

WSR 22-03-005
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed January 6, 2022, 4:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-058.

Title of Rule and Other Identifying Information: WAC 388-14A-3140

What can happen at a hearing on a support establishment notice?, 388-14A-8100 Are there special rules for setting child support for children in foster care?, and 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation?

These WAC changes will increase efficiency and better serve our customers regarding eliminating joint noncustodial parent (JNCP) cases. A JNCP case is one where both parents are married and residing together and the child is not in the home.

Hearing Location(s): On February 22, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the impacts of COVID-19, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than February 23, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., on February 22, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email tencza@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m., on February 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The establishment of a joint and several administrative child support order does not work well when the goal of family reunification and the fluid nature of reunification plans are taken into account. Married parents often choose to separate (or are required to separate) so that the child can return to the home of one of them. The obligation of the parent with physical custody is suspended by WAC 388-14A-3810, leaving the parent out of the home bearing the full brunt of the joint and several administrative order, further impacting reunification efforts. When the parent out of the home seeks to modify the joint and several order, it is sometimes modified only as to that particular parent, leaving the first parent still subject to the joint and several order if the child ever leaves the first parent's custody. This result does not align with division of child support's (DCS) efforts to establish and enforce right size orders and can result in harm to families. To resolve this, DCS is changing its policy and will no longer be setting up joint obligations for married parents living together where the child is not living in the home.

Reasons Supporting Proposal: The proposed change will allow DCS to discontinue the practice of setting up and enforcing JNCP cases,

which will produce better outcomes for families and help further DCS's efforts to establish and enforce right size orders.

Statutory Authority for Adoption: RCW 26.18.170, 26.23.050, 26.23.110, 74.08.090, 74.20A.055.

Statute Being Implemented: RCW 26.09.105, 26.18.170, 26.23.050, 26.23.110.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: DSHS, economic services administration, DCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brady Horenstein, DCS Rules Coordinator, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5291.

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

A cost-benefit analysis is not required under RCW 34.05.328. These rules are exempt under RCW 34.05.328 (5)(b)(vii) because they are rules of DSHS concerning liability for care of dependents.

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

Is exempt under RCW 19.85.025(4) and 34.05.328 (5)(b)(vii).

Explanation of exemptions: This proposal does not affect small businesses. These rules are exempt under RCW 34.05.328 (5)(b)(vii) because they are concerning liability for care of dependents.

January 6, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4901.2

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

WAC 388-14A-3140 What can happen at a hearing on a support establishment notice? (1) When a party requests a hearing on a notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical responsibility (NFMR), the hearing is limited to:

(a) Resolving the current and future support obligation and the accrued support debt of the noncustodial parent (NCP); and

(b) Establishing the medical support obligations of both the NCP and the custodial parent (CP), if the CP is the legal or biological parent of the ((child(ren))) child or children.

(2) The hearing is not for the purpose of setting a payment schedule on the support debt.

(3) The NCP and the CP each have the burden of proving any defenses to their own liability. See WAC 388-14A-3370.

(4) The NCP and/or the CP must show cause why the terms in the NFFR, NFPR, or NFMR are incorrect.

(5) The administrative law judge (ALJ) has authority to enter a support obligation that may be higher or lower than the amounts set forth in the NFFR, NFPR, or NFMR, including the support debt, current support, and the future support obligation.

(a) The ALJ may enter an order that differs from the terms stated in the notice, including different debt periods, if the obligation is supported by credible evidence presented by any party at the hearing, without further notice to any nonappearing party, if the ALJ finds that due process requirements have been met.

(b) Any support order entered by the ALJ must comply with the requirements of WAC 388-14A-6300.

(6) The ALJ has no authority to determine custody or visitation issues, or to set a payment schedule for the arrears debt.

(7) When a party has advised the ALJ that they will participate by telephone, the ALJ attempts to contact that party on the record before beginning the proceeding or rules on a motion. The ALJ may not disclose to the other parties the telephone number or the location of the party appearing by phone.

(8) In support establishment hearings, both the NCP and CP may participate in the hearing. However, in certain cases, there is no "custodial parent" because the child or children are in foster care.

(a) If the NCP and CP both fail to appear for hearing, see WAC 388-14A-3131.

(b) If only one of the parties appears for the hearing, see WAC 388-14A-3132.

(c) If the NCP and CP both appear for hearing, see WAC 388-14A-3133.

(9) In some cases prior to (effective date), there ~~((can))~~ could be two NCPs, called "joint NCPs." This ~~((happens))~~ happened when DCS ~~((serves))~~ served a joint support establishment notice on the marital community made up of ~~((a husband and wife))~~ spouses who ~~((reside))~~ re-sided together, or on the domestic partnership community made up of two registered domestic partners who ~~((reside))~~ resided together, seeking to establish a support obligation for a child in common who ~~((is))~~ was not residing in their home.

(a) If both of the joint NCPs fail to appear for hearing, see WAC 388-14A-3131;

(b) If both of the joint NCPs appear for hearing, see WAC 388-14A-3133; or

(c) Prior to (effective date), one joint NCP ~~((may))~~ could appear and represent the other joint NCP.

(10) When a CP is granted good cause level B (see WAC 388-422-0020), DCS notifies the CP that the CP will receive documents, notices and orders. The CP may choose to participate at any time. Failure to appear at hearing results in a default order but does not result in a sanction for noncooperation under WAC 388-14A-2041.

(11) If any party appears for the hearing and elects to proceed, the ALJ hears the matter and enters a final order based on the evidence presented, unless the ALJ grants a continuance. The ALJ includes a party's failure to appear in the initial decision and order as an order of default against that party. The direct appeal rights of the party who failed to appear are limited to an appeal on the record made at the hearing.

[Statutory Authority: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055(9), and 74.20A.056(11). WSR 11-12-006, § 388-14A-3140,

filed 5/19/11, effective 6/19/11. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.160. WSR 06-09-015, § 388-14A-3140, filed 4/10/06, effective 5/11/06. Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 34.05.220(1), 74.20A.055, 74.20A.056. WSR 03-20-072, § 388-14A-3140, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 00-15-016 and 00-20-022, § 388-14A-3140, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-400 and 388-11-425.]

AMENDATORY SECTION (Amending WSR 06-16-073, filed 7/28/06, effective 8/28/06)

WAC 388-14A-8100 Are there special rules for setting child support for children in foster care? (1) Child support obligations for children in foster care are set according to the Washington state child support schedule (the WSCSS), found in chapter 26.19 RCW.

(2) When a child or children are placed in foster care, DCS may use the administrative process to set a support obligation:

(a) ~~((As a joint obligation for married parents who reside together;~~

~~(b-))~~ As ~~((two))~~ a separate ~~((obligations))~~ obligation for ~~((parents who do not reside together))~~ each parent; or

~~((e-))~~ (b) For just one parent, if:

(i) There is already a court or administrative order setting the support obligation of the other parent;

(ii) The other parent is dead; or

(iii) The other parent is unknown.

(3) When setting a support obligation for only one parent, DCS follows the procedure set out in WAC 388-14A-8125.

(4) ~~((When setting))~~ Prior to (effective date), DCS used the administrative process to set a joint support obligation for parents who are married or in a registered domestic partnership and residing together. When setting a joint obligation, DCS ((follows)) followed the procedures set out in WAC 388-14A-8130.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 06-16-073, § 388-14A-8100, filed 7/28/06, effective 8/28/06. Statutory Authority: RCW 13.34.160(3), 13.34.270(7), 74.08.090, 74.13.031(11), 74.13.350, 74.20A.030(4), and 74.20A.310. WSR 05-12-135, § 388-14A-8100, filed 6/1/05, effective 7/2/05. Statutory Authority: RCW 74.08.090. WSR 01-03-089, § 388-14A-8100, filed 1/17/01, effective 2/17/01.]

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

WAC 388-14A-8130 How ((does)) did DCS complete the WSCSS worksheets when setting a joint child support obligation for a child in foster care prior to (effective date)? (1) ~~((When))~~ Prior to (effective date), the division of child support (DCS) ~~((is preparing))~~ prepared an administrative support notice to establish a joint support obligation for the parents of a child in foster care, DCS ~~((follows))~~

followed the steps set out in this section for completing the worksheets under the Washington state child support schedule (WSCSS).

(2) DCS (~~(establishes)~~) established a joint support obligation when, at the time of order establishment, the parents (~~(reside)~~) resided together and (~~(are)~~) were either married or in a registered domestic partnership, unless a child support order covering current support for that child (~~(has)~~) had already been established for one of the parents.

(3) DCS (~~(calculates)~~) calculated each parent's income under the rules set out in WAC 388-14A-3205, and then (~~(calculates)~~) calculated the income of the marital or domestic partnership community by combining both parents' income in one column of the worksheet and (~~(does)~~) did not put any income or other information in the other column.

(4) DCS (~~(calculates)~~) calculated the joint support obligation using the limitations contained in RCW 26.19.065:

(a) The joint child support obligation (~~(may)~~) could not exceed forty-five percent of the net income of the community except for good cause.

(b) DCS (~~(follows)~~) followed WAC 388-14A-3410 when calculating and applying the self-support reserve limitation.

(c) Even though there (~~(are)~~) were two parents involved, and despite the application of any limitations, the presumptive minimum obligation of fifty dollars per month per child (~~(applies)~~) applied when DCS (~~(sets)~~) set a joint child support obligation.

(d) If DCS or the administrative law judge (ALJ) (~~(may find)~~) found reasons for deviation (~~(and must support those)~~), the reasons were supported with appropriate findings of fact in the support order.

(5) As described in subsection (3) of this section, the support obligation in the column of the WSCSS worksheet which contains information regarding both parents is the joint support obligation of the parents.

(6) DCS (~~(determines)~~) determined the joint support obligation of the parents without regard to the cost of foster care placement, as provided in WAC 388-14A-8105.

(7) The rules in this section still apply if parties request modification of joint noncustodial parent (NCP) obligations established by administrative orders prior to (effective date).

[Statutory Authority: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055(9), and 74.20A.056(11). WSR 11-12-006, § 388-14A-8130, filed 5/19/11, effective 6/19/11. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 06-16-073, § 388-14A-8130, filed 7/28/06, effective 8/28/06.]

WSR 22-03-021

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed January 10, 2022, 8:21 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Title 246 WAC, amending multiple rule chapters to update statutory references per SHB 2246, chapter 20, Laws of 2020, regular session. Updating the Title 70 RCW references with the new environmental health and safety Title 70A RCW references and to clarify rule language.

Hearing Location(s): On February 22, 2022, at 1:00 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department of health (DOH) will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Register in advance for this webinar <https://us02web.zoom.us/join/91512920623>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: March 1, 2022.

Submit Written Comments to: Nina Helpling, DOH, Division of Environmental Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by February 22, 2022.

Assistance for Persons with Disabilities: Contact Nina Helpling, phone 360-236-3065, TTY 711, email nina.helpling@doh.wa.gov, by February 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update department of health (department) and state board of health (board) WAC that contain Title 70 RCW references that have been recently reorganized by SHB 2246 that was passed during the 2020 legislative session.

Reasons Supporting Proposal: SHB 2246 reorganized the statutory chapters of Title 70 RCW into two titles to better sort the chapters according to public health and safety, and environmental health and safety. Public health and safety will be named Title 70 RCW and environmental health and safety will be named Title 70A RCW.

The current Title 70 RCW contains numerous laws establishing board and department authority to adopt and enforce administrative rules to implement their statutory authority as well as other laws relevant to board and department rules. Five of the board rules and 20 of the department rules contain Title 70 RCW, Environmental health and safety, citations within the body of the rule. Reorganization of Title 70 RCW into two titles requires agencies to conduct rule making to update the citations from Title 70 RCW to Title 70A RCW. The SHB 2246 encourages agencies to complete this administrative work by July 1, 2025.

Statutory Authority for Adoption: RCW 43.70.040.

Statute Being Implemented: SHB 2246, chapter 20, Laws of 2020.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting: Nina Helpling, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3065; Implementation

and Enforcement: Lauren Jenks, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3050.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

December 26, 2021
Lauren Jenks
Assistant Secretary

OTS-3430.2

AMENDATORY SECTION (Amending WSR 92-02-018, filed 12/23/91, effective 1/23/92)

WAC 246-03-030 Timing and procedures for specified major actions. (1) Regulations and licenses relating to radioactive material.

(a) Scope of major action.

(i) Regulations relating to radioactive material shall include the adoption or amendment by the department of any regulations incorporating general standards for issuance of licenses authorizing the possession, use and transfer of radioactive material pursuant to RCW (~~(70.98.080, and 70.121.030)~~) 70A.388.050 and 70A.310.030.

(ii) The issuance, revocation or suspension of individual licenses under RCW (~~(70.98.080)~~) 70A.388.050 shall be exempt. However, the following licenses shall not be exempt: Licenses to operate low level waste burial facilities or licenses to operate or expand beyond design capacity mineral processing facilities, or their tailings areas, whose products, or byproducts, have concentrations of naturally occurring radioactive materials in excess of exempt concentrations as specified in WAC 246-232-010.

(b) Timing of SEPA requirements for regulations for radioactive material.

(i) A final EIS or determination of nonsignificance, whichever is determined appropriate by the lead agency's responsible official, shall be completed for proposed regulations relating to radioactive

material prior to the hearing preceding final adoption of such regulations.

(ii) The responsible official shall mail to the department of ecology headquarters office in Olympia for listing in the "SEPA register" (see WAC 197-11-508) a copy of any determination of nonsignificance, a copy of the draft EIS, and a copy of the final EIS. Copies of the draft EIS shall also be mailed to those agencies identified in WAC 197-11-455, and of the final EIS to those agencies identified in WAC 197-11-460. The responsible official shall also give public notice in the form and manner specified in RCW 43.21C.080 of the determination of nonsignificance or final EIS.

(c) Timing of SEPA requirements for licenses for uranium or thorium mills or radioactive waste burial facilities.

(i) The applicant shall be responsible for completing an environmental checklist, furnishing additional information needed by the department to make the threshold determination, and preparing an environmental report regarding the environmental impact of proposed activities for independent evaluation by the department, prior to issuance of a draft EIS by the responsible official. The environmental report shall be submitted within (~~ninety~~) 90 days following determination of significance. The following material presents a more detailed description of the responsibilities of the private applicant as well as of the responsible official.

(ii) The applicant shall be responsible for contacting the responsible official during the early stages of the applicants planning activities to obtain an outline of SEPA requirements.

(iii) Thereafter the private applicant shall be responsible for preparation of an environmental checklist. The responsible official shall review each environmental checklist and, within (~~fifteen~~) 15 days of the responsible official's receipt of the checklist, shall prepare and issue either a determination of nonsignificance as per WAC 197-11-340 or a determination of significance as per WAC 197-11-360.

(iv) When the responsible official has issued a determination of nonsignificance, the official shall send the determination and environmental checklist to the applicant and to all agencies with jurisdiction for review and comment as per WAC 197-11-340.

(v) When the responsible official makes a determination of significance, the preparation of an environmental report shall be completed in a manner consistent with the requirements for a draft EIS and shall be the responsibility of the private applicant. If the applicant desires, he may contract with an outside consultant for the preparation of the environmental report. The department may also contract with an outside consultant for the preparation of a draft or final EIS. The department or the department's contracted consultant will independently evaluate the environmental report and be responsible for the reliability of any information used in the draft or final EIS. Unless the scope or complexity of the proposal indicates otherwise, the final EIS shall be issued as described in WAC 197-11-460(6).

(vi) The responsible official shall request review of the draft EIS from the agencies listed in WAC 197-11-455 and from such other agencies as he determines.

(vii) The responsible official shall mail a copy of the draft EIS to the department of ecology headquarters in Olympia for listing in the "SEPA register" (see WAC 197-11-508) and also to those agencies listed in WAC 197-11-455.

(viii) When the responsible official determines that substantial changes are needed or that new information has become available, the

preparation of an amended or new environmental report is the responsibility of the private applicant.

(ix) The responsible official shall mail a copy of the final EIS to the department of ecology headquarters office in Olympia for listing in the "SEPA register" (see WAC 197-11-508). The responsible official shall also mail copies of the final EIS to those agencies specified in WAC 197-11-460 and shall give public notice of the completion of the final EIS in the form and manner specified in RCW 43.21C.080.

(2) Water system plans for public water systems as per WAC 246-290-100 and RCW (~~(70.116.050)~~) 70A.100.050.

(a) Scope of major action. Water system plans are plans developed and submitted to the department for review and approval pursuant to WAC 246-290-100 and RCW (~~(70.116.050)~~) 70A.100.050.

(b) Timing and procedures for water system plans prepared by private applicants.

(i) In general, when a private applicant has prepared a water system plan for review and approval by the department, the private applicant shall be responsible for completing an environmental checklist, furnishing additional information needed by the department to make the threshold determination, and preparing the draft and final EIS under the direction of the responsible official. The following material presents a more detailed description of the responsibilities of the private applicant as well as the responsible official.

(ii) Follow steps outlined in subsection (1)(c)(ii) through (iv) of this section.

(iii) When the responsible official makes a determination of significance, the preparation of a draft and final EIS shall be in compliance with WAC 197-11-400 through 197-11-620 and shall be the responsibility of the private applicant. If the applicant desires, he may contract with an outside consultant for preparation of the draft or final EIS. Unless the scope or complexity of the proposal indicates otherwise, the final EIS shall be completed within (~~(sixty)~~) 60 days of the end of the comment period for the draft EIS.

(iv) See subsection (1)(c)(vi) and (vii) of this section.

(v) When the responsible official determines that substantial changes are needed or that new information has become available, the preparation of an amended or a new draft EIS is the responsibility of the private applicant.

(vi) See subsection (1)(c)(ix) of this section.

(vii) Every water system plan submitted by a private applicant to the department for review and approval shall be accompanied by either a determination of nonsignificance or a final EIS.

(c) Timing and procedure for water system plans prepared by agencies. Every water system plan submitted by an agency to the department for review and approval shall be accompanied by either a determination of nonsignificance or a final EIS.

(3) New public water supply systems and major extensions of existing public water supply systems.

(a) Scope of major action. The approval of engineering reports or plans and specifications pursuant to chapter 246-290 WAC for all surface water source development, all water system storage facilities greater than (~~(one-half million)~~) 500,000 gallons, new transmission lines longer than (~~(one thousand)~~) 1,000 feet and larger than eight inches in diameter located in new rights of way and major extensions to existing water distribution systems involving use of pipes greater than eight inches in diameter, which are designed to increase the existing service area by more than one square mile.

(b) Timing and procedures for projects proposed by private applicants.

(i) In general, when a private applicant seeks the approval of the department for a new public water supply or a major extension to an existing public water supply, the private applicant shall be responsible for completing an environmental checklist, furnishing additional information needed by the department to make the threshold determination, and preparing the draft and final EIS under the direction of the responsible official. The following material presents a more detailed description of the responsibilities of the private applicant as well as of the responsible official.

(ii) Follow steps outlined in subsection (1)(c)(ii) through (iv) of this section.

(iii) See subsection (2)(b)(iii) of this section.

(iv) See subsection (1)(c)(vi) and (vii) of this section.

(v) See subsection (2)(b)(v) of this section.

(vi) See subsection (1)(c)(ix) of this section.

(vii) Whenever preliminary engineering reports, or plans and specifications for a new public water supply system or a major extension to an existing public water supply system are submitted by a private applicant to the secretary for review and approval pursuant to chapter 246-290 WAC, these reports, plans and specifications shall be accompanied by a determination of nonsignificance or a final EIS.

(c) Timing and procedures for projects proposed by an agency. Whenever preliminary engineering reports, plans and specifications for a new public water supply system or a major extension to an existing public water supply system are submitted by an agency to the secretary for review and approval pursuant to chapter 246-290 WAC, these reports, plans and specifications shall be accompanied by a determination of nonsignificance or a final EIS.

(4) Certificates of need.

(a) Scope of major action. Certificate of need applications are subject to SEPA requirements whenever the applicant proposes to construct a new hospital or to construct major additions to the existing service capacity of such an institution: Provided, That such applications are not subject to SEPA requirements when the proposed construction consists of additions which provide less than (~~twelve thousand~~) 12,000 square feet of floor area and with associated parking facilities designed for (~~forty~~) 40 automobiles or less: Provided further, That certificate of need applications for "substantial acquisitions" are not subject to SEPA requirements.

(b) Timing and procedures for hospital certificates of need. Where a state or local agency other than the department is lead agency for hospital construction, the department shall not issue a certificate of need approving this hospital construction until the applicant has supplied it with a determination of nonsignificance or a final EIS, and until seven days after the issuance by the lead agency of any final EIS. Nothing in this subsection shall preclude the department from making a commitment to issue a certificate of need to an applicant subject to the timely receipt of an appropriate environmental impact statement or determination of nonsignificance.

(5) Approval of sewerage general plans and/or water general plans described in RCW 36.94.010.

(a) Scope of major action. Sewerage general plans and water general plans shall mean and include those described in RCW 36.94.010.

(b) Timing and procedures for water general plans. Every water general plan submitted by a county to the department for review and

approval shall be accompanied by either a determination of nonsignificance or a final EIS.

(6) Plans and specifications for new sewage treatment works or for major extensions to existing sewage treatment works pursuant to chapter 246-271 WAC.

Scope of major action. Plans and specifications for new sewage treatment works or for major extensions to existing sewage treatment works are those which are reviewed and approved by the department pursuant to WAC 246-271-050.

(7) Construction of any building, facility or other installation for the purpose of housing department personnel or for prisons or for fulfilling other statutorily directed or authorized functions.

(a) Scope of major action. The construction of buildings, facilities or other installations for the purpose of housing department personnel or for other authorized functions shall be subject to SEPA requirements, but such construction shall not be subject to SEPA requirements when it consists of additions which provide less than (~~twelve thousand~~) 12,000 square feet of floor area and with associated parking facilities designed for (~~forty~~) 40 automobiles or less.

