filed as WSR 16-10-023 on April 25, 2016.

Changes Other than Editing from Proposed to Adopted Version:

- Subsection (5)(a), detailed information on how to determine if a United States government credit card qualifies for exempt purchases was removed because federal requirements can frequently change; general information on electronic funds transfers made by the United States government was added; and a reference to an outdated federal form was removed.
- Subsection (10), general information on sales to foreign governments and foreign diplomats was added.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: July 20, 2016.

Kevin Dixon  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-10-030, filed 4/26/10, effective 5/27/10)

**WAC 458-20-190 Sales to and by the United States and certain entities created by the United States—Doing business on federal reservations—Sales to foreign governments.** (1) **Introduction.** Federal law prohibits ~~((Washington))~~ states from directly imposing taxes ~~((upon))~~ on the United States. Persons doing business with the United States, however, are ~~((nonetheless))~~ subject to the taxes imposed by the state of Washington, unless specifically exempt. This rule explains the tax reporting responsibilities of persons making sales to the United States and to foreign governments. The rule also explains the tax reporting responsibilities of persons engaging in business activities within federal reservations and cleaning up radioactive waste and other by-products of weapons production for the United States.



~~((Persons engaged in construction, installation, or improvement to real property of or for the United States should also refer to))~~ (a) **Other rules that may be relevant.**

~~(i) WAC 458-20-17001 ((f))Government contracting((; etc.))~~ ~~Persons building, repairing, or improving streets, roads, and other transportation facilities, which are owned by the United States should also refer to))~~—Construction, installations, or improvements to government real property.

~~(ii) WAC 458-20-171 ((f))Building, repairing or improving streets, roads, etc.((; Persons selling cigarettes to the United States or any other federal entity should also refer to))~~, which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.

~~(iii) WAC 458-20-178 Use tax and the use of tangible personal property.~~

~~(iv) WAC 458-20-186 ((f))Tax on cigarettes((;)).~~

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

**(2) "United States" defined.**

(a) For the purposes of this rule, the term "United States" means the federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by ~~((reason of))~~ specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity and whether ~~((or not))~~ the entity is required to collect and remit retail sales/use tax depends on the benefits and immunities conferred ~~((upon))~~ on it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(b) "United States" does not include entities associated with but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

**(3) Prohibition against taxing the United States.** The state of Washington is prohibited from imposing taxes directly ~~((upon))~~ on the United States.

(a) This prohibition applies to taxes imposed for the privilege of engaging in business such as ~~((the))~~ business and occupation (B&O) (chapter 82.04 RCW) and ~~((the))~~ public utility (chapter 82.16 RCW) taxes.

It also applies to taxes imposed on a buyer or user of goods or services~~((;))~~ including, but not limited to, the:

(i) State and local retail sales and car rental taxes (chapters 82.08 and 82.14 RCW);

(ii) State and local use tax (chapters 82.12 and 82.14 RCW);

(iii) Solid waste collection tax (chapter 82.18 RCW); and

(iv) Local government taxes such as the special hotel/motel (chapter 67.28 RCW) and convention and trade center (chapter 67.40 RCW) taxes.

(b) The state is also prohibited from requiring the United States to collect taxes imposed on the buyer (e.g., the retail

sales tax) as an agent for the state. However, buyers must pay use tax on retail purchases from the United States, unless specifically exempt by law.

(c) In addition, federal law exempts certain nongovernmental entities from state taxes (for which Congress has given specific federal statutory tax exemptions). These specific federal statutory exemptions ~~((given by Congress))~~ may not be absolute and may be limited to specific activities of an entity.

(d) The American Red Cross is an instrumentality of the United States. As a federal corporation providing aid and relief, it is exempt from retail sales, use, and ~~((business and occupation))~~ B&O taxes under state law. RCW 82.08.0258, 82.12.0259, and 82.04.380.

The Red Cross provides some victims of natural disasters assistance by check, voucher, and/or direct deposits to the individuals' personal bank accounts. Assistance may also be provided with "client assistance cards" that may be used by the recipients at locations where bankcards are accepted or at automated teller machines (ATM). The retail sales tax treatment of purchases made using these payment methods is:

(i) Electronic funds transfers and checks. Purchases made by an individual using funds that have been transferred into the individual's bank account or received in the form of a check are subject to retail sales tax in the same manner as any other purchase made by that individual, unless specifically exempt by law.

(ii) Vouchers. A voucher is a certificate issued by the Red Cross to an individual that may be exchanged for a specific good or service. As the goods and services will be paid for directly by the Red Cross, the sales are not subject to retail sales tax. A vendor who accepts a voucher will send it and/or other proof of sale to the Red Cross, which will then send a check to the vendor to pay for the purchase.

(iii) Client assistance cards. Sales to individuals who use client assistance cards issued by the Red Cross, or who pay with cash withdrawn from an ATM using the card, are subject to retail sales tax, unless otherwise exempt from tax. These sales are not direct sales to the federal government or one of its instrumentalities.

(e) The Federal Emergency Management Administration (FEMA) is an agency of the federal government. As a federal corporation providing aid and relief, it is exempt from retail sales, use, and B&O taxes under state law. RCW 82.08.0258, 82.12.0259, and 82.04.380.

FEMA provides some victims of natural disasters assistance by check, voucher, and/or direct deposits to the individuals' personal bank accounts. Assistance may also be provided with emergency debit cards that can be used by the recipients at locations where bankcards are accepted or at ATMs. The retail sales tax treatment of purchases made using these payment methods is:

(i) Electronic funds transfer and checks. Sales are subject to retail sales tax as described in (d)(i) of this subsection.

(ii) Vouchers. Sales are not subject to retail sales tax. As with the Red Cross, the goods and services will be paid for directly by FEMA. See (d)(ii) of this subsection.

(iii) Emergency debit cards. As with the Red Cross, "client assistance cards" purchases made with these cards, or

with cash withdrawn from an ATM using these cards, are subject to retail sales tax. See (d)(iii) of this subsection.

(4) **Persons doing business with the United States.** Persons selling goods or services to the United States are subject to taxes imposed on the seller, such as the ~~((business and occupation))~~ B&O ~~((s))~~ and public utility taxes, unless a specific tax exemption applies. Persons receiving income from contracting with the United States government to administer its programs, either in whole or in part, are also subject to tax, unless a specific tax exemption applies.

(a) **Certain invoiced amounts not included in gross income.** Persons who contract with the United States may, for federal accounting purposes, be contractually required to invoice goods or services provided to the United States by third parties. The purpose of the invoices is to match the expenditures with the appropriate category of congressional funding. ~~((These))~~ Amounts received under such invoices should be excluded from the person's gross income when reporting on the ~~((combined))~~ excise tax return if all of the following conditions ~~((exist))~~ are met with respect to the goods or services:

- (i) The third party directly invoices the United States;
- (ii) The United States directly pays the third party; and
- (iii) The person has no liability, either primarily or secondarily, for making payment to the third party or for remitting payment to the third party.

(b) **Tax obligation with respect to the use of tangible personal property.** Persons performing services for the United States are also subject to the retail sales or use tax on property they use or consume when performing services for the United States, unless specifically exempt.

(i) **Manufacturing articles for commercial or industrial use.** In the case of products manufactured or produced by the person using the products as a consumer, the measure of the use tax is generally the value of the products as explained in WAC 458-20-112 ~~((Value of products). However,))~~. If the articles manufactured or produced by the user are used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of articles used is the value of the ingredients of such articles. The manufacturing B&O tax also applies to the value of articles manufactured for commercial or industrial use.

(ii) **Use of government provided property.** When articles or goods used are acquired by bailment, the measure of the use tax to the bailee is the reasonable rental with the value to be determined as nearly as possible according to the rental price at the place of use of similar products of like quality and character. For more information on leases or rentals of tangible personal property see WAC 458-20-211 ~~((Leases or rental of tangible personal property, bailments))~~. Thus, if a person has a contract to provide services for the United States and uses government supplied tangible personal property to perform the services, ~~((then))~~ the person must pay use tax on the fair market rental value of the government supplied tangible personal property.

Persons who incorporate government provided articles into construction projects or improvements made to real property of or for the United States should refer to WAC 458-

20-17001 ~~((Government contracting, etc.))~~ for more specific tax-reporting information.

(c) **Exemption for certain machinery and equipment.** Manufacturers or processors for hire may be eligible for the retail sales or use tax exemption provided by RCW 82.08-02565 and 82.12.02565 on machinery and equipment used directly in a manufacturing or research and development operation. For information on the sales and use tax exemptions see WAC 458-20-13601 ~~((Manufacturers and processor for hire—Sales and use tax exemption for machinery and equipment))~~.

(5) **Documenting exempt sales to the United States.** Only ~~((those))~~ sales made directly to the United States are exempt from retail sales tax or other tax imposed on the buyer. To be entitled to the exemption, the purchase must be paid for using a qualified U.S. government credit card, a check from the United States payable to the seller, a United States voucher, ~~((or with cash accompanied by the federal SF (Standard Form) 1165))~~ or by electronic funds transfer made by the United States.

Sales to employees or representatives of the United States are subject to tax, even though the United States may reimburse the employee or representative for all or a part of the expense. Purchases by any other person, whether with federal funds or through a reimbursement arrangement, are subject to tax unless specifically exempt by law.

(a) **Documenting tax-exempt sales.** Sellers must document the tax-exempt nature of sales made to the United States by keeping a copy of the United States credit card receipt, a copy of the check from the United States, a copy of the federal government voucher, or a ~~((signed copy of federal SF 1165))~~ copy of documentation clearly indicating payment was made by the United States through electronic funds transfer. For information on how to determine whether purchases made with a U.S. government credit card are exempt from retail sales tax, refer to the department's web site at [dor.wa.gov](http://dor.wa.gov).

(b) **Payment ~~((occurring via))~~ made by government contracted credit card.** Various United States government contracted credit cards are used to make payment for purchases of goods and services by or for the United States government. Sole responsibility for payment of these purchases may rest with the United States government or with the employee. The United States government's system of issuing government contracted credit cards is subject to change. For specific information about determining when payment is the direct responsibility of the United States government or the employee, contact the department's taxpayer services division at:

~~((Department of Revenue))~~  
Taxpayer Services  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478

or call the department's telephone information center at 1-800-647-7706 or visit the department's web site at ~~((http://dor.wa.gov))~~ [dor.wa.gov](http://dor.wa.gov).

(6) **Doing business on federal reservations.** The state of Washington has jurisdiction and authority to levy and col-

lect taxes (~~(upon)~~) from persons residing within, or with respect to business transactions conducted (~~(upon)~~) on, federal reservations. 4 U.S.C. §§ 105-110. The term "federal reservation," as used in this rule, means any land or premises within the exterior boundaries of the state of Washington that are held or acquired by and for the use of the United States, its departments, institutions or entities. This means that a concessionaire operating within a federal reservation under a grant or permit issued by the United States or by a department or entity of the United States is taxable to the same extent as any private operator engaging in a similar business outside a federal reservation and without specific authority from the United States.

(a) **Sales tax collection requirements.** Persons making retail sales to members of the armed forces or others residing within or conducting business (~~(upon)~~) on federal reservations are required to collect and remit retail sales tax from the buyer.

(b) **Cigarette tax stamps.** Washington cigarette tax stamps must generally be affixed to all cigarettes sold to persons residing within or conducting business (~~(upon)~~) on federal reservations. However, such stamps need not be affixed to cigarettes sold to the United States or any of its entities including voluntary organizations of military personnel authorized by the Secretary of Defense or the Secretary of the Navy or by the United States or any of its entities to authorized purchasers, for use on such reservation. For additional information on cigarette stamps, rates, and refunds see WAC 458-20-186 ((Tax on cigarettes)).

(7) **Sales made to authorized purchasers of the United States.** As explained in subsection (3)(b) of this rule, while sales by the United States are exempt of retail sales tax the purchaser is generally responsible for remitting use tax directly to the department (~~(of revenue)~~). Federal law prohibits the imposition of use tax on tangible personal property sold to authorized purchasers by the United States, its entities, or voluntary unincorporated organization of armed forces personnel. 4 U.S.C. § 107(a).

(a) **Who is an "authorized purchaser"?** A person is an "authorized purchaser" only with respect to purchases he or she is permitted to make from commissaries, ships' stores, or voluntary unincorporated organizations of personnel of any branch of the armed forces of the United States, under regulations promulgated by the departmental secretary having jurisdiction over such branch. 4 U.S.C. § 107(b).

(b) **What is a "voluntary unincorporated organization"?** "Voluntary unincorporated organizations" are those organizations comprised of armed forces personnel operated under regulations promulgated by the departmental secretary having jurisdiction over such branch. Examples of voluntary unincorporated organizations are post flying clubs, officers or noncommissioned officers open messes, and recreation associations.

(8) **Purchases by persons using federal funds.** Retail sales or use tax (~~(is applicable)~~) applies to retail purchases made by any buyer, other than the United States, including the state of Washington and all of its political subdivisions, irrespective of whether or not the buyer uses or is reimbursed with federal funds, unless the purchase is specifically exempt by law.

(9) **Cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** RCW 82.04.263 provides a preferential tax rate for the gross income derived from cleaning up for the United States, or its instrumentalities, radioactive waste and other by-products of weapons production and nuclear research and development. This tax rate applies whether the person performing these activities is a general contractor or subcontractor.

(a) **What activities are entitled to the preferential tax rate?** Only those activities that meet the definition of "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" are entitled to the preferential tax rate. The statute defines "cleaning up radioactive waste and other by-products of weapons production and nuclear research and development" to mean:

(i) The handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel;

(ii) Conditioning of spent nuclear fuel;

(iii) Removing contamination in soils and groundwater;

(iv) Decontaminating and decommissioning of facilities; and

(v) Services supporting the performance of cleanup. A service supports the performance of cleanup if it:

(A) Is within the scope of work under a clean-up contract with the United States Department of Energy; or

(B) Assists in the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy under a subcontract entered into with the prime contractor or another subcontractor in furtherance of a clean-up contract between the United States Department of Energy and a prime contractor.

(b) **When does a service not assist in the accomplishment of a requirement of a clean-up project?** Subject to specific exceptions provided by law, a service does not assist in the accomplishment of a clean-up project when the same services are routinely provided to businesses not engaged in clean-up activities.

The following exceptions are always deemed to contribute to the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy:

- Information technology and computer support services;
- Services rendered in respect to infrastructure; and
- Security, safety, and health services.

(c) **Guideline examples.** The following examples are to be used as a guideline when determining whether a service is "routinely provided to businesses not engaged in clean-up activities."

(i) **Accounting services.** The classification does not apply to general accounting services but does apply to performance audits performed for persons cleaning up radioactive waste.

(ii) **Legal services.** The classification does not apply to general legal services but does apply to those legal services that assist in the accomplishment of a requirement of a clean-up project undertaken by the United States Department of Energy. Thus, legal services provided to contest any local,

state, or federal tax liability or to defend a company against worker's compensation claim arising from a worksite injury do not qualify for the classification. However, legal services related to the resolution of contractual dispute between the parties to a clean-up contract between the United States Department of Energy and a prime contractor do qualify.

(iii) **General office janitorial.** General office janitorial services do not qualify for the radioactive waste clean-up classification, but the specialized cleaning of equipment exposed to radioactive waste does qualify.

(d) **Clean-up examples.** ~~((The examples in this subsection identify a number of facts and then state a conclusion. These examples should only be used as a general guide. Similar determinations for other situations can be made only after a review of all facts and circumstances.))~~

(i) Company C is a land excavation contractor ~~((who))~~ that contracts with Prime Contractor to dig trenches where waste will be reburied after processing. Company C's contract for digging trenches qualifies for the preferential tax rate under RCW 82.04.263 because the activity of digging trenches is one of the physical acts of cleaning up.

(ii) Company D contracts with Company C from the previous example to provide payroll and accounting services. Company D's activity does not qualify for the preferential tax rate under RCW 82.04.263 because the activity of general accounting is not an activity involving the physical act of cleaning up, nor is it a service supporting the performance of cleanup as defined in (a)(v) of this subsection.

(iii) Company E is an environmental engineering company ~~((which))~~ that contracts with Prime Contractor to develop a plan on how best to decontaminate the soil at a tank farm and will monitor the cleanup/decontamination as it progresses. Company E's activities qualify for the preferential tax rate under RCW 82.04.263 because the activities are services supporting the performance of cleanup.

(iv) Company F is a security company that contracts with Prime Contractor to provide overall security to the federal reservation, including providing security at clean-up sites. Security services at clean-up sites are services that support the performance of cleanup.

(e) **Taxability of tangible personal property used or consumed in cleaning up radioactive waste and other by-products of weapons production and nuclear research and development.** Persons cleaning up radioactive waste and other by-products of weapons production and nuclear research and development for the United States, or its instrumentalities, are consumers of any property they use or consume when performing these services. RCW 82.04.190. Therefore, tangible personal property used or consumed in the cleanup is subject to retail sales or use tax. If the seller does not collect retail sales tax on a retail sale, the buyer is required to pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. The ~~"((combined))~~ excise tax return" does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's ~~((combined))~~ excise tax return. ~~((Refer to))~~ For detailed information on the use tax, see WAC 458-20-178 ~~((for detailed information regarding use tax)).~~

(10) **Sales to foreign governments or foreign diplomats.** Purchases by foreign governments are not subject to retail sales tax. Documentation, such as purchase orders and receipts, must be maintained by the seller to verify the exempt nature of the sale. Purchases by foreign diplomats are generally not subject to retail sales tax if a valid Diplomatic Tax Exemption Card issued by the United States Department of State is used. For specific ~~((details))~~ information concerning the taxability of sales of goods and services to foreign missions and diplomats, contact the department's taxpayer services division at:

~~((Department of Revenue))~~  
Taxpayer Services  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478

or call the department's telephone information center at 1-800-647-7706 or visit the department's web site at ~~((http://dor.wa.gov))~~ dor.wa.gov.

**WSR 16-16-005**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed July 20, 2016, 4:17 p.m., effective August 20, 2016]

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

Purpose: WAC 458-16-300 Public meeting hall—Public meeting place—Community meeting hall, provides eligibility criteria for nonprofit organizations applying for a property tax exemption under RCW 84.36.037 for property connected with operation of public assembly hall or meeting place.

WAC 458-16-300 was amended to incorporate statutory changes in SB 6405 (2014), which standardized criteria for nonexempt uses of tax exempt property owned by nonprofit organizations; SHB 2402 (2010), which allowed tax exempt property to be used to conduct a farmers market; and SHB 1510 (2006), which allowed certain uses of property located in counties with a population of less than twenty thousand. WAC 458-16-300 was also amended to provide clarity for nonprofit organizations on the types of qualifying uses allowable for this exemption.

Citation of Existing Rules Affected by this Order: Amending WAC 458-16-300 Public meeting hall—Public meeting place—Community meeting hall.

Statutory Authority for Adoption: RCW 84.08.010 and 84.36.865.

Adopted under notice filed as WSR 16-11-025 on May 9, 2016.

Changes Other than Editing from Proposed to Adopted Version:

- Subsection (3)(a)(i), added a cross reference to subsection (4) that provides examples of what is considered substantial and actual efforts by the owner to ensure public awareness of property availability.
- Subsection (3)(d), added annual reporting requirement for meeting or event duration. This language supports the requirement that, in a calendar year, the facility be

used more hours for public gatherings than nonpublic gatherings.

- Subsection (5)(d), language regarding exempt purposes was removed to reflect the language currently in RCW 84.36.037(3).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: July 20, 2016.

Kevin Dixon  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 98-18-006, filed 8/20/98, effective 9/20/98)

**WAC 458-16-300 Public meeting hall—Public meeting place—Community meeting hall.** (1) **Introduction.** This ~~((section))~~ rule explains the property tax exemption available under the provisions of RCW 84.36.037 for real and personal property owned by a nonprofit organization, association, or corporation and used exclusively as a public meeting hall, public meeting place, or community meeting hall.

(2) **Definitions.** For purposes of this ~~((section))~~ rule, the following definitions apply:

(a) ~~("Inadvertent use or inadvertently used" means any unintentional or accidental use of exempt property by an individual, organization, association, or a corporation for pecuniary gain or to promote business activities through either carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.)~~ "Affiliate" means an association, organization, or corporation that is a branch, unit, chapter, or appendant body of the property owner.

(b) "Property" means real or personal property owned by a nonprofit organization, association, or corporation.

~~(c) "Public gathering" means ((any social function that the general public could, if invited, attend. For example, a public gathering includes, but is not limited to, a wedding, reception, funeral, reunion, or meeting of any organization, association, or corporation that is open to nonmembers. The term does not mean a meeting to which only members of a specific organization, association, or corporation are allowed to attend.~~

~~(c) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles to maintain and operate the loaned or rented portion of the exempt facility.~~

~~(d) "Owner" means a nonprofit organization, association, or corporation.~~

~~(e) "Property" means real or personal property owned by a nonprofit organization, association, or corporation)) a meeting or event in which attendance is not limited or restricted to only members of the organization, association, or corporation that owns the property or members of an affiliate. Refer to subsection (4) of this rule for examples of public gatherings.~~

(3) **Exemption.** Real and personal property owned by a nonprofit organization, association, or corporation and used exclusively as a public assembly hall, public meeting place, or community meeting hall ~~((shall))~~ will be exempt from taxation under the following conditions:

(a) **Exclusive use.** The property is used exclusively for public gatherings and is available to any individual, organization, association, or corporation that may desire to use or rent the property. Membership in ~~((a particular))~~ the organization, association, or corporation ~~((shall not be required to))~~ that owns the property or membership in an affiliate of the property owner cannot be a requirement or condition for those persons desiring to rent or use the property.

(i) **Availability of property.** To ensure the public is aware of the availability of the property, the property owner must provide written notification to the public that the property is available for use or rental. This written notification may include, but is not limited to, advertising in community newsletters or web sites, on facility reader boards or signs, or in local newspapers. The property owner must make substantial and actual efforts to ensure that the public knows that the property is available for use or rental. Examples of substantial and actual efforts by the owner to ensure public awareness of the property availability can be found in subsection (4) of this rule.

(ii) **Qualifying use of property.** In a calendar year, the total number of hours used for public gatherings, as that term is defined in this rule, held at the property must exceed the total number of hours used for nonpublic gatherings held at the property, regardless of whether the owner, the owner's affiliate, or renter, hosted or benefited from the public gathering.

(b) **Exemption for real property - Area.** The area of real property exempt under this ~~((section shall))~~ rule may not exceed one acre ~~((This area shall include))~~ including the building(s), the land under the building(s), and any additional area needed for parking.

(c) **Statement of availability and fees required.** The owner of the property ~~((shall))~~ must prepare and make available upon request a schedule of fees, a policy on the availability of the facility, and any restrictions on the use of the facility. The owner may impose ~~((any))~~ conditions or restrictions reasonably necessary to safeguard the property and to comply with the purposes of this exemption.

(d) **Annual summary required.** The owner ~~((shall))~~ must provide the department of revenue with a detailed summary containing the following information regarding the manner in which the exempt property was used during the preceding year:

(i) The name of ~~((any))~~ the person, organization, association, or corporation that used the property;

(ii) The date(s) on which the property was used;

- (iii) The purpose for which the property was used;
- (iv) Whether the meeting or event was a public gathering;
- (v) The duration of the meeting or event;
- (vi) The methods used to advertise the availability of the property to the public;
- (vii) The income derived from the rental of the property; and
- ~~((+))~~ (viii) The expenses incurred relating to the use of the property.

~~((e))~~ Entities that schedule regular meetings. Any property owned by a nonprofit organization, association, or corporation that schedules regular meetings of its members or shareholders will also qualify for this exemption if:

- (i) The owner meets the conditions set forth in (a) through (d) of this subsection;
- (ii) The owner does not use the property more than twenty-five percent of the useable time; and
- (iii) The facility is used an equal number or greater number of times for public gatherings than the number of times it is used by the owner for gatherings not open to the general public.

~~(f) Loan or rental of property. The tax-exempt status of the property will not be affected if it is loaned or rented and the amount of rent or donations collected for the use, loan, or rental of the exempt property:~~

- ~~(i) Is reasonable; and~~
- ~~(ii) Does not exceed the maintenance and operation expenses that are created by the corresponding use, loan, or rental.~~

~~(g) Property not included within this exemption. Property that is used more than fifty percent of the time by a nonprofit organization, association, or corporation that allows only members to attend its activities does not qualify for this exemption.)~~

(4) **Examples.** Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(a) Example 1. Prior to a member only meeting, a fraternal organization hosts a dinner at its facility that is open to nonmembers. The fraternal organization advertised the dinner on its web site and reader board, which clearly conveyed the public could attend. The dinner and the member only meeting are considered two separate events. The dinner is considered a public gathering because nonmembers are allowed to attend. However, the member only meeting following the dinner is not considered a public gathering.

(b) Example 2. A boys youth organization hosts a spaghetti feed at its facility to raise money for a camping trip. The organization advertised the spaghetti feed in the local newspaper, which stated nonmembers are allowed to attend. The spaghetti feed is considered a public gathering.

(c) Example 3. A girls youth organization has weekly club meetings at its facility. The weekly meetings are advertised on the organization's public web site as being open for nonmembers to also attend. The weekly club meetings are considered public gatherings.

(d) Example 4. A member only organization allows its public assembly hall to be rented for weddings, receptions, reunions, funerals, and other special events. The organization advertises the availability of its facility for rental by the public in a community newsletter. There are no restrictions on who can rent the hall, so these events are considered public gatherings. However, if the ability to rent the hall is based on membership in the owning organization or membership in an affiliate of the owning organization, then the events would not be considered public gatherings.