(b) Timing and procedures.

(i) The responsible official shall, prior to the request for construction bids, prepare an environmental checklist for each construction project of the type described in (a) of this subsection.

(ii) Within (~~fifteen~~) 15 days of the request for construction bids, the responsible official shall make (A) a written declaration of nonsignificance where the responsible official determines that the proposed construction will not have a significant adverse environmental impact or (B) a written declaration of significance where the responsible official determines that the proposed construction will have a significant adverse environmental impact.

(iii) Where the responsible official has made a determination of significance, the preparation of the draft and final EIS shall be in compliance with WAC 197-11-400 through 197-11-620, and shall be the responsibility of the responsible official. Unless the scope or complexity of the proposal indicates otherwise, the final EIS shall be completed within (~~sixty~~) 60 days of the end of the comment period for the draft EIS.

(iv) See subsection (1)(c)(vi) of this section.

(v) The responsible official shall mail to the department of ecology headquarters office in Olympia for listing in the "SEPA register" a copy of any determination of nonsignificance, a copy of the draft EIS, and a copy of the final EIS. Copies of the draft EIS shall also be mailed to those agencies identified in WAC 197-11-455, and of the final EIS to those agencies identified in WAC 197-11-460. The responsible official shall also give public notice in the form and manner specified in RCW 43.21C.080 of the determination of nonsignificance or final EIS.

(8) Approval of final plans for construction of a private psychiatric hospital pursuant to WAC 246-322-020, or construction of an alcoholism treatment facility pursuant to WAC 246-326-020.

(a) Scope of major action. The approval of final plans for construction of a private psychiatric hospital pursuant to WAC 246-322-020, or construction of an alcoholism treatment center pursuant to WAC 246-326-020 shall be subject to SEPA requirements: Provided, That such construction shall not be subject to SEPA requirements when it consists of additions which provide less than (~~twelve thou-~~

sand) 12,000 square feet of floor area and with associated parking facilities designed for (~~forty~~) 40 automobiles or less.

(b) Timing and procedures for construction of the type described. Where a state or local agency other than the department is lead agency for construction of the type described in (a) of this subsection, the department shall not approve final plans for construction of a private psychiatric hospital or alcoholism treatment center until the applicant for such approval has supplied the department with a final declaration of nonsignificance or a final EIS for the construction in question, and until seven days after the issuance by the lead agency of any final EIS.

[Statutory Authority: RCW 43.21C.120. WSR 92-02-018 (Order 224), § 246-03-030, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-050 (Order 122), § 246-03-030, filed 12/27/90, effective 1/31/91.]

OTS-3431.1

AMENDATORY SECTION (Amending WSR 18-18-049, filed 8/29/18, effective 9/29/18)

WAC 246-10-107 Persons who may request adjudicative proceedings.

The following persons or entities may request an adjudicative proceeding under this chapter.

(1) (a) With respect to the denial of applications made under chapters 246-290, 246-291, and 246-295 WAC, the denied applicant may request an adjudicative proceeding.

(b) A person whose application for the approval of a new public water system is denied under WAC 246-293-190, a purveyor whose license is adversely affected by a departmental decision under WAC 246-293-190 or the county legislative authority having jurisdiction in the area affected by the decision may request an adjudicative proceeding under this chapter.

(c) A purveyor affected by the decision of the department under WAC 246-293-430 or the county legislative authority having jurisdiction in the area may request an adjudicative proceeding with respect to a decision made under WAC 246-293-430.

(d) A person upon whom a civil penalty is imposed under RCW (~~70.119A.040~~) 70A.125.040 may request an adjudicative proceeding.

(2) Persons named in an initiating document under chapter 18.130 RCW involving the issuance, denial, or other action against a license, or alleging unlicensed practice, may request an adjudicative proceeding.

(3) With respect to matters involving receipt of benefits or application therefor, the recipient of or applicant for the benefits may request an adjudicative proceeding.

(4) With respect to an application for approval of a school or curriculum, or the withdrawal of such approval, the person or entity that applied for such approval may request an adjudicative proceeding.

(5) With respect to the department's final threshold determination that an environmental impact statement (EIS) is or is not neces-

sary and with respect to the adequacy of a final EIS, any person may request an adjudicative proceeding who:

(a) Is seeking to protect an interest within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question; and

(b) Will be specifically and perceptibly harmed by the proposed action.

(6) Any other person or entity who has the right to request an adjudicative proceeding under RCW 43.70.115 or other applicable statute or rule.

(7) Any application for an adjudicative proceeding that on its face demonstrates that the person making the application does not have standing under this rule may be summarily dismissed by entry of a decision pursuant to RCW 34.05.416. A motion to dismiss a matter for lack of standing may be made at any time prior to entry of the final order.

[Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-049, § 246-10-107, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-10-107, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-107, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-107, filed 6/3/93, effective 7/4/93.]

AMENDATORY SECTION (Amending WSR 20-24-047, filed 11/23/20, effective 1/1/21)

WAC 246-10-502 Preliminary record in brief adjudicative proceedings. (1) The preliminary record with respect to an application for a professional, business, or facility license, or for approval of a school or curriculum must consist of:

(a) The application for the license or approval and all associated documents;

(b) All documents relied on by the program in proposing to deny the application;

(c) All correspondence between the applicant for license or approval and the program regarding the application.

(2) Preliminary record.

(a) The preliminary record with respect to decisions made under WAC 246-290-100, 246-290-110, 246-290-120, 246-290-130, 246-290-140, 246-291-120, 246-291-125, 246-291-280, and 246-291-140 must consist of the decision document, all documents constituting the applicant's submittal and such other documents as the applicant or the department may wish to include in the preliminary record.

(b) The preliminary record with respect to decisions made under WAC 246-293-190.

(i) If proceedings are required and have been conducted by local agencies under the applicable coordinated water system plan, the preliminary record shall consist of the record submitted to the department under WAC 246-10-124(3).

(ii) If hearings are not required or have not been conducted by local agencies under the applicable coordinated water system plan or if the external boundaries of the coordination act area have been approved but a coordinated water system plan has not been adopted, then

the preliminary record shall consist of such documents as the presiding officer may solicit from the affected parties.

(c) The preliminary record with respect to a decision made under WAC 246-293-401, 246-293-420, and 246-293-430 shall consist of the record submitted to the presiding officer under WAC 246-10-124(4).

(d) The preliminary record with respect to a decision under WAC 246-294-050 shall consist of:

(i) The permit, if any;

(ii) All documents relied upon by the program in proposing to deny, modify, or impose conditions upon the permit; and

(iii) The decision document.

(e) The preliminary record with respect to decisions made under WAC 246-295-040 shall consist of the decision document, all documents constituting the applicant's submittal, comments submitted by the county, and such other documents as the applicant or the department may wish to include in the preliminary record.

(f) The preliminary record with respect to civil penalties imposed under RCW ((70.119A.040)) 70A.125.040 shall consist of the notice of imposition of penalties, the departmental order, if any, all documentation of communication between the program and the person or persons incurring the civil penalties regarding the violation or violations for which the civil penalties were imposed, and such other documents as the person or persons incurring the civil penalties or the department may wish to include in the preliminary record.

(g) The preliminary record with respect to an action to deny or revoke a credential under RCW 18.108.085(3) shall consist of a certified copy of the court documents reflecting a conviction, any documentation regarding a certification of restoration of opportunity under RCW 9.97.020, and such other documents as the person making the request and the department may wish to include in the preliminary record which are relevant to the issue of the applicant's or licensee's identity.

(h) The preliminary record with respect to an action to suspend a credential under RCW 18.130.127 shall consist of the report from the lending agency to the department of the licensee's nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship, and such other documents as the person making the request and the department may wish to include in the preliminary record.

(i) The preliminary record with respect to the issuance of a written citation and assessment of a fine under RCW 18.130.230 shall consist of the citation, as described in RCW 18.130.230(2), the request by the disciplining authority to produce documents, records, or other items within the licensee's control, the licensee's request for extension of time and the disciplining authority's response if a request for extension of time was made, and such other documents as the licensee or disciplining authority may wish to include in the preliminary record with respect to whether or not the licensee timely provided the items requested.

(j) The preliminary record with respect to a decision to withdraw a credential issued in error shall consist of the application for credential and any associated documents, all documents relied on by the program in proposing to withdraw the credential, and all correspondence between the person to whom the credential was issued in error and the program regarding the application or credential.

(k) The preliminary record with respect to a decision to deny a request for a list of applicants for professional licenses or of pro-

fessional licensees for commercial purposes shall consist of the written request for the list, any other documents relied on by the program in proposing to deny the request, all correspondence regarding the request between the person making the request and the department, and such other documents as the person making the request and the department may wish to include in the preliminary record.

(l) The preliminary record with respect to a decision to deny or revoke registration of a report or application for an amendment, or withhold or deny issuance of a certification under RCW 70.58A.040

(1)(f) shall consist of the application to amend any correspondence between the person who made the request and such other documents as the applicant or the department may wish to include in the preliminary record.

(m) The preliminary record with respect to a decision to withhold or deny certification of a vital record under RCW 70.58A.530 shall consist of request for certification, any correspondence between the person who made the request and the program, all documents relied on by the program in proposing to deny the request, and such other documents as the applicant or the department may wish to include in the preliminary record.

(n) The preliminary record with respect to a decision to deny an application or revoke an approved plan under RCW 43.70.510 and chapter 246-50 WAC shall consist of:

(i) For initial approval all documents required in WAC 246-50-030;

(ii) For modification of an approved plan all documents required in WAC 246-50-035(1);

(iii) For alternative programs all documents required in WAC 246-50-040; and

(iv) Any correspondence between the applicant and the program, all documents relied on by the program in proposing to deny the request, and such other documents as the applicant or the department may wish to include in the preliminary record.

(3) The preliminary record with respect to compliance with prior department orders shall consist of:

(a) The official department file of the proceeding in which the order was issued;

(b) All matters submitted by the person to whom the order is directed purporting to demonstrate compliance with the order;

(c) All documents relied on by the department in asserting non-compliance; and

(d) All correspondence between the department and the person to whom the order is directed respecting compliance.

(4) The preliminary record with respect to matters submitted to a brief adjudicative proceeding under WAC 246-10-501(2) shall be as agreed by the parties.

(5) For the purposes of this section, "decision document" shall mean one or more documents that provide notice to the affected party of the department's action, and that contain(s) the information provided by an initiating document.

[Statutory Authority: RCW 43.70.040, 34.05.413, 34.05.410, 18.130.050, and 2019 c 148, 2020 c 20. WSR 20-24-047, § 246-10-502, filed 11/23/20, effective 1/1/21. Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-049, § 246-10-502, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-10-502,

filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-502, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-502, filed 6/3/93, effective 7/4/93.]

OTS-3432.2

AMENDATORY SECTION (Amending WSR 07-14-149, filed 7/5/07, effective 8/5/07)

WAC 246-203-121 Disposal of dead animals. (1) **Definitions.** For the purpose of this regulation the following definitions apply:

(a) "Burial" means completely covering with soil in a manner and location not requiring a permit for a landfill under chapter ~~((70.95))~~ 70A.205 RCW ~~((, Solid waste management Reduction and recycling))~~.

(b) "Composting" means a process of controlled aerobic decomposition in compliance with chapter ~~((70.95))~~ 70A.205 RCW ~~((, Solid waste management Reduction and recycling))~~.

(c) "Dead animal" means the carcass or tissue from an animal, large or small, except part of an animal used for food or other beneficial purpose in accordance with federal, state, and local laws and regulations. "Dead animal" does not mean a fish or other primarily aquatic animal.

(d) "Incineration" means controlled and monitored combustion for the purposes of volume reduction and pathogen destruction in an enclosed device approved by the department of ecology or the local air pollution control authority under chapters ~~((70.94 RCW, Washington Clean Air Act, and chapter 70.95 RCW, Solid waste management Reduction and recycling))~~ 70A.15 and 70A.205 RCW.

(e) "Landfilling" means a process of disposal at a permitted facility where solid waste is permanently placed in or on land in compliance with rules adopted by the department of ecology under chapter ~~((70.95))~~ 70A.205 RCW ~~((, Solid waste management Reduction and recycling))~~.

(f) "Livestock" means horses, mules, donkeys, cattle, bison, sheep, goats, swine, rabbits, llamas, alpacas, ratites, poultry, waterfowl, game birds, or other species according to RCW 16.36.005.

(g) "Natural decomposition" means natural decay on the surface of the ground without cover material.

(h) "Rendering" means heat processing according to requirements under chapter 16.68 RCW, Disposal of dead animals.

(2) **Disposal methods.**

(a) Within ~~((seventy-two))~~ 72 hours after death or discovery, the owner of a dead animal or, if the owner of the animal cannot be identified, the owner of the property on which the animal is found must properly dispose of the dead animal. A dead animal must be covered or otherwise removed from public view immediately upon discovery by the person responsible for disposing of the dead animal.

(b) The person responsible for disposal of a dead animal must dispose of it in a manner so as not to become a public or common nuisance or cause pollution of surface or groundwater.

(c) The person responsible for disposal of a dead animal must dispose of it by burial, landfilling, incineration, composting, ren-

dering, or another method approved by the local health officer (such as natural decomposition) that is not otherwise prohibited by federal, state, or local law or regulation.

(d) A person disposing of a dead animal by burial must place it so that every part is covered by at least three feet of soil; at a location not less than (~~one hundred~~) 100 feet from any well, spring, stream or other surface waters; not in a low-lying area subject to seasonal flooding or within a (~~one hundred-year~~) 100-year flood plain; and not in a manner likely to contaminate groundwater.

(e) A person disposing of a dead animal must not bury or compost it within the sanitary control area of a public drinking water supply source as designated under chapter 246-290 WAC, Public water supplies, or chapter 246-291 WAC, Group B public water systems.

(f) The local health officer may specify the method of disposal for a dead animal if:

(i) The animal died with a communicable disease transmissible to humans; or

(ii) The local health officer considers a public health emergency to exist.

(g) The provisions of RCW 16.36.092 and chapter 16-25 WAC supersede the provisions of this regulation for the disposal of a livestock animal that has died because of disease or unknown cause.

[Statutory Authority: RCW 43.20.050(2). WSR 07-14-149, § 246-203-121, filed 7/5/07, effective 8/5/07.]

OTS-3433.1

AMENDATORY SECTION (Amending WSR 15-09-108, filed 4/20/15, effective 5/21/15)

WAC 246-205-010 Definitions. For the purposes of this chapter, the following words and phrases shall have the following meanings unless the content clearly indicates otherwise.

(1) "Authorized contractor" means any person or persons:

- Registered under chapter 18.27 RCW; and
- Certified by the department to decontaminate, demolish, or dispose of contaminated property as required by chapter 64.44 RCW and this chapter.

(2) "Basic course" means a training course which has been sponsored or approved by the department for workers and supervisors who perform or supervise decontamination on illegal drug manufacturing or storage sites.

(3) "Certificate" means a department issued written approval under this chapter.

(4) "Certified" means a person who has department issued written approval under this chapter.

(5) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated, but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."

(6) "Decontamination" means the process of reducing levels of known contaminants to the lowest practical level using currently available methods and processes.

(7) "Department" means the Washington state department of health.

(8) "Disposal of contaminated property" means the disposition of contaminated property under the provisions of chapter ((70.105)) 70A.300 RCW.

(9) "Hazardous chemicals" means the following substances used in the manufacture of illegal drugs:

- Hazardous substances as defined in RCW ((70.105D.020))

70A.305.020; and

- Precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the pharmacy quality assurance commission, has determined present an immediate or long-term health hazard to humans.

(10) "Illegal drug manufacturing or storage site" means any property where a person illegally manufactures or stores a controlled substance or a law enforcement agency or the property owner believes a person illegally manufactured or stored a controlled substance.

(11) "Initial site assessment" means the first evaluation of a property to determine the nature and extent of observable damage and contamination.

(12) "List of contaminated properties" means a list of properties contaminated by illegal drug manufacturing or the storage of hazardous chemicals.

(13) "Local department" means the jurisdictional local health department or district.

(14) "Local health officer" means a health officer or authorized representative as defined under chapters 70.05, 70.08, and 70.46 RCW.

(15) "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or other entity.

(16) "Posting" means attaching a written or printed announcement conspicuously on property which may be, or is determined to be, contaminated by illegal drug manufacturing or the storage of a hazardous chemical.

(17) "Property" means any site, lot, parcel of land, structure, or part of a structure involved in the illegal manufacture of a drug or storage of a hazardous chemical including, but not limited to:

- Single-family residences;
- Units or multiplexes;
- Condominiums;
- Apartment buildings;
- Motels and hotels;
- Boats;
- Motor vehicles;
- Trailers;
- Manufactured housing;
- Any ship, booth, or garden; or
- Any site, lot, parcel of land, structure, or part of a structure that may be contaminated by previous use.

(18) "Property owner" means a person with a lawful right of possession of the property by reason of obtaining it by purchase, exchange, gift, lease, inheritance, or legal action.

(19) "Refresher course" means a department sponsored or approved biennial training course for decontamination workers and supervisors. An approved refresher course:

- Reviews the subjects taught in the initial training course; and
- Includes updated information on emerging decontamination technology.

(20) "Storage site" means any property used for the storage of hazardous chemicals or illegally manufactured controlled substances.

(21) "Supervisor" means a person certified by the department and employed by an authorized contractor who is on site during the decontamination of an illegal drug manufacturing or storage site and who is responsible for the activities performed.

(22) "Warning" means a sign posted by the local health officer conspicuously on the site of an illegal drug manufacturing or storage site informing potential occupants that hazardous chemicals may exist on, or have been removed from, the premises and that entry is unsafe.

(23) "Worker" means a person certified by the department and employed by an authorized contractor who performs decontamination of an illegal drug manufacturing or storage site.

[Statutory Authority: 2013 c 19 and RCW 64.44.070. WSR 15-09-108, § 246-205-010, filed 4/20/15, effective 5/21/15. Statutory Authority: RCW 64.44.070. WSR 03-02-022, § 246-205-010, filed 12/23/02, effective 1/23/03. Statutory Authority: RCW 64.40.070 [64.44.070] and chapter 64.44 RCW. WSR 92-10-027 (Order 268B), § 246-205-010, filed 4/29/92, effective 5/30/92. Statutory Authority: RCW 64.44.060 and 64.44.070. WSR 92-02-017 (Order 223SB), § 246-205-010, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 64.44.060 and chapter 64.44 RCW. WSR 91-04-007 (Order 125SB), § 246-205-010, filed 1/24/91, effective 4/1/91.]

AMENDATORY SECTION (Amending WSR 03-02-022, filed 12/23/02, effective 1/23/03)

WAC 246-205-111 Performance standards. Authorized contractors, including workers and supervisors, working at a decontamination site shall, at a minimum:

- (1) Perform all decontamination work only with department certified workers and supervisors;
- (2) File a work plan with and obtain approval from the local health department;
- (3) Perform work in accordance with the approved work plan;
- (4) Station on site a contractor-employed certified supervisor to oversee the activities performed;
- (5) Perform work meeting applicable requirements of state and local building codes;
- (6) Comply with applicable Federal Occupational Safety and Health Act, Public Law 91-596, 84 stat. 1590; and Washington Industrial Safety and Health Act regulations and requirements, chapter 49.17 RCW;
- (7) Comply with applicable requirements of chapter (~~70.105~~) 70A.300 RCW, Hazardous waste management; and chapter 173-303 WAC, Dangerous waste regulations;
- (8) Comply with applicable requirements of department of ecology and Environmental Protection Agency regulations;
- (9) Comply with applicable contractor regulations;
- (10) Notify the state and local jurisdictional health department of all work performed within (~~ten~~) 10 days after completion of the project;

- (11) Comply with all other applicable laws and regulations; and
- (12) Comply with this chapter.

[Statutory Authority: RCW 64.44.070. WSR 03-02-022, § 246-205-111, filed 12/23/02, effective 1/23/03.]

OTS-3434.1

AMENDATORY SECTION (Amending WSR 14-01-077, filed 12/16/13, effective 1/16/14)

WAC 246-220-001 Authority. Rules set forth herein are adopted pursuant to the provisions of chapter ((70.98)) 70A.388 RCW.

[Statutory Authority: RCW 70.98.050. WSR 14-01-077, § 246-220-001, filed 12/16/13, effective 1/16/14. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-220-001, filed 12/27/90, effective 1/31/91; Order 1095, § 402-12-010, filed 2/6/76; Order 1, § 402-12-010, filed 1/8/69; Rules (part), filed 10/26/66.]

AMENDATORY SECTION (Amending WSR 16-13-054, filed 6/10/16, effective 7/11/16)

WAC 246-220-010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout chapters 246-220 through 246-254 WAC unless the context clearly indicates otherwise. Additional definitions used only in a certain chapter are included in that chapter.

(1) "**Absorbed dose**" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) "**Accelerator produced material**" means any material made radioactive by exposing it in a particle accelerator.

(3) "**Act**" means the Atomic Energy Act of 1954, including any amendments thereto.

(4) "**Activity**" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

(5) "**Adult**" means an individual ((eighteen)) 18 or more years of age.

(6) "**Agreement state**" means any state with which the Atomic Energy Commission or the NRC has entered into an effective agreement under subsection 274b of the act. Nonagreement state means any other state.

(7) "**Airborne radioactive material**" means any radioactive material dispersed in the air in the form of particulates, dusts, fumes, mists, vapors, or gases.

(8) "**Airborne radioactivity area**" means a room, enclosure, or operating area in which airborne radioactive material exists in concentrations (a) in excess of the derived air concentration (DAC) specified in WAC 246-221-290, Appendix A, or (b) to the degree that an individual present in the area without respiratory protective equipment

could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or twelve DAC-hours.

(9) "**Air purifying respirator**" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(10) "**ALARA**" (as low as reasonably achievable or as low as is reasonably achievable) means making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the state of technology, the economics of improvements in relation to the benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to the utilization of nuclear energy and licensed materials in the public interest.

(11) "**Alert**" means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by off-site response organizations to protect persons off-site.

(12) "**ALI (annual limit on intake)**" means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in WAC 246-221-290.

(13) "**APF (assigned protection factor)**" means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(14) "**Atmosphere-supplying respirator**" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes SARs and SCBA units.

(15) "**Background radiation**" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the department.

(16) "**Bq (becquerel)**" means the SI unit of activity. One becquerel is equal to 1 disintegration or transformation per second (s^{-1}).

(17) "**Bioassay**" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

(18) "**By-product material**" means:

(a) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "by-product material" within this definition;

(c) (i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that:

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

(d) Any discrete source of naturally occurring radioactive material, other than source material, that:

(i) The NRC, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines what would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

(ii) Before, on, or after August 8, 2005, is extracted or converted after extraction for use for in a commercial, medical, or research activity.

(19) "**Calendar quarter**" means at least (~~twelve~~) 12 but no more than (~~fourteen~~) 14 consecutive weeks. The first calendar quarter of each year begins in January and subsequent calendar quarters shall be arranged so that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. A licensee or registrant may not change the method of determining calendar quarters for purposes of these rules.

(20) "**Calibration**" means the determination of (a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or (b) the strength of a source of radiation relative to a standard.

(21) "**C.F.R.**" means Code of Federal Regulations.

(22) "**Class**" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: For Class D, Days, of less than (~~ten~~) 10 days, for Class W, Weeks, from (~~ten to one hundred~~) 10 to 100 days, and for Class Y, Years, of greater than (~~one hundred~~) 100 days. For purposes of these rules, "lung class" and "inhalation class" are equivalent terms. For "class of waste" see WAC 246-249-040.

(23) "**Collective dose**" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(24) "**Commencement of construction**" means taking any action defined as construction or any other activity at the site of a facility subject to the regulations in this chapter that has a reasonable nexus to radiological health and safety.

(25) **"Committed dose equivalent"** ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the (~~fifty-year~~) 50-year period following the intake.

(26) **"Committed effective dose equivalent"** ($H_{E,50}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = \sum w_{T,H_{T,50}}$).

(27) **"Consortium"** means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a federal facility or a medical facility.

(28) **"Constraint"** or dose constraint means a value above which specified licensee actions are required.

(29) **"Construction"** means the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the requirements in chapters 246-220 through 246-254 WAC that are related to radiological safety or security. The term construction does not include:

(a) Changes for temporary use of the land for public recreational purposes;

(b) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(c) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(d) Erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials;

(e) Excavation;

(f) Erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(g) Building of service facilities (e.g., paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(h) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final in-place location at the facility; or

(i) Taking any other action that has no reasonable nexus to radiological health and safety.

(30) **"Controlled area."** See "Restricted area."

(31) **"Curie"** means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} transformations per second (tps).

(32) **"Declared pregnant woman"** means a woman who has voluntarily informed the licensee or registrant, in writing, of her pregnancy, and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

(33) **"Deep dose equivalent"** (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm^2).

(34) **"Demand respirator"** means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(35) **"Department"** means the Washington state department of health, which has been designated as the state radiation control agency under chapter (~~70.98~~) 70A.388 RCW.

(36) **"Depleted uranium"** means the source material uranium in which the isotope Uranium-235 is less than 0.711 percent by weight of the total uranium present. Depleted uranium does not include special nuclear material.

(37) **"Derived air concentration"** (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of (~~two thousand~~) 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for (~~two thousand~~) 2,000 hours in a year. DAC values are given in WAC 246-221-290.

(38) **"DAC-hour (derived air concentration-hour)"** means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take (~~two thousand~~) 2,000 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

(39) **"Discrete source"** means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical or research activities.

(40) **"Disposable respirator"** means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

(41) **"Dose"** is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

(42) **"Dose commitment"** means the total radiation dose to a part of the body that will result from retention in the body of radioactive material. For purposes of estimating the dose commitment, it is assumed that from the time of intake the period of exposure to retained material will not exceed (~~fifty~~) 50 years.

(43) **"Dose equivalent"** (H_T) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

(44) **"Dose limits"** means the permissible upper bounds of radiation doses established in accordance with these rules. For purposes of these rules, "limits" is an equivalent term.

(45) **"Dosimetry processor"** means a person that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(46) **"dpm"** means disintegrations per minute. See also "curie."

(47) **"Effective dose equivalent"** (H_E) means the sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \sum w_T H_T$).

(48) **"Embryo/fetus"** means the developing human organism from conception until the time of birth.

(49) **"Entrance or access point"** means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, without respect to their intended use.

(50) **"Exposure"** means (a) being exposed to ionizing radiation or to radioactive material, or (b) the quotient of dQ by dm where " dQ " is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass " dm " are completely stopped in air. The special unit of exposure is the roentgen (R) and the SI equivalent is the coulomb per kilogram (c/kg). One roentgen is equal to 2.58×10^{-4} coulomb per kilogram of air.

(51) **"Exposure rate"** means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

(52) **"External dose"** means that portion of the dose equivalent received from any source of radiation outside the body.

(53) **"Extremity"** means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

(54) **"Filtering facepiece"** (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(55) **"Fit factor"** means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(56) **"Fit test"** means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(57) **"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities"** means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(58) **"Generally applicable environmental radiation standards"** means standards issued by the United States Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(59) **"Gray"** (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule/kilogram (100 rad).

- (60) "**Healing arts**" means the disciplines of medicine, dentistry, osteopathy, chiropractic, podiatry, and veterinary medicine.
- (61) "**Helmet**" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.
- (62) "**High radiation area**" means any area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in one hour at 30 centimeters from any source of radiation or 30 centimeters from any surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic X-ray systems are used for healing arts purposes are not considered high radiation areas.
- (63) "**Hood**" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.
- (64) "**Human use**" means the intentional internal or external administration of radiation or radioactive material to human beings.
- (65) "**Immediate**" or "**immediately**" means as soon as possible but no later than four hours after the initiating condition.
- (66) "**IND**" means investigatory new drug for which an exemption has been claimed under the United States Food, Drug and Cosmetic Act (Title 21 C.F.R.).
- (67) "**Individual**" means any human being.
- (68) "**Individual monitoring**" means the assessment of:
- (a) Dose equivalent (i) by the use of individual monitoring devices or (ii) by the use of survey data; or
 - (b) Committed effective dose equivalent (i) by bioassay or (ii) by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours.
- (69) "**Individual monitoring devices**" (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose equivalent e.g., as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.
- (70) "**Inspection**" means an official examination or observation by the department including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions of the department.
- (71) "**Interlock**" means a device arranged or connected so that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.
- (72) "**Internal dose**" means that portion of the dose equivalent received from radioactive material taken into the body.
- (73) "**Irretrievable source**" means any sealed source containing licensed material which is pulled off or not connected to the wireline downhole and for which all reasonable effort at recovery, as determined by the department, has been expended.
- (74) "**LDE (lens dose equivalent)**" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeters (300 mg/cm²).
- (75) "**License**" means a license issued by the department.
- (76) "**Licensed material**" means radioactive material received, possessed, used, transferred, or disposed under a general or specific license issued by the department.
- (77) "**Licensee**" means any person who is licensed by the department under chapter (~~70.98~~) 70A.388 RCW.

- (78) **"Loose-fitting facepiece"** means a respiratory inlet covering that is designed to form a partial seal with the face.
- (79) **"Lost or missing licensed material"** means licensed material whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.
- (80) **"Member of the public"** means an individual except when the individual is receiving an occupational dose.
- (81) **"Minor"** means an individual less than (~~eighteen~~) 18 years of age.
- (82) **"Monitoring"** means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.
- (83) **"NARM"** means any naturally occurring or accelerator-produced radioactive material. It does not include by-product, source, or special nuclear material.
- (84) **"Nationally tracked source"** means a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in WAC 246-221-236. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, sub-assembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.
- (85) **"Natural radioactivity"** means radioactivity of naturally occurring nuclides.
- (86) **"NDA"** means a new drug application which has been submitted to the United States Food and Drug Administration.
- (87) **"Negative pressure respirator"** (tight-fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.
- (88) **"Nonstochastic effect"** means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, a "deterministic effect" is an equivalent term.
- (89) **"NRC"** means the U.S. Nuclear Regulatory Commission.
- (90) **"Occupational dose"** means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose does not include dose received: From background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under chapter 246-240 WAC, from voluntary participation in medical research programs, or as a member of the public.

- (91) "**Ore refineries**" means all processors of a radioactive material ore.
- (92) "**Particle accelerator**" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this definition, "accelerator" is an equivalent term.
- (93) "**Permittee**" means a person who has applied for, and received, a valid site use permit for use of the low-level waste disposal facility at Hanford, Washington.
- (94) "**Person**" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, and any legal successor, representative, agent or agency of the foregoing.
- (95) "**Personal supervision**" means supervision where the supervisor is physically present at the facility and in sufficient proximity that contact can be maintained and immediate assistance given as required.
- (96) "**Personnel monitoring equipment.**" See individual monitoring devices.
- (97) "**PET**" means positron emission tomography.
- (98) "**Pharmacist**" means an individual licensed by this state to compound and dispense drugs, and poisons.
- (99) "**Physician**" means a medical doctor or doctor of osteopathy licensed by this state to prescribe and dispense drugs in the practice of medicine.
- (100) "**Planned special exposure**" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.
- (101) "**Positive pressure respirator**" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.
- (102) "**PAPR (powered air-purifying respirator)**" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.
- (103) "**Practitioner**" means an individual licensed by the state for the practice of a healing art (i.e., physician, dentist, podiatrist, chiropractor, etc.).
- (104) "**Pressure demand respirator**" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.
- (105) "**Public dose**" means the dose received by a member of the public from exposure to sources of radiation under the licensee's or registrant's control or to radiation or radioactive material released by the licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under chapter 246-240 WAC, or from voluntary participation in medical research programs.
- (106) "**Qualified expert**" means an individual who has demonstrated to the satisfaction of the department the knowledge, training, and experience to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs. The department reserves the right to recognize the qualifications of an individual in specific areas of radiation protection.

(107) "QLFT (qualitative fit test)" means a pass/fail fit test to assess the adequacy of respirator fit which relies on the individual's response to the test agent.

(108) "Quality factor (Q)" means the modifying factor, listed in Tables I and II, that is used to derive dose equivalent from absorbed dose.

TABLE I
QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

TYPE OF RADIATION	Quality Factor (Q)	Absorbed Dose Equal to A Unit Dose Equivalent ^a
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

^a Absorbed dose in rad equal to 1 rem or the absorbed dose in gray equal to 1 Sv.

If it is more convenient to measure the neutron fluence rate rather than to determine the neutron dose equivalent rate in sievert per hour or rem per hour as required for Table I, then 0.01 Sv (1 rem) of neutron radiation of unknown energies may, for purposes of these rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table II to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE II
MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

Neutron Energy (MeV)	Quality Factor ^a (Q)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² Sv ⁻¹)
(thermal) 2.5 x 10 ⁻⁸	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻⁷	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻⁶	2	810 x 10 ⁶	810 x 10 ⁸
1 x 10 ⁻⁵	2	810 x 10 ⁶	810 x 10 ⁸
1 x 10 ⁻⁴	2	840 x 10 ⁶	840 x 10 ⁸
1 x 10 ⁻³	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻²	2.5	1010 x 10 ⁶	1010 x 10 ⁸
1 x 10 ⁻¹	7.5	170 x 10 ⁶	170 x 10 ⁸
5 x 10 ⁻¹	11	39 x 10 ⁶	39 x 10 ⁸
1	11	27 x 10 ⁶	27 x 10 ⁸
2.5	9	29 x 10 ⁶	29 x 10 ⁸
5	8	23 x 10 ⁶	23 x 10 ⁸
7	7	24 x 10 ⁶	24 x 10 ⁸
10	6.5	24 x 10 ⁶	24 x 10 ⁸
14	7.5	17 x 10 ⁶	17 x 10 ⁸
20	8	16 x 10 ⁶	16 x 10 ⁸

Neutron Energy (MeV)	Quality Factor ^a (Q)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² Sv ⁻¹)
40	7	14 x 10 ⁶	14 x 10 ⁸
60	5.5	16 x 10 ⁶	16 x 10 ⁸
1 x 10 ²	4	20 x 10 ⁶	20 x 10 ⁸
2 x 10 ²	3.5	19 x 10 ⁶	19 x 10 ⁸
3 x 10 ²	3.5	16 x 10 ⁶	16 x 10 ⁸
4 x 10 ²	3.5	14 x 10 ⁶	14 x 10 ⁸

^a Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-cm diameter cylinder tissue-equivalent phantom.

^b Monoenergetic neutrons incident normally on a 30-cm diameter cylinder tissue-equivalent phantom.

(109) **"QNFT (quantitative fit test)"** means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(110) **"Quarter"** means a period of time equal to one-fourth of the year observed by the licensee, approximately (~~thirteen~~) 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(111) **"Rad"** means the special unit of absorbed dose. One rad equals one-hundredth of a joule per kilogram of material; for example, if tissue is the material of interest, then 1 rad equals 100 ergs per gram of tissue. One rad is equal to an absorbed dose of 100 erg/gram or 0.01 joule/kilogram (0.01 gray).

(112) **"Radiation"** means alpha particles, beta particles, gamma rays, X-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these rules: Radiation does not include magnetic fields or nonionizing radiation, such as radiowaves or microwaves, visible, infrared, or ultraviolet light; and ionizing radiation is an equivalent term.

(113) **"Radiation area"** means any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at (~~thirty~~) 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

(114) **"Radiation machine"** means any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

(115) **"Radiation safety officer"** means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned that responsibility by the licensee or registrant.

(116) **"Radiation source."** See "Source of radiation."

(117) **"Radioactive material"** means any material (solid, liquid, or gas) which emits radiation spontaneously.

(118) **"Radioactive waste"** means any radioactive material which is no longer of use and intended for disposal or treatment for the purposes of disposal.

(119) **"Radioactivity"** means the transformation of unstable atomic nuclei by the emission of radiation.

(120) **"Reference man"** means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public

health workers to standardize results of experiments and to relate biological insult to a common base.

(121) "**Registrable item**" means any radiation-producing machine except those exempted by RCW ((70.98.180)) 70A.388.200 or exempted by the department under the authority of RCW ((70.98.080)) 70A.388.050.

(122) "**Registrant**" means any person who is registered by the department or is legally obligated to register with the department in accordance with these rules and the act.

(123) "**Registration**" means registration with the department in accordance with the rules adopted by the department.

(124) "**Regulations of the United States Department of Transportation**" means the regulations in 49 C.F.R. Parts 170-189, 14 C.F.R. Part 103, and 46 C.F.R. Part 146.

(125) "**Rem**" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 Sv).

(126) "**Research and development**" means: (a) Theoretical analysis, exploration, or experimentation; or (b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

(127) "**Respiratory protective equipment**" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

(128) "**Restricted area**" means any area to which access is limited by the licensee or registrant for purposes of protecting individuals against undue risks from exposure to radiation and radioactive material. "Restricted area" does not include any areas used for residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

(129) "**Roentgen**" (R) means the special unit of exposure. One roentgen equals 2.58×10^{-4} coulombs/kilogram of air.

(130) "**Sanitary sewerage**" means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

(131) "**Sealed source**" means any radioactive material that is encased in a capsule designed to prevent leakage or the escape of the radioactive material.

(132) "**SEPA**" means the State Environmental Policy Act under chapter 43.21C RCW.

(133) "**SCBA (self-contained breathing apparatus)**" means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(134) "**Shallow dose equivalent**" (H_s), which applies to the external exposure of the skin of the whole body or the skin of an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm^2).

(135) "**SI**" means an abbreviation of the International System of Units.

(136) "**Sievert**" means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to

the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

(137) **"Site area emergency"** means events which may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by off-site response organizations to protect persons off-site.

(138) **"Site boundary"** means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

(139) **"Source container"** means a device in which radioactive material is transported or stored.

(140) **"Source material"** means: (a) Uranium or thorium, or any combination thereof, in any physical or chemical form, or (b) ores which contain by weight one-twentieth of one percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(141) **"Source material milling"** means the extraction or concentration of uranium or thorium from any ore processing primarily for its source material content.

(142) **"Source of radiation"** means any radioactive material, or any device or equipment emitting or capable of producing ionizing radiation.

(143) **"Special nuclear material"** means:

(a) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC, under the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) Any material artificially enriched in any of the foregoing, but does not include source material.

(144) **"Special nuclear material in quantities not sufficient to form a critical mass"** means uranium enriched in the isotope U-235 in quantities not exceeding (~~three hundred fifty~~) 350 grams of contained U-235; uranium-233 in quantities not exceeding (~~two hundred~~) 200 grams; plutonium in quantities not exceeding (~~two hundred~~) 200 grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of the ratios for all of the kinds of special nuclear material in combination shall not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\begin{array}{rcl}
 \frac{175 \text{ (grams contained U-235)}}{350} & + & \\
 \frac{50 \text{ (grams U-233)}}{200} & + & \\
 \frac{50 \text{ (grams Pu)}}{200} & < 1 &
 \end{array}$$

(145) **"Stochastic effect"** means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules, probabilistic effect is an equivalent term.

(146) "**SAR (supplied-air respirator)**" or "**airline respirator**" means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(147) "**Survey**" means an evaluation of the radiological conditions and potential hazards incident to the production, use, release, disposal, or presence of sources of radiation. When appropriate, the evaluation includes, but is not limited to, tests, physical examinations, calculations and measurements of levels of radiation or concentration of radioactive material present.

(148) "**Test**" means (a) the process of verifying compliance with an applicable rule, or (b) a method for determining the characteristics or condition of sources of radiation or components thereof.

(149) "**These rules**" mean all parts of the rules for radiation protection of the state of Washington.

(150) "**Tight-fitting facepiece**" means a respiratory inlet covering that forms a complete seal with the face.

(151) "**TEDE (total effective dose equivalent)**" means the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

(152) "**TODE (total organ dose equivalent)**" means the sum of the deep dose equivalent and the committed dose equivalent to the organ or tissue receiving the highest dose.

(153) "**United States Department of Energy**" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the department exercises functions formerly vested in the United States Atomic Energy Commission, its chairman, members, officers and components and transferred to the United States Energy Research and Development Administration and to the administrator thereof under sections 104 (b), (c) and (d) of the Energy Reorganization Act of 1974 (Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 U.S.C. 5814 effective January 19, 1975) and retransferred to the Secretary of Energy under section 301(a) of the Department of Energy Organization Act (Public Law 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

(154) "**Unrefined and unprocessed ore**" means ore in its natural form prior to any processing, such as grinding, roasting or beneficiating, or refining. Processing does not include sieving or encapsulation of ore, or preparation of samples for laboratory analysis.

(155) "**Unrestricted area**" (uncontrolled area) means any area which is not a restricted area. Areas where the external dose exceeds 2 mrem in any one hour or where the public dose, taking into account occupancy factors, will exceed 100 mrem total effective dose equivalent in any one year must be restricted.

(156) "**User seal check**" (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(157) "**Very high radiation area**" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 5 Gy (500 rad) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

(158) "**Waste**" means those low-level radioactive wastes containing source, special nuclear or by-product material that are acceptable for disposal in a land disposal facility. For purposes of this definition, low-level radioactive waste means radioactive waste not classified as

high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in subsection (17) (b), (c), and (d) of the definition of by-product material in this section.

(159) **"Waste handling licensees"** mean persons licensed to receive and store radioactive wastes prior to disposal or persons licensed to dispose of radioactive waste.

(160) **"Week"** means seven consecutive days starting on Sunday.

(161) **"Weighting factor"** w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 ^a
Whole Body	1.00 ^b

^a 0.30 results from 0.06 for each of 5 "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

^b For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T=1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

(162) **"Whole body"** means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

(163) **"Worker"** means an individual engaged in activities under a license or registration issued by the department and controlled by a licensee or registrant but does not include the licensee or registrant. Where the licensee or registrant is an individual rather than one of the other legal entities defined under "person," the radiation exposure limits for the worker also apply to the individual who is the licensee or registrant. If students of age (~~(eighteen)~~) 18 years or older are subjected routinely to work involving radiation, then the students are considered to be workers. Individuals of less than (~~(eighteen)~~) 18 years of age shall meet the requirements of WAC 246-221-050.

(164) **"WL (working level)"** means any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are - For radon-222: Polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: Polonium-216, lead-212, bismuth-212, and polonium-212.

(165) **"WLM (working level month)"** means an exposure to one working level for (~~(one hundred seventy hours - Two thousand)~~) 170 hours - 2,000 working hours per year divided by (~~(twelve)~~) 12 months per year is approximately equal to (~~(one hundred seventy)~~) 170 hours per month.

(166) **"Year"** means the period of time beginning in January used to determine compliance with the provisions of these rules. The licen-

see or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 16-13-054, § 246-220-010, filed 6/10/16, effective 7/11/16. Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-220-010, filed 2/23/15, effective 3/26/15; WSR 14-01-077, § 246-220-010, filed 12/16/13, effective 1/16/14. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 11-03-020, § 246-220-010, filed 1/7/11, effective 2/7/11; WSR 09-06-003, § 246-220-010, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-220-010, filed 2/6/06, effective 3/9/06; WSR 04-23-093, § 246-220-010, filed 11/17/04, effective 12/18/04; WSR 01-05-110, § 246-220-010, filed 2/21/01, effective 3/24/01; WSR 00-08-013, § 246-220-010, filed 3/24/00, effective 4/24/00; WSR 99-15-105, § 246-220-010, filed 7/21/99, effective 8/21/99; WSR 98-13-037, § 246-220-010, filed 6/8/98, effective 7/9/98; WSR 95-01-108, § 246-220-010, filed 12/21/94, effective 1/21/95; WSR 94-01-073, § 246-220-010, filed 12/9/93, effective 1/9/94. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 91-15-112 (Order 184), § 246-220-010, filed 7/24/91, effective 8/24/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-220-010, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-12-050, filed 12/11/86; WSR 83-19-050 (Order 2026), § 402-12-050, filed 9/16/83. Statutory Authority: Chapter 70.121 RCW. WSR 81-16-031 (Order 1683), § 402-12-050, filed 7/28/81. Statutory Authority: RCW 70.98.050. WSR 81-01-011 (Order 1570), § 402-12-050, filed 12/8/80; Order 1095, § 402-12-050, filed 2/6/76; Order 708, § 402-12-050, filed 8/24/72; Order 1, § 402-12-050, filed 7/2/71; Order 1, § 402-12-050, filed 1/8/69; Rules (part), filed 10/26/66.]