(e) Example 5. A garden club offers horticultural workshops for a fee at its facility one day each month. The workshop is advertised in the community newsletter as being open to anyone who wants to attend. The workshops are considered public gatherings because members of the public can attend, even if registration and/or payment are required. Although a fee is charged, the monthly workshops offered by the garden club do not count towards the fifteen day pecuniary gain limitation described in subsection (5)(a) of this rule because the fee only covers the materials and supplies necessary to conduct the workshop.

(f) Example 6. A member only organization rents a public assembly hall for its monthly board meetings. The board meetings are not open to the public. The organization that owns the facility advertises its availability to the public in the local newspaper. The two organizations are not affiliated with each other. Although the monthly board meetings are not open to the public, they are considered public gatherings for the purpose of this exemption because the rental of the facility is not being restricted to only members of the owning organization or to members of affiliates of the owning organization.

**(5) Use of property for pecuniary gain or to promote business activities.** If a public meeting hall, public meeting place, or community meeting hall exempt under subsection (3) of this ~~(section)~~ rule is used for pecuniary gain or to promote business activities, the property tax exemption will be lost ~~((for the assessment year following the year in which the exempt property is so used))~~. However, the exemption will not be lost if:

(a) The exempt property is used for pecuniary gain or to promote business activities ~~((seven))~~ fifteen days or less in an assessment year; ~~((or))~~

(b) In a county with a population of less than ~~((ten))~~ twenty thousand people, the exempt property is used to promote the following business activities: Dance lessons; art classes; or music lessons~~((or))~~

~~(c) The exempt property is inadvertently used by an individual, organization, association, or a corporation for pecuniary gain or to promote business activities if the inadvertent use is not a pattern of use. A "pattern of use" is presumed when an inadvertent use of the property for pecuniary gain or to promote business activities is repeated within the same assessment year or within two or more successive assessment years).~~ The rental income or donations, if any, must be reasonable and not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented;

(c) The exempt property is used to conduct a farmers market, as defined in RCW 66.24.170, for fifty-three days or

less each assessment year. The rental income or donations, if any, must be reasonable and not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; or

(d) All income received from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation expenses of the exempt property, or exempt purposes.

~~((5))~~ **(6) Additional requirements.** Any nonprofit organization, association, or corporation that applies for a property tax exemption under this ~~((section))~~ rule must also comply with the provisions of WAC 458-16-165. WAC 458-16-165 ~~((sets forth))~~ provides additional conditions and requirements that must be ~~((complied with))~~ satisfied to obtain a property tax exemption pursuant to RCW 84.36.037.

### WSR 16-16-014

#### PERMANENT RULES

#### TRANSPORTATION COMMISSION

[Filed July 21, 2016, 1:00 p.m., effective August 21, 2016]

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

Purpose: To modify the hours and days when tolling is in effect on the Interstate 405 express toll lanes between Bellevue and Lynnwood. This filing completes the permanent rule-making process that was originally enacted by emergency order WSR 16-07-112 in March 2016 and subsequently extended by emergency order WSR 16-12-031 in May 2016. Creates a new section WAC 468-270-078 to explain when tolling is in effect on the I-405 express toll lanes.

Citation of Existing Rules Affected by this Order: Amending WAC 468-270-077, 468-270-110, and 468-270-120.

Statutory Authority for Adoption: RCW 47.56.850 and 47.56.880, 2016 supplemental transportation budget (ESHB 2524).

Adopted under notice filed as WSR 16-09-082 on April 19, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

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

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

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

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

Date Adopted: July 19, 2016.

Reema Griffith  
Executive Director

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

**WAC 468-270-077 What are the toll rates for the I-405 express toll lanes?** When tolling is in effect on the I-405 express toll lanes ~~((are in operation))~~, the *Good To Go!*<sup>TM</sup> toll rate schedule shall be a minimum toll rate of \$0.75 and a maximum toll rate of \$10.00. *Good To Go!*<sup>TM</sup> Pass toll rates shall vary in amount by time of day and level of traffic congestion, and will automatically adjust within the established toll schedule using dynamic tolling to ensure average vehicle speeds in the lanes above forty-five miles per hour at least ninety percent of the time during peak hours. In the event there is a disruption in the ability to set tolls dynamically, the department may, on a temporary basis, adjust toll rates by time of day and level of traffic congestion within the range set forth in this section.

The commission shall periodically review the *Good To Go!*<sup>TM</sup> toll rate schedule against traffic performance of all lanes in the I-405 express toll lanes corridor, as outlined in RCW 47.56.880 to determine if the *Good To Go!*<sup>TM</sup> toll rates are effectively maintaining travel time, speed, and reliability~~((, and))~~ for all lanes. Based on this review, the commission shall adjust the toll rate schedule as needed ~~((to maintain performance standards))~~.

The toll rate for a Pay By Mail transaction is equal to the *Good To Go!*<sup>TM</sup> Pass toll rate plus \$2.00.

#### NEW SECTION

**WAC 468-270-078 What are the hours that tolling will be in effect on the I-405 express toll lanes?** Tolling will be in effect on the I-405 express toll lanes weekdays, Monday through Friday, from 5:00 a.m. to 7:00 p.m. (excluding the weekdays on which holidays<sup>i</sup> are observed).

When tolling is not in effect on the I-405 express toll lanes, including on weekends and holidays<sup>i</sup>, the lanes are open to all vehicles regardless of occupancy, and a transponder is not needed to travel toll-free.

<sup>i</sup> New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

**WAC 468-270-110 What vehicles are exempt from paying tolls on the I-405 express toll lanes?** ~~((Except))~~ When tolling is in effect on the I-405 express toll lanes, as provided herein, all vehicles using the I-405 express toll lanes must pay the required toll. Only qualified vehicles may be exempt from paying tolls. The registered owner and operator of the qualified vehicle must comply with the requirements of the department in order to obtain the exemption. The following vehicles shall qualify for exemption:

- (1) Transit buses and vanpools as specified in RCW 47.56.880;
- (2) Carpools, as defined for the facility in WAC 468-270-120;
- (3) Motorcycles;
- (4) Washington state patrol vehicles directly providing service to the express toll lane facility;

(5) Department maintenance vehicles directly involved in roadway maintenance on the I-405 express toll lanes, including the department's incident response vehicles responding to incidents and WSDOT tow trucks;

(6) Authorized emergency vehicles on bona fide emergencies; and

(7) Tow trucks authorized by Washington state patrol responding to clear blocking vehicles from the toll facility.

AMENDATORY SECTION (Amending WSR 15-08-038, filed 3/25/15, effective 4/25/15)

**WAC 468-270-120 How many occupants are required to be considered an eligible carpool for toll exemption on I-405 express toll lanes?** Between 5 a.m. to 9 a.m. and 3 p.m. to 7 p.m., Monday through Friday, (excluding the ~~((days))~~ weekdays on which holidays<sup>i</sup> are observed) you must have three or more occupants in your vehicle to qualify as a toll-free carpool. At all other times when tolling is in effect on the I-405 express toll lanes, you must have two or more occupants in your vehicle to qualify as a toll-free carpool. Occupancy requirements do not apply to vehicles that are otherwise exempt from tolls pursuant to WAC 468-270-110 or authorized as an HOV vehicle as defined in chapter 468-510 WAC.

<sup>i</sup> New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

### WSR 16-16-017

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Board of Optometry)

[Filed July 21, 2016, 4:39 p.m., effective August 21, 2016]

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

Purpose: WAC 246-851-580 Drug list and 246-851-590 Guidelines for the use of oral Schedule III through V controlled substances and legend drugs, the adopted rules implement SSB 5293 (chapter 113, Laws of 2015), which authorizes optometrists to use, prescribe, dispense, purchase, or possess Schedule II controlled substances that are hydrocodone combination products.

Citation of Existing Rules Affected by this Order: Amending WAC 246-851-580 and 246-851-590.

Statutory Authority for Adoption: RCW 18.54.070(2).

Other Authority: RCW 18.53.010.

Adopted under notice filed as WSR 16-10-123 on May 4, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: June 13, 2016.

Dr. Dale Heaston, Chair  
Board of Optometry

AMENDATORY SECTION (Amending WSR 04-12-127, filed 6/2/04, effective 7/3/04)

**WAC 246-851-580 Drug list.** Pursuant to RCW 18.53-010(4), the optometry board adopts the following drug formulary of oral Schedule II hydrocodone combination products, Schedule III through V controlled substances, and legend drugs for diagnostic and therapeutic purposes in the practice of optometry. No licensed optometrist may use, prescribe, dispense, purchase, possess, or administer these drugs except as authorized and to the extent permitted by the board. This section includes the approved oral drug formulary. Optometrists must consult WAC 246-851-590 for specific guidelines on these drugs or drug categories.

(1) Approved nonscheduled oral drugs include:

(a) Antibiotic agents excluding those listed in WAC 246-851-590(1).

(b) Antiviral agents.

(c) Antifungal agents listed under WAC 246-851-590

(2).

(d) Antihistamine agents.

(e) Decongestant agents.

(f) Dry eye agents.

(g) Anti-emetic agents listed under WAC 246-851-590(3).

(h) Diuretic agents listed under WAC 246-851-590(4).

(i) Nonsteroidal anti-inflammatory agents excluding those listed in WAC 246-851-590(5).

(j) Analgesics.

(2) Approved controlled substances limited to Schedule II hydrocodone combination products and Schedules III, IV, and V.

(a) Schedule II hydrocodone combination products.

~~((b))~~ (b) Schedule III controlled substances.

~~((c))~~ (c) Schedule IV controlled substances.

~~((e))~~ ~~Schedule V controlled substances.~~

~~((d))~~ ~~Schedule IV anti-anxiety/sedative agents.~~ (d)

Schedule IV anti-anxiety/sedative agents.

(e) Schedule V controlled substances.

(3) Approved injectable substances.

Administration of epinephrine by injection for the treatment of anaphylactic shock.

AMENDATORY SECTION (Amending WSR 04-12-127, filed 6/2/04, effective 7/3/04)

**WAC 246-851-590 Guidelines for the use of oral Schedule II hydrocodone combination products and Schedule III through V controlled substances and legend**



**drugs.** Nothing in these guidelines should be construed to restrict the recommendation of over-the-counter medications, vitamins, or supplements, nor restrict the ordering of any radiologic or laboratory testing necessary to the diagnosis of any eye related disease that is within the scope of practice of optometry.

(1) All oral forms and dosages of antibiotic agents will be available for use excluding: Vancomycin.

(2) Antifungal agents used in eye care shall fall into the following categories:

- (a) All oral forms and dosages of polyene antifungals.
- (b) All oral forms and dosages of imidazole antifungals.
- (c) All oral forms and dosages of triazole antifungals.

(3) Anti-emetic agents used in eye care shall be the following medications:

- (a) All oral forms and dosages of prochlorperazine.
- (b) All oral forms and dosages of metoclopramide.
- (c) All oral forms and dosages of promethazine.

(4) Diuretic agents used in eye care shall fall into the following categories:

(a) All oral forms and dosages of carbonic anhydrase inhibitors.

(b) All oral forms and dosages of osmotic diuretics. Osmotic diuretics shall be used only in the case of acute angle closure glaucoma administered in-office, outpatient, and/or ambulatory procedures only.

(5) All oral forms and dosages of nonsteroidal anti-inflammatory agents will be available for use excluding: Ketorolac tromethamine.

(6) Benzodiazepines prescribed, as anti-anxiety agents, shall be used for in-office, outpatient, and/or ambulatory procedures. This family of medications will be utilized as one dosage unit per prescription.

(7) Schedule II controlled substance will only include hydrocodone combination products.

(8) Schedules III and IV controlled substances will have a maximum quantity count of thirty dosage units per prescription.

~~((8))~~ (9) Specific dosage for use and appropriate duration of treatment of oral medications listed in WAC 246-851-580(1) will be consistent with guidelines established by the Food and Drug Administration.

~~((9))~~ (10) Notation of purpose shall be included on all prescriptions.

~~((10))~~ (11) An optometrist may not:

(a) Use, prescribe, dispense, or administer oral corticosteroids; or

(b) Prescribe, dispense, or administer a controlled substance for more than seven days in treating a particular patient for a single trauma, episode, or condition or for pain associated with or related to the trauma, episode, or condition; or

(c) Prescribe an oral drug within ninety days following ophthalmic surgery unless the optometrist consults with the treating ophthalmologist. If treatment exceeding the limitation is indicated, the patient must be referred to a physician licensed under chapter 18.71 RCW.

~~((11))~~ (12) The prescription or administration of drugs as authorized in this section is specifically limited to those drugs appropriate to treatment of diseases or conditions of the

human eye and the adnexa that are within the scope of practice of optometry. The prescription or administration of drugs for any other purpose is not authorized.

~~((12))~~ (13) Nothing in this chapter may be construed to authorize the use, prescription, dispensing, purchase, possession, or administration of any Schedule I or II controlled substance with the exception of Schedule II hydrocodone combination products.

## WSR 16-16-026

### PERMANENT RULES

### DEPARTMENT OF HEALTH

(Board of Psychology)

[Filed July 22, 2016, 4:11 p.m., effective August 22, 2016]

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

Purpose: Amending WAC 246-924-046, 246-924-100 and 246-924-480, and new WAC 246-924-047, the examining board of psychology adopted rules to allow an applicant the opportunity [to] complete and submit up two required courses outside of their doctoral degree program as [a] condition for a psychologist's licensure in Washington state. The rule also clarifies the process for applicants to obtain licensure by endorsement or obtain a temporary permit.

Citation of Existing Rules Affected by this Order: Amending WAC 246-924-046, 246-924-100, and 246-924-480.

Statutory Authority for Adoption: RCW 18.83.050 and 18.83.170.

Adopted under notice filed as WSR 16-08-105 on April 5, 2016.

A final cost-benefit analysis is available by contacting Kim-Boi Shadduck, Department of Health, Examining Board of Psychology, P.O. Box 47852, Olympia, WA, phone (360) 236-2912, fax (360) 236-2901, e-mail Kim-Boi.Shadduck@doh.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 3, 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 3, Repealed 0.

Date Adopted: May 20, 2016.

Shari Roberts, Board Chair  
Examining Board of Psychology

AMENDATORY SECTION (Amending WSR 07-24-093, filed 12/5/07, effective 9/1/09)

**WAC 246-924-046 Doctoral degree program.** To meet the education requirements of RCW 18.83.070, an applicant must possess a doctoral degree from a regionally accredited institution. Regional accreditation is awarded to an institution by one of the regional accrediting agencies, each of which covers a specified portion of the United States and its territories, or equivalent accreditation in another country, upon approval by the board.

(1) The doctoral degree program must include:

(a) At least forty semester (~~(hours)~~) credits, or sixty quarter (~~(hours)~~) credits, of graduate courses in curricular areas described in subsection (~~((2))~~) (3) of this section.

(i) Courses must be clearly identified by title and course content as being part of an integrated psychology program.

(ii) Courses taken before the doctoral degree program may be accepted if the doctoral degree program accepted the course(s).

(b) One year in residency as described in subsection (4) of this section;

(c) Submission of an original dissertation which is psychological in nature and endorsed by the program; and

(d) An organized, sequential and coordinated practicum and internship experience as described in WAC 246-924-049 and 246-924-056.

(2) The curriculum requirements: The doctoral degree program must encompass a minimum of three academic years of full-time graduate study or the equivalent. (~~The applicant must complete courses in:~~

~~(a) History and systems;~~

~~(b) Research design and methodology; and~~

~~(c) Statistics and psychometrics.))~~

(3) The applicant must complete three or more semester (~~(hours)~~) credits, or five or more quarter (~~(hours)~~) credits, of core study in each of the following content areas:

(a) Biological bases of behavior. For example: Physiological psychology, comparative psychology, neural bases of behavior, sensation and perception, and biological bases of development;

(b) Cognitive-affective bases of behavior. For example: Learning, thinking, motivation, emotion, and cognitive development;

(c) Social bases of behavior. For example: Social psychology, organizational theory, community psychology, and social development;

(d) Individual differences. For example: Personality theory and psychopathology;

(e) Scientific and professional ethics;

(f) History and systems of psychology;

(g) Statistics and psychometrics;

(h) Research design and methodology;

(i) Techniques of data analysis;

(j) Human development (~~((f))~~). For example: Developmental psychology, child development, adult development and aging(~~((j))~~);

(k) Cultural and individual differences and diversity;

(l) Psychopathology and dysfunctional behaviors;

(m) Theories and methods of assessment and diagnosis—minimum of two courses;

(n) Effective psychological intervention and evaluation of the efficacy of interventions—minimum of three courses; and

(o) Psychopharmacology.

(4) Doctoral degree programs accredited by the American Psychological Association or the Canadian Psychological Association are recognized as having met the minimum education requirements.

~~((4))~~ (5) Residency requirement:

(a) The doctoral degree program must involve at least one continuous year of full-time residency at the institution which grants the degree or a minimum of (~~(750)~~) seven hundred fifty hours of student-faculty contact involving face-to-face individual or group educational meetings.

(b) Educational meetings:

(i) Must include both faculty-student and student-student interaction;

(ii) Be conducted by the psychology faculty of the institution at least seventy-five percent of the time;

(iii) Be fully documented by the institution and the applicant; and

(iv) Relate substantially to the program components specified.

#### NEW SECTION

**WAC 246-924-047 Courses completed outside the doctoral degree granting program.** (1) The board will accept no more than two courses completed outside the applicant's doctoral degree-granting program to meet the requirements of WAC 246-924-046(3).

(2) Course(s) may be used to satisfy the requirements of WAC 246-924-046 if all of the following are met:

(a) The applicant meets all the requirements in WAC 246-924-046 (1) and (2), but the doctoral degree program did not include all of the courses described in WAC 246-924-046 (3);

(b) The doctoral degree was granted without the course (s);

(c) Courses were taken for credit from a regionally accredited graduate program in psychology; and

(d) Courses are documented on an official transcript.

AMENDATORY SECTION (Amending WSR 08-09-100, filed 4/21/08, effective 5/22/08)

**WAC 246-924-100 Qualifications for granting of license by endorsement.** (~~Candidates applying for licensure under RCW 18.83.170 (1) and (2) shall:~~

~~(1) Provide evidence of meeting the educational requirements set forth in RCW 18.83.070 in effect when the applicant completed his or her doctoral program; and~~

~~(2) Pass the jurisprudence examination administered by the department on behalf of the board, as described in WAC 246-924-070-.)~~ (1) Applicants applying for licensure by endorsement shall:

(a) Submit official transcripts documenting the completion of a doctoral degree with a primary emphasis on psychology from a regionally accredited institution, or equivalent accreditation from another country.

(b) Document that he or she has been credentialed as a psychologist in another state or country for at least two years, or is a current member of a professional organization identified in subsection (3) of this section.

(c) Document that he or she has an active credential as a psychologist in another state or country deemed by the board as essentially equivalent, or is a current member of a professional organization identified in subsection (3) of this section.

(d) All application documents submitted in a foreign language shall be accompanied by an accurate translation of those documents into English. Translated documents shall bear a notarized affidavit certifying that the translator is competent in both the language of the document and the English language and that the translation is a true and complete translation of the foreign language original. Costs of all documents shall be at the expense of the applicant.

(e) Successfully pass the jurisprudence examination required by WAC 246-924-070.

(2) If the board determines that the applicant's other state or country's credentialing requirements are not essentially equivalent, the applicant must:

(a) Provide documentation of meeting Washington state's credentialing requirements in the area(s) the board has determined a state or country of endorsement's requirements are not essentially equivalent.

(b) Ensure documents submitted in a foreign language meet the requirements of subsection (1)(d) of this section.

(c) If the board determines that the applicant's state or country of endorsement's credentialing requirements are not essentially equivalent, the applicant will be provided due process under RCW 18.130.055.

(3) The board shall recognize psychologists as having met the requirements of this chapter who, at the time of application, provide documentation of current membership in any of the following professional organizations:

(a) Health service psychologist credentialed by the National Register of Health Service Psychologists;

(b) Diplomate from the American Board of Examiners in Professional Psychology;

(c) Certificate of Professional Qualification in Psychology from the Association of State and Provincial Psychology Boards; or

(d) Diplomate of the American Board of Professional Neuropsychology.

(e) The board may recognize additional professional organizations deemed to meet the essential standards of this chapter.

AMENDATORY SECTION (Amending WSR 08-09-100, filed 4/21/08, effective 5/22/08)

**WAC 246-924-480 Temporary permits. ((A)) (1) Temporary permits ((is)) are:**

**(a) Issued under RCW 18.83.082 ((and is)); and**

**(b) Valid for no more than ninety days within one calendar year from the date ((it is)) they are issued.**

**(2) If the board finds that another state's licensing requirements are deemed not equivalent because a stated requirement is omitted or deficient, the applicant is not eligible for the temporary permit.**

(3) There is no charge for a temporary permit.

(4) Candidates applying for a temporary permit must:

(a) Verify that he or she is credentialed to practice psychology in another state that has been deemed substantially equivalent by the board, or is a member of an organization listed in WAC 246-924-100(3); and

(b) Submit a completed application on a form provided by the board.

## WSR 16-16-028

### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Medical Quality Assurance Commission)

[Filed July 22, 2016, 4:48 p.m., effective August 22, 2016]

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

Purpose: Amending WAC 246-919-421, 246-919-430, 246-919-460 and 246-919-470; repealing WAC 246-919-450; and adding WAC 246-919-422, the medical quality assurance commission (commission) amended rules and adopted a new section of rule regarding license renewal and continuing medical education requirements to ensure continuing competency for allopathic physicians.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-919-450; and amending WAC 246-919-421, 246-919-430, 246-919-460, and 246-919-470.

Statutory Authority for Adoption: RCW 18.71.002, 18.71.017, 18.71.080.

Adopted under notice filed as WSR 16-08-107 on April 5, 2016.

A final cost-benefit analysis is available by contacting Daidria Underwood, Medical Quality Assurance Commission, P.O. Box 47866, Olympia, WA 98504-7866, phone (360) 236-2727, fax (360) 236-2795, e-mail daidria.underwood@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 4, Repealed 1.

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 4, Repealed 1.

Date Adopted: May 11, 2016.

Melanie de Leon  
Executive Director

AMENDATORY SECTION (Amending WSR 11-05-025, filed 2/7/11, effective 3/10/11)

**WAC 246-919-421 Two year renewal ((and continuing medical education)) cycle ((revision))**. ((Beginning January 1, 2000, the one-year renewal cycle for physicians will transition to a two-year cycle and a four-year continuing medical education reporting cycle. The renewal and continuing medical education reporting cycle will be as follows:

(1) Effective January 1, 2000, any physician whose birth year is an even number will renew their credential for twenty-four months and every two years thereafter. Those physicians must obtain two hundred hours of continuing medical education within the next forty-eight months from the date of the initial two-year license and every four years thereafter.

(2) Effective January 1, 2001, any physician whose birth year is an odd number will renew their credential for twenty-four months and every two years thereafter. Those physicians must obtain two hundred hours of continuing medical education within the next forty-eight months from the date of the initial two-year license and every four years thereafter.

(3) Effective January 1, 2000, in order to attain full license status, individuals with a post-graduate limited license will pay the fee difference between the limited license application and the full license application. This license will expire on their second birth date after issuance and every two years thereafter.) A licensed physician shall renew his or her license every two years in compliance with WAC 246-12-030. A licensed physician must also submit information about his or her current professional practice as required by RCW 18.71.080 (1)(b).

NEW SECTION

**WAC 246-919-422 Transition from post-graduate limited license to full license**. In order to obtain full license status, individuals with a post-graduate limited license will pay the fee difference between the limited license application and the full license application. This license will expire on their second birth date after issuance and every two years thereafter.

AMENDATORY SECTION (Amending WSR 99-23-090, filed 11/16/99, effective 1/1/00)

**WAC 246-919-430 ((General)) Requirements for maintenance of licensure**. ((+)) A licensed physician((s)) must complete ((two hundred hours of continuing education every four years as required in chapter 246-12 WAC, Part 7.

(2) In lieu of the two hundred hours of continuing medical education, the commission will accept a current Physician's Recognition Award from the American Medical Association or a current certificate from any specialty board approved by the American Board of Medical Specialties (ABMS) which is considered by the specialty board as equivalent to the two hundred hours of continuing medical education required under WAC 246-919-430(1). The commission will also accept certification or recertification by a specialty board as the equivalent of two hundred hours of continuing medical education. A list of the approved specialty boards are designated in the 1995 Official American Boards of Medical

Specialty Director of Board Certified Medical Specialist and will be maintained by the commission. The list shall be made available upon request. The certification or recertification must be obtained in the four years preceding application for renewal.) one of the following to satisfy maintenance of licensure requirements during renewal:

(1) Complete two hundred hours of continuing education every four years as required in chapter 246-12 WAC and as described in WAC 246-919-460. Participation in a residency program accredited by the Accreditation Council for Graduate Medical Education or in a fellowship program, accredited or not, may be credited fifty hours of Category I continuing medical education per year of training towards the two hundred hour requirement;

(2) Obtain a current Physician's Recognition Award from the American Medical Association in at least two of the four years preceding the renewal due date;

(3) Become certified by a member board of the American Board of Medical Specialties in the four years preceding the renewal due date;

(4) Meet the requirements for participation in maintenance of certification of a member board of the American Board of Medical Specialties at the time of renewal.

AMENDATORY SECTION (Amending WSR 99-23-090, filed 11/16/99, effective 1/1/00)

**WAC 246-919-460 Categories of creditable continuing medical education ((requirement)) activities**. (1) ((The credits must be earned in the forty-eight month period preceding application for renewal of licensure.