AMENDATORY SECTION (Amending WSR 91-02-049, filed 12/27/90, effective 1/31/91)

WAC 246-220-070 Impounding. Sources of radiation shall be subject to impoundment pursuant to RCW ((70.98.160)) 70A.388.180.

[Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-220-070, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-12-140, filed 12/11/86; Order 1095, § 402-12-140, filed 2/6/76; Order 1, § 402-12-140, filed 1/8/69; Rules (part), filed 10/26/66.]

OTS-3435.1

AMENDATORY SECTION (Amending WSR 19-05-074, filed 2/19/19, effective 3/22/19)

WAC 246-224-0001 Purpose. The purpose of this chapter is to regulate sources of ionizing radiation as required by RCW ((~~70.98.050 and 70.98.080~~)) 70A.388.040 and 70A.388.050. This chapter provides for the registration of all radiation machine facilities located in Washington state.

[Statutory Authority: RCW 43.20B.020, 43.70.110, 43.70.250, and 70.98.080. WSR 19-05-074, § 246-224-0001, filed 2/19/19, effective 3/22/19. Statutory Authority: RCW 70.98.050 and [70.98.]080. WSR 02-14-050, § 246-224-0001, filed 6/27/02, effective 7/28/02.]

OTS-3436.1

AMENDATORY SECTION (Amending WSR 08-14-074, filed 6/26/08, effective 7/27/08)

WAC 246-225A-001 Purpose and scope. This chapter establishes facility design and operation requirements for the use of dental X-ray equipment according to chapter ((~~70.98~~)) 70A.388 RCW. The scope of this chapter pertains to dental intra-oral and extra-oral radiography and establishes radiation safety requirements for patients, dental employees, and the public; and establishes optimal diagnostic image processing requirements.

[Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 08-14-074, § 246-225A-001, filed 6/26/08, effective 7/27/08.]

AMENDATORY SECTION (Amending WSR 11-19-013, filed 9/7/11, effective 10/8/11)

WAC 246-225A-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Artifact" means an undesirable optical density or blemish on a radiographic image that detracts from the diagnostic information.

(2) "Barrier" (see "protective barrier").

(3) "Beam" (see "X-ray").

(4) "Beam-limiting device," sometimes called a collimator or cone, means a device that controls the size of the X-ray field.

(5) "Cephalometric" means X-ray imaging specific to the human head and jaw.

(6) "Control panel" means the part of the X-ray system where the switches, knobs, pushbuttons, and other hardware necessary to operate the X-ray system are located.

(7) "CR (computed radiography)" means creating an X-ray image using plates consisting of a special phosphor that when exposed to radiation and then processed by a scanner, provides the information to a computer for display and manipulation.

(8) "CT (computed tomography)" means creating a cross-sectional X-ray image generated by an X-ray source and detector moving around the patient's body.

(9) "Dead-man button" means an X-ray exposure button designed so that it can only be operated by continuous pressure on the button by the operator, and when released before the preset exposure time will stop the exposure.

(10) "Department" means the department of health, which is the state radiation control agency under chapter ((70.98)) 70A.388 RCW.

(11) "Detector" means a device capable of receiving and recording an X-ray image.

(12) "Diagnostic source assembly" means the combination of the tube housing assembly and the collimator.

(13) "Direct scattered radiation" means radiation discharged in a straight line from the object being radiographed.

(14) "DR (direct digital radiography)" means creating an X-ray image by sending signals directly from a solid state detector to a computer for display and manipulation.

(15) "Exposure," as the context implies, means:

(a) The number of electrons, measured in coulombs per kilogram of air, released through the ionization of air molecules by electromagnetic radiation; or

(b) An occupational worker or patient being subjected to radiation either directly or indirectly.

(16) "Extra-oral radiography" means creating a film or digital X-ray image on an image receptor placed outside the mouth. Examples include panoramic and cephalometric X-rays.

(17) "Filter" means material, such as copper or aluminum, placed in the useful beam of the X-ray to block selected energies, and in a safelight to block light that could fog the X-ray film.

(18) "Floor plan" means a drawing of the X-ray room, along with its dimensions, identification of adjacent areas and occupiable space above and below.

(19) "Focal spot" means the area on the anode end of the X-ray tube bombarded by the electrons accelerated from the cathode and from which the useful X-ray beam begins.

(20) "Grid" means a device placed between the patient and the image receptor in extra-oral radiography that reduces scattered radiation that would decrease the quality of the image being created.

(21) "Hand-held" (see "X-ray system").

(22) "Healing arts screening" means using X-ray equipment without an order by a licensed practitioner on an individual who does not have a known or diagnosed disease or symptom to learn if the individual may have an indication of ill health.

(23) "HVL (half-value layer)" means the thickness of material that reduces the intensity of radiation to one-half of its original value.

(24) "Image receptor" means a device that captures an X-ray beam for image processing.

(25) "Intra-oral radiography" means creating a film or digital X-ray image on an image receptor placed inside the mouth.

(26) "kV (kilovolt)" means the unit used to measure electrical energy.

(27) "kVp (kilovolts peak)" means the highest possible voltage across the X-ray tube during an exposure (see also "peak tube potential").

(28) "Leakage radiation" means radiation coming from the X-ray tube, other than the useful X-ray beam.

(29) "Leakage technique factors" means the technique factors associated with the tube housing assembly that are used to measure leakage radiation. They are defined as the maximum rated peak tube potential and the maximum rated continuous tube current at the maximum peak tube potential.

(30) "Licensed practitioner" means an individual licensed to practice dentistry under chapter 18.32 RCW.

(31) "mA (milliamperere)" means the unit used to measure electrical current in an X-ray tube.

(32) "mAs (milliamperere second)" means the product of the electrical current in the X-ray tube in mA and the time of exposure in seconds.

(33) "Mobile" (see "X-ray system").

(34) "Operator" means a person working under the direction of a licensed practitioner to operate X-ray equipment and who has been properly trained according to WAC 246-225A-020.

(35) "Operatory" means a room in which dental health care procedures are performed.

(36) "Peak tube potential" means the maximum voltage in the X-ray tube during an exposure.

(37) "Portable" (see "X-ray system").

(38) "Position-indicating device" means a device on X-ray equipment that shows where the X-ray beam will be directed and establishes the distance from the X-ray tube to the patient's body. The device may or may not incorporate or serve as a beam-limiting device.

(39) "Primary beam" (see "useful beam").

(40) "Primary protective barrier" means the material placed in the useful beam, beyond the patient and image receptor, to reduce remnant primary beam exposure.

(41) "Protected area" means a space for X-ray equipment operators that is shielded so that X-ray exposures are reduced enough to meet the exposure limits of WAC 246-221-010 (Occupational dose limits for adults) and WAC 246-220-007 (Statement of philosophy). In addition, the space must have no exposure to direct scattered radiation.

(42) "Protective apron" means a garment made of radiation absorbing materials used to reduce a person's radiation exposure.

(43) "Protective barrier" means a structure made of radiation absorbing material used to reduce radiation exposure.

(44) "Quality assurance" means a program designed to produce high quality X-ray images at minimal cost and with minimal patient exposure to radiation.

(45) "Quick developer" means small-volume chemistry designed to process dental intra-oral film in less than a minute.

(46) "Radiation safety" means ways to protect patients and staff from unnecessary radiation exposure. Safety measures may include patient exposure reduction, image quality improvement, diagnostic imaging system quality assurance, radiation measurements, dose evaluations, compliance with state and federal regulations, and related issues.

(47) "Radiographic" means the production of an image created when an X-ray pattern exits an X-rayed object.

(48) "Radiography" means a way of creating a permanent film or digital image using X-rays.

(49) "Recording" means creating a permanent image, on film or in a computer, from an X-ray exposure.

(50) "Registrant" means the owner or controller of the radiation equipment who is responsible for the safe operation of the radiation equipment in accordance with this chapter and chapter ((70.98)) 70A.388 RCW.

(51) "Registration" means providing required information and continuing contact with the department by any person possessing a radiation machine in accordance with chapter 246-224 WAC, Radiation protection—Radiation machine assembly and registration.

(52) "Remnant primary beam" means the part of the useful beam that completely passes through the patient and image receptor.

(53) "Ring-detector type CT" means computed tomography performed with a fan-shaped beam that generates image slices of anatomy rather than using a cone-shaped beam creating a volumetric picture.

(54) "Safelight" means a lamp with a filter that is used in an X-ray darkroom to provide enough light to see, but not enough to fog the film.

(55) "Scattered radiation" means radiation that has changed direction, or generated other radiation as it impacts or passes through matter.

(56) "Scram button" means a large, prominently displayed button, mounted in an X-ray operator's area to allow quick termination of an X-ray exposure in case of an emergency.

(57) "Secondary protective barrier" means an object or material sufficient to reduce stray radiation to the required degree as stated in chapter 246-221 WAC (Radiation protection standards).

(58) "SID (source-to-image-receptor distance)" means the distance from the focal spot in the X-ray tube to the center of the surface of the image receptor.

(59) "Source" means the focal spot of the X-ray tube.

(60) "SSD (source-to-skin distance)" means the distance between the focal spot of the X-ray tube and the nearest point on the patient's skin where the primary beam enters.

(61) "Stationary" (see "X-ray system").

(62) "Stray radiation" means the sum of leakage and scattered radiation.

(63) "Technique chart" means a written instruction or guide that X-ray equipment operators use to determine which radiation technique factors to select for each type of radiographic examination.

(64) "Technique factors" means the X-ray system settings selected for a given radiographic examination. They are specified as the peak tube potential in kVp and either:

(a) Tube current measured in mA and exposure time in seconds or pulses; or

(b) The product of tube current and exposure time expressed in mAs.

(65) "Tube" means a glass tube that produces an X-ray when high-voltage electricity is passed between the cathode at one end and the anode at the other.

(66) "Tube housing assembly" means the X-ray tube and its housing. It includes high-voltage or filament transformers and other appropriate elements when they are contained within the tube housing.

(67) "Tube housing port" means the portion of the tube housing assembly that the X-rays pass through.

(68) "Useful beam" means the radiation that passes through the tube housing port and the opening of the beam-limiting device.

(69) "Variance" means a department-authorized alternative to a requirement of this chapter.

(70) "X-ray" means a beam of ionizing radiation produced by a machine.

(71) "X-ray control" means a device that controls how much electricity enters the X-ray high-voltage generator or the X-ray tube. It includes equipment that controls the technique factors for an exposure.

(72) "X-ray equipment" means the entire X-ray system or parts of the system.

(73) "X-ray exposure button" means the part of the X-ray system that when engaged generates the production of an X-ray.

(74) "X-ray high-voltage generator" means a device that supplies electrical energy to the X-ray tube to create an X-ray beam.

(75) "X-ray system" means all of the components of a machine used for the controlled production of X-rays. It includes minimally an X-ray high-voltage generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system, such as the image receptor, are considered integral parts of the system. Types of X-ray systems are:

(a) "Hand-held" means a self-contained X-ray system designed to be held in one or two hands to perform intra-oral radiography. Hand-held X-ray systems used on a tripod or stand are considered to be "portable" systems.

(b) "Mobile" means an X-ray system mounted on a permanent base with wheels or casters for moving the X-ray system fully assembled. It is intended to be taken from one geographical location to another or from one room to another.

(c) "Portable" means an X-ray system designed to be hand-carried, but not hand-held during use.

(d) "Stationary" means an X-ray system that is installed in a fixed location, such as bolted to a floor or wall.

(76) "X-ray tube" means any electron tube which is designed to be used primarily for the production of X-rays.

[Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 11-19-013, § 246-225A-010, filed 9/7/11, effective 10/8/11; WSR 08-14-074, § 246-225A-010, filed 6/26/08, effective 7/27/08.]

OTS-3437.1

AMENDATORY SECTION (Amending WSR 16-23-030, filed 11/8/16, effective 1/1/17)

WAC 246-226-001 Authority, purpose, and scope. The requirements of this chapter are adopted pursuant to the provisions of chapter ((70.98)) 70A.388 RCW.

This chapter establishes CT X-ray system requirements for the intentional exposure of humans to ionizing radiation for diagnostic imaging.

[Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 16-23-030, § 246-226-001, filed 11/8/16, effective 1/1/17.]

OTS-3438.1

AMENDATORY SECTION (Amending WSR 02-14-050, filed 6/27/02, effective 7/28/02)

WAC 246-229-0001 Purpose. The purpose of this chapter is to regulate certain sources of ionizing radiation as required by RCW (~~70.98.050 and 70.98.080~~) 70A.388.040 and 70A.388.050. This chapter provides for the registration and use of all particle accelerators installed and/or used in Washington state.

[Statutory Authority: RCW 70.98.050 and [70.98.]080. WSR 02-14-050, § 246-229-0001, filed 6/27/02, effective 7/28/02.]

OTS-3442.1

AMENDATORY SECTION (Amending WSR 18-15-017, filed 7/9/18, effective 8/9/18)

WAC 246-236-015 Commencement of construction. (1) Commencement of construction of a new irradiator may not occur prior to the submission to the department of both an application for a license for the irradiator and the fee required by chapter 246-254 WAC.

(2) Any activities undertaken prior to the issuance of a license are entirely at the risk of the applicant and have no bearing on the issuance of a license with respect to the requirements of chapter (~~70.98~~) 70A.388 RCW, and rules and administrative orders issued under chapters 34.05 and (~~70.98~~) 70A.388 RCW.

(3) Commencement of construction as defined in WAC 246-236-010 may include nonconstruction activities if the activity has a reasonable nexus to radiological safety and security.

[Statutory Authority: RCW 70.98.050, 70.98.110 and 58 F.R. 7728, 76 F.R. 56963, 77 F.R. 39906, 80 F.R. 54234. WSR 18-15-017, § 246-236-015, filed 7/9/18, effective 8/9/18.]

OTS-3443.1

AMENDATORY SECTION (Amending WSR 17-01-034, filed 12/12/16, effective 1/12/17)

WAC 246-252-030 Criteria related to disposition of uranium mill tailings or wastes. As used in this section, the term "by-product material" means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

As required by WAC 246-235-110(6), each applicant for a license to possess and use source material in conjunction with uranium or thorium milling, or by-product material at sites formerly associated with such milling, is required to include in a license application proposed specifications relating to the milling operation and the disposition of tailings or waste resulting from such milling activities. This section establishes criteria relating to the siting, operation, decontamination, decommissioning, and reclamation of mills and tailings or waste systems and sites at which such mills and systems are located and site and by-product material ownership. Applications must clearly demonstrate how these criteria have been addressed. The specifications shall be developed considering the expected full capacity of tailings or waste systems and the lifetime of mill operations. Where later expansions of systems or operations may be likely, the amenability of the disposal system to accommodate increased capacities without degradation in long-term stability and other performance factors shall be evaluated.

Licensees or applicants may propose alternatives to the specific requirements in these criteria. The alternative proposals may take into account local or regional conditions, including geology, topography, hydrology, and meteorology. The department may find that the proposed alternatives meet the department's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of the standards promulgated by the United States Environmental Protection Agency in 40 C.F.R. 192, Subparts D and E.

(1) Criterion 1 - In selecting among alternative tailings disposal sites or judging the adequacy of existing tailings sites, the following site features which would contribute to meeting the broad objective of permanent isolation of the tailings and associated contaminants from man and the environment for (~~one thousand~~) 1,000 years to the extent reasonably achievable, and in any case, for at least (~~two hundred~~) 200 years without ongoing active maintenance shall be considered:

- (a) Remoteness from populated areas;
- (b) Hydrogeologic and other environmental conditions conducive to continued immobilization and isolation of contaminants from groundwater sources; and
- (c) Potential for minimizing erosion, disturbance, and dispersion by natural forces over the long term.

The site selection process must be an optimization to the maximum extent reasonably achievable in terms of these features.

In the selection of disposal sites, primary emphasis shall be given to isolation of tailings or wastes, a matter having long-term impacts, as opposed to consideration only of short-term convenience or benefits, such as minimization of transportation or land acquisition

costs. While isolation of tailings will be a function of both site characteristics and engineering design, overriding consideration shall be given to siting features given the long-term nature of the tailings hazards.

Tailings shall be disposed in a manner such that no active maintenance is required to preserve the condition of the site.

(2) Criterion 2 - To avoid proliferation of small waste disposal sites, by-product material from in-situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations shall be disposed at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity and the costs and environmental impacts of transporting the wastes to a large disposal site, such off-site disposal is demonstrated to be impracticable or the advantage of on-site burial clearly outweighs the benefits of reducing the perpetual surveillance obligations.

(3) Criterion 3 - The "prime option" for disposal of tailings is placement below grade, either in mines or specially excavated pits (that is, where the need for any specially constructed retention structure is eliminated).

The evaluation of alternative sites and disposal methods performed by mill operators in support of their proposed tailings disposal program (provided in applicants' environmental reports) shall reflect serious consideration of this disposal mode. In some instances, below grade disposal may not be the most environmentally sound approach, such as might be the case if a groundwater formation is relatively close to the surface or not very well isolated by overlying soils and rock. Also, geologic and topographic conditions might make full, below grade burial impracticable; for example, near-surface bedrock could create prominent excavation costs while more suitable alternate sites may be available. Where full below grade burial is not practicable, the size of the retention structures, and the size and steepness of slopes of associated exposed embankments, shall be minimized by excavation to the maximum extent reasonably achievable or appropriate, given the geologic and hydrogeologic conditions at a site. In these cases, it must be demonstrated that an above-grade disposal program will provide reasonably equivalent isolation of the tailings from natural erosional forces.

(4) Criterion 4 - The following site and design criteria shall be adhered to whether tailings or wastes are disposed of above or below grade:

(a) Upstream rainfall catchment areas must be minimized to decrease erosion potential and the size of the probable maximum flood which could erode or wash out sections of the tailings disposal area.

(b) Topographic features shall provide good wind protection.

(c) Embankment and cover slopes shall be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long-term stability. The broad objective should be to contour final slopes to grades which are as close as possible to those which would be provided if tailings were disposed of below grade; this could, for example, lead to slopes of about (~~ten~~) 10 horizontal to one vertical (10h:1v) or less steep. In general, slopes should not be steeper than about 5h:1v. Where steeper slopes are proposed, reasons why a slope less steep than 5h:1v would be impracticable should be provided, and compensating factors and conditions which make such slopes acceptable should be identified.

(d) A fully self-sustaining vegetative cover shall be established or rock cover employed to reduce wind and water erosion to negligible levels.

Where a full vegetative cover is not likely to be self-sustaining due to climatic conditions, such as in semi-arid and arid regions, rock cover shall be employed on slopes of the impoundment system. The NRC will consider relaxing this requirement for extremely gentle slopes such as those which may exist on the top of the pile.

The following factors shall be considered in establishing the final rock cover design to avoid displacement of rock particles by human and animal traffic or by natural processes, and to preclude undercutting and piping:

(i) Shape, size, composition, gradation of rock particles (excepting bedding material, average particle size shall be at least cobble size or greater);

(ii) Rock cover thickness and zoning of particles by size; and

(iii) Steepness of underlying slopes.

(e) Individual rock fragments must be dense, sound, and resistant to abrasion, and free from defects that would tend to unduly increase their destruction by water and frost actions. Weak, friable, or laminated aggregate may not be used. Shale, rock laminated with shale, and cherts may not be used.

Rock covering of slopes may be unnecessary where top covers are very thick (on the order of ~~(ten)~~ 10 meters or greater); impoundment slopes are very gentle (on the order of 10h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; and there is negligible drainage catchment area upstream of the pile, and good wind protection as described in (a) and (b) of this subsection (Criterion 4).

(f) Impoundment surfaces shall be contoured to avoid areas of concentrated surface runoff or abrupt or sharp changes in slope gradient. In addition to rock cover on slopes, areas toward which surface runoff might be directed shall be well protected with substantial rock cover (riprap). In addition to providing for stability of the impoundment systems itself, the overall stability, erosion potential, and geomorphology of surrounding terrain shall be evaluated to assure that there are no processes, such as gully erosion, which would lead to impoundment instability.

(g) The impoundment may not be located near a capable fault that could cause a maximum credible earthquake larger than that which the impoundment could reasonably be expected to withstand. As used in this criterion, the term "capable fault" has the same meaning as defined in Section III (g) of Appendix A of 10 C.F.R. Part 100. The term "maximum credible earthquake" means that earthquake which would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(h) The impoundment, where feasible, should be designed to incorporate features which will promote deposition of suspended particles. For example, design features which promote deposition of sediment suspended in any runoff which flows into the impoundment area might be utilized; the object of such a design feature would be to enhance the thickness of cover over time.

(5) Criterion 5 - Criteria 5(a) through 5(g) and new Criterion 13 incorporate the basic groundwater protection standards imposed by the United States Environmental Protection Agency in 40 C.F.R. Part 192, Subparts D and E (48 FR 45926; October 7, 1983) which apply during op-

erations and prior to the end of closure. Groundwater monitoring to comply with these standards is required by Criterion 7.

(a) The primary groundwater protection standard is a design standard for surface impoundments used to manage uranium and thorium by-product material. Surface impoundments (except for an existing portion) must have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil, groundwater, or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil, groundwater, or surface water) during the active life of the facility, provided that impoundment closure includes removal or decontamination of all waste residues, contaminated containment system components (liners), contaminated subsoils, and structures and equipment contaminated with waste and leachate. For impoundments that will be closed with the liner material left in place, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility.

(b) The liner required by (a) of this subsection must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the wastes or leachate.

(c) The applicant or licensee will be exempted from the requirements of (a) of this subsection if the department finds, based on a demonstration by the applicant or licensee, that alternate design and operating practices, including the closure plan, together with site characteristics will prevent the migration of any hazardous constituents into groundwater or surface water at any future time. In deciding whether to grant an exemption, the department will consider:

(i) The nature and quantity of the wastes;

(ii) The proposed alternate design and operation;

(iii) The hydrogeologic setting of the facility, including the attenuation capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(iv) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(d) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave actions; rainfall; run-on; from malfunctions of level controllers, alarms, and other equipment; and human error.

(e) When dikes are used to form the surface impoundment, the dikes must be designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner

system will function without leakage during the active life of the impoundment.

(f) Uranium and thorium by-product materials must be managed to conform to the following secondary groundwater protection standard: Hazardous constituents entering the groundwater from a licensed site must not exceed the specified concentration limits in the uppermost aquifer beyond the point of compliance during the compliance period. Hazardous constituents are those constituents identified by the department pursuant to (g) of this subsection. Specified concentration limits are those limits established by the department as indicated in (j) of this subsection. The department will also establish the point of compliance and compliance period on a site specific basis through license conditions and orders. The objective in selecting the point of compliance is to provide the earliest practicable warning that the impoundment is releasing hazardous constituents to the groundwater. The point of compliance must be selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area. The department must identify hazardous constituents, establish concentration limits, set the compliance period, and adjust the point of compliance, if needed, when the detection monitoring established under criterion 7 indicates leakage of hazardous constituents from the disposal area.

(g) A constituent becomes a hazardous constituent subject to (j) of this subsection when the constituent:

(i) Is reasonably expected to be in or derived from the by-product material in the disposal area;

(ii) Has been detected in the groundwater in the uppermost aquifer; and

(iii) Is listed in WAC 246-252-050 Appendix A.

(h) The department may exclude a detected constituent from the set of hazardous constituents on a site specific basis if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to exclude constituents, the department will consider the following:

(i) Potential adverse effect on groundwater quality, considering:

(A) The physical and chemical characteristics of the waste in the licensed site, including its potential for migration;

(B) The hydrogeological characteristics of the facility and surrounding land;

(C) The quantity of groundwater and the direction of groundwater flow;

(D) The proximity and withdrawal rates of groundwater users;

(E) The current and future uses of groundwater in the area;

(F) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(G) The potential for health risks caused by human exposure to waste constituents;

(H) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(I) The persistence and permanence of the potential adverse effects.

(ii) Potential adverse effects on hydraulically connected surface water quality, considering:

(A) The volume and physical and chemical characteristics of the waste in the licensed site;

- (B) The hydrogeological characteristics of the facility and surrounding land;
- (C) The quantity and quality of groundwater, and the direction of groundwater flow;
- (D) The patterns of rainfall in the region;
- (E) The proximity of the licensed site to surface waters;
- (F) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
- (G) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;
- (H) The potential for health risks caused by human exposure to waste constituents;
- (I) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
- (J) The persistence and permanence of the potential adverse effects.
 - (i) In making any determinations under (h) and (k) of this subsection about the use of groundwater in the area around the facility, the department will consider any identification of underground sources of drinking water and exempted aquifers made by the United States Environmental Protection Agency.
 - (j) At the point of compliance, the concentration of a hazardous constituent must not exceed:
 - (i) The department approved background concentration of that constituent in the groundwater;
 - (ii) The respective value given in the table in subsection (5)(1) of this section if the constituent is listed in the table and if the background level of the constituent is below the value listed; or
 - (iii) An alternate concentration limit established by the department.
 - (k) Conceptually, background concentrations pose no incremental hazards and the drinking water limits in (j)(i) of this subsection state acceptable hazards but these two options may not be practically achievable at a specific site. Alternate concentration limits that present no significant hazard may be proposed by licensees for department consideration. Licensees must provide the basis for any proposed limits including consideration of practicable corrective actions, that limits are as low as reasonably achievable, and information on the factors the department must consider.

The department will establish a site specific alternate concentration limit for a hazardous constituent as provided in (j) of this subsection if it finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the department will apply its as low as reasonably achievable criterion in this chapter. The department will also consider the following factors:

- (i) Potential adverse effects on groundwater quality, considering:
 - (A) The physical and chemical characteristics of the waste in the licensed site including its potential for migration;
 - (B) The hydrogeological characteristics of the facility and surrounding land;
 - (C) The quantity of groundwater and the direction of groundwater flow;
 - (D) The proximity and withdrawal rates of groundwater users;

- (E) The current and future uses of groundwater in the area;
- (F) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;
- (G) The potential for health risks caused by human exposure to waste constituents;
- (H) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
- (I) The persistence and permanence of the potential adverse effects.
- (ii) Potential adverse effects on hydraulically connected surface water quality, considering:
 - (A) The volume and physical and chemical characteristics of the waste in the licensed site;
 - (B) The hydrogeological characteristics of the facility and surrounding land;
 - (C) The quantity and quality of groundwater, and the direction of groundwater flow;
 - (D) The patterns of rainfall in the region;
 - (E) The proximity of the licensed site to surface waters;
 - (F) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;
 - (G) The existing quality of surface water including other sources of contamination and the cumulative impact on surface water quality;
 - (H) The potential for health risks caused by human exposure to waste constituents;
 - (I) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and
 - (J) The persistence and permanence of the potential adverse effects.
- (1) MAXIMUM VALUES FOR GROUNDWATER PROTECTION:

Constituent or Property	Maximum Concentration
	Milligrams per liter
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1,7 -exoxy-1,4,4a,5,6,7,8,9a-octahydro-1, 4-endo-5,8-dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-Trichloro-2,2-bis(p-methoxyphenylethane)	0.1
Toxaphene (C ₁₀ H ₁₀ Cl ₆ , Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01
	Picocuries per liter
Combined radium - 226 and radium - 228	5

Constituent or Property	Maximum Concentration
	Milligrams per liter
Gross alpha - particle activity (excluding radon and uranium when producing uranium by-product material or thorium when producing thorium by-product material)	15

(m) If the groundwater protection standards established under (f) of this subsection are exceeded at a licensed site, a corrective action program must be put into operation as soon as is practicable, and in no event later than ((eighteen)) 18 months after the department finds that the standards have been exceeded. The licensee shall submit the proposed corrective action program and supporting rationale for department approval prior to putting the program into operation, unless otherwise directed by the department. The objective of the program is to return hazardous constituent concentration levels in groundwater to the concentration limits set as standards. The licensee's proposed program must address removing the hazardous constituents that have entered the groundwater at the point of compliance or treating them in place. The program must also address removing or treating in place any hazardous constituents that exceed concentration limits in groundwater between the point of compliance and the downgradient facility property boundary. The licensee shall continue corrective action measures to the extent necessary to achieve and maintain compliance with the groundwater protection standard. The department will determine when the licensee may terminate corrective action measures based on data from the groundwater monitoring program and other information that provide reasonable assurance that the groundwater protection standard will not be exceeded.

(n) In developing and conducting groundwater protection programs, applicants and licensees shall also consider the following:

(i) Installation of bottom liners (where synthetic liners are used, a leakage detection system must be installed immediately below the liner to ensure major failures are detected if they occur. This is in addition to the groundwater monitoring program conducted as provided in Criterion 7. Where clay liners are proposed or relatively thin, in-situ clay soils are to be relied upon for seepage control, tests must be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continuous exposure of clay to tailings solutions. Tests must be run for a sufficient period of time to reveal any effects if they are going to occur (in some cases deterioration has been observed to occur rather rapidly after about nine months of exposure)).

(ii) Mill process designs which provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the tailings impoundment.

(iii) Dewatering of tailings by process devices or in-situ drainage systems (at new sites, tailings must be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head of seepage, unless tests show tailings are not amenable to such a system. Where in-situ dewatering is to be conducted, the impoundment bottom must be graded to assure that the drains are at a low point. The drains must be protected by suitable filter materials to assure that drains remain free running.

The drainage system must also be adequately sized to assure good drainage).

(iv) Neutralization to promote immobilization of hazardous constituents.

(o) Where groundwater impacts are occurring at an existing site due to seepage, action must be taken to alleviate conditions that lead to excessive seepage impacts and restore groundwater quality. The specific seepage control and groundwater protection method, or combination of methods, to be used must be worked out on a site-specific basis. Technical specifications must be prepared to control installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, must be established to assure the specifications are met.

(p) In support of a tailings disposal system proposal, the applicant/operator shall supply information concerning the following:

(i) The chemical and radioactive characteristics of the waste solutions.

(ii) The characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This includes detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations must be determined. This information must be gathered from borings and field survey methods taken within the proposed impoundment area and in surrounding areas where contaminants might migrate to groundwater. The information gathered on boreholes must include both geologic and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability may not be determined on the basis of laboratory analysis of samples alone; a sufficient amount of field testing (e.g., pump tests) must be conducted to assure actual field properties are adequately understood. Testing must be conducted to allow estimating chemi-sorption attenuation properties of underlying soil and rock.

(iii) Location, extent, quality, capacity and current uses of any groundwater at and near the site.

(q) Steps must be taken during stockpiling of ore to minimize penetration of radionuclides into underlying soils; suitable methods include lining or compaction of ore storage areas.

(6) Criterion 6 - (a) In disposing of waste by-product material, licensees shall place an earthen cover (or approved alternative) over tailings or wastes at the end of milling operations and shall close the waste disposal area in accordance with a design¹ which provides reasonable assurance of control of radiological hazards to:

(i) Be effective for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years; and

(ii) Limit releases of Radon-222 from uranium by-product materials, and Radon-220 from thorium by-product materials, to the atmosphere so as not to exceed an average² release rate of 20 picocuries per square meter per second (pCi/m²s) to the extent practicable throughout the effective design life determined pursuant to (a) (i) of this subsection (this criterion). In computing required tailings cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances may not be considered. Direct

gamma exposure from the tailings or wastes should be reduced to background levels. The effects of any thin synthetic layer may not be taken into account in determining the calculated radon exhalation level. If nonsoil materials are proposed as cover materials, it must be demonstrated that these materials will not crack or degrade by differential settlement, weathering, or other mechanism, over long-term intervals.

(b) As soon as reasonably achievable after emplacement of the final cover to limit releases of Radon-222 from uranium by-product material and prior to placement of erosion protection barriers or other features necessary for long-term control of the tailings, the licensee shall verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of Radon-222 to a level not exceeding 20 pCi/m²s averaged over the entire pile or impoundment using the procedures described in 40 C.F.R. part 61, appendix B, Method 115, or another method of verification approved by NRC as being at least as effective in demonstrating the effectiveness of the final radon barrier.

(c) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, the verification of Radon-222 release rates required in (b) of this subsection (this criterion) must be conducted for each portion of the pile or impoundment as the final radon barrier for that portion is emplaced.

(d) Within (~~ninety~~) 90 days of the completion of all testing and analysis relevant to the required verification in (b) and (c) of this subsection (this criterion), the uranium mill licensee shall report to the department the results detailing the actions taken to verify that levels of release of Radon-222 do not exceed 20 pCi/m²s when averaged over the entire pile or impoundment. The licensee shall maintain records until termination of the license documenting the source of input parameters including the results of all measurements on which they are based, the calculations or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These records shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to DOE or a state for long-term care if requested.

(e) Near surface cover materials (i.e., within the top three meters) may not include waste or rock that contains elevated levels of radium; soils used for near surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(f) The design requirements in this criterion for longevity and control of radon releases apply to any portion of a licensed or disposal site unless such portion contains a concentration of radium in land, averaged over areas of 100 square meters, which, as a result of by-product material, does not exceed the background level by more than:

(i) 5 picocuries per gram (pCi/g) of radium-226, or, in the case of thorium by-product material, radium-228, averaged over the first 15 centimeters (cm) below the surface; and

(ii) 15 pCi/g of radium-226, or, in the case of thorium by-product material, radium-228, averaged over 15-cm thick layers more than 15 cm below the surface.

(g) By-product material containing concentrations of radionuclides other than radium in soil, and surface activity on remaining

structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the standard (benchmark dose) contained in (f) of this subsection, and must be at levels which are as low as is reasonably achievable (ALARA). If more than one residual radionuclide is present in the same 100 square meter area, the sum of the ratios for each radionuclide of concentration present to the concentration limit will not exceed "1" (unity). A calculation of the potential peak annual TEDE within 1000 years to the average member of the critical group that would result from applying the radium standard, not including radon, on the site must be submitted for approval. The use of decommissioning plans with benchmark doses which exceed 100 mrem/yr, before application of ALARA, requires the approval of the department. This requirement for dose criteria does not apply to sites that have decommissioning plans for soil and structures approved before June 11, 1999.

(h) The licensee shall also address the nonradiological hazards associated with the wastes in planning and implementing closure. The licensee shall ensure that disposal areas are closed in a manner that minimizes the need for further maintenance. To the extent necessary to prevent threats to human health and the environment, the licensee shall control, minimize, or eliminate post-closure escape of nonradiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to the ground or surface waters or to the atmosphere.

¹ In the case of thorium by-product materials, the standard applies only to design. Monitoring for radon emissions from thorium by-product materials after installation of an appropriately designed cover is not required.

² This average applies to the entire surface of each disposal area over a period of at least one year, but a period short compared to 100 years. Radon will come from both by-product materials and from covering materials. Radon emissions from covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from by-product materials to the atmosphere.

Criterion 6A - (a) For impoundments containing uranium by-product materials, the final radon barrier must be completed as expeditiously as practicable considering technological feasibility after the pile or impoundment ceases operation in accordance with a written, department-approved reclamation plan. (The term as expeditiously as practicable considering technological feasibility as specifically defined in WAC 246-252-010 includes factors beyond the control of the licensee.) Deadlines for completion of the final radon barrier and, if applicable, the following interim milestones must be established as a condition of the individual license: Windblown tailings retrieval and placement on the pile and interim stabilization (including dewatering or the removal of freestanding liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the tailings must also be completed in a timely manner in accordance with a written, approved reclamation plan.

(b) The department may approve a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the department finds that the licensee has adequately demonstrated in the manner required in subsection (6)(b) of this section (Criterion 6) that releases of Radon-222 do not exceed an average of 20 pCi/m²s. If the delay is approved on the basis that the radon releases do not exceed 20 pCi/m²s, a verification of radon levels, as required by subsection (6)(b) of this section (Criterion 6), must be made annually during the period of delay. In addition, once the department has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the department may extend that

date based on cost if, after providing an opportunity for public participation, the department finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definitions of available technology, and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(c) The department may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium by-product material or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in the pile or impoundment from other sources, during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of Radon-222 releases not exceeding 20 pCi/m²s averaged over the entire impoundment. The verification required in subsection (6)(b) of this section (Criterion 6) may be completed with a portion of the impoundment being used for further disposal if the department makes a final finding that the impoundment will continue to achieve a level of Radon-222 releases not exceeding 20 pCi/m²s averaged over the entire impoundment. In this case, after the final radon barrier is complete except for the continuing disposal area:

- (i) Only by-product material will be authorized for disposal;
- (ii) The disposal will be limited to the specified existing disposal area; and
- (iii) This authorization will only be made after providing opportunity for public participation.

Reclamation of the disposal area, as appropriate, must be completed in a timely manner after disposal operations cease in accordance with subsection (6)(a) of this section (Criterion 6); however, these actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

(7) Criterion 7 - At least one full year prior to any major site construction, a preoperational monitoring program must be conducted to provide complete baseline data on a milling site and its environs. Throughout the construction and operating phases of the mill, an operational monitoring program must be conducted to complete the following:

- (a) To measure or evaluate compliance with applicable standards and regulations;
- (b) To evaluate performance of control systems and procedures;
- (c) To evaluate environmental impacts of operation; and
- (d) To detect potential long-term effects.

The licensee shall establish a detection monitoring program needed for the department to set the site-specific groundwater protection standards in Criterion 5 of this section. For all monitoring under this paragraph, the licensee or applicant will propose for department approval as license conditions, which constituents are to be monitored on a site-specific basis. A detection monitoring program has two purposes. The initial purpose of the program is to detect leakage of hazardous constituents from the disposal area so that the need to set groundwater protection standards is monitored. If leakage is detected, the second purpose of the program is to generate data and information needed for the department to establish the standards under Criterion 5. The data and information must provide a sufficient basis to identi-

fy those hazardous constituents which require concentration limit standards and to enable the department to set the limits for those constituents and the compliance period. They may also need to provide the basis for adjustments to the point of compliance. For licenses in effect September 30, 1983, the detection monitoring programs must have been in place by October 1, 1984. For licenses issued after September 30, 1983, the detection monitoring programs must be in place when specified by the department in orders or license conditions. Once groundwater protection standards have been established pursuant to Criterion 5, the licensee shall establish and implement a compliance monitoring program. The purpose of the compliance monitoring program is to determine that the hazardous constituent concentrations in groundwater continue to comply with the standards set by the department. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program. The purpose of the corrective action monitoring program is to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

(8) Criterion 8 - Milling operations shall be conducted so that all airborne effluent releases are reduced to as low as is reasonably achievable. The primary means of accomplishing this shall be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that off-site exposure limits are met, but only after all practicable measures have been taken to control emissions at the source. Notwithstanding the existence of individual dose standards, strict control of emissions is necessary to assure that population exposures are reduced to the maximum extent reasonably achievable and to avoid site contamination. The greatest potential sources of off-site radiation exposure (aside from radon exposure) are dusting from dry surfaces of the tailings disposal area not covered by tailings solution and emissions from yellowcake drying and packaging operations. During operations and prior to closure, radiation doses from radon emissions from surface impoundments shall be kept as low as is reasonably achievable. Checks shall be made and logged hourly of all parameters (e.g., differential pressure and scrubber water flow rate) which determine the efficiency of yellowcake stack emission control equipment operation. It shall be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency; corrective action shall be taken when performance is outside of prescribed ranges. Effluent control devices shall be operative at all times during drying and packaging operations and whenever air is exhausting from the yellowcake stack.

Drying and packaging operations shall terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions shall be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations shall cease as soon as practicable.

Operations may not be restarted after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All such cessations, corrective actions, and restarts shall be reported to the department in writing, within (~~ten~~) 10 days of the subsequent restart.

To control dusting from tailings, that portion not covered by standing liquids shall be wetted or chemically stabilized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if tailings are effectively sheltered from wind, such as may be the case where they are disposed of below grade and the tailings surface is not exposed to wind. Consideration shall be given in planning tailings disposal programs to methods which would allow phased covering and reclamation of tailings impoundments since this will help in controlling particulate and radon emissions during operation. To control dustings from diffuse sources, such as tailings and ore pads where automatic controls do not apply, operators shall develop written operating procedures specifying the methods of control which will be utilized.

Milling operations producing or involving thorium by-product material shall be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed (~~twenty-five~~) 25 millirems to the whole body, (~~seventy-five~~) 75 millirems to the thyroid, and (~~twenty-five~~) 25 millirems to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive materials, Radon-220 and its daughters excepted, to the general environment.

Uranium and thorium by-product materials shall be managed so as to conform to the applicable provisions of Title 40 of the Code of Federal Regulations, Part 440, Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory, as codified on January 1, 1983.

The licensee shall establish a detection monitoring program needed to establish the groundwater protection standards in subsection (5)(f) of this section. A detection monitoring program has two purposes. The initial purpose of the program is to detect leakage of hazardous constituents from the disposal area so that the need to set groundwater protection standards is monitored. If leakage is detected, the second purpose of the program is to generate data and information needed for the department to establish the standards under subsection (5)(f) of this section. The data and information must provide a sufficient basis to identify those hazardous constituents which require concentration limit standards and to enable the department to set the limits for those constituents and the compliance period. They may also need to provide the basis for adjustments to the point of compliance. For licenses in effect September 30, 1983, the detection monitoring programs must have been in place by October 1, 1984. For licenses issued after September 30, 1983, the detection monitoring programs must be in place when specified by the department in orders or license conditions. Once groundwater protection standards have been established pursuant to subsection (5)(f) of this section, the licensee shall establish and implement a compliance monitoring program. The purpose of the compliance monitoring program is to determine that the hazardous constituent concentrations in groundwater continue to comply with the standards set by the department. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program. The purpose of the corrective action monitoring program is to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

Daily inspections of tailings or waste retention systems must be conducted by a qualified engineer or scientist and documented. The department must be immediately notified of any failure in a tailings or waste retention system that results in a release of tailings or waste into unrestricted areas, or of any unusual conditions (conditions not contemplated in the design of the retention system) which if not corrected could indicate the potential or lead to failure of the system and result in a release of tailings or waste into unrestricted areas.

(9) Criterion 9 - (a) Pursuant to chapter (~~(70.121)~~) 70A.310 RCW, and except as otherwise provided, financial surety arrangements must be established by each mill operator before the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas. The amount of funds to be ensured by such surety arrangements must be based on department-approved cost estimates in a department-approved plan, or a proposed revision to the plan submitted to the department for approval, if the proposed revision contains a higher cost estimate for:

(i) Decontamination and decommissioning of mill buildings and the milling site to levels which allow unrestricted use of these areas upon decommissioning; and

(ii) The reclamation of tailings or waste areas in accordance with technical criteria delineated in this section.

(b) Each cost estimate must contain:

(i) A detailed cost estimate for decontamination, decommissioning, and reclamation, in an amount reflecting:

(A) The cost of an independent contractor to perform the decontamination, decommissioning, and reclamation activities; and

(B) An adequate contingency factor.