(2)) Category I: Continuing medical education activities with accredited sponsorship. The licensed physician may earn all two hundred credit hours in Category I. The commission ((has approved)) will accept attendance at a continuing education program that is recognized as Category I credit and is offered by an organization or institution that meets the standards adopted by the Accreditation Council for Continuing Medical Education or its designated interstate accrediting agency, the Washington State Medical Association((, in accrediting organizations and institutions offering continuing medical education programs, and will accept attendance at such programs offered by organizations and institutions offering continuing medical education programs; and will accept attendance at such programs offered by organizations and institutions so recognized as Category I credit towards the licensee's continuing medical education requirement for annual renewal of licensure. The licensee may earn all two hundred credit hours in Category I)).

((3)) (2) Category II: Continuing medical education activities with nonaccredited sponsorship. A licensed physician may earn a maximum of eighty credit hours ((may be earned)) by attendance at continuing medical education programs that are not approved but which are in accordance with the provisions of Category I.

((4)) (3) Category III: Teaching of physicians or other allied health professionals. A licensed physician may earn a maximum of eighty credit hours ((may be earned)) for serving as an instructor of medical students, house staff, other physicians or allied health professionals from a hospital or

institution with a formal training program if the hospital or institution has approved the instruction.

~~((5))~~ **(4) Category IV: Books, papers, publications, exhibits.** A licensed physician may earn:

(a) A maximum of eighty credit hours ~~((may be earned))~~ under Category IV, with specific subcategories listed below. Credit may be earned only during the forty-eight-month period following presentations or publications.

(b) Ten credit hours ~~((may be claimed))~~ for a paper, exhibit, publication, or for each chapter of a book that is authored by the licensed physician and published. A paper must be published in a recognized medical journal. A licensed physician who presents a paper ~~((that is presented))~~ at a meeting or an exhibit ~~((that is shown must be))~~ must present to physicians or allied health professionals. Credit may be claimed only once for the scientific materials presented. Credit should be claimed as of the date materials were presented or published.

Medical editing ~~((can))~~ will not be accepted in this or any other category for credit.

~~((6))~~ **(5) Category V: Self-directed activities.** A licensed physician may earn:

(a) A maximum of eighty credit hours ~~((may be earned))~~ under Category V.

(b) Self-assessment: Credit hours ~~((may be earned))~~ for completion of a multimedia medical education program.

(c) Self-instruction: Credit hours ~~((may be earned))~~ for the independent reading of scientific journals and books.

(d) Specialty board examination preparation: Credit hours ~~((may be earned))~~ for preparation for specialty board certification or recertification examinations.

(e) Quality care ~~((and/or))~~ or utilization review: Credit hours ~~((may be earned))~~ for participation on a staff committee for quality of care ~~((and/or))~~ or utilization review in a hospital or institution or government agency.

AMENDATORY SECTION (Amending WSR 96-03-073, filed 1/17/96, effective 2/17/96)

**WAC 246-919-470 Approval not required.** (1) Except as required by law, the commission will not give prior approval for any continuing medical education. The commission will accept any continuing medical education that reasonably falls within these ~~((regulations))~~ rules and relies upon each individual physician's integrity ~~((in complying))~~ to comply with this requirement.

(2) ~~((The commission will not give prior approval for any formal continuing medical education program.))~~ The continuing medical education category will depend solely upon the accredited status of the organization or institution. The number of creditable hours may be determined by counting the contact hours of instruction and rounding to the nearest quarter hour. The commission relies upon the integrity of program sponsors to present continuing medical education that constitutes a meritorious learning experience.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-919-450 Categories of creditable continuing medical education activities.

### **WSR 16-16-030 PERMANENT RULES PROFESSIONAL EDUCATOR STANDARDS BOARD**

[Filed July 25, 2016, 8:59 a.m., effective August 25, 2016]

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

Purpose: Amends WAC 181-85-025 to remove the language from citation to WAC 181-78A-010. New definition of accredited institution; not regionally accredited.

Citation of Existing Rules Affected by this Order: Amending WAC 181-85-025.

Statutory Authority for Adoption: Chapter 28A.410 RCW, RCW 28A.410.278.

Adopted under notice filed as WSR 16-11-024, filed May 9, 2016.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: July 20, 2016.

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

**WAC 181-85-025 Continuing education—Definition.** As used in this chapter, the term "continuing education" shall mean:

(1) All college and/or university credit, normally 100 level or higher, or continuing education credit awarded by ~~((a regionally))~~ an accredited institution of higher education, pursuant to WAC 181-78A-010~~((6))~~.

(2) All continuing education credit hours awarded by a vocational-technical college pursuant to WAC 181-85-030  
(3) and all continuing education credit hours awarded in conformance with the in-service education procedures and stan-

dards specified in this chapter by an approved in-service education agency.

(3) All continuing education credit hours awarded through a business, industry, or government internship that meets the requirements of chapter 181-83 WAC, Internships.

(4) All continuing education credit hours awarded in conformance with WAC 181-85-033 (~~and 181-85-034~~).

### WSR 16-16-039

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed July 26, 2016, 12:05 p.m., effective August 26, 2016]

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

Purpose: Amending WAC 246-817-135 and repealing WAC 246-817-130 and 246-817-140, the adopted rule: Eliminates conflict with RCW 18.32.215 by eliminating reference to clinical examination requirement; provides a single rule to eliminate confusion with the current three rules; defines "state" and "currently engaged in the practice of dentistry"; removes the unnecessary requirements and adds two standard licensure requirements.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-817-130 and 246-817-140; and amending WAC 246-817-135.

Statutory Authority for Adoption: RCW 18.32.0365.

Other Authority: RCW 18.32.215.

Adopted under notice filed as WSR 16-09-101 on April 19, 2016.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98501, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 2.

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 2.

Date Adopted: June 3, 2016.

C. Madden  
Commission Chair

AMENDATORY SECTION (Amending WSR 08-23-017, filed 11/6/08, effective 12/7/08)

**WAC 246-817-135 Dental licensure without examination (~~for dentists~~)—Eligibility and application (~~procedure~~) requirements.** ((The applicant is responsible for obtaining and furnishing to the DQAC all materials required to establish eligibility for a)) For individuals holding a dentist credential in another U.S. state or territory, to be eligible for Washington state dental license without examination (~~In addition to the requirements defined in WAC 246-817-110 the following documentation must be provided~~), the applicant must provide:

(1) ((A statement by the applicant as to whether the applicant has been the subject of any disciplinary action in the state(s) of licensure and whether the applicant has engaged in unprofessional conduct as defined in RCW 18.130.180.

(2) A statement by the applicant that they are not an impaired practitioner as defined in RCW 18.130.170.) A completed application on forms provided by the secretary;

(2) Applicable fees under WAC 246-817-990;

(3) A (~~certification by the state board(s)~~) verification by a U.S. state or territory board of dentistry (or equivalent authority) ((that the applicant was issued a license, registration, certificate or privilege)) of an active credential to practice dentistry, without restrictions, and whether the applicant has been the subject of final or pending disciplinary action (-);

(4) (~~Documentation to substantiate that standards defined in WAC 246-817-140 have been met.~~) Proof of graduation from an approved dental school under WAC 246-817-110 (2)(a):

(a) The only acceptable proof is an official, posted transcript sent directly from such school;

(b) Graduates of nonapproved dental schools must meet the requirements under RCW 18.32.215 (1)(b).

(5) Proof that the applicant is currently engaged in the practice of dentistry (~~in another state as demonstrated by the following information:~~

(a) Address of practice location(s);

(b) Length of time at the location(s);

(c) A letter from all malpractice insurance carrier(s) defining years when insured and any claims history;

(d) Federal or state tax numbers;

(e) DEA numbers if any;);

(a) Dentists serving in the United States federal services as described in RCW 18.32.030(2) ((, for the period of such service, need not provide (a) through (e) of this subsection, but)) must provide documentation from their commanding officer regarding length of service, duties and responsibilities ((including)), and any adverse actions or restrictions ((Such dental service, including service within the state of Washington, shall be credited toward the dental practice requirement));

(b) Dentists employed by a dental school ((approved by the DQAC for the period of such dental practice, need not provide (a) through (e) of this subsection, but)) approved under WAC 246-817-110 (2)(a) must provide documentation from the dean or appropriate administrator of the institution regarding the length and terms of employment ((and their)),

~~duties and responsibilities, and any adverse actions or restrictions((. Such dental practice, including practice within the state of Washington, shall be credited toward the dental practice requirement. Dental practice within a residency program shall be credited toward the dental practice requirement. A license may be revoked upon evidence of misinformation or substantial omission.~~

~~All information must be completed and received within one hundred eighty days of receipt of the initial application. Only completed applications will be reviewed by the DQAC, or its designee(s) at the next scheduled DQAC meeting or at other intervals as determined by the DQAC.)):~~

~~(c) Dentists in a dental residency program must provide documentation from the director or appropriate administrator of the residency program regarding length of residency, duties and responsibilities, and any adverse actions or restrictions; or~~

~~(d) Dentists practicing dentistry for a minimum of twenty hours per week for the four consecutive years preceding application, in another U.S. state or territory must provide:~~

~~(i) Address of practice location(s);~~

~~(ii) Length of time at the location(s);~~

~~(iii) A letter from all malpractice insurance carrier(s) defining years when insured and any claims history;~~

~~(iv) Federal or state tax numbers; and~~

~~(v) DEA numbers if any.~~

~~(6) Proof of seven clock hours of AIDS education and training as required by chapter 246-12 WAC, Part 8;~~

~~(7) Proof of successful completion of a commission approved written jurisprudence examination;~~

~~(8) A recent 2" x 2" photograph, signed, dated, and attached to the application; and~~

~~(9) Authorization for background inquiries to other sources may include, but are not limited to, the national practitioner data bank and drug enforcement agency.~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-817-130 Licensure without examination for dentists—Eligibility.

WAC 246-817-140 Licensure without examination for dentists—Licensing examination standards.

**WSR 16-16-044**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed July 26, 2016, 2:49 p.m., effective August 26, 2016]

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

Purpose: Amends WAC 181-79A-231 to provide for continuing career and technical education certificate holders to be issued lifetime teaching substitute certificates. Clarifies

that educational service associates (ESA) may only substitute in that role.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-231.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 16-11-047 on May 11, 2016.

Changes Other than Editing from Proposed to Adopted Version: Emergency certificates for ESA are no longer to be issued.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: July 20, 2016.

David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 15-20-058, filed 10/1/15, effective 11/1/15)

**WAC 181-79A-231 Limited certificates.** Notwithstanding other requirements prescribed in this chapter for eligibility for certification in the state of Washington, the following certificates shall be issued under specific circumstances set forth below for limited service:

(1) Conditional certificate.

(a) The purpose of the conditional certificate is to assist local school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals. The professional educator standards board encourages in all cases the hiring of fully certificated individuals and understands that districts will employ individuals with conditional certificates only after careful review of all other options. The professional educator standards board asks districts when reviewing such individuals for employment to consider, in particular, previous experience the individual has had working with children.

(b) Conditional certificates are issued upon application by the local school district, approved private school, or educational service district superintendent to persons who meet the age, good moral character, and personal fitness require-

ments of WAC 181-79A-150 (1) and (2), if one of the following conditions is verified:

(i) The applicant is highly qualified and experienced in the subject matter to be taught and has unusual distinction or exceptional talent which is able to be demonstrated through public records of accomplishments and/or awards; or

(ii) No person with regular teacher certification in the endorsement area is available as verified by the district or educational service district superintendent or approved private school administrator, or circumstances warrant consideration of issuance of a conditional certificate.

(c) In addition, conditional certificates are issued to persons in the following categories only if no person with regular certification is available:

(i) The applicant qualifies to instruct in the traffic safety program as paraprofessionals pursuant to WAC 392-153-020 (2) and (3); or

(ii) The applicant is assigned instructional responsibility for intramural/interscholastic activities which are part of the district or approved private school approved program; or

(iii) The applicant possesses a state of Washington license for a registered nurse: Provided, That the district will be responsible for orienting and preparing individuals for their assignment as described in (e)(iii) of this subsection; or

(iv) The applicant has completed a bachelor's degree or higher from a regionally accredited college/university. All speech-language pathologists or audiologists providing services under a current and valid conditional certificate issued as of June 30, 2003, will be fully qualified consistent with WAC 181-79A-223 by the year 2010. First conditional certificates, issued to speech-language pathologists or audiologists after June 30, 2003, which are valid for up to two years, may be reissued once for up to two years, if the individual provides evidence that he/she is enrolled in and completing satisfactory progress in a master's degree program resulting in the initial ESA school speech-language pathologists or audiologist certificate.

(v) The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from ~~((a regionally))~~ an accredited college/university.

(vi) The issuance of a conditional certificate to a special education teacher after July 1, 2003, is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education. The conditional certificate is valid for up to two years and may be reissued once for one year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program.

(vii) An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(d) The educational service district or local district superintendent or administrator of an approved private school will verify that the following criteria have been met when requesting the conditional certificate:

(i) The district or educational service district superintendent or approved private school administrator has indicated

the basis on which he/she has determined that the individual is competent for the assignment;

(ii) The individual is being certificated for a specific assignment and responsibility in a specified activity/field;

(e) When requesting the conditional certificate for persons who provide classroom instruction, the educational service district superintendent or local district superintendent or approved private school administrator will verify that the following additional criteria will be met:

(i) After specific inclusion on the agenda, the school board or educational service district board has authorized submission of the application.

(ii) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities with the direct assistance of a school district or approved private school mentor and will not be serving in a paraprofessional role which would not require certification;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment by the employing district or approved private school. A written plan of assistance will be developed, in cooperation with the person to be employed within twenty working days from the commencement of the assignment. In addition, prior to service the person will be apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment;

(iv) Within the first sixty working days, personnel so certificated will complete sixty clock hours (six quarter hours or four semester hours) of course work in pedagogy and child/adolescent development appropriate to the assigned grade level(s) as approved by the employing school district or approved private school.

(f) The certificate is valid for two years or less, as evidenced by the expiration date which is printed on the certificate, and only for the activity specified. The certificate may be reissued for two years and for two-year intervals thereafter upon application by the employing local school district, approved private school, or educational service district and upon completion of sixty clock hours (six quarter hours or four semester hours) of course work since the issuance of the most recent certificate. The requesting local school district, approved private school, or educational service district shall verify that the sixty clock hours taken for the reissuance of the certificate shall be designed to support the participant's professional growth and enhance the participant's instructional knowledge or skills to better assist students meeting the state learning goals and/or essential academic learning requirements.

(2) Substitute certificate.

(a) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed one hundred eighty days during the school year in any one assignment. Districts or approved private schools employing a teacher holding a substitute certificate in any one assignment for more than thirty days must within twenty days develop a plan of professional learning for the individual that is appropriate to the assignment and designed to support their professional growth and enhance instructional knowledge and skills to meet dis-



strict needs and better assist students in meeting the state learning goals. This certificate may be issued to:

(i) Teachers, educational staff associates or administrators (~~whose~~) who hold or have held a regular state of (~~regular~~) Washington certificates (~~have expired~~); Provided, educational staff associates may only substitute in the role of their certificate; or

(ii) Persons who have completed state approved preparation programs and baccalaureate degrees at (~~regionally~~) accredited colleges and universities for certificates; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257 (1)(c) and (d); or

(iv) Persons who hold or have held a continuing career and technical education teacher certificate.

(b) The substitute certificate is valid for life.

(3) Emergency certification.

(a) Emergency certification for specific positions may be issued upon the recommendation of school district and educational service district superintendents or approved private school administrators to persons who hold the appropriate degree and have substantially completed a program of preparation in accordance with Washington requirements for certification: Provided, That a qualified person who holds regular certification is not available or that the position is essential and circumstances warrant consideration of issuance of an emergency certificate: Provided further, That a candidate for emergency certification as a school counselor, school psychologist, or social worker shall be the best qualified of the candidates for the position as verified by the employing school district and shall have completed all course work for the required master's degree with the exception of the internship: Provided further, That a candidate for emergency certification as a school psychologist shall be enrolled in an approved school psychologist preparation program and shall be participating in the required internship.

(b) The emergency certificate is valid for one year or less, as evidenced by the expiration date which is printed on the certificate.

(4) Emergency substitute certification.

(a) If the district or approved private school has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, the superintendent of public instruction may issue emergency substitute certificates to persons not fully qualified under subsection (2) of this section for use in a particular school district or approved private school once the list of otherwise qualified substitutes has been exhausted.

(b) Such emergency substitute certificates shall be valid for three years or less, as evidenced by the expiration date which is printed on the certificate.

(c) To ensure that related services personnel deliver special education services in their respective discipline or profession, the office of superintendent of public instruction may not issue emergency substitute certificates for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b)(2)(ii).

(5) Nonimmigrant alien exchange teacher. Applicants for certification as a nonimmigrant alien exchange teacher must qualify pursuant to WAC 181-79A-270 and be eligible

to serve as a teacher in the elementary or secondary schools of the country of residence.

(6) Intern substitute teacher certificate.

(a) School districts and approved private schools may request intern substitute teacher certificates for persons enrolled in student teaching/internships to serve as substitute teachers in the absence of the classroom teacher.

(b) The supervising college or university must approve the candidate for the intern substitute teacher certificate.

(c) Such certificated substitutes may be called at the discretion of the school district or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher/intern.

(d) The intern substitute teacher certificate is valid for one year, or less, as evidenced by the expiration date which is printed on the certificate.

(7) Transitional certificate.

(a) An individual whose continuing or residency certificate has expired according to WAC 181-85-040 or 181-79A-251 may be issued a transitional certificate to be employed on a conditional basis upon request by a school district, approved private school, or educational service district superintendent. The holder of the transitional certificate must successfully complete the external assessment established by the professional educator standards board within two years of the date the holder was issued the transitional certificate in order to continue to be employed: Provided, (~~five~~) one year(~~s~~) has elapsed since the final renewal expired and the teacher registers and passes the professional certificate assessment within the two years under WAC 181-79A-251. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(b) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(c) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of assistance to be sure the holder completes the necessary continuing certificate reinstatement requirements under WAC 181-85-130 within the two-year conditional employment period specified under (a) of this subsection if the holder is to continue to be employed.

(d) The transitional certificate is not renewable and may not be reissued.

(8) Provisional alternative administrative certificate.

(a) This certificate shall be issued to individuals admitted to the professional educator standards board alternative route to principal certification pilot program.

(b) The certificate is valid for one year from date of issue.

(c) A comprehensive assessment of the intern's performance by school officials and program faculty and a recommendation that the person be issued a residency principal certificate upon successful completion of the program.

**WSR 16-16-049**  
**PERMANENT RULES**  
**OFFICE OF THE**  
**STATE TREASURER**

[Filed July 27, 2016, 8:58 a.m., effective August 27, 2016]

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

Purpose: The amendments to the existing rules will clarify that electronic funds transfer also includes the contribution and withdrawal of funds, by pool participants by automated clearing house as well as by wire. This change will allow greater flexibility to users of the local government investment pool.

Citation of Existing Rules Affected by this Order: Amending chapter 210-10 WAC.

Statutory Authority for Adoption: RCW 43.250.060.

Adopted under notice filed as WSR 16-13-013 on June 3, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, 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 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: July 27, 2016.

Douglas D. Extine  
Deputy State Treasurer

AMENDATORY SECTION (Amending WSR 13-03-043, filed 1/9/13, effective 2/9/13)

**WAC 210-10-050 Contribution procedures.** (1) Contribution procedures for the money market fund:

(a) All contributions will be effected by electronic funds transfer to an account in the money market fund designated by the state treasurer. It is the responsibility of each pool participant to pay any bank charges associated with such electronic transfers to the state treasurer.

(b) Funds transmitted by automated clearing house (ACH) will be held for a period of time as designated by the state treasurer in the prospectus.

(c) Failure to ((~~wire~~)) transmit funds by a pool participant after notification to the state treasurer of an intended transfer will result in penalties. Penalties for failure to timely ((~~wire~~)) transmit funds will be assessed to the account of the pool participant responsible. Reversal of an ACH transmission will constitute a failure to transmit funds.

(d) Contribution requests received in good order will receive the net asset value per unit of the money market fund next determined after the order is accepted by the state treasurer.

(2) Contribution procedures for the extended asset fund:

Direct investments into the extended asset fund are not permitted. Contributions to the extended asset fund may only be effected by means of a contribution from the money market fund. Contributions will take place monthly, on the 10th calendar day of the month (or on the next business day, if the 10th does not fall on a business day).

Pool participants must notify the state treasurer of any contribution on the business day prior to a permitted contribution date no later than the time on that day specified in the prospectus. The state treasurer may allow contributions with less than the required notice in its sole discretion.

Contributions to the extended asset fund will be effected by way of a corresponding withdrawal from the pool participant's specified money market fund account. On the contribution date, shares will be sold from the specified money market fund account at the net asset value determined as of the order acceptance date. Shares of the extended asset fund will be purchased using the extended asset fund's net asset value determined as of the order acceptance date.

AMENDATORY SECTION (Amending WSR 13-03-043, filed 1/9/13, effective 2/9/13)

**WAC 210-10-060 Contribution limits and earnings credit.** (1) Contribution limits and earnings credit for the money market fund:

To ensure same day credit, a pool participant must inform the state treasurer of any contribution over one million dollars, except for funds transmitted by ACH, no later than 9 a.m. on the same day the contribution is made. Contributions for one million dollars or less, other than those funds transmitted by ACH, can be requested at any time prior to 10 a.m. on the day of contribution.

For all other contributions over one million dollars that are requested prior to 10 a.m., a pool participant may receive same day credit at the sole discretion of the state treasurer. Contributions that receive same day credit will count, for earning rate purposes, as of the day in which the contribution was made. Contributions for which no notice is received prior to 10 a.m. will be credited as of the following business day.

Participants transmitting a contribution via ACH must notify the state treasurer no later than 2 p.m. the business day prior to the contribution date.

(2) Earnings credit:

Income earnings credit on funds contributed to a subpool will be credited to each subpool in the timing and manner described in the prospectus.

AMENDATORY SECTION (Amending WSR 13-03-043, filed 1/9/13, effective 2/9/13)

**WAC 210-10-070 Withdrawal procedures.** (1) Withdrawal procedures for the money market fund:

Each pool participant shall file with the state treasurer a letter designating the financial institution at which funds withdrawn from the money market fund shall be deposited. This letter shall contain the name of the financial institution, the location of the financial institution, the account name, and the account number to which funds will be deposited. This letter shall be signed by local officials authorized to receive

and disburse funds, as described in WAC 210-10-020. Disbursements from the subpool will be effected by electronic funds transfer. Failure by the state treasurer to ~~((wire))~~ transmit funds to a pool participant after proper notification to the state treasurer to disburse funds to a pool participant may result in a bank overdraft in the pool participant's bank account. The state treasurer will reimburse a pool participant for such bank overdraft penalties charged to the pool participant's bank account.

In order to withdraw funds from the money market fund, a pool participant must notify the state treasurer of any withdrawal over one million dollars no later than 9 a.m. on the same day the withdrawal is made except for funds transmitted by ACH. Withdrawals for one million dollars or less, other than those funds transmitted by ACH, can be requested at any time prior to 10 a.m. on the day of withdrawal.

For all other withdrawals from the money market fund over one million dollars that are requested prior to 10 a.m., a pool participant may receive such withdrawal on the same day it is requested at the sole discretion of the state treasurer.

Participants requesting withdrawals via ACH must notify the state treasurer no later than 2 p.m. the business day prior to the requested withdrawal date. Funds contributed by ACH will not be available for withdrawal for a period of time as designated by the state treasurer in the prospectus.

Withdrawal requests with respect to the money market fund received in good order will receive the net asset value per unit of the money market fund next determined after the order is accepted by the state treasurer.

(2) Withdrawal procedures for the extended asset fund.

Withdrawal orders will be accepted on a quarterly basis and must be received two business days prior to the intended withdrawal date. Withdrawals will occur on the 10th calendar day of the months so designated in the prospectus. If the 10th is not a business day, the withdrawal will occur on the following business day. Other withdrawals may be permitted due to necessity, if the governing body of a pool participant sets forth, by resolution or other appropriate official action, that a withdrawal is necessary to meet the cash flow needs of the pool participant.

Withdrawals from the extended asset fund will be effected by way of a corresponding contribution into the pool participant's specified money market fund account. On the withdrawal date, shares will be sold from the specified extended asset fund account at the net asset value determined as of the next business day after the order acceptance date. Shares of the money market fund will be purchased using the money market fund's net asset value determined as of the next business day after the order acceptance date.

Pool participants must notify the state treasurer of any withdrawal two business days prior to a permitted withdrawal date no later than the time on that day specified in the prospectus. The state treasurer may allow withdrawals with less than the required notice in its sole discretion.

AMENDATORY SECTION (Amending WSR 13-03-043, filed 1/9/13, effective 2/9/13)

**WAC 210-10-080 Transfer procedures.** A pool participant may transfer funds from one money market fund

account to another. To ensure same day credit, a pool participant must inform the state treasurer of any transfer no later than 10 a.m. on the same day the transfer is made. Contributions to the money market fund through ACH will not be available for transfer for a period of time as designated by the state treasurer in the prospectus.

**WSR 16-16-050  
PERMANENT RULES  
LIQUOR AND CANNABIS  
BOARD**

[Filed July 27, 2016, 10:34 a.m., effective August 27, 2016]

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

Purpose: The purpose of this proposal is to establish a process and requirement for recalls of marijuana and marijuana products, and to provide guidance for marijuana businesses that wish to conduct market withdrawals. This proposal creates a new section in chapter 314-55 WAC. Marijuana licensees will have to comply with the new recall requirements and create a recall plan should they be subject to a recall event. Notification requirements are included, as well as reporting requirements should a recall be required.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.345.

Adopted under notice filed as WSR 16-11-113 on May 18, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 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: July 27, 2016.

Jane Rushford  
Chair

NEW SECTION

**WAC 314-55-225 Marijuana recalls. (1) Definitions.** For the purposes of this section, the following definitions apply:

(a) "Affected product" means marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products subject to a recall.

(b) "Affected licensee" means a licensee whose marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products are subject to a recall. More than one licensee may be an affected licensee in a recall.

**(2) Exempt market withdrawals.**

(a) A licensee may withdraw from the market marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products by its own determination for reasons that do not pose a risk to consumers such as for aesthetic reasons or other similar deficiencies in product or packaging.

(b) If a licensee initiates a market withdrawal for a reason that does not pose a risk to consumers, the licensee must notify the WSLCB by contacting the local WSLCB enforcement officer assigned to the local area within forty-eight hours of beginning the market withdrawal. Licensees withdrawing marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products under this subsection (2), for reasons other than risk to consumers, are exempt from the remaining requirements of this section.

(3)(a) **When a recall is required.** A recall is required when circumstances exist that pose a risk to consumers. Factors that contribute to a determination of a recall situation include, but are not limited to, the following:

(i) Evidence that pesticides not approved by the board are present on or in marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products above the action levels prescribed by board rule;

(ii) Evidence that residual solvents are present on or in marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products at levels above the action levels prescribed by board rule; or

(iii) Evidence of another condition that poses a risk to consumers including, but not limited to, ingredients in marijuana-infused products that are unfit for human consumption.

**(b) Licensee-initiated recalls.**

(i) If a licensee initiates a recall due to a condition that poses a risk to consumers and would make a recall appropriate under this subsection (3), the licensee must:

(A) Immediately notify the local WSLCB enforcement officer; and

(B) Secure, isolate, and prevent the distribution of all marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products that may have been exposed to the condition warranting the recall. The licensee is prohibited from destroying any affected product prior to notifying the WSLCB and coordinating with the local WSLCB officer on destruction activities.

(ii) If the WSLCB determines the licensee fails to engage in recall efforts that meet the urgency of the risk to consumers, the WSLCB may seek a board-directed recall as provided in this section depending on the circumstances.

**(c) WSLCB investigation-initiated recalls.**

(i) If the WSLCB determines that a recall is not appropriate after an investigation, the WSLCB enforcement division may release administrative holds placed on marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products as part of the investigation as appropriate, unless an administrative hold is necessary under a continuing investigation.

(ii) If the WSLCB determines that a recall is appropriate after an investigation, the WSLCB notifies the board and requests the board issue a recall. If the board issues a recall, the WSLCB notifies the affected licensee that is the source of the issue giving rise to a recall.

(d) **Recall plans.** All licensees must develop a recall plan within sixty days of the effective date of this section that sets the procedures the licensee will follow in the event of a recall of the licensee's product or products under the licensee's control. If a licensee becomes an affected licensee as part of a recall and the affected licensee distributed affected product to consumers or to retailers, the affected licensee must immediately notify all licensees that received affected product, and issue a press release and other appropriate public notification to inform consumers of the recall and identifying information about the affected product recalled.

(i) A recall plan must include, at a minimum, the following:

(A) Designation of a member of the licensee's staff who serves as the licensee's recall coordinator;

(B) Procedures for identifying and isolating product to prevent or minimize its distribution to consumers;

(C) Procedures to retrieve and destroy product; and

(D) A communications plan to notify those affected by the recall, including:

(I) How the affected licensee will notify other licensees in possession of product subject to the recall; and

(II) The use of press releases and other appropriate notifications to ensure consumers are notified of the recall and affected product information if the affected product was distributed to consumers.

(ii) A recall must follow the procedures outlined in the recall plan unless otherwise agreed by the WSLCB and the licensee. The affected licensee must ensure recall procedures are conducted to maximize recall of affected product and minimize risks to consumers.

(e) **Destruction of affected product.** An affected licensee must coordinate destruction of affected product with the local WSLCB enforcement officer and allow WSLCB enforcement to oversee the destruction of affected product recalled to ensure the destruction of affected product that poses risks to consumers.

(f) **Recall reports and audit.** The affected licensee must track the total amount of affected product and the amount of affected product returned to the affected licensee as part of the recall effort. The affected licensee must report to the WSLCB periodically on the progress of the recall efforts. The periodic reports must occur at a minimum of once a week or as otherwise specified and agreed to by the WSLCB and the affected licensee in the recall plan.

(g) **Recall closure.** If the WSLCB determines that the recall efforts are successful and risks to public health and safety are no longer present, the WSLCB may recommend closure of the recall to the board.

**(4) Board-directed recall.**

(a) Upon the recommendation by the WSLCB enforcement division, the board may issue a directed recall if:

(i) The affected licensee does not comply with a recall under subsection (3) of this section;

(ii) The affected licensee does not comply with the recall plan or recall reporting requirements under subsection (3) of this section; or

(iii) The WSLCB enforcement division determines that affected product may be diverted or is being diverted from the licensed business, or another circumstance that makes the

affected licensee's destruction of the product inadvisable or a risk to consumers.

(b) If the board issues a directed recall, the WSLCB will notify consumers of the recall and all licensees that may possess product affected by the recall if notice has not yet occurred.

(c) Under a directed recall, the WSLCB enforcement division may seek an order for destruction of the affected product from the board.

(i) If the board issues an order for destruction, the WSLCB enforcement division may seize and conduct the destruction of affected product.

(ii) An order for destruction will include notice to the licensee and opportunity for hearing before destruction, unless there is evidence of an immediate danger to public health, safety, or welfare to justify an immediate order for destruction, with an opportunity for an expedited hearing after the destruction.

(d) If a destruction order is issued and the WSLCB seizes product affected by the recall and conducts the destruction of the product, the affected licensee may be responsible for reimbursing the WSLCB for costs associated with product destruction.

(e) If the board finds that an immediate danger to the public health, safety, or welfare requires immediate WSLCB action, a licensee may also be subject to summary suspension under RCW 66.08.150(4).

(5) The WSLCB will maintain a recall web page on its web site of all current and closed recalls of record.

### WSR 16-16-070

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed July 28, 2016, 11:48 a.m., effective August 28, 2016]

Purpose: WAC 246-935-290 Qualified organizations approved by the veterinary board of governors, the veterinary board of governors (board) is amending the rule to update the list of approved veterinary technician continuing education (CE) organizations to include colleges of veterinary medicine. The current list includes board approved colleges or schools of veterinary medical technology, but does not include veterinary colleges as approved CE providers.

Citation of Existing Rules Affected by this Order: Amending WAC 246-935-290.

Statutory Authority for Adoption: RCW 18.92.030.

Adopted under notice filed as WSR 16-10-121 on May 4, 2016.

Changes Other than Editing from Proposed to Adopted Version: Editing changes only.

A final cost-benefit analysis is available by contacting Lorelei Walker, Washington State Department of Health, Veterinary Board of Governors, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4947, fax (360) 236-2901, e-mail Lorelei.Walker@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: June 20, 2016.

Suzan Seelye, DVM, Chair  
Veterinary Board of Governors

AMENDATORY SECTION (Amending WSR 08-20-126, filed 10/1/08, effective 11/1/08)

**WAC 246-935-290 Qualified organizations approved by the veterinary board of governors.** Courses offered by the following organizations qualify as continuing education courses for veterinary technicians.

(1) The Washington State Association of Veterinary Technicians.

(2) National Association of Veterinary Technicians in America.

(3) All veterinary technician specialty academies recognized by the (~~North American Veterinary Technician Association~~) National Association of Veterinary Technicians in America.

(4) The American Association of Veterinary State Boards (AAVSB).

(5) The American Veterinary Medical Association (AVMA).

(6) The Washington State Veterinary Medical Association.

(7) Any board approved college or school of veterinary medical technology.

(8) Any board approved college or school of veterinary medicine.

(9) Any state or regional veterinary association which is recognized by the licensing authority of its state as a qualified professional association or educational organization.

~~((9))~~ (10) The American Animal Hospital Association.

~~((10))~~ (11) Veterinary specialty boards recognized by the American Veterinary Medical Association.

~~((11))~~ (12) Regional veterinary conferences and allied organizations recognized by AAVSB.

~~((12))~~ (13) The Registry of Approved Continuing Education (RACE).

~~((13))~~ (14) Other courses as approved by the board.

## WSR 16-16-071

## PERMANENT RULES

## DEPARTMENT OF HEALTH

(Veterinary Board of Governors)

[Filed July 28, 2016, 11:49 a.m., effective August 28, 2016]

Purpose: WAC 246-933-350 Release of a veterinary prescription, the rule adds a new section to require a veterinarian to release a veterinary prescription to a client upon request. Honoring a client's request for a prescription in lieu of dispensing is a provision of the American Veterinary Medicine Association Principals of Veterinary Medical Ethics.

Statutory Authority for Adoption: RCW 18.92.030.

Adopted under notice filed as WSR 16-10-102 on December 9, 2015 [May 4, 2016].

Changes Other than Editing from Proposed to Adopted Version: Editing changes only.

A final cost-benefit analysis is available by contacting Lorelei Walker, Washington State Department of Health, Veterinary Board of Governors, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4947, fax (360) 236-2901, e-mail Lorelei.Walker@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, 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: June 20, 2016.

Suzan Seelye, DVM, Chair  
Veterinary Board of Governors

NEW SECTION

**WAC 246-933-350 Release of a veterinary prescription.** (1) If requested by the client, a veterinarian must provide a written prescription for any medication prescribed by that veterinarian under a valid veterinarian-client-patient relationship.

(2) As an alternative to a written prescription, if requested by the client, the veterinarian must call or send the prescription by electronic means consistent with state and federal law, to any pharmacy of the client's choosing that is licensed under chapter 18.64 RCW.

## WSR 16-16-075

## PERMANENT RULES

## EXECUTIVE ETHICS BOARD

[Filed July 29, 2016, 8:24 a.m., effective August 29, 2016]

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

Purpose: Update the rules and provide guidance and clarity to public records requestors.

Citation of Existing Rules Affected by this Order: Amending chapter 292-130 WAC.

Statutory Authority for Adoption: RCW 42.52.360.

Adopted under notice filed as WSR 16-12-020 on May 20, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 8, Repealed 6.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 6.

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

Date Adopted: July 29, 2016.

Ruthann Bryant  
Administrative Officer

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-010 Purpose.** The purpose of this chapter is to provide rules implementing RCW 34.05.220 and ((42.17.250 through 42.17.320)) chapter 42.56 RCW for the executive ethics board.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-130-020 ((Function—Organization—Office—)) Agency description—Contact information—Public records officer.** (1) The executive ethics board was created by chapter 42.52 RCW to enforce the state's ethics law and rules adopted under it with respect to statewide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

The executive ethics board consists of five members, appointed by the governor as follows: One member shall be a classified service employee; one member shall be a state officer or state employee in an exempt position; one member shall be a citizen selected from a list of three names submitted by the attorney general; one member shall be a citizen selected from a list of three names submitted by the state auditor; and, one member shall be a citizen at large selected by the governor.

~~((The board's administrative office is located at 2425 Bristol Court S.W., 1st Floor, P.O. Box 40149, Olympia, WA 98504-0149.))~~ (2) Any person wishing to request access to public records of the executive ethics board, or seeking assistance in making such a request, should contact the public records officer of the executive ethics board:

Executive Director  
Executive Ethics Board  
2425 Bristol Court S.W.  
P.O. Box 40149  
Olympia, WA 98504-0149  
360-664-0871  
360-586-3955 (fax)  
ethics@atg.wa.gov

Information and a request form is also available at the executive ethics board's web site at [www.ethics.wa.gov](http://www.ethics.wa.gov). The office hours are 8:00 a.m. to ~~((noon and 1:00 p.m. to))~~ 5:00 p.m., Monday through Friday except legal holidays and during regularly scheduled board meetings.

(3) The public records officer will oversee compliance with the act but another executive ethics board staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the executive ethics board will provide the "fullest assistance" to requestors; create and maintain for use by the public and executive ethics board officials an index to public records of the executive ethics board; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the executive ethics board.

AMENDATORY SECTION (Amending WSR 05-19-142, filed 9/21/05, effective 10/22/05)

**WAC 292-130-030 Operations and procedures.** The board holds regular scheduled meetings on the second Friday of each month at 9:00 a.m. unless a different time is noted on the agenda ~~((, except August and December when no meetings are held))~~. The meetings are held at ~~((2425 Bristol Court, Conference Room 148,))~~ the administrative office location unless circumstances require relocating to another site as designated by the executive director of the board.

All meetings are conducted in accordance with the Open Public Meetings Act (chapter 42.30 RCW). Three members of the board constitute a quorum. Any matter coming before the board may be decided by a majority vote of those members present and voting. Minutes shall be taken at all meetings.

The board issues advisory opinions; develops education and training materials; investigates, hears, and determines complaints; reviews and approves agency ethics policies; and, reviews, approves, or denies contracts between state officers and employees and state agencies.

Written communications intended for board consideration or action shall be filed with the administrative office.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-130-040 Executive director.** The executive director shall perform the following duties under the general authority and supervision of the board:

- (1) Make initial determinations, pursuant to RCW 42.52.425 and WAC 292-100-045, regarding complaints received by the board;
- (2) Render informal nonbinding advice, pursuant to ~~((RCW 42.52.360 (2)(b) and (c) and))~~ WAC 292-110-050;
- (3) Make initial determinations, pursuant to RCW 42.52.120 and WAC 292-110-060, regarding approval of certain contracts between state agencies and state officers or employees;
- (4) Act as records officer and administrative arm of the board;
- (5) Coordinate the policies of the board and the activities of board staff ~~((s))~~ and supervise board staff as appropriate;
- (6) Act as a liaison between the board and other public agencies; and
- (7) Conduct ethics training and information outreach.

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-050 ~~((Public records))~~ Availability of public records.** ~~((Public records are available for inspection and copying except as otherwise provided by RCW 42.17.310 and chapter 292-100 WAC.))~~ (1) Hours for inspection of records. Public records are available for inspection and copying Monday through Friday, 9:00 a.m. to noon, and 1:00 p.m. to 4:00 p.m., excluding legal holidays and during scheduled board meetings. Records must be inspected at the offices of the executive ethics board.

(2) Records index. An index of public records is available for use by members of the public, including final orders, stipulations and advisory opinions. The indices for these documents are available upon request.

(3) Organization of records. The executive ethics board will maintain its records in a reasonably organized manner. The executive ethics board will take reasonable actions to protect records from damage and disorganization. A requestor shall not take executive ethics board records from executive ethics board offices without the permission of the public records officer or designee. A variety of records is available on the executive ethics board web site at [www.ethics.wa.gov](http://www.ethics.wa.gov). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(4) Making a request for public records.

(a) Any person wishing to inspect or copy public records of the executive ethics board should make the request in writing on the executive ethics board request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

- (i) Name of requestor;
- (ii) Address of requestor;
- (iii) Other contact information, including telephone number and any e-mail address;

(iv) Identification of the public records adequate for the public records officer or designee to locate the records; and

(v) The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 292-130-110, standard black and white and color photocopies will be provided at fifteen cents per page.

(c) A form is available for use by requestors at the office of the public records officer and online at [www.ethics.wa.gov](http://www.ethics.wa.gov).

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

WAC 292-130-100 ((~~Response to~~) **Processing of public records requests—General.** ((~~1~~) The administrative office shall respond promptly to requests for disclosure. Within five business days of receiving a public records request, the office will respond by:

(a) Providing the record;

(b) Acknowledging that the office has received the request and providing a reasonable estimate of the time the office will require to respond to the request; or

(c) Denying the public records request.

(2) Additional time for the office to respond to a request may be based upon the need to:

(a) Clarify the scope of the request;

(b) Locate and assemble the information requested;

(c) Notify third persons who may be named in a record;

or

(d) Determine whether any or all of the information requested is exempt and that a denial should be made as to all or part of the request.) (1) **Providing "fullest assistance."** The executive ethics board is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection or copying;

(b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;

(c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the

requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) **Consequences of failure to respond.** If the executive ethics board does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer or designee to determine the reason for the failure to respond.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the executive ethics board believes that a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspection of records.**

(a) Consistent with other demands, the executive ethics board shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the executive ethics board to copy.

(b) The requestor must claim or review the assembled records within thirty days of the executive ethics board's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the executive ethics board may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) **Providing copies of records.** After inspection is complete, the public records officer or designee will make the requested copies or arrange for copying.

(8) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines



that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(9) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the executive ethics board has completed a diligent search for the requested records and made any located non-exempt records available for inspection.

(10) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate to the requestor that the executive ethics board has closed the request.

(11) **Later discovered documents.** If, after the executive ethics board has informed the requestor that it has provided all available records, the executive ethics board becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-110 ((Copying fees.)) Costs of providing copies of public records.** ((No fees shall be charged for the inspection of public records. The office will charge one dollar for the first ten pages and ten cents per copy for additional pages for requests made under this chapter. The public records officer may waive the fees for copies when the expense of processing the payment exceeds the cost of providing the copies. These charges are necessary to reimburse the office for the costs of providing copies of public records and use of the copying equipment. The office may require that all charges be paid in advance of release of the copies.)) (1) **Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies or color copies for fifteen cents per page. Copying fees will be waived for twenty-five or fewer photocopies.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The executive ethics board will not charge sales tax when it makes copies of public records.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be one dollar for information on a CD-ROM. There will be no charge for e-mailing electronic records to a requestor.

(3) **Costs of mailing.** The executive ethics board may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by cash, check, or money order to the executive ethics board.

AMENDATORY SECTION (Amending WSR 01-13-033, filed 6/13/01, effective 7/14/01)

**WAC 292-130-130 Exemptions.** (1) ((The board reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 292-130-060 is exempt under the provisions of RCW 42.17.310.

(2) It is the policy of the board during the course of any investigation that all records generated or collected as a result of that investigation are)) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the executive ethics board for inspection and copying:

Under RCW 42.52.420 the identity of a person filing a complaint under RCW 42.52.410(1) is exempt from public disclosure as provided for in RCW 42.56.240.

(2) The executive ethics board is prohibited by statute from disclosing lists of individuals for commercial purposes.

(3) During the course of an investigation, records generated or collected as a result of the investigation may be exempt from public inspection and copying under RCW ((42.17.310 (1)(d))) 42.56.240.

(a) The investigation is not considered complete until a case is resolved either by a stipulation and settlement that is signed by all parties; or, when the board enters a final order after a public hearing((. If a public records request is made following a signed stipulation and settlement or a final order for any such record which implicates the privacy of an individual, written notice of the records request will be provided to the individual in order that such individual may request a protective order from a court under RCW 42.17.330)).

(b) The following records are not considered part of the investigation file and are releasable upon request:

((a)) (i) Complaints, upon receipt by the respondent;

((b)) (ii) The board staff's ((preliminary review or) investigation report;

((c)) (iii) The board's findings of reasonable cause or no reasonable cause; and

((d) Proposed) (iv) Stipulations and settlements, upon receipt by the board.

((3) In addition, pursuant to RCW 42.17.310, the board reserves the right to withhold or delete information when it makes available or publishes any public record in any cases where there is reason to believe that disclosure of such details would be otherwise exempt from disclosure under chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(4) Any denial of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption

authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.)

AMENDATORY SECTION (Amending WSR 98-22-072, filed 11/3/98, effective 12/4/98)

**WAC 292-130-140 Review of denials of public records request.** (1) **Petition for internal administrative review of denial of access.** Any person who objects to ((a) the initial denial or partial denial of ((a request for a public record)) a records request may petition ((for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial)) in writing (including e-mail) to the public records officer or designee for review of that decision. The petition should include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) ((Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it)) **Consideration of petition for review.** The public records officer or designee will promptly provide the petition and any other relevant information to the chair of the board or the chair's designee. The chair ((shall)) or the chair's designee will immediately consider the matter and either affirm or reverse such denial within two business days following the executive ethics board's receipt of the petition, or within such other time as mutually agreed upon by the requestor and executive ethics board, or call a special meeting of the board as soon as legally possible to review the denial.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530 if the executive ethics board denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 292-130-060 Index prior to January 1, 2001.
- WAC 292-130-065 Index after January 1, 2001.
- WAC 292-130-070 Public records—Officer.
- WAC 292-130-080 Hours for seeking public records.
- WAC 292-130-090 Requests for public records.
- WAC 292-130-120 Protection of public records.

## WSR 16-16-076 PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed July 29, 2016, 10:00 a.m., effective August 29, 2016]

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

Purpose: WAC 392-502-030 requires an update to revise teacher qualifications and extend the performance target requirement for online learning.

Citation of Existing Rules Affected by this Order: Amending WAC 392-502-030.

Statutory Authority for Adoption: RCW 28A.250.020.

Adopted under notice filed as WSR 16-13-137 on June 22, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: July 29, 2016.

Randy Dorn  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-20-034, filed 9/28/15, effective 10/29/15)

**WAC 392-502-030 Approval assurances, criteria, and performance targets.** (1) This section sets forth the assurances, criteria, and performance targets that online providers must meet to be approved under this chapter.

(a) To be approved, online providers must provide the following assurances to the superintendent of public instruction:

(i) The online provider is accredited through an accrediting body as defined in WAC 392-502-010 and agrees to maintain accredited status for the duration of the approval period. Online providers may be candidates for accreditation at the time of application for approval provided that the provider earns full accreditation on the standard timeline. Online school programs, single-district providers, and affiliate providers are exempt from (a)(i) of this subsection.

(ii) Each course and program the online provider offers is aligned with at least eighty percent of the current applicable grade/subject area of Washington state standards. For courses with content that is not included in state standards, the online provider's courses are aligned with at least eighty percent of nationally accepted content standards set for the

relevant subjects. Online providers must submit information to the superintendent regarding the standards alignment and the standards aligned.

(iii) All instruction delivered to Washington state students is delivered by Washington state certificated teachers who:

(A) Are ~~((assigned to instruct courses in a manner which meets the "highly qualified" definition under the No Child Left Behind Act and in a manner which meets the requirements set forth in chapter 181-82 WAC))~~ properly endorsed in the subject area taught; and

(B) Are evaluated annually using the revised evaluative criteria and four-level rating system established in RCW 28A.405.100.

(iv) For online providers that offer high school courses, the courses offered by the online provider must be eligible for high school credit pursuant to WAC 180-51-050.

(v) All of the online provider's current and future courses in the applicable areas meet the credit/content requirements in chapter 392-410 WAC.

(vi) All advanced placement courses offered by the online provider have been approved in accordance with the college board advanced placement course audit. For advanced placement courses not yet offered at the time of application, the online provider must assure that those courses will be approved by the college board prior to offering those courses to students.

(vii) The online provider's data management systems ensure all student information remains confidential, as required by the Family Educational Rights and Privacy Act of 1974, as amended.

(viii) The online provider's web systems and content meet accessibility conformance levels specified in the list of approved provider assurances on the office of superintendent of public instruction's web site.

(ix) The online provider provides all information as directed or as requested by the office of superintendent of public instruction, the secretary for the department of education, and other federal officials for audit, program evaluation compliance, monitoring, and other purposes and to maintain all records for the current year and three previous years.

(x) The online provider informs the office of superintendent of public instruction in writing of any significant changes to the program including, but not limited to, changes in assurances, program description, fiscal status, or ownership.

(xi) The online provider upholds any pertinent federal or state laws, rules or regulations, in the delivery of the online courses or programs.

(xii) The online provider retains responsibility for the quality of courses, web systems, and content offered, regardless of any third-party contractual arrangements, partnerships or consortia, contributing to the content or delivery of the online courses or programs.

(xiii) The online school program complies with the state assessment requirements including, but not limited to, the requirements of chapter 28A.655 RCW and WAC 392-121-182, as applicable.

(xiv) All of the provider's current and future career and technical education (CTE) courses are aligned to Washington

state CTE program standards and have been approved by the office of superintendent of public instruction's CTE office. CTE courses must be taught by a Washington certificated teacher who is also CTE-certificated in the subject area of the course.

(xv) The online provider agrees to abide by any additional assurances required by the superintendent of public instruction.

(xvi) The online school program agrees that all programs delivered as alternative learning experiences comply with the requirements of WAC 392-121-182. The online course provider agrees to disclose to OSPI the manner in which it supports the requirements of WAC 392-121-182 for online courses delivered outside of an online school program.

(xvii) Instructional materials used by online school programs in online courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(b) Multidistrict online providers must meet the following initial approval criteria by a preponderance of evidence submitted with the online provider's application:

(i) Course content and instructional design incorporating course goals and outcomes, materials and content organization, and student engagement.

(ii) Classroom management incorporating grading and privacy policies, internet etiquette, and expectations for communications.

(iii) Student assessment incorporating various types, frequent feedback, and appropriateness for the online learning environment.

(iv) Course evaluation and management incorporating strategies for obtaining feedback about the courses/programs and processes for quality assurance and updating content.

(v) Student support incorporating policies and systems to enhance the students' learning experience and their success.

(vi) School-based support incorporating strategies and systems to allow school-based staff to support student success.

(vii) Technology elements, requirements and support including descriptions and ease of navigation.

(viii) Staff development and support including training and online instructor performance reviews conducted on a planned and regularly scheduled basis.

(ix) Program management including timeliness and quality of teachers' responses to students, handling of fees, prompt distribution of materials and processing of enrollments, and handling fees and payments.

(x) The superintendent may require additional approval criteria pursuant to WAC 392-502-080.