(ii) An estimate of the amount of radioactive contamination in on-site subsurface material;

(iii) Identification of and justification for using the key assumptions contained in the decommissioning cost estimate; and

(iv) A description of the method of assuring funds for decontamination, decommissioning, and reclamation.

(c) The licensee shall submit this plan in conjunction with an environmental report that addresses the expected environmental impacts of the milling operation, decommissioning and tailings reclamation, and evaluates alternatives for mitigating these impacts. The plan must include a signed original of the financial instrument obtained to satisfy the surety arrangement requirements of this criterion (unless a previously submitted and approved financial instrument continues to cover the cost estimate for decommissioning). The surety arrangement must also cover the cost estimate and the payment of the charge for long-term surveillance and control required by subsection (10) of this section.

(d) To avoid unnecessary duplication and expense, the department may accept financial sureties that have been consolidated with financial or surety arrangements established to meet requirements of other federal or state agencies or local governing bodies for decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the surety which covers the decommissioning and reclamation of the mill, mill tailings site and associated areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities.

(e) The licensee's surety mechanism will be reviewed annually by the department to assure, that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor.

(f) The amount of surety liability should be adjusted to recognize any increases or decreases resulting from:

(i) Inflation;

(ii) Changes in engineering plans;

(iii) Activities performed;

(iv) Spills, leakage or migration of radioactive material producing additional contamination in on-site subsurface material that must be remediated to meet applicable remediation criteria;

(v) Waste inventory increasing above the amount previously estimated;

(vi) Waste disposal costs increasing above the amount previously estimated;

(vii) Facility modifications;

(viii) Changes in authorized possession limits;

(ix) Actual remediation costs that exceed the previous cost estimate;

(x) On-site disposal; and

(xi) Any other conditions affecting costs.

(g) Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of surety liability must be retained until final compliance with the reclamation plan is determined.

(h) The appropriate portion of surety liability retained until final compliance with the reclamation plan is determined will be at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the surety mechanism must be open ended, unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance would be provided with a surety instrument which is written for a specified time (for example five years) and which must be automatically renewed unless the surety notifies the department and the licensee with reasonable time (for example (~~ninety~~) 90 days) before the renewal date of their intention not to renew. In such a situation the surety requirement still exists and the licensee would be required to submit an acceptable replacement surety within a brief time to allow at least (~~sixty~~) 60 days for the department to collect.

(i) Proof of forfeiture must not be necessary to collect the surety. In the event that the licensee cannot provide an acceptable replacement surety within the required time, the surety shall be automatically collected before its expiration. The surety instrument must provide for collection of the full face amount immediately on demand without reduction for any reason, except for trustee fees and expenses provided for in a trust agreement, and that the surety will not refuse to make full payment. The conditions described previously would have to be clearly stated on any surety instrument which is not open-ended, and must be agreed to by all parties. Financial surety arrangements generally acceptable to the department are:

(i) Trust funds;

(ii) Surety bonds;

(iii) Irrevocable letters of credit; and

(iv) Combinations of the financial surety arrangements or other types of arrangements as may be approved by the department. If a trust

is not used, then a standby trust must be set up to receive funds in the event the department exercises its right to collect the surety. The surety arrangement and the surety or trustee, as applicable, must be acceptable to the department. Self-insurance, or any arrangement which essentially constitutes self-insurance (for example, a contract with a state or federal agency), will not satisfy the surety requirement because this provides no additional assurance other than that which already exists through license requirements.

(10) Criterion 10 - (a) A minimum charge of (~~two hundred fifty thousand dollars~~) \$250,000 (1978 United States dollars) accrued as specified in WAC 246-235-086(4) to cover the costs of long-term surveillance shall be paid by each mill operator to the agency prior to the termination of a uranium or thorium mill license. If site surveillance or control requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater than those specified in (a) of this subsection (e.g., if fencing is determined to be necessary), variance in funding requirements may be specified by the department. The total charge to cover the costs of long-term surveillance shall be such that, with an assumed one percent annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site surveillance. The charge will be adjusted annually prior to actual payments to recognize inflation. The inflation rate to be used is that indicated by the change in the consumer price index published by the United States Department of Labor, Bureau of Labor Statistics. Contributions by a licensee to the long-term care trust fund pursuant to chapter (~~70.121~~) 70A.310 RCW shall be transferred to cover the costs assessed under this criterion.

(11) Criterion 11 - These criteria relating to ownership of tailings and their disposal sites become effective on November 8, 1981, and apply to all licenses terminated, issued, or renewed after that date.

Any uranium or thorium milling license or tailings license shall contain such terms and conditions as NRC determines necessary to assure that prior to termination of the license, the licensee will comply with ownership requirements of this criterion for sites used for tailings disposal.

Title to the by-product material licensed pursuant to WAC 246-252-030 and land, including any interests therein (other than land owned by the United States or by the state of Washington) which is used for the disposal of any such by-product material, or is essential to ensure the long-term stability of such disposal site, shall be transferred to the United States or the state of Washington. In view of the fact that physical isolation must be the primary means of long-term control, and government land ownership is a desirable supplementary measure, ownership of certain severable subsurface interests (for example, mineral rights) may be determined to be unnecessary to protect the public health and safety and the environment. In any case, the applicant/operator must demonstrate a serious effort to obtain such subsurface rights, and must, in the event that certain rights cannot be obtained, provide notification in local public land records of the fact that the land is being used for the disposal of radioactive material and is subject to either a NRC general or specific license prohibiting the disruption and disturbance of the tailings. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses issued before November 8,

1981, NRC may take into account the status of the ownership of such land, and interests therein, and the ability of a licensee to transfer title and custody thereof to the United States or the state. If NRC, subsequent to title transfer, determines that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a state will not endanger the public health, safety, welfare or environment, NRC may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions provided in these criteria. If NRC permits such use of such land, it will provide the person who transferred such land with the right of first refusal with respect to such use of such land.

Material and land transferred to the United States or a state in accordance with this criterion must be transferred without cost to the United States or a state other than administrative and legal costs incurred in carrying out such transfer.

The provisions of this part, respecting transfer of title and custody to land and tailings and wastes, do not apply in the case of lands held in trust by the United States for any Indian Tribe, or lands owned by such Indian Tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of by-product material, as defined in this section, the licensee shall enter into arrangements with NRC as may be appropriate to assure the long-term surveillance of such lands by the United States.

(12) Criterion 12 - The final disposition of tailings or wastes at milling sites should be such that ongoing active maintenance is not necessary to preserve isolation. As a minimum, annual site inspections must be conducted by the government agency retaining ultimate custody of the site where tailings or wastes are stored, to confirm the integrity of the stabilized tailings or waste systems, and to determine the need, if any, for maintenance or monitoring. Results of the inspection must be reported to NRC within (~~sixty~~) 60 days following each inspection. NRC may require more frequent site inspections if, on the basis of a site-specific evaluation, such a need appears necessary, due to the features of a particular tailings or waste disposal system.

(13) Criterion 13 - Secondary groundwater protection standards required by Criterion 5 of this section are concentration limits for individual hazardous constituents. The list of constituents found in Appendix A of this chapter, chapter 246-252 WAC, identifies the constituents for which standards must be set and complied with if the specific constituent is reasonably expected to be in or derived from the by-product material and has been detected in groundwater. For purposes of this criterion, the property of gross alpha activity will be treated as if it is a hazardous constituent. Thus, when setting standards under subsection (5)(j) of this section, the department will also set a limit for gross alpha activity.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 17-01-034, § 246-252-030, filed 12/12/16, effective 1/12/17; WSR 16-13-054, § 246-252-030, filed 6/10/16, effective 7/11/16. Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-252-030, filed 2/23/15, effective 3/26/15. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 02-17-005, § 246-252-030, filed 8/8/02, effective 9/8/02. Statutory Authority: RCW 70.98.050. WSR 00-08-013, § 246-252-030, filed 3/24/00, effective 4/24/00; WSR 97-13-055, § 246-252-030, filed 6/16/97, effective 7/17/97; WSR 94-01-073, § 246-252-030, filed 12/9/93, effective 1/9/94. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR

91-16-109 (Order 187), § 246-252-030, filed 8/7/91, effective 9/7/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-252-030, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-52-100, filed 12/11/86. Statutory Authority: Chapter 70.121 RCW. WSR 81-16-031 (Order 1683), § 402-52-100, filed 7/28/81.]

OTS-3444.1

AMENDATORY SECTION (Amending WSR 12-14-025, filed 6/25/12, effective 8/1/12)

- WAC 246-254-130 Radioactive waste disposal site surveillance fee.** (1) The department shall charge a radioactive waste site surveillance fee of (~~twenty-six dollars~~) \$26 per cubic foot to generators and brokers of LLRW (low-level radioactive waste) and NARM (naturally occurring and accelerator produced radioactive material).
- (2) The fee shall be an added charge on each cubic foot of LLRW and NARM disposed at the disposal site.
- (3) The department shall authorize by contract the operator of a low-level radioactive waste disposal site to collect the fee from waste generators and brokers.
- (4) The department shall provide for reimbursement to the site operator for collection costs.
- (5) The department shall calculate the fee collected from waste generators and brokers as required under RCW (~~70.98.085~~) 70A.388.060 and the fee shall not exceed the statutory limit specified in that section.
- (6) The site operator shall remit the fee to the department as follows:
- (a) Quarterly for the first seven quarters of each biennium.
 - (b) By July 15th for the final quarter of the biennium.

[Statutory Authority: RCW 70.98.085, 70.98.050, 70.98.110, and 2011 1st sp.s. c 50. WSR 12-14-025, § 246-254-130, filed 6/25/12, effective 8/1/12. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-254-130, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.085. WSR 90-11-126 (Order 050), § 402-70-073, filed 5/23/90, effective 6/23/90.]

OTS-3445.2

AMENDATORY SECTION (Amending WSR 11-12-035, filed 5/25/11, effective 7/1/11)

WAC 246-272B-01000 Purpose and objectives. (1) The purpose of this chapter is to protect public health and the environment by establishing a comprehensive framework for statewide management of LOSS.

(2) This chapter implements chapter ((70.118B)) 70A.115 RCW((~~, Large on-site sewage disposal systems,~~)) by establishing regulations for LOSS owners, operators, design engineers, and installers; and their duties in siting, designing, constructing, installing, permitting, operating, monitoring, maintaining, and repairing LOSS to achieve sustainable long-term sewage management.

[Statutory Authority: RCW 70.118B.020. WSR 11-12-035, § 246-272B-01000, filed 5/25/11, effective 7/1/11.]

AMENDATORY SECTION (Amending WSR 11-12-035, filed 5/25/11, effective 7/1/11)

WAC 246-272B-07100 Department inspections. (1) The department may enter and inspect any LOSS site or LOSS facility to determine compliance with chapter ((70.118B)) 70A.115 RCW((~~, Large on-site sewage disposal systems~~)) or this chapter:

(a) On any weekday that is not a legal holiday between the hours of 8:00 a.m. and 5:00 p.m.; and

(b) At any time with the consent of the owner or owner's agent.

(2) The department may inspect:

(a) All records, including records of O&M;

(b) All data submitted;

(c) All permits; and

(d) The LOSS, all LOSS components, and all LOSS performance equipment.

(3) During an inspection, the department shall have free and unimpeded access to all:

(a) Buildings, warehouses, storage facilities, and other places reasonably considered to be or to have been part of the LOSS;

(b) Ledgers, books, accounts, memorandums, or records required to be compiled or maintained in this chapter; and

(c) Products, components, maintenance supplies, or other material used in connection with the LOSS.

(4) During the inspection, the department may take such samples as may be reasonably necessary to verify compliance.

(5) The owner shall take preventative or corrective action as directed by the department when results of an inspection indicate conditions which may harm or are harming LOSS operation or which are in violation of any requirements of this chapter.

[Statutory Authority: RCW 70.118B.020. WSR 11-12-035, § 246-272B-07100, filed 5/25/11, effective 7/1/11.]

AMENDATORY SECTION (Amending WSR 11-12-035, filed 5/25/11, effective 7/1/11)

WAC 246-272B-08100 Enforcement. (1) The department shall enforce this chapter and chapter ((70.118B)) 70A.115 RCW((~~, Large on-site sewage disposal systems~~)).

(2) When any person is out of compliance with a law or rule regulating LOSS and administered by the department, the department may

take appropriate enforcement actions, regardless of any prior approvals issued.

(3) The department may initiate enforcement action against the owner to bring the system into compliance by using one or more of the following options, which include, but are not limited to:

- (a) A conference between the department and the owner to explore facts and resolve problems;
- (b) A compliance agreement between the department and the owner;
- (c) A notice of correction;
- (d) A notice of violation;
- (e) A state departmental order;
- (f) Civil penalties;
- (g) Operating permit conditions or approval conditions;
- (h) Injunctions; and
- (i) Other authorized proceedings.

(4) The department may issue an emergency stop work order or department order to refrain from using any LOSS or portion of the LOSS or improvements to the LOSS until all permits, certifications, approvals, and determinations to proceed required by rule or statute are obtained.

(5) The department may issue an order to stop work on LOSS construction activities that occur or are scheduled to occur prior to receiving department approval, determination to proceed, or a department operating permit.

(6) The department may impose civil penalties pursuant to RCW ((70.118B.050)) 70A.115.050 in an amount of up to ((ten thousand dollars)) \$10,000 per day per violation.

(7) The department may deny an application for an operating permit, approval, or determination to proceed, or revoke, suspend or modify a permit, approval, or determination to proceed if:

- (a) The permit was obtained by fraud;
- (b) An owner violates or fails to comply with any term or condition of the permit;
- (c) A LOSS failure or the need for a repair or replacement of a LOSS component has resulted from neglect or poor management practices;
- (d) A person fails, refuses, or is unable to comply with chapter ((70.118B)) 70A.115 RCW((, Large on-site sewage disposal systems)) or this chapter;
- (e) There is a change in any condition that requires the LOSS to temporarily or permanently limit or stop operating; or
- (f) It is necessary to comply with applicable water quality provisions in chapter 90.48 RCW, Water Pollution Control Act.

(8) The department may enjoin a violation or threatened violation of this chapter or chapter ((70.118B)) 70A.115 RCW((, Large on-site sewage disposal systems,)) in the superior court in the county in which the system is located or in Thurston County.

[Statutory Authority: RCW 70.118B.020. WSR 11-12-035, § 246-272B-08100, filed 5/25/11, effective 7/1/11.]

AMENDATORY SECTION (Amending WSR 11-12-035, filed 5/25/11, effective 7/1/11)

WAC 246-272B-08200 Notice of decision, appeals, and adjudicative proceedings. (1) The department's notice of a denial, suspension,

modification, or revocation of a permit; approval; or determination to proceed must be consistent with RCW 43.70.115. An applicant or permit holder has the right to an adjudicative proceeding to contest the decision.

(2) The department's notice of imposition of a civil penalty must be consistent with RCW 43.70.095 and (~~(70.118B.050)~~) 70A.115.050. A person upon whom the department imposes a civil penalty has the right to an adjudicative proceeding.

(3) A person upon whom the department imposes a civil penalty or issues a notice of denial, suspension, modification or revocation of a permit; approval; or determination to proceed may contest a department decision within (~~(twenty-eight)~~) 28 days of receipt of the decision by filing a written application for an adjudicative proceeding by a method showing proof of receipt with the administrative hearings unit, department of health. The person must include the following in or with the application:

- (a) A specific statement of the issue or issues and law involved;
- (b) The grounds for contesting the department decision; and
- (c) A copy of the contested department decision.

(4) An adjudicative proceeding is governed by the Administrative Procedure Act (chapter 34.05 RCW), this chapter, and (~~(chapter 246-10 WAC, Administrative procedure Adjudicative proceedings)~~) the administrative procedures as adopted by the department of health under chapter 246-10 WAC.

[Statutory Authority: RCW 70.118B.020. WSR 11-12-035, § 246-272B-08200, filed 5/25/11, effective 7/1/11.]

OTS-3446.2

AMENDATORY SECTION (Amending WSR 95-24-062, filed 12/1/95, effective 1/1/96)

WAC 246-273-001 Purpose and authority. (1) This chapter establishes the review, criteria and decision-making procedures for evaluating on-site sewage disposal system additives to determine whether individual additives have an adverse effect on public health or water quality.

(2) The Washington state department of health administers this chapter under the authority and requirements of chapter (~~(70.118)~~) 70A.105 RCW.

[Statutory Authority: Chapter 70.118 RCW and RCW 43.70.040. WSR 95-24-062, § 246-273-001, filed 12/1/95, effective 1/1/96.]

AMENDATORY SECTION (Amending WSR 95-24-062, filed 12/1/95, effective 1/1/96)

WAC 246-273-020 Applicability. (1) After July 1, 1994, no person shall use, sell, or distribute an on-site sewage disposal system chemical additive in Washington state.

(2) After January 1, 1996, no person shall use, sell or distribute an on-site sewage disposal system additive whose ingredients have not been approved by the department in accordance with requirements of chapter ((70.118)) 70A.105 RCW and this chapter.

[Statutory Authority: Chapter 70.118 RCW and RCW 43.70.040. WSR 95-24-062, § 246-273-020, filed 12/1/95, effective 1/1/96.]

AMENDATORY SECTION (Amending WSR 95-24-062, filed 12/1/95, effective 1/1/96)

WAC 246-273-060 Unfair practices. Manufacturers of approved additives advertised, sold, or distributed in Washington state shall:

(1) Make no claims relating to the elimination of the need for septic tank pumping or proper septic tank maintenance;

(2) List the components of additive products on the product label, along with information regarding instructions for use and precautions;

(3) Make no false statements, design, or graphic representation relative to an additive product that is inconsistent with RCW ((70.118.060, 70.118.070, or 70.118.080)) 70A.105.060, 70A.105.070, or 70A.105.080; and

(4) Make no claims, either direct or implied, about the performance of the product based on state approval of its ingredients.

[Statutory Authority: Chapter 70.118 RCW and RCW 43.70.040. WSR 95-24-062, § 246-273-060, filed 12/1/95, effective 1/1/96.]

AMENDATORY SECTION (Amending WSR 95-24-062, filed 12/1/95, effective 1/1/96)

WAC 246-273-080 Enforcement. (1) The attorney general, or appropriate city or county prosecuting attorney may bring appropriate action to enjoin any violation of the:

(a) Prohibition on the sale or distribution of on-site sewage disposal system additives; or

(b) Conditions of RCW ((70.118.080 Additives—Unfair practices,)) 70A.105.080 and WAC 246-273-060 (1) through (4).

(2) The department may rescind approval of an on-site sewage disposal system additive in response to:

(a) Demonstrated link to on-site sewage disposal system failure resulting from use (consistent with the manufacturer's product-use instructions) of an approved additive; or

(b) Documentation that ingredients or formulation of an approved on-site sewage system additive differs from the ingredients or formu-

lation information submitted for review, and upon which departmental approval was granted.

[Statutory Authority: Chapter 70.118 RCW and RCW 43.70.040. WSR 95-24-062, § 246-273-080, filed 12/1/95, effective 1/1/96.]

OTS-3447.1

AMENDATORY SECTION (Amending WSR 11-02-011, filed 12/28/10, effective 7/31/11)

WAC 246-274-005 Other applicable requirements. (1) Greywater reuse must comply with all applicable local ordinances and codes, and state statutes and regulations including, but not limited to, the Uniform Plumbing Code, as adopted in chapters 51-56 and 51-57 WAC.

(2) For buildings using an on-site sewage system, the use of a greywater irrigation system does not change the design, capacity, or reserve area requirements, or any other requirement applicable to on-site sewage systems under RCW 43.20.050, chapters ((70.118B)) 70A.115 RCW, or 246-272A, 246-272B, or 246-272C WAC.

(3) The use of a greywater irrigation system does not serve as an alternative to the use of an approved on-site sewage system or connection to an approved public sewer for greywater disposal at any building, including buildings using waterless toilets.

[Statutory Authority: RCW 90.46.015. WSR 11-02-011, § 246-274-005, filed 12/28/10, effective 7/31/11.]

AMENDATORY SECTION (Amending WSR 11-02-011, filed 12/28/10, effective 7/31/11)

WAC 246-274-011 Greywater irrigation systems—General requirements. (1) The following conditions and restrictions apply to all tiers of greywater irrigation systems:

(a) The greywater must be used only for subsurface irrigation.

(b) The greywater may be used for subsurface irrigation of plants that produce food but must not come into contact with edible portions of any plant.

(c) The greywater must consist of domestic type flows having the consistency and strength typical of greywater from domestic households.

(d) The greywater may not contain toxic substances, cleaning chemicals or hazardous household products derived from the waste from a water softener, activities such as cleaning car parts, washing greasy or oily rags or clothing, rinsing paint brushes, or disposing of waste solutions from home photo labs or similar hobbyist or home occupation activities, or from home maintenance activities.

(e) The greywater may not contain water used to wash diapers or similarly soiled or infectious materials.

(f) The greywater may not contain biomedical waste as defined in chapter ((70.95K)) 70A.228 RCW.

(g) The greywater may not surface in any way, including through ponding or runoff. It must remain below the surface of the ground so that people and animals do not come into contact with it.

(h) The greywater must be used and contained within the property boundary of the building it originates from or on nearby property where it is legally allowed to be used.

(i) The system may be used only during the growing season.

(j) The system must be located in suitable soil.

(k) The system must be located where the land is stable.

(l) The system may not be located in an environmentally sensitive area, as determined by the local health officer.

(m) The irrigation rates may not be greater than the evapotranspiration rate of the irrigation field.

(n) The system must include a readily accessible diversion valve so the greywater can be directed into the approved public sewer system or on-site sewage system when necessary; for example, when soils are saturated or frozen, or blockage, plugging, or backup of the system occurs, or the maximum allowed gallons per day is reached, or when the building owner chooses not to use the system.

(o) The diversion valve must be visibly labeled.