(c) Beginning September 1, ~~((2015))~~ 2017, the online school program's course success rate must be greater than seventy percent. Programs with fewer than twenty online enrollments are not subject to this performance target.

(d) Beginning September 1, ~~((2016))~~ 2017, online school programs must meet or exceed each of the following annual performance targets:

(i) The online school program's percentage of students taking online math courses who meet standard on the state math assessments must be greater than forty percent. A program is not subject to this performance target if it has fewer

than twenty students who have both taken an online math course and taken the state math assessment.

(ii) The online school program's percentage of students taking online English language arts courses who meet standard on the state English language arts assessments must be greater than fifty percent. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online English language arts course and taken the state English language arts assessment.

(iii) The online school program's median math student growth percentile for students taking an online math course must be greater than the thirtieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online math course and have a math student growth percentile.

(iv) The online school program's median English language arts student growth percentile for students taking an online English language arts course must be greater than the fortieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online English language arts course and have an English language arts student growth percentile.

(e) Beginning September 1, (~~2015~~) 2017, online course providers' course success rate must be greater than seventy percent. Online providers must supply OSPI with student-level enrollment and performance information. Online course providers must also supply OSPI with a list of each district in the state that they served. An online course provider is not subject to this performance target if they have fewer than twenty online course enrollments.

(2) After review by the online learning advisory committee, the approval criteria with explanations and suggested supporting evidence will be posted on the superintendent of public instruction web site on or before the date the application is made available.

(3) Online provider's application will be reviewed by reviewers selected by the superintendent of public instruction for their experience and expertise. The reviewers will be provided orientations and training to review and score the online provider applications using the approval criteria and scoring protocols.

(4) Single-district provider online programs must incorporate the approval criteria developed by the superintendent of public instruction into the program design.

**WSR 16-16-077**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 29, 2016, 10:00 a.m., effective August 29, 2016]

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

Purpose: To comply with section 504(1) of E4SHB [4SHB] 1541 (2016), the office of superintendent of public instruction (OSPI) is adopting a new rule, codified at WAC 392-117-060, to provide that the only student data that OSPI should not publicly report is when a school or school district has fewer than ten students in a grade level or student demo-

graphic subgroup. The rule requires that OSPI's public reporting of student data must comply with section 504 of E4SHB [4SHB] 1541, so long as the reporting does not violate federal student privacy laws.

Statutory Authority for Adoption: E4SHB [4SHB] 1541 (504)(1) (2016).

Adopted under notice filed as WSR 16-13-136 on June 22, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: July 29, 2016.

Randy Dorn  
State Superintendent  
of Public Instruction

NEW SECTION

**WAC 392-117-060 Student data reported for public reporting and accountability.** As authorized by section 504, chapter 72, Laws of 2016 (section 504 of 4SHB 1541 (2016)), and subject to the requirements of the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, 34 C.F.R. Part 99, the only student data that should not be reported by the office of superintendent of public instruction for public reporting and accountability is data where the school or school district has fewer than ten students in a grade level or student subgroup.

**WSR 16-16-078**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 29, 2016, 10:01 a.m., effective September 1, 2016]

Effective Date of Rule: September 1, 2016.

Purpose: (1) Clarify the ways school districts can meet the requirement for districts to focus first on addressing the needs of students in grades kindergarten through four (K-4) who are deficient in reading or reading readiness skills for the purpose of improving reading literacy;

(2) Reflect that learning assistance program (LAP) funds may be coordinated with Title I, Part A funds to meet the K-4 literacy focus;

(3) Make clear that a district's failure to report LAP CEDARS data or timely complete the annual report may result in delay of LAP apportionment funds;

(4) Align with passage for section of ESHB [4SHB] 1541 (2016); and

(5) Consolidate several WAC and update terms.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-162-051 and 392-162-056; and amending WAC 392-122-605, 392-162-005, 392-162-010, 392-162-015, 392-162-020, 392-162-023, 392-162-032, 392-162-041, 392-162-054, 392-162-080, 392-162-100, 392-162-110, and 392-162-115.

Statutory Authority for Adoption: RCW 28A.165.075, 28A.150.290.

Adopted under notice filed as WSR 16-13-138 on June 22, 2016.

Changes Other than Editing from Proposed to Adopted Version: Final rule for WAC 392-162-020 differs from version filed under CR-102. Final rule includes language added under WAC 392-162-020 (2)(a) to clarify the calculation for serving approximately fifty percent of its LAP students in K-4 English language arts. Under the final rule, students served under readiness to learn programs are excluded from the calculation. This is done because LAP students differ from readiness to learn students in eligibility, service criteria, and reporting requirements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 11, Repealed 2.

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

Date Adopted: July 29, 2016.

Randy Dorn  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 91-03-118, filed 1/23/91, effective 2/23/91)

**WAC 392-122-605 Apportionment of state moneys for the state learning assistance program.** State learning assistance program moneys shall be allocated as provided in the state Operating Appropriations Act in effect at the time the apportionment is due. The superintendent of public instruction may withhold the monthly learning assistance program apportionment payment to a school district, public charter school, or school operated pursuant to a state-tribe education compact if the school district, charter school, or compact school fails to submit its annual report for the prior

school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

**WAC 392-162-005 Authority.** The authority for this chapter is RCW 28A.165.075 which authorizes the superintendent of public instruction to adopt rules and regulations for the administration of a program designed to provide learning assistance to public school students enrolled in grades kindergarten through twelve who score below standard in ~~((reading, writing, and))~~ English language arts or mathematics for his or her grade level.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

**WAC 392-162-010 Purpose.** The purpose of this chapter is to set forth policies and procedures for the administration of and to ensure district compliance with state requirements for a program designed to assist underachieving students enrolled in grades kindergarten through twelve who score below standard in ~~((reading, writing,))~~ English language arts and mathematics for his or her grade level.

The learning assistance program requirements in this chapter are designed to:

(1) ~~((Direct districts as they implement a learning assistance program that learning assistance program funds must first be used to address))~~ Guide school districts in addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy;

(2) Promote the use of data when developing programs to assist underachieving students and reduce disruptive behaviors in the classroom;

(3) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist underachieving students and reduce disruptive behaviors in the classroom; and

(4) Guide school districts in providing extended learning opportunities to assist underachieving students, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, and students in grades eleven and twelve who are at risk of not meeting state and local graduation requirements.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

**WAC 392-162-015 Definition—Basic skills.** As used in this chapter, the term "basic skills" means ~~((reading, writing, and))~~ English language arts or mathematics, as well as readiness associated with these skills.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

**WAC 392-162-020 Definition—Learning assistance program (LAP).** (1) As used in this chapter, the term "learning assistance program" means a statewide program designed to enhance educational opportunities for public school students enrolled in grades kindergarten through twelve who do not meet state (~~(reading, writing, and)~~) English language arts or mathematics standards by providing supplemental instruction and services to those students.

(2) School districts implementing a learning assistance program must first focus on addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills.

(a) A district may meet this requirement during the regular school year by ensuring that of the total number of students served by the learning assistance program, approximately fifty percent are students enrolled in grades kindergarten through four receiving English language arts services. Students served under readiness to learn programs provided under WAC 392-162-041 (1)(g) are excluded from this calculation.

(b) A district may serve a threshold lower than fifty percent if it demonstrates a lesser need through one of the following data sources:

(i) The district's prior year statewide assessment scores for third and fourth grade reading;

(ii) The district's prior year's reported number of kindergarten through grade four students reading on grade level under RCW 28A.320.203;

(iii) Districts serving a lower threshold under (b)(i) or (ii) of this subsection must be approved to do so at the start of the school year by the office of the superintendent of public instruction.

The learning assistance program may then be used to support underachieving students in grades kindergarten through twelve by providing supplemental (~~(reading, writing, and)~~) English language arts or mathematics instruction, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, by addressing the needs of eleventh and twelfth grade students to assist them in meeting state and district graduation requirements, and to reduce disruptive behaviors in the classroom.

#### NEW SECTION

**WAC 392-162-023 Definition—District.** For the purpose of this chapter, the term "district" includes a school district, public charter school, or school operated pursuant to a state-tribe education compact.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

**WAC 392-162-032 Definition—Participating student.** As used in this chapter, the term "participating student" means a student enrolled in kindergarten through grade twelve who scores below standard for his or her grade level using multiple measures of performance, including on the

statewide student assessments or other assessments and performance or other assessments and performance measurement tools administered by the school or district and who is identified by the district to receive services.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

**WAC 392-162-041 Best practices.** (1) ~~Best practices ((as identified by the office of superintendent of public instruction)) are to be used to provide learning assistance program ((educational instructional materials and strategies)) services to identified learning assistance students. The district must select and implement the best practices ((implemented must be research based and have demonstrated that the practice has increased student academic success. During the 2013-14 and 2014-15 school years, districts may select from the following:~~

~~(4)) that are designed to increase student achievement and are aligned with research. To the extent they are included as a best practice or strategy in one of the state menus on or an alternative allowed under subsection (2)(b) of this section, the following are services and activities that may be supported by the learning assistance program:~~

~~(a) Extended learning opportunities occurring:~~

~~((4)) (i) Before or after the regular school day;~~

~~((5)) (ii) On Saturday; and~~

~~((6)) (iii) Beyond the regular school year.~~

~~((2-Service)) (b) Extended learning opportunities provided under RCW 28A.320.190. ((3)) Eligibility is for:~~

~~(i) Eleventh and twelfth grade students not on track to meet local or state graduation requirements; and~~

~~(ii) Students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade.~~

~~(c) Professional development for certificated and classified staff that focuses on:~~

~~((7)) (i) The needs of a diverse student population;~~

~~((8)) (ii) Specific literacy and mathematics content and instructional strategies; and~~

~~((9)) (iii) The use of student work to guide effective instruction and appropriate assistance.~~

~~((4)) (d) Consultant teachers to assist in implementing effective instructional practices by teachers serving participating students.~~

~~((5)) (e) Tutoring support for participating students.~~

~~((6)) (f) Outreach activities and support for parents of participating students, including employing parent and family engagement coordinators.~~

~~((7)) (g) Up to five percent of district's learning assistance program allocation may be used ((for)) to deliver a readiness to learn program. Students served are to be significantly at-risk of not being successful in school and services must be focused on reducing barriers to learning, increasing student engagement, and enhancing students' readiness to learn. The program may include academic or nonacademic supports offered by the district or through development of partnerships with community-based organizations, educational service districts, and other local agencies ((to deliver academic and nonacademic supports to participating students~~

who are significantly at risk of not being successful in school to reduce barriers to learning, increase student engagement, and enhance students' readiness to learn. The office of the superintendent of public instruction). The school board must approve in an open meeting any community-based organization or local agency before learning assistance program funds may be expended.

(2) Beginning in the 2016-17 school year districts must either:

(a) Select a practice or strategy that is on one of the state-approved menus for the learning assistance program; or

(b) Use a practice or strategy that is not on the state menus for up to two years. Districts must annually notify the office of the superintendent of public instruction if selecting an alternative practice or strategy. At the end of the two years, the district must be able to demonstrate improved outcomes for participating learning assistance program students. If the district is able to demonstrate improved outcomes commensurate with the state approved menu for such students, the office of the superintendent of public instruction will approve the use of the alternative practice for one additional year. For each subsequent year, the district must provide data that demonstrates that participating students are meeting or exceeding academic achievement compared to those students who are being served by a state approved best practices and strategy.

(3) School districts may enter into cooperative agreements with state agencies, local governments, or school districts for administrative or operational costs needed to provide services in accordance with the state menus developed beginning in 2016-17.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

**WAC 392-162-054 Definition—District eligibility and distribution of funds.** The funds for the learning assistance program shall be appropriated in accordance with the Omnibus Appropriations Act and RCW 28A.150.260. The distribution formula is for school district allocation purposes only, but funds appropriated for the learning assistance program must be expended for the purposes of RCW 28A.165.005 through 28A.165.065 ((and for chapter 28A.655 RCW)). A school district's funded students for the learning assistance program shall be the sum of the district's full-time equivalent enrollment in grades K-12 for the prior school year multiplied by the district's percentage of October headcount enrollment in grades K-12 eligible for free or reduced price lunch in the prior school year.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

**WAC 392-162-080 Program requirement—Selection of students.** Students ((selected)) identified by the district to participate in the learning assistance program shall be limited to those ((who)) enrolled in grades kindergarten through twelve meeting one of the following categories:

(1) ((Are enrolled in grades kindergarten through twelve; (2)) Students who score below standard for his or her grade level using multiple measures of performance((

including on)). Multiple measures may include the statewide student assessments or other assessments and performance measurement tools administered by the school or district ((and who is identified by the district to receive services; and (3))):

(2) Students who are in grades eleven or twelve and are ((at risk of)) not ((meeting)) on track to meet state or local graduation requirements ((as defined in RCW 28A.320-190)).

(3) Students identified in eighth grade in need of high school transition services, which may continue up through the end of ninth grade; or

(4) Are identified by the district as being significantly at-risk of not being successful in school and to be served under the district's readiness to learn program.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

**WAC 392-162-100 Federal and state program coordination.** (1) School districts may coordinate federal, state, and local programs in order to serve the maximum number of students who are below grade level in basic skills.

(2) Subject to guidelines provided by the United States Department of Education, districts with schoolwide buildings may use Title I, Part A funds to meet the requirement to focus first on students in kindergarten through fourth grade who are deficient in reading or literacy skills. Districts opting to use Title I, Part A funds in combination with or in place of learning assistance program funds must meet the requirements of chapter 28A.165 RCW, including implementing best practice strategies according to RCW 28A.165.035 and completing all reporting requirements outlined in this chapter.

(3) Students receiving assistance in another special needs program may also be served in the learning assistance program if they meet student eligibility and selection requirements as identified in WAC 392-162-032 and 392-162-080.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

**WAC 392-162-110 Program requirements—((Annual report)) District reporting.** (1) Individual student records shall be recorded, beginning with the 2014-15 school year, in the statewide individual student data system annual entrance and exit performance data for each student participating in the learning assistance program according to specifications established by the office of the superintendent of public instruction's CEDARS manual.

(2) Districts shall submit to the superintendent of public instruction by ((August 1, 2014, and each August 1st thereafter,)) the established due date an annual report ((on electronic forms)) in the electronic format provided by the superintendent of public instruction. The report must include the following:

((+)) (a) The amount of academic growth gained by students participating in the learning assistance program;

((2)) (b) The number of students who gain at least one year of academic growth; ((and

~~(3))~~ (c) The specific practices, activities, and programs used by each school building that received learning assistance program funds; and

(d) The number of students served by the learning assistance program during the school year who were able to exit the program because student academic growth resulted in meeting the academic standard for grade level.

(3) The superintendent of public instruction will withhold the monthly learning assistance program apportionment payment to a school district, public charter school, or school operated pursuant to a state-tribe education compact if the school district, charter school, or compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.

AMENDATORY SECTION (Amending WSR 14-08-067, filed 3/31/14, effective 5/1/14)

**WAC 392-162-115 Monitoring of districts.** In order to insure that school districts are meeting the requirements of this chapter, the superintendent of public instruction shall monitor learning assistance programs no less than once every four years by using the state program review process. The primary purpose of the monitoring is to evaluate the effectiveness of a district's allocation and expenditure of resources and to monitor school district fidelity in their implementation of best practices. ~~((Individual student records shall be recorded beginning with the 2014-15 school year, in the statewide individual student data system annual entrance and exit performance data for each student participating in the learning assistance program according to specifications established by the office of the superintendent of public instruction.))~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 392-162-051 District selection of best practices and strategies for use in the learning assistance program.
- WAC 392-162-056 Exception to state-approved selection of best practices and strategies for use in the learning assistance program.

#### **WSR 16-16-083**

#### **PERMANENT RULES**

#### **HEALTH CARE AUTHORITY**

[Filed July 29, 2016, 12:05 p.m., effective August 29, 2016]

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

Purpose: The agency amended chapter 182-50 WAC to clarify rules regarding therapeutic alternatives and therapeutic interchange.

Citation of Existing Rules Affected by this Order: Amending WAC 182-50-001, 182-50-005, 182-50-010, 182-50-015, 182-50-025, 182-50-030, 182-50-035, and 182-50-200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 69.41.190.

Adopted under notice filed as WSR 16-13-030 on June 6, 2016.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: July 29, 2016.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-06-021, filed 2/23/04, effective 3/25/04)

**WAC 182-50-001 Authority and purpose.** RCW 41.05.021 (1)((~~a~~)) (b)(iii) and 70.14.050 authorize the ~~((administrator))~~ director to establish an independent Washington state pharmacy and therapeutics committee within the health care authority to evaluate available evidence of the relative safety, efficacy and the effectiveness of prescription drugs within a class of prescription drugs, in the development of an evidence-based prescription drug program for participating state purchased health care programs. This section requires the ~~((administrator))~~ director to adopt rules governing practitioner endorsement and use of ~~((any))~~ the Washington preferred drug list developed as part of the prescription drug program.

AMENDATORY SECTION (Amending WSR 07-19-031, filed 9/12/07, effective 10/13/07)

**WAC 182-50-005 Definitions.** When used in this chapter:

(1) "Appointing authority" ~~((shall))~~ means the following ~~((persons))~~ people acting jointly: The ~~((administrator))~~ director of the health care authority ~~((the secretary of the department of social and health services;))~~ and the director of the department of labor and industries.

(2) "Committee" means the independent Washington state pharmacy and therapeutics committee created by RCW 41.05.021 (1)((~~a~~))(b)(iii) and 70.14.050. At the election of the ~~((department of social and health services;))~~ health care authority, the committee may serve as the drug use review board provided for in WAC ~~((388-530-1850))~~ 182-530-4000.



(3) "Drug" means the term as it is defined in RCW 69.41.010 ~~((9) and (12))~~.

(4) "Endorsing practitioner" means a practitioner who ~~((has reviewed the preferred drug list and))~~ has notified the health care authority that he or she ~~((has agreed))~~ agrees to allow therapeutic interchange ~~((of a preferred drug for any nonpreferred drug in a given therapeutic class))~~.

(5) "Practitioner" means a health care provider, except a veterinarian, as defined at RCW 18.64.011~~((9))~~.

(6) "Preferred drug" means a drug selected by the appointing authority for inclusion in the Washington preferred drug list used by applicable state agencies for state purchased health care programs.

~~(7) ("Preferred drug list" or "PDL" means the list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for the purchase of drugs in state purchased health care programs.~~

~~(8))~~ "Prescription" has the meaning set forth in RCW 18.64.011~~((8))~~.

~~((9))~~ (8) "Refill" means the continuation of therapy with the same drug, ~~((including the renewal of a previous prescription or adjustments in dosage))~~ ~~(-when a prescription is for an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug, or for the refill of an immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks))~~.

~~((10))~~ (9) "State purchased health care" has the meaning set forth in RCW 41.05.011~~((2))~~.

~~((11) "Therapeutic alternatives" are drug products of different chemical structure within the same pharmacologic or therapeutic class and that are expected to have similar therapeutic effects and safety profiles when administered in therapeutically equivalent doses.~~

~~(12))~~ (10) "Therapeutic interchange" means to dispense ~~((with the endorsing practitioner's authorization, a therapeutic alternative to the))~~ a preferred drug in place of a prescribed nonpreferred drug within the same therapeutic class listed on the Washington preferred drug list.

(11) "Washington preferred drug list" or "WPDL" means the list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for the purchase of drugs in state purchased health care programs.

AMENDATORY SECTION (Amending WSR 04-06-021, filed 2/23/04, effective 3/25/04)

**WAC 182-50-010 Purpose of the pharmacy and therapeutics committee.** The purpose of the committee is to evaluate the available evidence of the relative safety, efficacy, and effectiveness of prescription drugs within a class of prescription drugs and make recommendations to the appointing authority for its deliberation in the development of the Washington preferred drug list established in RCW 70.14.050.

AMENDATORY SECTION (Amending WSR 04-06-021, filed 2/23/04, effective 3/25/04)

**WAC 182-50-015 Open Public Meetings Act and Administrative Procedure Act; exception as technical review committee.** (1) Meetings of the pharmacy and therapeutics committee ~~((shall in all respects))~~ comply with the provisions of the Open Public Meetings Act, chapter 42.30 RCW, and ~~((shall be))~~ are subject to the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as applicable.

(2) The pharmacy and therapeutics committee ~~((shall))~~ constitutes a technical review committee created to facilitate the development, acquisition, or implementation of ~~((a))~~ the Washington preferred drug list, for the purposes of state purchased health care under RCW 41.05.026, and ~~((as such))~~ may hold an executive session in accordance with chapter 42.30 RCW during any regular or special meeting to discuss information submitted in accordance with RCW 41.05.026 ~~((1) through (5))~~.

AMENDATORY SECTION (Amending WSR 04-06-021, filed 2/23/04, effective 3/25/04)

**WAC 182-50-025 Membership and qualifications of pharmacy and therapeutics committee.** (1) The committee ~~((shall))~~ consists of no fewer than ten members appointed by the appointing authority.

(2) The appointing authority has the sole right to appoint committee members and may terminate appointment of any member at any time during the term.

(3) The appointing authority ~~((will))~~ makes appointments to the committee from a pool of interested applicants. Interested ~~((persons will be))~~ people are provided an opportunity to submit applications to the appointing authority.

(4) Members ~~((shall))~~ enter into an agreement with the health care authority at the time of their appointment to the committee and ~~((shall))~~ act in accordance with all of its terms and conditions. Failure to do so may result in termination of the appointment.

(5) The membership composition at all times ~~((shall be))~~ is consistent with applicable federal requirements ~~((under the federal Social Security Act, Title 19 § 1927 and the requirements of the department of social and health services medical assistance administration))~~ for its drug utilization review board ~~((Therefore,))~~ under the federal Social Security Act, Title 19 Sec. 1927 and the requirements of the health care authority. Pharmacists and physicians each ~~((shall))~~ represent at least thirty-one percent, but no more than fifty-one percent of committee membership respectively.

(6) Members must be actively practicing in their clinical area of expertise throughout the entire term of their appointments.

(7) Members must have knowledge and expertise in one or more of the following:

- (a) Clinically appropriate prescribing of covered outpatient drugs;
- (b) Clinically appropriate dispensing and monitoring of covered outpatient drugs;
- (c) Drug use review;
- (d) Medical quality assurance;

- (e) Disease state management; or
- (f) Evidence-based medicine.

(8) Members of the committee ~~((shall))~~ must not be employed by a pharmaceutical manufacturer, a pharmacy benefits management company, or by any state agency administering state purchased health care programs during their terms ~~((shall))~~ and must not have been so employed ~~((and))~~ for eighteen months prior to their appointment.

(9) A member ~~((shall))~~ must not have a substantial financial conflict of interest including any interest in any pharmaceutical company, including the holding of stock options or the receipt of honoraria or consultant moneys. The appointing authority in its sole discretion may disqualify any potential member if it determines that a substantial conflict of interest exists.

(10) As part of the application process, prospective committee members ~~((shall))~~ must complete a conflict of interest disclosure form, provided by the appointing authority, and after appointment, annually by July 1st of each year. Members must keep their disclosure statements current and provide updated information whenever circumstances change.

(11) Committee members must agree to keep all proprietary information confidential.

AMENDATORY SECTION (Amending WSR 04-06-021, filed 2/23/04, effective 3/25/04)

**WAC 182-50-030 Period of appointment.** (1) Members ~~((shall be))~~ are appointed to a term of three years and ~~((shall))~~ serve until a successor is ~~((duly))~~ appointed. A member may be reappointed to one additional three-year term for a total of six years. One year after the end of a six-year term, a person is eligible for appointment to one additional three-year term.

(2) Committee members serve staggered three-year terms. Of the initial appointees, in order to provide for staggered terms, some members may be appointed initially for less than three years. If the initial appointment is for less than twenty-four months, that period of time ~~((shall not be))~~ is not counted toward the limitation of years of appointment described in subsection (1) of this section.

(3) Vacancies on the committee will be filled for the balance of the unexpired term from nominee lists for the appropriate committee category as provided under WAC 182-50-025.

(4) Members of the committee ~~((will be))~~ are compensated for participation in the work of the committee in accordance with a personal services contract executed after appointment and prior to commencement of activities related to the work of the committee.

AMENDATORY SECTION (Amending WSR 04-06-021, filed 2/23/04, effective 3/25/04)

**WAC 182-50-035 Duties.** Committee members ~~((shall))~~:

(1) Select a chair and a vice-chair from among the committee membership.

(2) Meet at least quarterly and may meet at other times at the discretion of the chair.

(3) Adopt a plan of operation that sets forth the policies and procedures established by the committee to develop an evidence-based prescription drug program as authorized by state law for approval by the appointing authority.

(4) Operate according to the plan of operation as approved by the appointing authority.

AMENDATORY SECTION (Amending WSR 07-19-031, filed 9/12/07, effective 10/13/07)

**WAC 182-50-200 Endorsing practitioner therapeutic interchange program; effect of practitioner's endorsing status; dispense as written instructions.** (1) When filling prescriptions for participating state purchased health care programs, pharmacists ~~((shall dispense a preferred drug in place of a drug not included in the preferred drug list in a given therapeutic class whenever pharmacists receive a prescription from))~~ must make a therapeutic interchange if the prescription is prescribed by an endorsing practitioner except:

(a) If the endorsing practitioner ~~((determines the nonpreferred drug is medically necessary by indicating))~~ indicates "dispense as written" on the nonpreferred prescription; ~~((or))~~

(b) If the prescription is a refill of an antipsychotic, antidepressant, antiepileptic, chemotherapy, antiretroviral, ~~((or))~~ immunosuppressive drug, or ~~((for the refill of a))~~ an immunomodulator/antiviral treatment for hepatitis C ~~((for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks)); or~~

(c) If the pharmacy and therapeutics committee has determined that therapeutic interchange is not clinically appropriate for a specific drug or drug class on the Washington preferred drug list.

(2) When a therapeutic interchange is made, the pharmacist ~~((shall))~~ must notify the endorsing practitioner of the specific drug and dose dispensed.

~~((3) When a nonendorsing practitioner issues a prescription for a drug not included in the preferred drug list, the pharmacist shall dispense the prescribed drug in accordance with the requirements of RCW 69.41.100 through 69.41.180.))~~

## WSR 16-16-084

### PERMANENT RULES

### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed July 29, 2016, 12:40 p.m., effective August 29, 2016]

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

Purpose: The agency amended this rule to replace outdated references to Title 388 WAC with references to Title 182 WAC, and to expand the applicability of the chapter to other agency health care programs in addition to medical assistance.

Citation of Existing Rules Affected by this Order: Amending WAC 182-500-0005.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 16-13-008 on June 2, 2016.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: July 29, 2016.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-500-0005 (~~(Medical)~~) Definitions.** Chapter (~~(388-500)~~) 182-500 WAC contains definitions of words and phrases used in rules for medical assistance and other health care programs. When a term is not defined in this chapter, other agency or agency's designee WAC, or state or federal law, the medical definitions found in the Taber's Cyclopedic Medical Dictionary will apply. For general terms not defined in this chapter, other agency or agency's designee WAC, or state or federal law, the definitions in Webster's New World Dictionary apply. If a definition in this chapter conflicts with a definition in another chapter of Title (~~(388)~~) 182 WAC, the definition in the specific WAC prevails.

## WSR 16-16-095

### PERMANENT RULES

#### DEPARTMENT OF ECOLOGY

[Order 12-03—Filed August 1, 2016, 11:20 a.m., effective September 1, 2016]

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

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This rule is effective thirty-one days after filing, but will not be able to be used for clean water actions until the department of ecology receives Clean Water Act approval from the Environmental Protection Agency.

Purpose: The Washington state department of ecology intends to adopt amendments to chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington. The amendments provide new human health criteria and implementation tools. All federal clean water actions, including discharge permits, water pollution identification, and water clean-up plans, will use the new criteria.

The rule also provides language around tools to implement water quality standards, and requirements for implementing water quality standards that will keep dischargers in compliance with their national pollutant discharge elimination system permits while they actively implement actions and control strategies to address pollutants.

Citation of Existing Rules Affected by this Order: Amending chapter 173-201A WAC.

Statutory Authority for Adoption: RCW 90.48.035, 90.48.605.

Other Authority: Section 303(c) of the Federal Water Pollution Control Act (often called the Clean Water Act) Code of Federal Regulations (C.F.R.) 40 C.F.R. 131.

Adopted under notice filed as WSR 16-04-092 on February 1, 2016.

Changes Other than Editing from Proposed to Adopted Version: RCW 34.05.325 (6)(a)(ii) requires ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, other than editing changes, stating the reasons for the differences.

The rule adopted on August 1, 2016, differs from the rule proposed on February 1, 2016. Ecology made these changes:

- In response to comments we received during the formal comment period.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.
- To consider new information.

The following content describes the changes between the proposed and adopted rule language, and ecology's reasons for making them. New language is underlined, and deleted language is in strikethrough.

Example: New language.

Example: ~~Deleted language.~~

**Change to WAC-173-201A-020:** Ecology clarified the definition of "intake credit" to be consistent with language in WAC 173-201A-460 [(1)](a).

#### Proposed rule language:

["*Intake credit* is a procedure for establishing effluent limits that take into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the body of water by the discharger or other facility supplying the discharger with intake water."

#### Final rule language:

["*Intake credit* is a procedure for establishing effluent limits that takes into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water."

**Change to WAC-173-201A-240(5):** Based on public comment, ecology moved language regarding criteria revision from the section that addresses only aquatic life protection ((5)(a)) to the more inclusive provision (5) that will include both aquatic life and human health.

#### Proposed rule language:

(5) *The following criteria, found in Table 240, shall be applied to all surface waters of the state of Washington. Val-*

ues are µg/L for all substances except ammonia and chloride, which are mg/L, and asbestos which is million fibers/L.

(a) **Aquatic life protection.** The department may revise the following criteria in Table 240 for aquatic life on a state-wide or water body-specific basis as needed to protect aquatic life occurring in waters of the state and to increase the technical accuracy of the criteria being applied. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. ~~The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria.~~

**Final rule language:**

(5) The following criteria, found in Table 240, shall be applied to all surface waters of the state of Washington. Values are µg/L for all substances except ammonia and chloride which are mg/L, and asbestos which is million fibers/L. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria.

(a) **Aquatic life protection.** The department may revise the criteria in Table 240 for aquatic life on a statewide or water body-specific basis as needed to protect aquatic life occurring in waters of the state and to increase the technical accuracy of the criteria being applied. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act.

**Change to WAC 173-201A-240 Cadmium footnote indicators:** Based on public comments, ecology corrected footnote indicators for cadmium. The proposed rule language included an incorrect aquatic life criteria footnote indicator due to a transcription error.

**Proposed rule language:**

		Aquatic Life Criteria - Freshwater	
Chemical	CAS#	Acute	Chronic
Cadmium	7440439	(I, c, dd)	(I, c, dd)

**Final rule language:**

		Aquatic Life Criteria - Freshwater	
Chemical	CAS#	Acute	Chronic
Cadmium	7440439	(i, c, dd)	(j, c, dd)

**Change to WAC 173-201A-240 Bis(2-Chloroisopropyl) Ether:** After the rule proposal comment period closed, EPA notified ecology that information from EPA on which ecology had originally based the proposed criteria for Bis(2-Chloroisopropyl) Ether was in error. Ecology corrected the error, which includes changing the CAS# and removing the criteria from Table 240. Please see Key Decision Document

(Publication no. 16-10-025) for documentation to support this change.

**Proposed rule language:**

		Human Health Criteria for Consumption of	
Chemical	CAS#	Water & Organisms	Chronic
Bis(2-Chloroisopropyl) Ether	108601	1,100	7,400

**Final rule language:**

		Human Health Criteria for Consumption of	
Chemical	CAS#	Water & Organisms	Organisms Only
Bis(2-Chloroisopropyl) Ether	39638329	-	-

**Change to WAC 173-201A-510 (4)(c):** Based on public comments, ecology removed reference language from the proposed rule. This language was not needed and added confusion to this section. Additionally, the word "practicable" to "possible" to make the state language consistent with language in the federal regulations found at 40 C.F.R. 122.47.

**Proposed rule language:**

(d) Prior to establishing a schedule of compliance, the department shall require the discharger to evaluate the possibility of achieving water quality standards via nonconstruction changes (e.g., facility operation, pollution prevention). Schedules of compliance ~~shall meet requirements in WAC 173-220-140 and~~ shall require compliance with the specified requirements as soon as ~~practicable~~.

**Final rule language:**

(d) Prior to establishing a schedule of compliance, the department shall require the discharger to evaluate the possibility of achieving water quality standards via nonconstruction changes (e.g., facility operation, pollution prevention). Schedules of compliance shall require compliance with the specified requirements as soon as possible.

**Change to WAC 173-201A-510 (4)(b):** Based on public comments, ecology changed the word "practicable" to "possible" to make the state language consistent within the rule, and also consistent with language in the federal regulations found at 40 C.F.R. 122.47.

**Proposed rule language:**

(b) Schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits and the water quality standards ~~in the shortest practicable time~~.

**Final rule language:**

(b) Schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits and the water quality standards as soon as possible.

**Change to WAC 173-201A-510 (4)(e):** In 2009, the legislature directed ecology to authorize compliance schedules longer than ten years to implement TMDL requirements if certain conditions are met (RCW 90.48.605). Since the rule language no longer limits compliance schedules to ten years,

the proposed language in WAC 173-201A-510 (4)(e) authorizing "a longer period of time" was unclear. Ecology reworded WAC 173-201A-510 (4)(e) to improve clarity.

**Proposed rule language:**

*(e) When an approved total maximum daily load, ~~or TMDL~~, has established waste load allocations for permitted dischargers, a longer period of time for a compliance schedule may be authorized if the department has determined that:*

**Final rule language:**

*(e) When an approved total maximum daily load has established waste load allocations for permitted dischargers, the department may authorize a compliance schedule longer than ten years if:*

A final cost-benefit analysis is available by contacting Becca Conklin, Water Quality Program, Washington Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6413, fax (360) 407-6426, e-mail swqs@ecy.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 4, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: August 1, 2016.

Maia D. Bellon  
Director

**AMENDATORY SECTION** (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

**WAC 173-201A-020 Definitions.** The following definitions are intended to facilitate the use of chapter 173-201A WAC:

**"1-DMax" or "1-day maximum temperature"** is the highest water temperature reached on any given day. This measure can be obtained using calibrated maximum/minimum thermometers or continuous monitoring probes having sampling intervals of thirty minutes or less.

**"7-DADMax" or "7-day average of the daily maximum temperatures"** is the arithmetic average of seven consecutive measures of daily maximum temperatures. The 7-DADMax for any individual day is calculated by averaging that day's daily maximum temperature with the daily maximum temperatures of the three days prior and the three days after that date.

**"Action value"** means a total phosphorus (TP) value established at the upper limit of the trophic states in each ecoregion (see Table 230(1)). Exceedance of an action value

indicates that a problem is suspected. A lake-specific study may be needed to confirm if a nutrient problem exists.

**"Actions"** refers broadly to any human projects or activities.

**"Acute conditions"** are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of short-term exposure to the substance or detrimental environmental condition.

**"AKART"** is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.

**"Background"** means the biological, chemical, and physical conditions of a water body, outside the area of influence of the discharge under consideration. Background sampling locations in an enforcement action would be up-gradient or outside the area of influence of the discharge. If several discharges to any water body exist, and enforcement action is being taken for possible violations to the standards, background sampling would be undertaken immediately up-gradient from each discharge.

**"Best management practices (BMP)"** means physical, structural, and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges.

**"Biological assessment"** is an evaluation of the biological condition of a water body using surveys of aquatic community structure and function and other direct measurements of resident biota in surface waters.

**"Bog"** means those wetlands that are acidic, peat forming, and whose primary water source is precipitation, with little, if any, outflow.

**"Carcinogen"** means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen will apply to substances on the United States Environmental Protection Agency lists of A (known human) and B (probable human) carcinogens, and any substance which causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment as set forth in 51 FR 33992 et seq. as presently published or as subsequently amended or republished.

**"Chronic conditions"** are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of repeated or constant exposure over an extended period of time to a substance or detrimental environmental condition.

**"Combined sewer overflow (CSO) treatment plant"** is a facility that provides at-site treatment as provided for in chapter 173-245 WAC. A CSO treatment plant is a specific

facility identified in a department-approved CSO reduction plan (long-term control plan) that is designed, operated and controlled by a municipal utility to capture and treat excess combined sanitary sewage and storm water from a combined sewer system.

**"Compliance schedule" or "schedule of compliance"** is a schedule of remedial measures included in a permit or an order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with an effluent limit, other prohibition, or standard.

**"Created wetlands"** means those wetlands intentionally created from nonwetland sites to produce or replace natural wetland habitat.

**"Critical condition"** is when the physical, chemical, and biological characteristics of the receiving water environment interact with the effluent to produce the greatest potential adverse impact on aquatic biota and existing or designated water uses. For steady-state discharges to riverine systems the critical condition may be assumed to be equal to the 7Q10 flow event unless determined otherwise by the department.

**"Damage to the ecosystem"** means any demonstrated or predicted stress to aquatic or terrestrial organisms or communities of organisms which the department reasonably concludes may interfere in the health or survival success or natural structure of such populations. This stress may be due to, but is not limited to, alteration in habitat or changes in water temperature, chemistry, or turbidity, and shall consider the potential build up of discharge constituents or temporal increases in habitat alteration which may create such stress in the long term.

**"Department"** means the state of Washington department of ecology.

**"Designated uses"** are those uses specified in this chapter for each water body or segment, regardless of whether or not the uses are currently attained.

**"Director"** means the director of the state of Washington department of ecology.

**"Drainage ditch"** means that portion of a designed and constructed conveyance system that serves the purpose of transporting surplus water; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

**"Ecoregions"** are defined using EPAs *Ecoregions of the Pacific Northwest* Document No. 600/3-86/033 July 1986 by Omernik and Gallant.

**"Enterococci"** refers to a subgroup of fecal streptococci that includes *S. faecalis*, *S. faecium*, *S. gallinarum*, and *S. avium*. The enterococci are differentiated from other streptococci by their ability to grow in 6.5% sodium chloride, at pH 9.6, and at 10°C and 45°C.

**"E. coli" or "Escherichia coli"** is an aerobic and facultative gram negative nonspore forming rod shaped bacterium that can grow at 44.5 degrees Celsius that is ortho-nitrophenyl-B-D-galactopyranoside (ONPG) positive and Methylumbelliferyl glucuronide (MUG) positive.

**"Existing uses"** means those uses actually attained in fresh or marine waters on or after November 28, 1975,

whether or not they are designated uses. Introduced species that are not native to Washington, and put-and-take fisheries comprised of nonself-replicating introduced native species, do not need to receive full support as an existing use.

**"Extraordinary primary contact"** means waters providing extraordinary protection against waterborne disease or that serve as tributaries to extraordinary quality shellfish harvesting areas.

**"Fecal coliform"** means that portion of the coliform group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within twenty-four hours at 44.5 plus or minus 0.2 degrees Celsius.

**"Geometric mean"** means either the nth root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

**"Ground water exchange"** means the discharge and recharge of ground water to a surface water. Discharge is inflow from an aquifer, seeps or springs that increases the available supply of surface water. Recharge is outflow down-gradient to an aquifer or downstream to surface water for base flow maintenance. Exchange may include ground water discharge in one season followed by recharge later in the year.

**"Hardness"** means a measure of the calcium and magnesium salts present in water. For purposes of this chapter, hardness is measured in milligrams per liter and expressed as calcium carbonate (CaCO<sub>3</sub>).

**"Intake credit"** is a procedure for establishing effluent limits that takes into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

**"Irrigation ditch"** means that portion of a designed and constructed conveyance system that serves the purpose of transporting irrigation water from its supply source to its place of use; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

**"Lakes"** shall be distinguished from riverine systems as being water bodies, including reservoirs, with a mean detention time of greater than fifteen days.

**"Lake-specific study"** means a study intended to quantify existing nutrient concentrations, determine existing characteristic uses for lake class waters, and potential lake uses. The study determines how to protect these uses and if any uses are lost or impaired because of nutrients, algae, or aquatic plants. An appropriate study must recommend a criterion for total phosphorus (TP), total nitrogen (TN) in µg/l, or other nutrient that impairs characteristic uses by causing excessive algae blooms or aquatic plant growth.

**"Mean detention time"** means the time obtained by dividing a reservoir's mean annual minimum total storage by the thirty-day ten-year low-flow from the reservoir.

**"Migration or translocation"** means any natural movement of an organism or community of organisms from one locality to another locality.

**"Mixing zone"** means that portion of a water body adjacent to an effluent outfall where mixing results in the dilution of the effluent with the receiving water. Water quality criteria

may be exceeded in a mixing zone as conditioned and provided for in WAC 173-201A-400.

**"Natural conditions"** or **"natural background levels"** means surface water quality that was present before any human-caused pollution. When estimating natural conditions in the headwaters of a disturbed watershed it may be necessary to use the less disturbed conditions of a neighboring or similar watershed as a reference condition. (See also WAC 173-201A-260(1).)

**"New or expanded actions"** mean human actions that occur or are regulated for the first time, or human actions expanded such that they result in an increase in pollution, after July 1, 2003, for the purpose of applying this chapter only.

**"Nonpoint source"** means pollution that enters any waters of the state from any dispersed land-based or water-based activities including, but not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, or forest lands; subsurface or underground sources; or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

**"Permit"** means a document issued pursuant to chapter 90.48 RCW specifying the waste treatment and control requirements and waste discharge conditions.

**"pH"** means the negative logarithm of the hydrogen ion concentration.

**"Pollution"** means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

**"Primary contact recreation"** means activities where a person would have direct contact with water to the point of complete submergence including, but not limited to, skin diving, swimming, and water skiing.

**"Secondary contact recreation"** means activities where a person's water contact would be limited (e.g., wading or fishing) to the extent that bacterial infections of eyes, ears, respiratory or digestive systems, or urogenital areas would normally be avoided.

**"Shoreline stabilization"** means the anchoring of soil at the water's edge, or in shallow water, by fibrous plant root complexes; this may include long-term accretion of sediment or peat, along with shoreline progradation in such areas.

**"Storm water"** means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a storm water drainage system into a defined surface water body, or a constructed infiltration facility.

**"Storm water attenuation"** means the process by which peak flows from precipitation are reduced and runoff velocities are slowed as a result of passing through a surface water body.

**"Surface waters of the state"** includes lakes, rivers, ponds, streams, inland waters, saltwaters, wetlands and all other surface waters and water courses within the jurisdiction of the state of Washington.

**"Temperature"** means water temperature expressed in degrees Celsius (°C).

**"Treatment wetlands"** means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of wastewater or storm water treatment. Treatment wetlands are considered part of a collection and treatment system, and generally are not subject to the criteria of this chapter.

**"Trophic state"** means a classification of the productivity of a lake ecosystem. Lake productivity depends on the amount of biologically available nutrients in water and sediments and may be based on total phosphorus (TP). Secchi depth and chlorophyll-a measurements may be used to improve the trophic state classification of a lake. Trophic states used in this rule include, from least to most nutrient rich, ultra-oligotrophic, oligotrophic, lower mesotrophic, upper mesotrophic, and eutrophic.

**"Turbidity"** means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

**"Upwelling"** means the natural process along Washington's Pacific Coast where the summer prevailing northerly winds produce a seaward transport of surface water. Cold, deeper more saline waters rich in nutrients and low in dissolved oxygen, rise to replace the surface water. The cold oxygen deficient water enters Puget Sound and other coastal estuaries at depth where it displaces the existing deep water and eventually rises to replace the surface water. Such surface water replacement results in an overall increase in salinity and nutrients accompanied by a depression in dissolved oxygen. Localized upwelling of the deeper water of Puget Sound can occur year-round under influence of tidal currents, winds, and geomorphic features.

**"USEPA"** means the United States Environmental Protection Agency.

**"Variance"** is a time-limited designated use and criterion as defined in 40 C.F.R. 131.3, and must be adopted by rule.

**"Wetlands"** means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites((?)) including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. (Water bodies not included in the definition of wetlands as well as those mentioned in the definition are still waters of the state.)

"Wildlife habitat" means waters of the state used by, or that directly or indirectly provide food support to, fish, other aquatic life, and wildlife for any life history stage or activity.

AMENDATORY SECTION (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

**WAC 173-201A-240 Toxic substances.** (1) Toxic substances shall not be introduced above natural background levels in waters of the state which have the potential either singularly or cumulatively to adversely affect characteristic water uses, cause acute or chronic toxicity to the most sensitive biota dependent upon those waters, or adversely affect public health, as determined by the department.

(2) The department shall employ or require chemical testing, acute and chronic toxicity testing, and biological assessments, as appropriate, to evaluate compliance with subsection (1) of this section and to ensure that aquatic communities and the existing and designated uses of waters are being fully protected.

(3) USEPA Quality Criteria for Water, 1986, as revised, shall be used in the use and interpretation of the values listed in subsection (5) of this section.

(4) Concentrations of toxic, and other substances with toxic propensities not listed in Table 240 of this section shall be determined in consideration of USEPA Quality Criteria for Water, 1986, and as revised, and other relevant information as appropriate.

(5) The following criteria, found in Table 240((3)), shall be applied to all surface waters of the state of Washington ((for the protection of aquatic life)). Values are µg/L for all substances except ammonia and chloride which are mg/L, and asbestos which is million fibers/L. The department shall formally adopt any appropriate revised criteria as part of this

chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria.

(a) **Aquatic life protection.** The department may revise the ((following)) criteria in Table 240 for aquatic life on a statewide or water body-specific basis as needed to protect aquatic life occurring in waters of the state and to increase the technical accuracy of the criteria being applied. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. ((The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria. Values are µg/L for all substances except Ammonia and Chloride which are mg/L:))

(b) **Human health protection.** The following provisions apply to the human health criteria in Table 240. All waters shall maintain a level of water quality when entering downstream waters that provides for the attainment and maintenance of the water quality standards of those downstream waters, including the waters of another state. The human health criteria in the tables were calculated using a fish consumption rate of 175 g/day. Criteria for carcinogenic substances were calculated using a cancer risk level equal to one-in-one-million, or as otherwise specified in this chapter. The human health criteria calculations and variables include chronic durations of exposure up to seventy years. All human health criteria for metals are for total metal concentrations, unless otherwise noted. Dischargers have the obligation to reduce toxics in discharges through the use of AKART.

Table 240((3))  
Toxics Substances Criteria

((Substance	Freshwater		Marine Water	
	Acute	Chronic	Acute	Chronic
Aldrin/Dieldrin e	2.5a	0.0019b	0.71a	0.0019b
Ammonia (un-ionized NH <sub>3</sub> ) hh	f,e	g,d	0.233h,e	0.035h,d
Arsenic dd	360.0e	190.0d	69.0e,h	36.0d,ee,h
Cadmium dd	i,e	j,d	42.0e	9.3d
Chlordane	2.4a	0.0043b	0.09a	0.004b
Chloride (Dissolved) k	860.0h,e	230.0h,d	-	-
Chlorine (Total Residual)	19.0e	11.0d	13.0e	7.5d
Chlorpyrifos	0.083e	0.041d	0.011e	0.0056d
Chromium (Hex) dd	15.0e,i,ii	10.0d,jj	1,100.0e,i,h	50.0d,h
Chromium (Tri) gg	m,e	n,d	-	-
Copper dd	o,e	p,d	4.8e,h	3.1d,h
Cyanide ee	22.0e	5.2d	1.0e,mm	-d,mm
DDT (and metabolites)	1.1a	0.001b	0.13a	0.001b
Dieldrin/Aldrin e	2.5a	0.0019b	0.71a	0.0019b
Endosulfan	0.22a	0.056b	0.034a	0.0087b



((Substance	Freshwater		Marine Water	
	Acute	Chronic	Acute	Chronic
Endrin	0.18a	0.0023b	0.037a	0.0023b
Heptachlor	0.52a	0.0038b	0.053a	0.0036b
Hexachlorocyclohexane (Lindane)	2.0a	0.08b	0.16a	-
Lead-dd	q,e	r,d	210.0e,ll	8.1d,ll
Mercury-s	2.1e,kk,dd	0.012d,ff	1.8e,ll,dd	0.025d,ff
Nickel-dd	t,e	u,d	74.0e,ll	8.2d,ll
Parathion	0.065e	0.013d	-	-
Pentachlorophenol (PCP)	w,e	v,d	13.0e	7.9d
Polychlorinated Biphenyls (PCBs)	2.0b	0.014b	10.0b	0.030b
Selenium-	20.0e,ff	5.0d,ff	290e,ll,dd	71.0d, x,ll,dd
Silver-dd	y,a	-	1.9a,ll	-
Toxaphene	0.73e,z	0.0002d	0.21e,z	0.0002d
Zinc-dd	aa,e	bb,d	90.0e,ll	81.0d,ll

Notes to Table 240(3):)

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
<b>Metals:</b>								
Antimony	7440360	Metals, cyanide, and total phenols	-	-	-	-	12	180
Arsenic	7440382	Metals, cyanide, and total phenols	360.0 (c,dd)	190.0 (d,dd)	69.0 (c,ll,dd)	36.0 (d,cc,ll,dd)	10 (A)	10 (A)
Asbestos	1332214	Toxic pollutants and hazardous substances	-	-	-	-	7,000,000 fibers/L (C)	-
Beryllium	7440417	Metals, cyanide, and total phenols	-	-	-	-	-	-
Cadmium	7440439	Metals, cyanide, and total phenols	(i,c,dd)	(j,d,dd)	42.0 (c,dd)	9.3 (d,dd)	-	-
Chromium (III)	16065831	Metals, cyanide, and total phenols	(m,c,gg)	(n,d,gg)	-	-	-	-
Chromium (VI)	18540299	Metals, cyanide, and total phenols	15.0 (c,i,ii,dd)	10.0 (d,jj,dd)	1,100.0 (c,l,ll,dd)	50.0 (d,ll,dd)	-	-
Copper	7440508	Metals, cyanide, and total phenols	(o,c,dd)	(p,d,dd)	4.8 (c,ll,dd)	3.1 (d,ll,dd)	1,300 (C)	-
Lead	7439921	Metals, cyanide, and total phenols	(q,c,dd)	(r,d,dd)	210.0 (c,ll,dd)	8.1 (d,ll,dd)	-	-
Mercury	7439976	Metals, cyanide, and total phenols	2.1 (c,kk,dd)	0.012 (d,ff,s)	1.8 (c,ll,dd)	0.025 (d,ff,s)	(G)	(G)
Methylmercury	22967926	Nonconventional	-	-	-	-	-	-
Nickel	7440020	Metals, cyanide, and total phenols	(t,c,dd)	(u,d,dd)	74.0 (c,ll,dd)	8.2 (d,ll,dd)	150	190
Selenium	7782492	Metals, cyanide, and total phenols	20.0 (c,ff)	5.0 (d,ff)	290 (c,ll,dd)	71.0 (d,x,ll,dd)	120	480
Silver	7440224	Metals, cyanide, and total phenols	(y,a,dd)	-	1.9 (a,ll,dd)	-	-	-
Thallium	7440280	Metals, cyanide, and total phenols	-	-	-	-	0.24	0.27