(p) Pipes and above-ground tanks must be labeled with the words: "CAUTION: NONPOTABLE WATER, DO NOT DRINK."

(q) If mulch is used, it must be permeable enough to allow rapid infiltration of greywater.

(2) The location of the system must meet the minimum horizontal setback requirements established in WAC 246-274-405, Table I.

(3) If the system fails or is suspected of failing, the owner shall immediately divert the greywater to the approved public sewer system or on-site sewage system serving the building as required under WAC 246-274-445.

[Statutory Authority: RCW 90.46.015. WSR 11-02-011, § 246-274-011, filed 12/28/10, effective 7/31/11.]

OTS-3454.1

AMENDATORY SECTION (Amending WSR 16-14-086, filed 7/5/16, effective 8/5/16)

WAC 246-296-020 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "**Affordability**" means a community's ability, on a per household basis, to pay for rate increases that result from a DWSRF loan project.

(2) "**Application**" means the DWSRF loan request form provided by the department.

(3) "**Application package**" means the DWSRF loan application form(s), requirements, terms of assistance, and related information created by the department.

- (4) **"Borrower"** means the person that has legal and financial responsibility for the DWSRF loan.
- (5) **"Capitalization grant"** means an award by EPA of funds to a state for the DWSRF and other purposes as authorized in Section 1452 of the SDWA.
- (6) **"Construction completion report"** means a form provided by the department and completed for each specific construction project to document:
- (a) Project construction in accordance with chapter 246-290 WAC and general standards of engineering practice;
 - (b) Physical capacity changes;
 - (c) Satisfactory test results; and
 - (d) The completed form is stamped with an engineer's seal, and signed and dated by a professional engineer.
- (7) **"Default"** means failure to meet a financial obligation such as a DWSRF loan payment.
- (8) **"Department"** means the Washington state department of health.
- (9) **"Disadvantaged community"** means the service area of a proposed project within a public water system where the project will result in:
- (a) Water rates that are more than one and one-half percent of the MHI of the service area; or
 - (b) Restructuring, when one or more public water systems are having financial difficulties.
- (10) **"DWSRF (drinking water state revolving fund)"** means the program that meets the requirements of RCW ((70.119A.170)) 70A.125.160 to administer federal funds and other funds deposited in a dedicated account used to finance public water system infrastructure improvements and drinking water program activities.
- (11) **"DWSRF loan"** means an agreement between the department and the borrower in which the DWSRF provides funds for eligible assistance and the borrower agrees to repay the principal sum, applicable interest, and DWSRF loan fee to the DWSRF.
- (12) **"DWSRF loan fee"** means a nonrefundable fee that is charged on all DWSRF loans, including DWSRF loans for which all or part of the principal is forgiven.
- (13) **"Ecology"** means the Washington state department of ecology.
- (14) **"Eligible public water system"** means a Group A community public water system, either privately or publicly owned, or a non-profit Group A noncommunity public water system.
- (15) **"Emergency"** means an event such as a natural disaster or other unforeseen or unavoidable circumstances that causes damage or disrupts normal public water system operations and requires immediate action to protect public health and safety. A failure to maintain, replace, reconstruct, upgrade, or make necessary infrastructure improvements does not constitute an emergency.
- (16) **"EPA"** means the United States Environmental Protection Agency.
- (17) **"Green project"** means a public water system infrastructure improvement project that includes water efficiency, energy efficiency, or environmental innovations as follows:
- (a) Water efficiency projects use improved technologies and practices to deliver equal or better service with less water, including preventing water loss and reducing customer demand to protect water resources;

(b) Energy efficiency projects use improved technologies and practices to reduce energy consumption or produce cleaner energy for use in water treatment;

(c) Environmentally innovative projects use new or innovative approaches to manage water resources in a more environmentally sustainable way. Projects that are considered environmentally innovative include those that:

(i) Prevent or remove pollution;

(ii) Help a community adapt to climate change through water resource protection programs; or

(iii) Result in other proven, sustainable environmental benefits.

(18) "**Group A public water system**" is defined and referenced under WAC 246-290-020.

(19) "**Group B public water system**" means a public water system that is not a Group A public water system and is defined and referenced under WAC 246-291-005.

(20) "**Individual water supply system**" means any water system that is not subject to chapter 246-290 or 246-291 WAC; and provides water to either one single-family residence, or to a system with four or fewer connections, all of which serve residences on the same farm.

(21) "**IUP (intended use plan)**" means the federally required document prepared each year by the department identifying the intended uses of the DWSRF funds and describing how those uses support the DWSRF goals.

(22) "**Loan closeout**" means a loan agreement is complete when the loan is repaid in full.

(23) "**MHI (median household income)**" means the midpoint or the average of two midpoints in the range of household incomes in the project's service area. The median divides the list of households in a service area into two parts; half of the households exceed the median, and half of the households are below the median.

(24) "**Multiple benefit**" means projects that address more than one type of health risk.

(25) "**Municipality**" means a city, town, special purpose district, or municipal corporation established according to the applicable laws of this state.

(26) "**NEPA**" means the National Environmental Policy Act of 1969, 42 United States Code 4321 et seq., PL-91-190.

(27) "**Nonprofit organization**" means an entity that has a federal tax exempt status identification number.

(28) "**Owner**" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, person, or any other entity that holds as property a public water system.

(29) "**Person**" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(30) "**Principal forgiveness**" means that a reduction of a percentage of the total loan amount is not required to be paid back by the borrower. Principal forgiveness is applied when the project is complete.

(31) "**Project report**" means a department-approved document the borrower or borrower's agency develops under WAC 246-290-110.

(32) "**Public water system**" is defined and referenced under WAC 246-290-020.

(33) "**Receivership**" means the voluntary or involuntary transfer of ownership and operation of a public water system according to chapter 7.60 RCW and RCW 43.70.195.

(34) "**Regional benefit**" means project improvements that affect more than one public water system.

(35) "**Restructuring**" means changing public water system ownership including, but not limited to:

(a) Consolidation of two or more existing public water systems into a single public water system;

(b) Transfer of ownership; or

(c) Receivership.

(36) "**SDWA (Safe Drinking Water Act)**" means Public Law 93-523, including all amendments.

(37) "**SEPA**" means the State Environmental Policy Act under chapter 43.21C RCW.

(38) "**Set-aside**" means the use of a portion of DWSRF funds allotted to the state for a range of specific SDWA-related activities under Section 1452 of the SDWA, to fund new programs, and for other drinking water program activities.

(39) "**SERP (state environmental review process)**" means the NEPA-like environmental review process adopted by Washington state to comply with the requirements of 40 C.F.R. 35.3140. SERP combines the SEPA review with additional elements to comply with federal requirements.

(40) "**Surface water**" means a body of water open to the atmosphere and subject to surface runoff.

(41) "**Sustainable**" means able to continue a benefit into the future as a result of appropriate public water system design, processes, operations, governance, and maintenance.

(42) "**SWSMP (small water system management program)**" means a document for a small nonexpanding Group A public water system developed and approved under WAC 246-290-105.

(43) "**System capacity**" means a public water system's operational, technical, managerial, and financial capability to achieve and maintain ongoing compliance with all relevant local, state, and federal plans and regulations.

(44) "**Transfer of ownership**" means to change legal ownership of a public water system from one person to another.

(45) "**Water right**" means a legal authorization, such as a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

(46) "**WFI (water facilities inventory)**" means a department form summarizing a public water system's characteristics.

(47) "**WSP (water system plan)**" means a document that a Group A community public water system submits to the department as required under WAC 246-290-100. The plan addresses a public water system's capacity to comply with relevant local, state, and federal plans and regulations, describes the public water system's present and future needs, and establishes eligibility for funding under this chapter.

[Statutory Authority: RCW 70.119A.170 as amended by 2016 c 111. WSR 16-14-086, § 246-296-020, filed 7/5/16, effective 8/5/16. Statutory Authority: RCW 70.119A.170. WSR 16-06-100, § 246-296-020, filed 3/1/16, effective 4/1/16. Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-020, filed 12/19/11, effective 2/1/12. Statutory Authority:

RCW 70.119A.170. WSR 01-21-137, § 246-296-020, filed 10/24/01, effective 11/24/01.]

AMENDATORY SECTION (Amending WSR 18-21-021, filed 10/4/18, effective 11/4/18)

WAC 246-296-040 Use of funds by the state. (1) The department may use the following funds to carry out the purposes of the DWSRF:

- (a) Capitalization grants provided by the federal government;
 - (b) State matching funds appropriated under RCW ((70.119A.170) 70A.125.160;
 - (c) Principal and interest payments;
 - (d) DWSRF loan fees; and
 - (e) Any other funds earned and deposited.
- (2) The department may use these funds to:
- (a) Finance DWSRF loans for planning, design, and construction of public water system infrastructure projects that will address or prevent violations of applicable federal, state, and local drinking water requirements;
 - (b) Finance reasonable costs for the department to administer the DWSRF program; and
 - (c) Fund set-aside activities as authorized in 40 C.F.R. Section 35.3535 including, but not limited to:
 - (i) DWSRF program administration;
 - (ii) Technical assistance specific to small public water systems;
 - (iii) State drinking water program management; and
 - (iv) Local assistance and other state programs.

[Statutory Authority: RCW 70.119A.170, 40 C.F.R. 35.352 and 35.3535. WSR 18-21-021, § 246-296-040, filed 10/4/18, effective 11/4/18. Statutory Authority: RCW 70.119A.170 as amended by 2016 c 111. WSR 16-14-086, § 246-296-040, filed 7/5/16, effective 8/5/16. Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-040, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-040, filed 10/24/01, effective 11/24/01.]

OTS-3455.1

AMENDATORY SECTION (Amending WSR 12-05-079, filed 2/16/12, effective 3/18/12)

WAC 246-290-990 Water system evaluation and project review and approval fees. (1) The fees for the review and approval of water system plans, project reports, construction documents, existing systems, and related evaluations required under chapters 246-290, 246-291, 246-293, 246-294, and 246-295 WAC are:

- (a) Water system plans required under WAC 246-290-100, 246-290-105, 246-291-140, 246-293-220, and 246-293-230.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Water system plan (New and Updated)	\$138	\$491	\$1,206	\$2,280	\$3,705	\$5,484
Minor water system plan alteration	\$31	\$115	\$293	\$565	\$919	\$1,349

(b) Satellite management agency (SMA) plans for Group A and Group B water systems required under WAC 246-295-040.

Project Type	Total Active or Approved Services				
	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
SMA plan for ownership (New and Updated)	\$491	\$1,206	\$2,280	\$3,705	\$5,484
SMA approval amendment	\$102 per hour or appropriate fee from category above, whichever is less				
SMA plan for operation only (New and Updated)	\$1,206	\$1,206	\$1,206	\$1,206	\$1,206

Note: SMAs owning water systems and submitting planning documents to the department for review shall be charged only the SMA fee.

(c) New plan elements required under WAC 246-290-100, 246-290-105, 246-290-125, 246-290-132, 246-290-135, 246-290-691, and 246-291-140 including:

(i) Water use efficiency; and

(ii) Wellhead protection, shall be reviewed separately by the department and the fee assessed shall reflect the time spent for this review and shall be calculated based on (~~one hundred two dollars~~) \$102 per hour. After the initial submittal, updated information shall be reviewed as part of the updated water system plan and the review fee shall be included in the applicable updated plan review fee listed under (a) or (b) of this subsection.

(d) Project reports required under WAC 246-290-110 and design reports required under WAC 246-291-120.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	\$348	\$710	\$1,103	\$1,598	\$2,204	\$2,922
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	\$102	\$205	\$348	\$525	\$743	\$994
Complete water system (an additional fee shall be assessed for review of treatment facility, if any)	\$205	\$491	\$778	\$1,137	\$1,564	\$2,061
System modifications requiring a detailed evaluation to determine whether the system, as modified, will comply with regulations (an additional fee shall be assessed for review of treatment facility, if any)	\$138	\$348	\$565	\$851	\$1,206	\$1,626

Note: In accordance with WAC 246-290-125, project reports are not required for minor projects that are described in sufficient detail in an approved water system plan, and have been reviewed as part of the process for approving the water system plan.

(e) Special reports or plans required under WAC 246-290-230, 246-290-235, 246-290-250, 246-290-470, 246-290-636, 246-290-640, 246-290-654, 246-290-676, 246-291-230 including:

(i) Corrosion control recommendation report;

(ii) Corrosion control study;

(iii) Plan to cover uncovered reservoirs;

(iv) Predesign study;

(v) Uncovered reservoir plan of operation;

(vi) Tracer study plan;

(vii) Surface water or GWI treatment facility operations plan;

(viii) Filtration pilot study; or

(ix) GWI determination reports, shall be reviewed by the department and the fee assessed shall reflect the time spent for this review

and shall be calculated based on ((one hundred two dollars)) \$102 per hour.

(f) Construction documents required under WAC 246-290-120 and design reports required under WAC 246-291-120.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	\$348	\$710	\$1,103	\$1,598	\$2,204	\$2,922
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	\$102	\$205	\$348	\$525	\$743	\$994
Complete new water system except treatment (an additional fee shall be assessed for review of treatment facility, if any)	\$281	\$633	\$919	\$1,279	\$1,709	\$2,204
New source only (an additional fee shall be assessed for review of treatment facility, if any)	\$205	\$382	\$525	\$710	\$919	\$1,172
One or more of the following submitted as a package and not requiring a detailed evaluation as determined by the department: Water line installation, booster pump station, modifications to source pumping, piping-valving, controls or storage reservoir (an additional fee shall be assessed for review of treatment facility, if any)	\$138	\$241	\$382	\$565	\$778	\$1,027
Documents submitted for projects such as water line installation, booster pump stations, modifications to source pumping, piping/valving, controls or storage reservoirs as determined by the department where such projects: Comply with design standards established by the department; Are prepared by a professional engineer in accordance with WAC 246-290-040; and Do not require a detailed evaluation by the department.	\$64	\$118	\$198	\$281	\$389	\$512

(g) Existing system approval required under WAC 246-290-140 and 246-291-130. For the purpose of this subsection the department shall determine whether a system is expanding or nonexpanding.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
NONEXPANDING system not requiring a detailed evaluation by the department	\$268	\$539	\$811	\$1,083	\$1,355	\$1,626
NONEXPANDING system requiring a detailed evaluation as determined by the department	\$404	\$811	\$1,229	\$1,626	\$2,034	\$2,441
EXPANDING system not requiring a detailed evaluation by the department	\$539	\$1,083	\$1,626	\$2,169	\$2,714	\$3,256
EXPANDING system requiring a detailed evaluation as determined by the department	\$676	\$1,355	\$2,034	\$2,714	\$3,391	\$4,072

(h) Other evaluations and approvals. As applicable, these fees will be charged in addition to the basic fees assessed under (a) through (h) of this subsection.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Well-site evaluation and approval including the site inspection and hydrogeologic information review.	\$205	\$309	\$363	\$451	\$565	\$710
Regulatory monitoring plan ¹	No plan required	\$198	\$268	\$337	\$404	\$471
Unfiltered system annual comprehensive report	Not applicable	\$404	\$676	\$947	\$1,218	\$1,489
¹ A comprehensive document containing coliform, inorganic chemical and organic chemical monitoring plans in accordance with WAC 246-290-300.						
Water system compliance report	\$115	\$115	\$115	\$115	\$115	\$115

(2) To determine the appropriate fee for a noncommunity system, calculate the service equivalent by taking the average population served each day of operation and dividing by ~~((twenty-five))~~ 25 for a transient noncommunity (TNC) system and two and one-half for nontransient noncommunity (NTNC) system. Use the number of service equivalents to find out what Group A size category to look under and submit the appropriate fee. (All noncommunity systems are Group A systems as described in WAC 246-290-020.)

(3) Additional review and approval fees may be assessed as follows:

(a) The basic fee covers an evaluation, or the review of an initial submittal and one resubmittal if required. If additional resubmittals are required, an additional ~~((twenty-five))~~ 25 percent of the original fee will be assessed for each additional resubmittal. For water system plan and SMA plan preparation the basic fee also covers a preplanning conference;

(b) Fees for department project approval based on local technical review will be determined on a case-by-case basis as outlined in the applicable memorandum of understanding between the department and the respective local agency;

(c) Fees may be assessed for services which the department determines are not described under subsection (1) of this section. If assessed, the fees will be calculated based on a rate of ~~((one hundred two dollars))~~ \$102 per hour.

Examples of these services include, but are not limited to:

- (i) Collection of water quality samples requested by purveyor;
- (ii) Review of alternate technologies requested by purveyor, manufacturer or authorized representative;
- (iii) Sanitary surveys, including the time spent as part of the annual on-site inspections for systems under WAC 246-290-690(3) that is in addition to the time necessary to assess watershed control and disinfection treatment;
- (iv) Well field designations; or
- (v) Transfers of ownership under WAC 246-290-035 or 246-294-060.

(d) Additional fees assessed by the department shall be billed to the purveyor using an itemized invoice.

(4) If the legislature revises the water system operating permit fee under RCW ~~((70.119A.110))~~ 70A.125.100 to incorporate into it one or more fees for service currently assessed separately under this section, and the purveyor has paid that consolidated fee, the department shall not assess or collect a separate fee under this section for any such service.

(5) All fees required under this section except as noted in subsection (3) of this section, shall be submitted prior to the department's approval. Payment of fees shall be in the form of a check or

money order made payable to: The Department of Health, P.O. Box 1099, Olympia, Washington 98507-1099. Payment of a fee shall not guarantee approval of the submitted document or evaluation request.

(6) Purveyors unable to determine the appropriate fee payment to submit should contact the department.

[Statutory Authority: RCW 70.119A.110. WSR 12-05-079, § 246-290-990, filed 2/16/12, effective 3/18/12. Statutory Authority: RCW 43.70.110, 43.70.250, 43.20B.020, and 2010 c 37. WSR 10-16-108, § 246-290-990, filed 8/2/10, effective 9/2/10. Statutory Authority: RCW 43.70.250 and 43.20B.020. WSR 07-14-128, § 246-290-990, filed 7/3/07, effective 8/3/07. Statutory Authority: RCW 70.119A.180. WSR 07-02-025B, § 246-290-990, filed 12/22/06, effective 1/22/07. Statutory Authority: RCW 43.70.250 and 70.119.160. WSR 04-12-123, § 246-290-990, filed 6/2/04, effective 7/3/04. Statutory Authority: RCW 43.70.250, 43.20B.020, and 70.119.160. WSR 03-13-028, § 246-290-990, filed 6/10/03, effective 7/11/03. Statutory Authority: RCW 43.70.250 and 70.119.160. WSR 02-01-065, § 246-290-990, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 43.70.250. WSR 00-02-015, § 246-290-990, filed 12/27/99, effective 1/27/00; WSR 99-12-022, § 246-290-990, filed 5/24/99, effective 6/24/99. Statutory Authority: RCW 43.20B.020. WSR 98-11-068, § 246-290-990, filed 5/19/98, effective 6/19/98; WSR 97-12-032, § 246-290-990, filed 5/30/97, effective 6/30/97; WSR 95-20-079, § 246-290-990, filed 10/4/95, effective 11/4/95; WSR 93-01-006 (Order 315), § 246-290-990, filed 12/3/92, effective 1/3/93. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-290-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.20A.055. WSR 87-14-066 (Order 2493), § 440-44-048, filed 7/1/87; WSR 83-14-038 (Order 1980), § 440-44-048, filed 6/30/83.]

OTS-3456.1

AMENDATORY SECTION (Amending WSR 12-24-070, filed 12/4/12, effective 1/1/14)

WAC 246-291-001 Purpose and scope. (1) The purpose of this chapter is to protect the health of consumers by establishing minimum design, construction, and other standards for Group B public drinking water systems.

(2) This chapter is adopted under chapter 43.20 RCW. A purveyor of a Group B public water system shall comply with this chapter and rules adopted by a local board of health under RCW 70.05.060 or 70.46.060 as applicable.

(3) Other statutes relating to this chapter are:

(a) RCW 43.20B.020, Fees for services—Department of health and department of social and health services;

(b) Chapter 43.70 RCW, Department of health;

(c) Chapter (~~70.116~~) 70A.100 RCW, Public Water System Coordination Act of 1977; and

(d) Chapter (~~70.119A~~) 70A.125 RCW, Public water systems—Penalties and compliance.

[Statutory Authority: RCW 43.20.050 and chapter 70.119A RCW. WSR 12-24-070, § 246-291-001, filed 12/4/12, effective 1/1/14. Statutory Authority: RCW 43.20.050. WSR 94-14-002, § 246-291-001, filed 6/22/94, effective 7/23/94.]

AMENDATORY SECTION (Amending WSR 12-24-070, filed 12/4/12, effective 1/1/14)

WAC 246-291-030 General administration. (1) The department administers this chapter unless:

(a) A local board of health adopts rules under RCW 70.05.060 or 70.46.060 to implement this chapter that are at least as stringent as this chapter; or

(b) The local health jurisdiction has accepted primary responsibility for administering this chapter in a JPR.

(2) Existing local rules shall remain in effect, except requirements of this chapter that are more stringent than the local board of health rules.

(3) In addition to the requirements of this chapter for Group B systems, local board of health rules may include, but are not limited to:

(a) System operations and maintenance;

(b) Ongoing water quality and water use monitoring;

(c) Reporting of water quality and water use monitoring data to the local health jurisdiction;

(d) System inspections or sanitary surveys;

(e) Public notification;

(f) Additional requirements for existing systems to be considered in compliance; and

(g) Regulation of systems with one or two service connections.

(4) A local board of health may adopt rules that require a purveyor of a Group B system to obtain an annual operating permit as authorized under RCW ((70.119A.130)) 70A.125.130.

[Statutory Authority: RCW 43.20.050 and chapter 70.119A RCW. WSR 12-24-070, § 246-291-030, filed 12/4/12, effective 1/1/14. Statutory Authority: RCW 43.20.050. WSR 95-20-078, § 246-291-030, filed 10/4/95, effective 11/4/95; WSR 94-14-002, § 246-291-030, filed 6/22/94, effective 7/23/94.]