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Zinc	7440666	Metals, cyanide, and total phenols	(aa,c,dd)	(bb,d,dd)	90.0 (c,ll,dd)	81.0 (d,ll,dd)	2,300	2,900
<b>Other chemicals:</b>								
1,1,1-Trichloroethane	71556	Volatile	=	=	=	=	47,000	160,000
1,1,2,2-Tetrachloroethane	79345	Volatile	=	=	=	=	0.12 (B)	0.46 (B)
1,1,2-Trichloroethane	79005	Volatile	=	=	=	=	0.44 (B)	1.8 (B)
1,1-Dichloroethane	75343	Volatile	=	=	=	=	=	=
1,1-Dichloroethylene	75354	Volatile	=	=	=	=	1200	4100
1,2,4-Trichlorobenzene	120821	Base/neutral compounds	=	=	=	=	0.12 (B)	0.14 (B)
1,2-Dichlorobenzene	95501	Volatile	=	=	=	=	2000	2500
1,2-Dichloroethane	107062	Volatile	=	=	=	=	9.3 (B)	120 (B)
1,2-Dichloropropane	78875	Volatile	=	=	=	=	0.71 (B)	3.1 (B)
1,3-Dichloropropene	542756	Volatile	=	=	=	=	0.24 (B)	2 (B)
1,2-Diphenylhydrazine	122667	Base/neutral compounds	=	=	=	=	0.015 (B)	0.023 (B)
1,2-Trans-Dichloroethylene	156605	Volatile	=	=	=	=	600	5,800
1,3-Dichlorobenzene	541731	Volatile	=	=	=	=	13	16
1,4-Dichlorobenzene	106467	Volatile	=	=	=	=	460	580
2,3,7,8-TCDD (Dioxin)	1746016	Dioxin	=	=	=	=	0.000000064	0.000000064
2,4,6-Trichlorophenol	88062	Acid compounds	=	=	=	=	0.25 (B)	0.28 (B)
2,4-Dichlorophenol	120832	Acid compounds	=	=	=	=	25	34
2,4-Dimethylphenol	105679	Acid compounds	=	=	=	=	85	97
2,4-Dinitrophenol	51285	Acid compounds	=	=	=	=	60	610
2,4-Dinitrotoluene	121142	Base/neutral compounds	=	=	=	=	0.039 (B)	0.18 (B)
2,6-Dinitrotoluene	606202	Base/neutral compounds	=	=	=	=	=	=
2-Chloroethyvinyl Ether	110758	Volatile	=	=	=	=	=	=
2-Chloronaphthalene	91587	Base/neutral compounds	=	=	=	=	170	180
2-Chlorophenol	95578	Acid compounds	=	=	=	=	15	17
2-Methyl-4,6-Dinitrophenol (4,6-dinitro-o-cresol)	534521	Acid compounds	=	=	=	=	7.1	25
2-Nitrophenol	88755	Acid compounds	=	=	=	=	=	=
3,3'-Dichlorobenzidine	91941	Base/neutral compounds	=	=	=	=	0.0031 (B)	0.0033 (B)
3-Methyl-4-Chlorophenol (parachlorometa cresol)	59507	Acid compounds	=	=	=	=	36	36
4,4'-DDD	72548	Pesticides/PCBs	=	=	=	=	0.000036 (B)	0.000036 (B)
4,4'-DDE	72559	Pesticides/PCBs	=	=	=	=	0.000051 (B)	0.000051 (B)
4,4'-DDT	50293	Pesticides/PCBs	=	=	=	=	0.000025 (B)	0.000025 (B)
4,4'-DDT (and metabolites)		Pesticides/PCBs	1.1 (a)	0.001 (b)	0.13 (a)	0.001 (b)	=	=

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
4-Bromophenyl Phenyl Ether	101553	Base/neutral compounds	-	-	-	-	-	-
4-Chorophenyl Phenyl Ether	7005723	Base/neutral compounds	-	-	-	-	-	-
4-Nitrophenol	100027	Acid compounds	-	-	-	-	-	-
Acenaphthene	83329	Base/neutral compounds	-	-	-	-	110	110
Acenaphthylene	208968	Base/neutral compounds	-	-	-	-	-	-
Acrolein	107028	Volatile	-	-	-	-	1.0	1.1
Acrylonitrile	107131	Volatile	-	-	-	-	0.019 (B)	0.028 (B)
Aldrin	309002	Pesticides/PCBs	2.5 (a,e)	0.0019 (b,e)	0.71 (a,e)	0.0019 (b,e)	0.0000057 (B)	0.0000058 (B)
alpha-BHC	319846	Pesticides/PCBs	-	-	-	-	0.0005 (B)	0.00056 (B)
alpha-Endosulfan	959988	Pesticides/PCBs	-	-	-	-	9.7	10
Anthracene	120127	Base/neutral compounds	-	-	-	-	3,100	4,600
Benzene	71432	Volatile	-	-	-	-	0.44 (B)	1.6 (B)
Benzidine	92875	Base/neutral compounds	-	-	-	-	0.00002 (B)	0.000023 (B)
Benzo(a) Anthracene	56553	Base/neutral compounds	-	-	-	-	0.014 (B)	0.021 (B)
Benzo(a) Pyrene	50328	Base/neutral compounds	-	-	-	-	0.0014 (B)	0.0021 (B)
Benzo(b) Fluoranthene	205992	Base/neutral compounds	-	-	-	-	0.014 (B)	0.021 (B)
Benzo(ghi) Perylene	191242	Base/neutral compounds	-	-	-	-	-	-
Benzo(k) Fluoranthene	207089	Base/neutral compounds	-	-	-	-	0.014 (B)	0.21 (B)
beta-BHC	319857	Pesticides/PCBs	-	-	-	-	0.0018 (B)	0.002 (B)
beta-Endosulfan	33213659	Pesticides/PCBs	-	-	-	-	9.7	10
Bis(2-Chloroethoxy) Methane	111911	Base/neutral compounds	-	-	-	-	-	-
Bis(2-Chloroethyl) Ether	111444	Base/neutral compounds	-	-	-	-	0.02 (B)	0.06 (B)
Bis(2-Chloroisopropyl) Ether	39638329	Base/neutral compounds	-	-	-	-	-	-
Bis(2-Ethylhexyl) Phthalate	117817	Base/neutral compounds	-	-	-	-	0.23 (B)	0.25 (B)
Bromoform	75252	Volatile	-	-	-	-	5.8 (B)	27 (B)
Butylbenzyl Phthalate	85687	Base/neutral compounds	-	-	-	-	0.56 (B)	0.58 (B)
Carbon Tetrachloride	56235	Volatile	-	-	-	-	0.2 (B)	0.35 (B)
Chlordane	57749	Pesticides/PCBs	2.4 (a)	0.0043 (b)	0.09 (a)	0.004 (b)	0.000093 (B)	0.000093 (B)
Chlorobenzene	108907	Volatile	-	-	-	-	380	890

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Chlorodibromomethane	124481	Volatile	-	-	-	-	0.65 (B)	3 (B)
Chloroethane	75003	Volatile	-	-	-	-	-	-
Chloroform	67663	Volatile	-	-	-	-	260	1200
Chrysene	218019	Base/neutral compounds	-	-	-	-	1.4 (B)	2.1 (B)
Cyanide	57125	Metals, cyanide, and total phenols	22.0 (c,ee)	5.2 (d,ee)	1.0 (c,mm,ee)	(d,mm,ee)	19 (D)	270 (D)
delta-BHC	319868	Pesticides/PCBs	-	-	-	-	-	-
Dibenzo(a,h) Anthracene	53703	Base/neutral compounds	-	-	-	-	0.0014 (B)	0.0021 (B)
Dichlorobromomethane	75274	Volatile	-	-	-	-	0.77 (B)	3.6 (B)
Dieldrin	60571	Pesticides/PCBs	2.5 (a,e)	0.0019 (b,e)	0.71 (a,e)	0.0019 (b,e)	0.0000061 (B)	0.0000061 (B)
Diethyl Phthalate	84662	Base/neutral compounds	-	-	-	-	4,200	5,000
Dimethyl Phthalate	131113	Base/neutral compounds	-	-	-	-	92,000	130,000
Di-n-Butyl Phthalate	84742	Base/neutral compounds	-	-	-	-	450	510
Di-n-Octyl Phthalate	117840	Base/neutral compounds	-	-	-	-	-	-
Endosulfan		Pesticides/PCBs	0.22 (a)	0.056 (b)	0.034 (a)	0.0087 (b)	-	-
Endosulfan Sulfate	1031078	Pesticides/PCBs	-	-	-	-	9.7	10
Endrin	72208	Pesticides/PCBs	0.18 (a)	0.0023 (b)	0.037 (a)	0.0023 (b)	0.034	0.035
Endrin Aldehyde	7421934	Pesticides/PCBs	-	-	-	-	0.034	0.035
Ethylbenzene	100414	Volatile	-	-	-	-	200	270
Fluoranthene	206440	Base/neutral compounds	-	-	-	-	16	16
Fluorene	86737	Base/neutral compounds	-	-	-	-	420	610
Hexachlorocyclohexane (gamma-BHC; Lindane)	58899	Pesticides/PCBs	2.0 (a)	0.08 (b)	0.16 (a)	-	15	17
Heptachlor	76448	Pesticides/PCBs	0.52 (a)	0.0038 (b)	0.053 (a)	0.0036 (b)	0.0000099 (B)	0.00001 (B)
Heptachlor Epoxide	1024573	Pesticides/PCBs	-	-	-	-	0.0000074 (B)	0.0000074 (B)
Hexachlorobenzene	118741	Base/neutral compounds	-	-	-	-	0.000051 (B)	0.000052 (B)
Hexachlorobutadiene	87683	Base/neutral compounds	-	-	-	-	0.69 (B)	4.1 (B)
Hexachlorocyclopentadiene	77474	Base/neutral compounds	-	-	-	-	150	630
Hexachloroethane	67721	Base/neutral compounds	-	-	-	-	0.11 (B)	0.13 (B)
Indeno(1,2,3-cd) Pyrene	193395	Base/neutral compounds	-	-	-	-	0.014 (B)	0.021 (B)
Isophorone	78591	Base/neutral compounds	-	-	-	-	27 (B)	110 (B)
Methyl Bromide	74839	Volatile	-	-	-	-	520	2,400
Methyl Chloride	74873	Volatile	-	-	-	-	-	-

Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Methylene Chloride	75092	Volatile	-	-	-	-	16 (B)	250 (B)
Napthalene	91203	Base/neutral compounds	-	-	-	-	-	-
Nitrobenzene	98953	Base/neutral compounds	-	-	-	-	55	320
N-Nitrosodimethylamine	62759	Base/neutral compounds	-	-	-	-	0.00065 (B)	0.34 (B)
N-Nitrosodi-n-Propylamine	621647	Base/neutral compounds	-	-	-	-	0.0044 (B)	0.058 (B)
N-Nitrosodiphenylamine	86306	Base/neutral compounds	-	-	-	-	0.62 (B)	0.69 (B)
Pentachlorophenol (PCP)	87865	Acid compounds	(w.c)	(v.d)	13.0 (c)	7.9 (d)	0.046 (B)	0.1 (B)
Phenanthrene	85018	Base/neutral compounds	-	-	-	-	-	-
Phenol	108952	Acid compounds	-	-	-	-	18,000	200,000
Polychlorinated Biphenyls (PCBs)		Pesticides/PCBs	2.0 (b)	0.014 (b)	10.0 (b)	0.030 (b)	0.00017 (E)	0.00017 (E)
Pyrene	129000	Base/neutral compounds	-	-	-	-	310	460
Tetrachloroethylene	127184	Volatile	-	-	-	-	4.9 (B)	7.1 (B)
Toluene	108883	Volatile	-	-	-	-	180	410
Toxaphene	8001352	Pesticides/PCBs	0.73 (c.z)	0.0002 (d)	0.21 (c.z)	0.0002 (d)	0.000032 (B)	0.000032 (B)
Trichloroethylene	79016	Volatile	-	-	-	-	0.38 (B)	0.86 (B)
Vinyl Chloride	75014	Volatile	-	-	-	-	0.02 (B, F)	0.26 (B, F)
Ammonia (hh)		Nonconventional	(f.c)	(g.d)	0.233 (h.c)	0.035 (h.d)	-	-
Chloride (dissolved) (k)		Nonconventional	860.0 (h.c)	230.0 (h.d)	-	-	-	-
Chlorine (total residual)		Nonconventional	19.0 (c)	11.0 (d)	13.0 (c)	7.5 (d)	-	-
Chlorpyrifos		Toxic pollutants and hazardous substances	0.083 (c)	0.041 (d)	0.011 (c)	0.0056 (d)	-	-
Parathion		Toxic pollutants and hazardous substances	0.065 (c)	0.013 (d)	-	-	-	-

Footnotes for aquatic life criteria in Table 240:

- a. An instantaneous concentration not to be exceeded at any time.
- b. A 24-hour average not to be exceeded.
- c. A 1-hour average concentration not to be exceeded more than once every three years on the average.
- d. A 4-day average concentration not to be exceeded more than once every three years on the average.
- e. Aldrin is metabolically converted to Dieldrin. Therefore, the sum of the Aldrin and Dieldrin concentrations are compared with the Dieldrin criteria.

f. Shall not exceed the numerical value in total ammonia nitrogen (mg N/L) given by:

$$\text{For salmonids present: } \frac{0.275}{1 + 10^{7.204 \cdot pH}} + \frac{39.0}{1 + 10^{pH-7.204}}$$

$$\text{For salmonids absent: } \frac{0.411}{1 + 10^{7.204 \cdot pH}} + \frac{58.4}{1 + 10^{pH-7.204}}$$

g. Shall not exceed the numerical concentration calculated as follows:

Unionized ammonia concentration for waters where salmonid habitat is an existing or designated use:

$$0.80 \div (FT)(FPH)(RATIO)$$

where: RATIO = 13.5; 7.7 ≤ pH ≤ 9

$$RATIO = \frac{(20.25 \times 10^{(7.7-pH)}) \div (1 + 10^{(7.4-pH)})}{7.7}; 6.5 \leq pH \leq 7.7$$

$$FT = 1.4; 15 \leq T \leq 30$$

$$FT = 10^{[0.03(20-T)]}; 0 \leq T \leq 15$$

$$FPH = 1; 8 \leq pH \leq 9$$

$$FPH = (1 + 10^{(7.4-pH)}) \div 1.25; 6.5 \leq pH \leq 8.0$$

Total ammonia concentrations for waters where salmonid habitat is not an existing or designated use and other fish early life stages are absent:

$$Chronic\ Criterion = \left( \frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \times (1.45 \times 10^{0.028(25-A)})$$

where: A = the greater of either T (temperature in degrees Celsius) or 7.

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on average. The highest four-day average within the thirty-day period should not exceed 2.5 times the chronic criterion.

Total ammonia concentration for waters where salmonid habitat is not an existing or designated use and other fish early life stages are present:

$$Chronic\ Criterion = \left( \frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \times B$$

where: B = the lower of either 2.85, or 1.45 × 10<sup>0.028 × (25-T)</sup>. T = temperature in degrees Celsius.

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on the average. The highest four-day average within the thirty-day period should not exceed 2.5 times the chronic criterion.

- h. Measured in milligrams per liter rather than micrograms per liter.
- i. ≤ (0.944)(e<sup>(1.128[ln(hardness)]-3.828)</sup>) at hardness = 100. Conversion factor (CF) of 0.944 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.136672 - [(ln hardness)(0.041838)].
- j. ≤ (0.909)(e<sup>(0.7852[ln(hardness)]-3.490)</sup>) at hardness = 100. Conversion factor (CF) of 0.909 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.101672 - [(ln hardness)(0.041838)].
- k. Criterion based on dissolved chloride in association with sodium. This criterion probably will not be adequately protective when the chloride is associated with potassium, calcium, or magnesium, rather than sodium.
- l. Salinity dependent effects. At low salinity the 1-hour average may not be sufficiently protective.
- m. ≤ (0.316)(e<sup>(0.8190[ln(hardness)] + 3.688)</sup>)
- n. ≤ (0.860)(e<sup>(0.8190[ln(hardness)] + 1.561)</sup>)
- o. ≤ (0.960)(e<sup>(0.9422[ln(hardness)] - 1.464)</sup>)
- p. ≤ (0.960)(e<sup>(0.8545[ln(hardness)] - 1.465)</sup>)
- q. ≤ (0.791)(e<sup>(1.273[ln(hardness)] - 1.460)</sup>) at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.46203 - [(ln hardness)(0.145712)].
- r. ≤ (0.791)(e<sup>(1.273[ln(hardness)] - 4.705)</sup>) at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.46203 - [(ln hardness)(0.145712)].
- s. If the four-day average chronic concentration is exceeded more than once in a three-year period, the edible portion of the consumed species should be analyzed. Said edible tissue concentrations shall not be allowed to exceed 1.0 mg/kg of methylmercury.
- t. ≤ (0.998)(e<sup>(0.8460[ln(hardness)] + 3.3612)</sup>)
- u. ≤ (0.997)(e<sup>(0.8460[ln(hardness)] + 1.1645)</sup>)
- v. ≤ e<sup>[1.005(pH) - 5.290]</sup>

- w. ≤ e<sup>[1.005(pH) - 4.830]</sup>
- x. The status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 ug/l in salt water.
- y. ≤ (0.85)(e<sup>(1.72[ln(hardness)] - 6.52)</sup>)
- z. Channel Catfish may be more acutely sensitive.
- aa. ≤ (0.978)(e<sup>(0.8473[ln(hardness)] + 0.8604)</sup>)
- bb. ≤ (0.986)(e<sup>(0.8473[ln(hardness)] + 0.7614)</sup>)
- cc. Nonlethal effects (growth, C-14 uptake, and chlorophyll production) to diatoms (*Thalassiosira aestivalis* and *Skeletonema costatum*) which are common to Washington's waters have been noted at levels below the established criteria. The importance of these effects to the diatom populations and the aquatic system is sufficiently in question to persuade the state to adopt the USEPA National Criteria value (36 µg/L) as the state threshold criteria, however, wherever practical the ambient concentrations should not be allowed to exceed a chronic marine concentration of 21 µg/L.
- dd. These ambient criteria in the table are for the dissolved fraction. The cyanide criteria are based on the weak acid dissociable method. The metals criteria may not be used to calculate total recoverable effluent limits unless the seasonal partitioning of the dissolved to total metals in the ambient water are known. When this information is absent, these metals criteria shall be applied as total recoverable values, determined by back-calculation, using the conversion factors incorporated in the criterion equations. Metals criteria may be adjusted on a site-specific basis when data are made available to the department clearly demonstrating the effective use of the water effects ratio approach established by USEPA, as generally guided by the procedures in USEPA Water Quality Standards Handbook, December 1983, as supplemented or replaced by USEPA or ecology. Information which is used to develop effluent limits based on applying metals partitioning studies or the water effects ratio approach shall be identified in the permit fact sheet developed pursuant to WAC 173-220-060 or 173-226-110, as appropriate, and shall be made available for the public comment period required pursuant to WAC 173-220-050 or 173-226-130(3), as appropriate. Ecology has developed supplemental guidance for conducting water effect ratio studies.

- ee. The criteria for cyanide is based on the weak acid dissociable method in the 19th Ed. Standard Methods for the Examination of Water and Wastewater, 4500-CN I, and as revised (see footnote dd, above).
- ff. These criteria are based on the total-recoverable fraction of the metal.
- gg. Where methods to measure trivalent chromium are unavailable, these criteria are to be represented by total-recoverable chromium.
- hh. The listed fresh water criteria are based on un-ionized or total ammonia concentrations, while those for marine water are based on un-ionized ammonia concentrations. Tables for the conversion of total ammonia to un-ionized ammonia for freshwater can be found in the USEPA's Quality Criteria for Water, 1986. Criteria concentrations based on total ammonia for marine water can be found in USEPA Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA440/5-88-004, April 1989.
- ii. The conversion factor used to calculate the dissolved metal concentration was 0.982.
- jj. The conversion factor used to calculate the dissolved metal concentration was 0.962.
- kk. The conversion factor used to calculate the dissolved metal concentration was 0.85.
- ll. Marine conversion factors (CF) which were used for calculating dissolved metals concentrations are given below. Conversion factors are applicable to both acute and chronic criteria for all metals except mercury. The CF for mercury was applied to the acute criterion only and is not applicable to the chronic criterion. Conversion factors are already incorporated into the criteria in the table. Dissolved criterion = criterion x CF

Metal	CF
Arsenic	1.000
Cadmium	0.994
Chromium (VI)	0.993
Copper	0.83
Lead	0.951
Mercury	0.85
Nickel	0.990
Selenium	0.998
Silver	0.85
Zinc	0.946

mm. The cyanide criteria are: 2.8µg/l chronic and 9.1µg/l acute and are applicable only to waters which are east of a line from Point Roberts to Lawrence Point, to Green Point to Deception Pass; and south from Deception Pass and of a line from Partridge Point to Point Wilson. The chronic criterion applicable to the remainder of the marine waters is 1 µg/L.

~~((4) USEPA Quality Criteria for Water, 1986, as revised, shall be used in the use and interpretation of the values listed in subsection (3) of this section.~~

~~(5) Concentrations of toxic, and other substances with toxic propensities not listed in subsection (3) of this section shall be determined in consideration of USEPA Quality Criteria for Water, 1986, and as revised, and other relevant information as appropriate. Human health based water quality criteria used by the state are contained in 40 C.F.R. 131.36 (known as the National Toxics Rule).~~

~~(6) Risk based criteria for carcinogenic substances shall be selected such that the upper bound excess cancer risk is less than or equal to one in one million.)~~

Footnotes for human health criteria in Table 240:

- A. This criterion for total arsenic is the maximum contaminant level (MCL) developed under the Safe Drinking Water Act. The MCL for total arsenic is applied to surface waters where consumption of organisms-only and where consumption of water + organisms reflect the designated uses. When the department determines that a direct or indirect industrial discharge to surface waters designated for domestic water supply may be adding arsenic to its wastewater, the department will require the discharger to develop and implement a pollution prevention plan to reduce arsenic through the use of AKART. Industrial wastewater discharges to a privately or publicly owned wastewater treatment facility are considered indirect discharges.
- B. This criterion was calculated based on an additional lifetime cancer risk of one-in-one-million (1 x 10<sup>-6</sup> risk level).
- C. This criterion is based on a regulatory level developed under the Safe Drinking Water Act.
- D. This recommended water quality criterion is expressed as total cyanide, even though the integrated risk information system RfD used to derive the criterion is based on free cyanide. The multiple forms of cyanide that are present in ambient water have significant differences in toxicity due to their differing abilities to liberate the CN-moiety. Some complex cyanides require even more extreme conditions than refluxing with sulfuric acid to liberate the CN-moiety. Thus, these complex cyanides are expected to have little or no "bioavailability" to humans. If a substantial fraction of the cyanide present in a water body is present in a complexed form (e.g., Fe4[Fe(CN)6]3), this criterion may be overly conservative.
- E. This criterion applies to total PCBs. (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses). The PCBs criteria were calculated using a chemical-specific risk level of 4 x 10<sup>-5</sup>. Because that calculation resulted in a higher (less protective) concentration than the current criterion concentration (40 C.F.R. 131.36) the state made a chemical-specific decision to stay at the current criterion concentration.
- F. This criterion was derived using the cancer slope factor of 1.4 (linearized multistage model with a twofold increase to 1.4 per mg/kg-day to account for continuous lifetime exposure from birth).
- G. The human health criteria for mercury are contained in 40 C.F.R. 131.36.

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

AMENDATORY SECTION (Amending WSR 11-09-090, filed 4/20/11, effective 5/21/11)

**WAC 173-201A-420 Variance.** ~~((1) The criteria established in WAC 173-201A-200 through 173-201A-260 and 173-201A-600 through 173-201A-612 may be modified for individual facilities, or stretches of waters, through the use of a variance. Variances may be approved by the department when:~~

- ~~(a) The modification is consistent with the requirements of federal law (currently 40 C.F.R. 131.10(g) and 131.10(h));~~
- ~~(b) The water body is assigned variances for specific criteria and all other applicable criteria must be met; and~~
- ~~(c) Reasonable progress is being made toward meeting the original criteria.~~
- ~~(2) The decision to approve a variance is subject to a public and intergovernmental involvement process.~~
- ~~(3) The department may issue a variance for up to five years, and may renew the variance after providing for another opportunity for public and intergovernmental involvement and review.~~
- ~~(4) Variances are not in effect until they have been incorporated into this chapter and approved by the USEPA.)~~ (1)

**General provisions.** Variances for individual facilities, a group of facilities, or stretches of waters may be issued for the criteria and designated uses established in WAC 173-201A-200 through 173-201A-260 and 173-201A-600 through 173-201A-612. The following conditions apply when considering issuance of a variance:

(a) A variance may be considered when the standards are expected to be attained by the end of the variance period or the attainable use cannot be reliably determined.

(b) The variance applies to specific parameters and all other applicable standards remain in effect for the water body.

(c) The modification must be consistent with the requirements of federal regulations (currently 40 C.F.R. 131.14).

(d) Reasonable progress must be made toward meeting the underlying standards during the variance period.

(e) A variance renewal may be considered if the renewal request meets the above conditions.

**(2) Types of variances.** Upon request or on its own initiative, the department will consider granting the following types of variances to existing water quality standards:

(a) An individual variance is a time-limited designated use and parameter-specific change to the standard(s) of the receiving water body for a specific discharger. The temporary standard(s) only apply at the point(s) of compliance for the individual facility.

(b) A multidischarger variance is a time-limited designated use and parameter-specific change to the standard(s) of any water body that receives discharges from a permitted facility defined within the scope of the multidischarger variance. Any permitted discharger that is defined within the scope of the variance may be covered under the variance that is granted by the department, provided all requirements of the variance for that discharger are met.

(c) A water body variance is a time-limited designated use and parameter-specific change to the standard(s) for a stretch of waters. Any discharger of the specific parameter that is defined within the geographic scope of the water body variance may be covered under the variance that is granted by the department, provided all requirements of the variance for that discharger are met.

**(3) Requirements.** Any entity initiating a variance request or applying for coverage for an individual, multidischarger, or water body variance must submit the following information to the department:

(a) The pollutant-specific criteria and designated use(s) proposed to be modified by the variance, and the proposed duration of the variance.

(b) A demonstration that attaining the water quality standard for a specific pollutant is not feasible for the requested duration of the variance based on 40 C.F.R. 131.14.

(c) An evaluation of treatment or alternative actions that were considered to meet effluent limits based on the underlying water quality criteria, and a description of why these options are not technically, economically, or otherwise feasible.

(d) Sufficient water quality data and analyses to characterize receiving and discharge water pollutant concentrations.

(e) A description and schedule of actions that the discharger(s) proposes to ensure the underlying water quality

standard(s) are met or the highest attainable use is attained within the variance period. Dischargers are also required to submit a schedule for development and implementation of a pollutant minimization plan for the subject pollutant(s).

(f) If the variance is for a water body or stretch of water, the following information must also be provided to the department:

(i) The results from a pollutant source assessment that quantifies the contribution of pollution from permitted sources and nonpermitted sources;

(ii) All cost-effective and reasonable best management practices for permitted sources that address the pollutant the variance is based upon; and

(iii) Best management practices for nonpermitted sources that meet the requirements of chapter 90.48 RCW.

(g) Any additional information the department deems necessary to evaluate the application.

**(4) Public review and notification.** The decision to grant a variance is a formal rule making subject to a public and intergovernmental involvement process.

(a) The department will provide notice of the proposed variance and consult with Indian tribes or other states that have jurisdiction over adjacent and downstream waters of the proposed variance.

(b) The department shall maintain and make publicly available a list of dischargers that are covered under the variances that are in effect.

**(5) Period during which the variance is in effect.** A variance is a time-limited designated use and criterion.

(a) Each variance will be granted for the minimum time estimated to meet the underlying standard(s) or, if during the period of the variance it is determined that a designated use cannot be attained, then a use attainability analysis (WAC 173-201A-440) will be initiated.

(b) The ability to apply a variance in permits or other actions may be terminated by the department as a result of a mandatory interim review.

(c) Variances are in effect after they have been incorporated into this chapter and approved by the USEPA.

**(6) Contents of a variance.** At a minimum a variance adopted into rule will include the following:

(a) The time period for which the variance is applicable.

(b) The geographic area or specific waters in which the variance is applicable.

(c) A description of the permitted and unpermitted dischargers covered by the variance.

(d) Identification of required actions and a schedule, including any measurable milestones, for all pollution sources (permitted and unpermitted) subject to the variance. Dischargers are required to use adaptive management to fine-tune and update actions, schedules, and milestones in order to achieve the goals of the variance.

(e) A provision allowing the department to reopen and modify any permits and to revise BMP requirements for unpermitted dischargers as a result of the mandatory interim review of the variance (see subsection (8) of this section).

**(7) Variance permit conditions.** The department must establish and incorporate into NPDES permits all conditions necessary to implement and enforce an approved variance, including:



(a) Effluent limits that represent currently achieved or achievable effluent conditions, or effluent limits that are sufficient to meet the underlying water quality standard upon expiration of the variance;

(b) Monitoring and reporting requirements; and

(c) A provision allowing the department to reopen and modify the permits based on the mandatory interim review of the variance.

(8) **Mandatory interim review.** The department will conduct an interim review of each variance at least once every five years after the variance is adopted and approved to determine that conditions of the variance are being met and to evaluate whether the variance is still necessary.

(a) Review process for individual discharger and multi-discharger variances:

(i) The review shall be coordinated with the public review process of the permit renewal if the variance is being implemented in a permit.

(ii) The review will be focused on the discharger's compliance with permit conditions that are required by the variance as well as an evaluation of whether the variance is still necessary.

(b) Review process for water body variances:

(i) Variances for stretches of waters will be reviewed in a public process conducted by the department every five years after the variance is adopted into this chapter and approved by the USEPA.

(ii) The review will evaluate whether the variance is still necessary, any new information on sources of the pollutant that indicates that reductions could be made that would allow water quality standards to be met in a shorter time frame, as well as any new information that indicates water quality improvements may require more time.

(c) A variance that applies to a permit will be shortened or terminated if the review determines that:

(i) The conditions and requirements of the variance and associated permit requirements have not been complied with unless reasons outside the control of the discharger prevented meeting any condition or requirement; or

(ii) Water quality standards could be met in a shorter time frame, based on new information submitted to the department.

## NEW SECTION

**WAC 173-201A-460 Intake credits.** (1) **General provisions.** The following provisions apply to the consideration of intake credits in determining reasonable potential and establishing water quality based effluent limits (WQBELs).

(a) An "intake pollutant" is the amount of a pollutant that is present in waters of the state (including groundwater except as provided in (c) of this subsection) at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

(b) An intake pollutant must be from the "same body of water" as the discharge in order to be eligible for an intake credit. An intake pollutant is considered to be from the "same body of water" as the discharge if the department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period

had it not been removed by the permittee. This finding will be established if a discharger demonstrates:

(i) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; and

(ii) There is a direct hydrological connection between the intake and discharge points.

(c) An intake pollutant in groundwater partially or entirely due to human activity is not eligible for use of an intake credit.

(d) Where intake water for a facility is provided by a municipal water supply system and the supplier provides treatment of the raw water that removes an intake water pollutant, the concentration of the intake water pollutant will be determined at the point where the water enters the water supplier's distribution system.

(e) Where a facility discharges intake pollutants from multiple sources that originate from the receiving water body and from other water bodies, the department may derive an effluent limit reflecting the flow-weighted amount of each source of the pollutant provided that conditions in subsection (3) of this section are met and adequate monitoring to determine compliance can be established and is included in the permit.

(f) The department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee.

### **(2) Consideration of intake pollutants in reasonable potential determination.**

(a) The department may determine there is no reasonable potential for the discharge of an identified intake pollutant to cause or contribute to an exceedance of a narrative or numeric water quality criterion where a discharger demonstrates that all the following conditions are met:

(i) The facility removes the intake water containing the pollutant from the same body of water into which the discharge is made;

(ii) The facility does not alter the identified intake pollutant chemically or physically in a manner that would cause adverse water quality impacts to occur that would not occur if the pollutant had not been removed from the body of water;

(iii) The timing and location of the discharge would not cause adverse water quality impacts to occur that would not occur if the identified intake pollutant had not been removed from the body of water;

(iv) The facility does not increase the identified intake pollutant concentration at the edge of the mixing zone, or at the point of discharge if a mixing zone is not allowed, as compared to the pollutant concentration in the intake water, unless the increased concentration does not cause or contribute to an excursion above an applicable water quality standard; and

(v) The facility does not contribute any additional mass of the identified intake pollutant to its wastewater.

(b) Upon a finding under (a) of this subsection that an intake pollutant in the discharge does not cause, have the reasonable potential to cause, or contribute to an exceedance of

an applicable water quality standard, the department is not required to include a water quality-based effluent limit for the identified intake pollutant in the facility's permit.

**(3) Consideration of intake pollutants in establishing water quality based effluent limits.**

(a) This subsection applies only when the ambient background concentration of the intake pollutant does not meet the most stringent applicable water quality criterion for that pollutant;

(b) The requirements of subsection (2)(a)(i) and (iv) also apply to this subsection.

(c) A discharger may add mass of the pollutant to its waste stream if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.

(d) Where the conditions of this subsection are met, the department may establish effluent limits using an intake credit. The facility's permit must specify how compliance with the limits will be assessed.

AMENDATORY SECTION (Amending WSR 03-14-129, filed 7/1/03, effective 8/1/03)

**WAC 173-201A-510 Means of implementation. (1) Permitting.** The primary means to be used for controlling municipal, commercial, and industrial waste discharges shall be through the issuance of waste discharge permits, as provided for in RCW 90.48.160, 90.48.162, and 90.48.260. Waste discharge permits, whether issued pursuant to the National Pollutant Discharge Elimination System or otherwise, must be conditioned so the discharges authorized will meet the water quality standards. No waste discharge permit can be issued that causes or contributes to a violation of water quality criteria, except as provided for in this chapter.

(a) Persons discharging wastes in compliance with the terms and conditions of permits are not subject to civil and criminal penalties on the basis that the discharge violates water quality standards.

(b) Permits must be modified by the department when it is determined that the discharge causes or contributes to a violation of water quality standards. Major modification of permits is subject to review in the same manner as the originally issued permits.

**(2) Miscellaneous waste discharge or water quality effect sources.** The director shall, through the issuance of regulatory permits, directives, and orders, as are appropriate, control miscellaneous waste discharges and water quality effect sources not covered by subsection (1) of this section.

**(3) Nonpoint source and storm water pollution.**

(a) Activities which generate nonpoint source pollution shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices required in waste discharge permits, rules, orders, and directives issued by the department for activities which generate nonpoint source pollution.

(b) Best management practices shall be applied so that when all appropriate combinations of individual best management practices are utilized, violation of water quality criteria shall be prevented. If a discharger is applying all best

management practices appropriate or required by the department and a violation of water quality criteria occurs, the discharger shall modify existing practices or apply further water pollution control measures, selected or approved by the department, to achieve compliance with water quality criteria. Best management practices established in permits, orders, rules, or directives of the department shall be reviewed and modified, as appropriate, so as to achieve compliance with water quality criteria.

(c) Activities which contribute to nonpoint source pollution shall be conducted utilizing best management practices to prevent violation of water quality criteria. When applicable best management practices are not being implemented, the department may conclude individual activities are causing pollution in violation of RCW 90.48.080. In these situations, the department may pursue orders, directives, permits, or civil or criminal sanctions to gain compliance with the standards.

(d) Activities which cause pollution of storm water shall be conducted so as to comply with the water quality standards. The primary means to be used for requiring compliance with the standards shall be through best management practices required in waste discharge permits, rules, orders, and directives issued by the department for activities which generate storm water pollution. The consideration and control procedures in (b) and (c) of this subsection apply to the control of pollutants in storm water.

**(4) General allowance for compliance schedules.**

(a) Permits ~~(and orders and directives of)~~ issued by the department for existing discharges may include a schedule for achieving compliance with effluent limits and water quality ~~((criteria contained in this chapter))~~ standards that apply to:

(i) Aquatic life uses; and

(ii) Uses other than aquatic life.

~~((Such))~~ (b) Schedules of compliance shall be developed to ensure final compliance with all water quality-based effluent limits ~~((in the shortest practicable time. Decisions regarding))~~ and the water quality standards as soon as possible. The department will decide whether to issue schedules of compliance ~~((will be made))~~ on a case-by-case basis ~~((by the department))~~. Schedules of compliance may not be issued for new discharges. Examples of schedules of compliance that may be issued ~~((to allow for))~~ include:

(i) Construction of necessary treatment capability;

(ii) Implementation of necessary best management practices;

(iii) Implementation of additional storm water best management practices for discharges determined not to meet water quality ~~((criteria))~~ standards following implementation of an initial set of best management practices; and

(iv) Completion of necessary water quality studies ~~((or~~ (v) resolution of a pending water quality standards' issue through rule-making action)) related to implementation of permit requirements to meet effluent limits.

~~((b))~~ (c) For the period of time during which compliance with water quality ~~((criteria))~~ standards is deferred, interim effluent ~~((limitations))~~ limits shall be formally established, based on the best professional judgment of the department. Interim effluent ~~((limitations))~~ limits may be numeric

or nonnumeric (e.g., construction of necessary facilities by a specified date as contained in an ~~((ecology))~~ order or permit), or both.

~~((e))~~ (d) Prior to establishing a schedule of compliance, the department shall require the discharger to evaluate the possibility of achieving water quality ~~((criteria))~~ standards via nonconstruction changes (e.g., facility operation, pollution prevention). Schedules of compliance ~~((may in no case exceed ten years, and))~~ shall require compliance with the specified requirements as soon as possible. Compliance schedules shall generally not exceed the term of any permit unless the department determines that a longer time period is needed to come into compliance with the applicable water quality standards.

(e) When an approved total maximum daily load has established waste load allocations for permitted dischargers, the department may authorize a compliance schedule longer than ten years if:

(i) The permittee is not able to meet its waste load allocation in the TMDL solely by controlling and treating its own effluent;

(ii) The permittee has made significant progress to reduce pollutant loading during the term of the permit;

(iii) The permittee is meeting all of its requirements under the TMDL as soon as possible; and

(iv) Actions specified in the compliance schedule are sufficient to achieve water quality standards as soon as possible.

**(5) Compliance schedules for dams:**

(a) All dams in the state of Washington must comply with the provisions of this chapter.

(b) For dams that cause or contribute to a violation of the water quality standards, the dam owner must develop a water quality attainment plan that provides a detailed strategy for achieving compliance. The plan must include:

(i) A compliance schedule that does not exceed ten years;

(ii) Identification of all reasonable and feasible improvements that could be used to meet standards, or if meeting the standards is not attainable, then to achieve the highest attainable level of improvement;

(iii) Any department-approved gas abatement plan as described in WAC 173-201A-200 (1)(f)(ii);

(iv) Analytical methods that will be used to evaluate all reasonable and feasible improvements;

(v) Water quality monitoring, which will be used by the department to track the progress in achieving compliance with the state water quality standards; and

(vi) Benchmarks and reporting sufficient for the department to track the applicant's progress toward implementing the plan within the designated time period.

(c) The plan must ensure compliance with all applicable water quality criteria, as well as any other requirements established by the department (such as through a total maximum daily load, or TMDL, analysis).

(d) If the department is acting on an application for a water quality certification, the approved water quality attainment plan may be used by the department in its determination that there is reasonable assurance that the dam will not cause or contribute to a violation of the water quality standards.

(e) When evaluating compliance with the plan, the department will allow the use of models and engineering estimates to approximate design success in meeting the standards.

(f) If reasonable progress toward implementing the plan is not occurring in accordance with the designated time frame, the department may declare the project in violation of the water quality standards and any associated water quality certification.

(g) If an applicable water quality standard is not met by the end of the time provided in the attainment plan, or after completion of all reasonable and feasible improvements, the owner must take the following steps:

(i) Evaluate any new reasonable and feasible technologies that have been developed (such as new operational or structural modifications) to achieve compliance with the standards, and develop a new compliance schedule to evaluate and incorporate the new technology;

(ii) After this evaluation, if no new reasonable and feasible improvements have been identified, then propose an alternative to achieve compliance with the standards, such as site specific criteria (WAC 173-201A-430), a use attainability analysis (WAC 173-201A-440), or a water quality offset (WAC 173-201A-450).

(h) New dams, and any modifications to existing facilities that do not comply with a gas abatement or other pollution control plan established to meet criteria for the water body, must comply with the water quality standards at the time of project completion.

(i) Structural changes made as a part of a department approved gas abatement plan to aid fish passage, described in WAC 173-201A-200 (1)(f)(ii), may result in system performance limitations in meeting water quality criteria for that parameter at other times of the year.

**(6) Combined sewer overflow treatment plant. The influent to these facilities is highly variable in frequency, volume, duration, and pollutant concentration. The primary means to be used for requiring compliance with the human health criteria shall be through the application of narrative limitations which include, but are not limited to, best management practices required in waste discharge permits, rules, orders and directives issued by the department.**

**WSR 16-16-101**

**PERMANENT RULES**

**DEPARTMENT OF LICENSING**

[Filed August 2, 2016, 7:39 a.m., effective September 2, 2016]

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

Purpose: Update list of moving traffic violations in WAC 308-104-160 by adding a reference to the marijuana open container violation and minor driver consuming marijuana.

Citation of Existing Rules Affected by this Order: Amending WAC 308-104-160.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.2891.

Adopted under notice filed as WSR 16-13-124 on June 21, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: August 2, 2016.

Damon Monroe  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 14-04-014, filed 1/24/14, effective 2/24/14)

**WAC 308-104-160 Moving and nonmoving violations defined.** For purposes of RCW 46.20.2891, 46.65.020, and this chapter, the term "moving violation" means any violation of vehicle laws listed in this section that is committed by the driver of a vehicle, while the vehicle is moving. However, being in actual physical control of a motor vehicle while under the influence of intoxicating liquor or any drug is also considered a moving violation for the purposes of this section. Parking violations, equipment violations or paperwork violations relating to insurance, registration, licensing and inspection are considered "nonmoving violations." Moving violations are those violations included in the following list or violations of substantially similar laws, administrative regulations, local laws, ordinances, regulations, or resolutions of a political subdivision of this state, the federal government, or any other state:

(1) Driving while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502;

(2) Physical control of a motor vehicle while under the influence of intoxicating liquor or any drug, as defined by RCW 46.61.504;

(3) Vehicular homicide, as defined by RCW 46.61.520;

(4) Vehicular assault, as defined by RCW 46.61.522;

(5) Reckless driving, as defined by RCW 46.61.500;

(6) Racing, as defined by RCW 46.61.530;

(7) Embracing, as defined by RCW 46.61.665;

(8) Hit and run (injury, death, striking the body of a deceased person, or occupied vehicle), as defined by RCW 46.52.020;

(9) Attempting to elude a police vehicle, as defined by RCW 46.61.024;

(10) Driving while driving privilege suspended or revoked, as defined by RCW 46.20.342, 46.20.345, or 46.20.394;

(11) Reckless endangerment of roadway workers, as defined in RCW 46.61.527;

(12) Driver under twenty-one driving or being in physical control of a motor vehicle after consuming alcohol or marijuana, as defined in RCW 46.61.503;

(13) Driving or in physical control of commercial motor vehicle while having alcohol in system, as defined in RCW 46.25.110;

(14) Open container violation (driver), as defined by RCW 46.61.519 or 46.61.745;

(15) Negligent driving in the first degree, as defined by RCW 46.61.5249;

(16) Negligent driving in the second degree, as defined by RCW 46.61.525 or 46.61.526;

(17) Hit and run (unattended vehicle or property), as defined by RCW 46.52.010;

(18) Disobey road sign, as defined by RCW 46.61.050, 46.61.070, or 46.61.450;

(19) Disobey signalman, officer, or firefighter, as defined by RCW 46.61.015, 46.61.020, 46.61.021, or 46.61.022;

(20) Disobey school patrol, as defined by RCW 46.61.385;

(21) Speed too fast for conditions, as defined by RCW 46.61.400;

(22) Speed in excess of maximum limit, as defined by RCW 46.61.400 or 46.61.460;

(23) Speeding in a school zone, as defined by RCW 46.61.440;

(24) Failure to stop, as defined by RCW 46.61.055, 46.61.065, 46.61.195, 46.61.200, 46.61.340, 46.61.345, 46.61.350, 46.61.365, 46.61.370, or 46.61.375;

(25) Failure to yield right of way, as defined by RCW 46.61.180, 46.61.183, 46.61.185, 46.61.190, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.235, 46.61.245, 46.61.261, 46.61.300, or 46.61.427;

(26) Failure to keep to the right, as defined by RCW 46.61.100 or 46.61.105;

(27) Wrong way on a one-way street or rotary traffic island, as defined by RCW 46.61.135;

(28) Improper lane change or travel, as defined by RCW 46.61.140;

(29) Straddling or driving over centerline, as defined by RCW 46.61.140;

(30) Driving on the wrong side of the road, as defined by RCW 46.61.150;

(31) Crossing divider, as defined by RCW 46.61.150;

(32) Improper entrance to or exit from freeway, as defined by RCW 46.61.155;

(33) Violating restrictions on a limited access highway while driving a motor vehicle, as defined by RCW 46.61.160;

(34) High occupancy vehicle lane violation, as defined by RCW 46.61.165;

(35) Improper overtaking or passing, as defined by RCW 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, or 46.61.428;

(36) Passing stopped school bus, as defined by RCW 46.61.370;

(37) Passing stopped private carrier bus, as defined by RCW 46.61.375;

(38) Following too closely, as defined by RCW 46.61.145;

- (39) Following fire apparatus, as defined by RCW 46.61.635;
- (40) Crossing fire hose, as defined by RCW 46.61.640;
- (41) Driving on sidewalk, as defined by RCW 46.61.-606;
- (42) Driving through safety zone, as defined by RCW 46.61.260;
- (43) Driving with wheels off roadway, as defined by RCW 46.61.670;
- (44) Impeding traffic, as defined by RCW 46.61.100, 46.61.425, or 46.20.427;
- (45) Improper turn, as defined by RCW 46.61.290;
- (46) Prohibited turn, as defined by RCW 46.61.295;
- (47) Failure to signal or improper signal, as defined by RCW 46.61.305, 46.61.310, or 46.61.315;
- (48) Improper backing, as defined by RCW 46.61.605;
- (49) Unlawful operation of motorcycle on roadway, as defined by RCW 46.61.608, 46.61.612, or 46.61.614;
- (50) Reckless endangerment, as defined by RCW 9A.36.050;
- (51) Failure to maintain control, as defined by RCW 46.61.445;
- (52) Violation of license restriction(s), as defined by RCW 46.20.041 or 46.20.740;
- (53) Violation of instruction permit restrictions, as defined by RCW 46.20.055;
- (54) Violation of out-of-service order, as defined by RCW 46.25.090;
- (55) Obstructed vision or control, as defined by RCW 46.61.615;
- (56) Carrying persons or animals outside of vehicle, as defined by RCW 46.61.660;
- (57) Carrying passenger in towed vehicle, as defined by RCW 46.61.625;
- (58) Coasting on downgrade, as defined by RCW 46.61.-630;
- (59) Violation of child restraint requirements, as defined by RCW 46.61.687;
- (60) Carrying child under the age of five years old on motorcycle, as defined by RCW 46.37.530;
- (61) Carrying passenger improperly on motorcycle, as defined by RCW 46.61.610;
- (62) No helmet, goggles, mirrors, windshield or face shield, as defined by RCW 46.37.530;
- (63) Operating moped on freeway or sidewalk, as defined by RCW 46.61.710;
- (64) Driving without lights, as defined by RCW 46.37.-020;
- (65) Failure to dim lights, as defined by RCW 46.37.230;
- (66) Operating motorcycle without lights, as defined by RCW 46.37.522;
- (67) No lamp, reflector, or flag on extended load, as defined by RCW 46.37.140;
- (68) Wearing earphones or viewing television in vehicle, as defined by RCW 46.37.480;
- (69) Failure to secure load, as defined by RCW 46.37.-490;
- (70) Spilling load, as defined by RCW 46.61.655;
- (71) Improper towing, as defined by RCW 46.44.070;

(72) Using a hand-held mobile telephone while driving a commercial motor vehicle, as defined by RCW 46.61.667 (1)(b); and

(73) Texting while driving a commercial motor vehicle, as defined by RCW 46.61.668 (1)(b).

### WSR 16-16-102

#### PERMANENT RULES

#### DEPARTMENT OF LICENSING

[Filed August 2, 2016, 7:43 a.m., effective September 2, 2016]

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

Purpose: This adoption will eliminate the fingerprint requirement for business principals where there is a change in motor vehicle dealer business structure or ownership. This change will streamline the application process without compromising public protection, because the department is able to identify and qualify applicants through other means. Motor vehicle dealers reporting a change in business structure or ownership will avoid the time and expense required to get and submit fingerprint cards for new principals, corporate officers, directors, managing partners, members or trustees.

In addition the amendment replaces outdated wording "and legal and financial history" with the words "a personal and criminal history statement." The intent is to use the same words in rule as are used to describe the form used by the department.

Citation of Existing Rules Affected by this Order: Amending WAC 308-66-210.

Statutory Authority for Adoption: RCW 46.70.160, 46.01.110.

Adopted under notice filed as WSR 16-11-118 on May 18, 2016.

A final cost-benefit analysis is available by contacting Dealer Services, P.O. Box 9039, Olympia, WA 98507-9039, phone (360) 664-6466, fax (360) 570-4954, e-mail dealers@dol.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

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

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

Date Adopted: August 2, 2016.

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-03-119, filed 1/22/07, effective 2/22/07)

**WAC 308-66-210 Statement of change in business structure, ownership interest or control. When do I report such a change?** (1) With the exception of a corporation any person licensed as a dealer under chapter 46.70 RCW must, within ten days following any change in its business structure, file a new application and pay original licensing fees under the new entity.

(2) In addition, any new principals including, but not limited to, new corporate officers, directors, managing partners, members or trustees, must, within ten days of assuming such function, file ~~((an application including fingerprint cards and legal and financial history))~~ a personal and criminal history statement.

(3) Any person licensed as a vehicle manufacturer pursuant to chapter 46.70 RCW must inform the department in writing within ten days of the change to:

(a) The business structure of the licensee company and must file a new application and pay original licensing fees under the new entity;

(b) The mailing address of the licensee;

(c) The name and address of employees or agents designated pursuant to RCW 46.70.041 and 46.70.101 to provide service or repairs to vehicles located within the state of Washington. However, if the licensee requires warranty service to be performed by all of its dealers pursuant to current service agreements on file with the department, it need not advise the department of changes in such employees or agents.

(4) Any and all changes affecting the applicability of a surety bond shall be reflected by appropriate endorsement to such bond.