AMENDATORY SECTION (Amending WSR 12-24-070, filed 12/4/12, effective 1/1/14)

WAC 246-291-050 Enforcement. (1) When a Group B system is out of compliance with this chapter, the department may initiate enforcement actions under RCW ((70.119A.030 and 70.119A.040)) 70A.125.030 and 70A.125.040.

(2) A health officer may initiate enforcement actions as authorized under RCW 70.46.060 and ((70.119A.050)) 70A.125.050, and as authorized under local board of health rules.

[Statutory Authority: RCW 43.20.050 and chapter 70.119A RCW. WSR 12-24-070, § 246-291-050, filed 12/4/12, effective 1/1/14. Statutory Authority: RCW 43.20.050. WSR 94-14-002, § 246-291-050, filed 6/22/94, effective 7/23/94.]

AMENDATORY SECTION (Amending WSR 12-24-070, filed 12/4/12, effective 1/1/14)

WAC 246-291-090 Public Water System Coordination Act and satellite management. (1) A purveyor of a new or expanding Group B system shall comply with the applicable coordinated water system plan created under chapter 246-293 WAC and (~~(70.116)~~) 70A.100 RCW if located within the boundaries of a critical water supply service area.

(2) The department or health officer shall approve a new or expanding Group B system consistent with requirements under WAC 246-293-190 and RCW (~~(70.116.060(3))~~) 70A.100.060(3).

(3) A new Group B system must comply with SMA requirements under RCW (~~(70.119A.060)~~) 70A.125.060.

[Statutory Authority: RCW 43.20.050 and chapter 70.119A RCW. WSR 12-24-070, § 246-291-090, filed 12/4/12, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 12-24-070, filed 12/4/12, effective 1/1/14)

WAC 246-291-120 Design report approval. (1) A purveyor shall receive written department or health officer approval of a design report prior to:

(a) Installing a new Group B system; or

(b) Providing service to more than the current approved number of service connections.

(2) To obtain design report approval for a Group B system, a purveyor shall provide a copy of the following, at a minimum, to the department or health officer:

(a) Documentation that creating a new system or expanding an existing system does not conflict with any applicable coordinated water system plan adopted under chapter 246-293 WAC;

(b) Documentation that creating a new system complies with the SMA requirements under RCW (~~(70.119A.060(2))~~) 70A.125.060(2);

(c) Source approval under WAC 246-291-125 or 246-291-135;

(d) Documentation that all requirements under WAC 246-291-140 are met;

(e) A system design that complies with the requirements under WAC 246-291-200 including, but not limited to:

(i) Drawings of each project component, including:

(A) Location;

(B) Orientation;

(C) Size; and

(D) Easements for:

(I) Future access and maintenance of distribution system pipelines located on private property, or franchise agreements necessary

for distribution system pipelines located within public right of way;
and

(II) Other system components, including access and maintenance of reservoirs, wells, and pumping stations.

(ii) Material specifications for each project component;

(iii) Construction specifications and assembly techniques;

(iv) Testing criteria and procedures; and

(v) A description of disinfection procedures as required under WAC 246-291-220.

(3) The design report shall be prepared, sealed, and signed in accordance with chapter 196-23 WAC by a professional engineer who:

(a) Is licensed in the state of Washington under chapter 18.43 RCW; and

(b) Has specific expertise regarding design, operation, and maintenance of public water systems.

(4) A local health jurisdiction that has accepted primary responsibility in a JPR under WAC 246-291-030 may adopt by rule, an exception to the professional engineer requirement for Group B systems that:

(a) Do not use a variable speed pump;

(b) Do not provide fire flow;

(c) Do not have special hydraulic considerations;

(d) Do not have atmospheric storage in which the bottom elevation of the storage reservoir is below the ground surface; and

(e) Serve fewer than (~~ten~~) 10 service connections.

(5) A purveyor shall submit a "Construction Completion Report for Public Water System Projects" to the department or health officer on a form approved by the department or health officer within (~~sixty~~) 60 days of construction completion, and before use of any approved Group B system. The form must:

(a) Be signed by a professional engineer, unless the health officer approves the project as meeting the requirements under subsection (4) of this section;

(b) Include a statement that the project is constructed and completed according to the design report requirements under this chapter; and

(c) Include a statement that the installation, testing, and disinfection of the Group B system is completed in accordance with this chapter.

(6) All design changes, except for minor field revisions, must be submitted in writing to, and approved by, the department or health officer.

[Statutory Authority: RCW 43.20.050 and chapter 70.119A RCW. WSR 12-24-070, § 246-291-120, filed 12/4/12, effective 1/1/14. Statutory Authority: RCW 43.20.050. WSR 94-14-002, § 246-291-120, filed 6/22/94, effective 7/23/94.]

OTS-3457.1

AMENDATORY SECTION (Amending WSR 14-01-003, filed 12/4/13, effective 1/4/14)

WAC 246-292-010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) **"Air gap"** means a physical separation measured vertically between the lowest point of a free-flowing discharge end of a potable water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel.

(2) **"Approved air gap"** is defined in chapter 246-290 WAC.

(3) **"Approved AVB (approved atmospheric vacuum breaker)"** is defined in chapter 246-290 WAC.

(4) **"Approved backflow preventer"** is defined in chapter 246-290 WAC.

(5) **"Approved backflow prevention assembly"** is defined in chapter 246-290 WAC.

(6) **"Authority having jurisdiction"** means the local official, board, department, or agency authorized to administer and enforce the Uniform Plumbing Code adopted in chapter 19.27 RCW.

(7) **"AVB (atmospheric vacuum breaker)"** means a device that contains an air inlet, vent, air inlet valve, and check seat and is used to prevent backsiphonage backflow.

(8) **"BAT (backflow assembly tester)"** means an individual meeting the requirements of this chapter and certified under chapter ((70.119)) 70A.120 RCW to inspect, field test, maintain, and repair backflow prevention assemblies, devices, and air gaps that protect the public water system.

(9) **"Backflow"** means the reversal of flow of water or other substances through a cross-connection into the public water system or consumer's water system.

(10) **"Backflow preventer"** means a backflow prevention assembly, air gap, or AVB.

(11) **"Backflow preventer inspection and field test"** means the set of procedures and measurements performed by a BAT to evaluate a backflow preventer's approval status, installation, and performance to determine compliance with the requirements in WAC 246-290-490.

(12) **"Backflow prevention assembly"** means a mechanical backflow preventer designed for in-line testing and repair including, but not limited to:

(a) Reduced pressure backflow assembly;

(b) Reduced pressure detector assembly;

(c) Double check valve assembly;

(d) Double check detector assembly;

(e) Pressure vacuum breaker assembly; or

(f) Spill-resistant vacuum breaker assembly.

(13) **"BTO (basic treatment operator)"** means an individual meeting the requirements of this chapter and certified under chapter ((70.119)) 70A.120 RCW to perform routine on-site duties in a water treatment plant. BTO duties affect water treatment plant performance, public water system performance, water quality, water quantity, or public health protection.

(14) **"CCS (cross-connection control specialist)"** means an individual meeting the requirements of this chapter and certified under chapter ((70.119)) 70A.120 RCW to develop and implement a cross-connection control program.

(15) "**Certificate**" means a document issued annually by the department stating that the operator has met the requirements for a specific certified operator classification in WAC 246-292-060.

(16) "**Certified operator**" means an individual meeting the requirements of this chapter, certified under chapter (~~(70.119)~~) 70A.120 RCW, and who has a valid certificate for one or more of the following classifications:

- (a) BAT;
- (b) BTO;
- (c) CCS;
- (d) WDS;
- (e) WDM; or
- (f) WTPO.

(17) "**CEU (continuing education unit)**" means the nationally recognized measurement, similar to college credit, developed by IACET, in which one CEU is awarded for every (~~(ten)~~) 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

(18) "**College credit**" means a measurement that documents completion of educational courses earned toward a college degree from an accredited college or university.

(19) "**Community water system**" means any Group A public water system providing service to (~~(fifteen)~~) 15 or more service connections used by year-round residents for (~~(one hundred eighty)~~) 180 or more days within a calendar year, regardless of the number of people, or regularly serving at least (~~(twenty-five)~~) 25 year-round (i.e., more than (~~(one hundred eighty)~~) 180 days per year) residents.

(20) "**Consumer**" means any person receiving water from a public water system from either the meter or the point where the service line connects with the distribution system if no meter is present. For purposes of cross-connection control, "consumer" means the owner or operator of a water system connected to a public water system through a service connection.

(21) "**Consumer's premises**" means a consumer's real property, any easement held by a consumer for the purpose of delivering the water to the consumer's real property, and all buildings and fixtures on the consumer's real property.

(22) "**Consumer's water system**" means any potable or industrial water system that begins at the point of delivery from the public water system and is located on the consumer's premises. The consumer's water system includes all auxiliary sources of supply, storage, treatment, and distribution facilities, piping, plumbing, and fixtures under the control of the consumer.

(23) "**Contract operator**" means a certified operator who is approved by the department to operate three or more Group A public water systems.

(24) "**Cross-connection control program**" means the administrative and technical procedures the purveyor implements to protect the public water system from contamination via cross-connections as required in WAC 246-290-490.

(25) "**Department**" means the Washington state department of health.

(26) "**Distribution system**" means all piping components of a public water system that serve to convey water from transmission mains linked to source, storage and treatment facilities to the consumer excluding individual services.

(27) "**GED**" means the general educational development test of the American Council on Education.

(28) "**Grandparented certification**" means an operator certification granted before January 1, 2001, under which the department granted an exemption for the existing operator in responsible charge from meeting the initial education, experience and examination requirements for the public water system's assigned certification classification.

(29) "**Gross negligence**" means an act or omission performed or not performed in reckless disregard of a legal duty, or without even slight care.

(30) "**GWI (groundwater under the direct influence of surface water)**" means any water beneath the surface of the ground that the department determines has the following characteristics:

(a) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water conditions where natural conditions cannot prevent the introduction of surface water pathogens into the source at the system's point of withdrawal.

(31) "**IACET**" means the International Association for Continuing Education and Training.

(32) "**Major segment**" means a distinct portion of a public water system based on system size and complexity that a purveyor assigns to one or more certified operators in responsible charge.

(33) "**Nationally recognized association of certification authorities**" means an organization that:

(a) Serves as an information center for certification activities;

(b) Recommends minimum standards and guidelines for classification of potable water treatment plants, distribution systems, and certification of operators;

(c) Facilitates reciprocity between a state or provincial program; and

(d) Assists authorities in establishing new certification programs and updating existing programs.

(34) "**Noncommunity water system**" means a Group A public water system that is not a community water system. Noncommunity water systems are further defined as nontransient noncommunity and transient noncommunity.

(35) "**Nontransient noncommunity water system**" means a Group A public water system that provides service opportunities to (~~twenty-five~~) 25 or more of the same nonresidential people for (~~one hundred eighty~~) 180 or more days within a calendar year.

(36) "**OIT (operator in training)**" means an individual with less than the required amount of operating experience meeting the requirements of this chapter and certified under chapter (~~70.119~~) 70A.120 RCW to perform routine on-site duties in a water treatment plant or distribution system.

(37) "**Operating experience**" means the routine performance or management of duties:

(a) In a water treatment plant or distribution system; and

(b) That affect water treatment plant performance, distribution system performance, water quality, water quantity, or public health protection.

(38) "**Operating shift**" means a designated period of time in which a certified operator makes decisions and takes actions that directly

impact drinking water quality, water quantity, or public health protection.

(39) **"Person"** means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities.

(40) **"Premises isolation"** is defined in chapter 246-290 WAC.

(41) **"Professional growth reporting period"** means a designated period of time not less than three years, in which a certified operator completes the professional growth requirement in WAC 246-292-095.

(42) **"Public water system (Group A public water system)"** means:

(a) A system with (~~(fifteen)~~) 15 or more service connections, regardless of the number of people; or

(b) A system serving an average of (~~(twenty-five)~~) 25 or more people per day for (~~(sixty)~~) 60 or more days within a calendar year, regardless of the number of service connections; and

(c) In addition, a Group A public water system is further defined in WAC 246-290-020.

(43) **"Purveyor"** means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system. Purveyor also means the authorized agents of these entities.

(44) **"Relevant excess education"** means science, applied science, or technology CEUs or college credits that exceed the minimum education required for certification in a specific certified operator classification. Example fields of study include, but are not limited to:

(a) Biology;

(b) Chemistry;

(c) Engineering;

(d) Geology; and

(e) Physics.

(45) **"Relevant water system training"** means training that directly relates to information and procedures that influence water quality, water quantity, or public health protection, including:

(a) The operation or maintenance activities of a public water system; or

(b) Managing the operation or maintenance activities of a public water system.

(46) **"Responsible charge"** means the authority a purveyor grants to a certified operator to make decisions:

(a) That will directly impact water quality, water quantity, or public health protection of a public water system; and

(b) Regarding the daily operational activities, process control, or system integrity of a water treatment plant or distribution system.

(47) **"SMA (satellite system management agency)"** means a person that is approved by the department under chapter 246-295 WAC to own or operate more than one public water system on a regional or county-wide basis without the necessity for a physical connection between the systems.

(48) **"Surface water"** means a body of water open to the atmosphere and subject to surface runoff.

(49) **"Transient noncommunity water system"** means a Group A public water system that serves:

(a) Twenty-five or more different people each day for (~~(sixty)~~) 60 or more days within a calendar year; or

(b) Twenty-five or more of the same people each day for ~~((sixty))~~ 60 or more days, but less than ~~((one hundred eighty))~~ 180 days within the calendar year.

(50) "**USC**" means the University of Southern California.

(51) "**Validated examination**" means an examination that is independently reviewed by subject matter experts, to verify that the examination is based on a job analysis and, where applicable, is related to the classification of a water treatment plant and distribution system.

(52) "**Water-related experience**" means experience:

(a) Operating a water treatment plant or distribution system;

(b) Working in water quality, water resources, or water infrastructure in a federal, state, county, local, or other governmental agency;

(c) Working in industrial water;

(d) Working in wastewater treatment; or

(e) Working as a consulting engineer or operations consultant in water quality, water resources, or water infrastructure.

(53) "**Water treatment plant**" means that portion of a public water system that treats or improves the physical, chemical, or microbial quality of the system's water to comply with water quality requirements in chapter 246-290 WAC.

(54) "**WDM (water distribution manager)**" means an individual meeting the requirements of this chapter and certified under chapter ~~((70.119))~~ 70A.120 RCW to perform or manage routine on-site duties in the distribution system of a public water system that serves more than ~~((two hundred fifty))~~ 250 people. WDM duties affect the public water system performance, water quality, water quantity, or public health protection.

(55) "**WDS (water distribution specialist)**" means an individual meeting the requirements of this chapter and certified under chapter ~~((70.119))~~ 70A.120 RCW to perform or manage on-site duties in a distribution system of a public water system that serves ~~((two hundred fifty))~~ 250 people or less. WDS duties affect public water system performance, water quality, water quantity, or public health protection.

(56) "**WFI (water facilities inventory)**" means the department form required in WAC 246-290-480(2) that summarizes a public water system's characteristics.

(57) "**WTPO (water treatment plant operator)**" means an individual meeting the requirements of this chapter and certified under chapter ~~((70.119))~~ 70A.120 RCW to perform or manage on-site duties in a water treatment plant. WTPO duties affect plant performance, public water system performance, water quality, water quantity, or public health protection.

[Statutory Authority: RCW 70.119.050 and chapter 70.119 RCW. WSR 14-01-003, § 246-292-010, filed 12/4/13, effective 1/4/14. Statutory Authority: Chapter 70.119 RCW. WSR 05-06-122, § 246-292-010, filed 3/2/05, effective 4/2/05. Statutory Authority: Chapter 70.119 RCW and Safe Drinking Water Act, Public Law 104-182; 64 F.R. 5916 - 5921. WSR 01-02-070, § 246-292-010, filed 12/29/00, effective 1/29/01. Statutory Authority: Chapter 70.119 RCW. WSR 94-04-004, § 246-292-010, filed 1/20/94, effective 2/20/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-292-010, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.119.050. WSR 78-10-053 (Order 1343), § 248-55-020, filed 9/22/78.]

AMENDATORY SECTION (Amending WSR 14-01-003, filed 12/4/13, effective 1/4/14)

- WAC 246-292-100 Revocation and suspension.** (1) The department may suspend an operator's certificate for up to one year or revoke an operator's certificate for up to five years if the operator:
- (a) Obtains a certificate by fraud or deceit;
 - (b) Performs an act of fraud, deceit, or gross negligence when:
 - (i) Operating or maintaining a public water system;
 - (ii) Inspecting, testing, maintaining, or repairing backflow assemblies, devices, or air gaps intended to protect a public water system from contamination; or
 - (iii) Developing or implementing a cross-connection control program.
 - (c) Intentionally violates the requirements of this chapter or department statutes, rules, or orders as authorized in chapter 246-290 WAC, RCW ((~~70.119.110, or 70.119A.040~~)) 70A.120.110, or 70A.125.040.
- (2) When considering if an act or omission constitutes gross negligence, the department shall consider all pertinent factors including, but not limited to:
- (a) The standard of care commonly exercised by a certified operator;
 - (b) If the legal duty was known or should have been known to the alleged violator; and
 - (c) The degree to which the alleged gross negligence endangered public health.
- (3) An operator whose certificate is suspended shall continue to meet all renewal and professional growth requirements in WAC 246-292-090 and 246-292-095, in order to maintain certification after the suspension period has ended.
- (4) An operator whose certificate is revoked may apply for certification after the period of revocation has ended, and shall meet all requirements in WAC 246-292-060 and 246-292-070.

[Statutory Authority: RCW 70.119.050 and chapter 70.119 RCW. WSR 14-01-003, § 246-292-100, filed 12/4/13, effective 1/4/14. Statutory Authority: Chapter 70.119 RCW. WSR 05-06-122, § 246-292-100, filed 3/2/05, effective 4/2/05. Statutory Authority: Chapter 70.119 RCW and Safe Drinking Water Act, Public Law 104-182; 64 F.R. 5916 - 5921. WSR 01-02-070, § 246-292-100, filed 12/29/00, effective 1/29/01. Statutory Authority: Chapter 70.119 RCW. WSR 94-04-004, § 246-292-100, filed 1/20/94, effective 2/20/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-292-100, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.119.050. WSR 78-10-053 (Order 1343), § 248-55-120, filed 9/22/78.]

AMENDATORY SECTION (Amending WSR 14-01-003, filed 12/4/13, effective 1/4/14)

- WAC 246-292-110 Enforcement.** (1) When a public water system or operator fails to comply with the requirements of this chapter, the department may initiate appropriate enforcement actions as authorized in chapters ((~~70.119 and 70.119A~~)) 70A.120 and 70A.125 RCW.
- (2) The department's enforcement actions against a public water system or operator may include one or more of the following:

- (a) Issuing an informal letter directing appropriate corrective measures;
- (b) Issuing a notice of violation requiring appropriate corrective measures;
- (c) Issuing a compliance schedule of specific actions needed to achieve compliance;
- (d) Issuing an order requiring specific actions or ceasing unacceptable activities within a designated time period;
- (e) Imposing civil penalties for up to:
 - (i) Five thousand dollars per day per violation; or
 - (ii) Ten thousand dollars per day per violation in the case of a violation that the department has determined to be a public health emergency;
- (f) Revoking or suspending a certification in accordance with WAC 246-292-100; and
- (g) Other legal action by the attorney general or local prosecutor.

[Statutory Authority: RCW 70.119.050 and chapter 70.119 RCW. WSR 14-01-003, § 246-292-110, filed 12/4/13, effective 1/4/14. Statutory Authority: Chapter 70.119 RCW and Safe Drinking Water Act, Public Law 104-182; 64 F.R. 5916 - 5921. WSR 01-02-070, § 246-292-110, filed 12/29/00, effective 1/29/01. Statutory Authority: Chapter 70.119 RCW. WSR 94-04-004, § 246-292-110, filed 1/20/94, effective 2/20/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-292-110, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.119.050. WSR 78-10-053 (Order 1343), § 248-55-130, filed 9/22/78.]

OTS-3458.1

AMENDATORY SECTION (Amending WSR 91-02-049, filed 12/27/90, effective 1/31/91)

WAC 246-293-001 Purpose. This chapter is promulgated pursuant to the authority granted in the Public Water System Coordination Act of 1977, chapter (~~70.116~~) 70A.100 RCW, for the purpose of implementing a program relating to public water system coordination within the state of Washington, for evaluation and determination of critical water supply service areas, and assistance for orderly and efficient public water system planning.

[Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-293-001, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.116 RCW. WSR 78-07-048 (Order 1309), § 248-56-100, filed 6/28/78.]

AMENDATORY SECTION (Amending WSR 91-02-049, filed 12/27/90, effective 1/31/91)

WAC 246-293-401 Purpose. The purpose of this chapter is to provide a process for resolving service area conflicts which arise from implementation of the Public Water System Coordination Act, chapter ((70.116)) 70A.100 RCW, and its procedural regulations, chapter 248-56 WAC.

[Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-293-401, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 74.116.070 [70.116.070]. WSR 83-01-015 (Order 1919), § 248-59-005, filed 12/6/82.]

AMENDATORY SECTION (Amending WSR 91-02-049, filed 12/27/90, effective 1/31/91)

WAC 246-293-601 Purpose. This chapter is promulgated pursuant to the authority granted in the Public Water System Coordination Act of 1977, chapter ((70.116)) 70A.100 RCW, for the purpose of establishing minimum performance standards related to fire protection, including provisions for their application and enforcement, and incorporating them into the design and construction of new and expanding public water systems.

[Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-293-601, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.116.080. WSR 79-04-007 (Order 1378), § 248-57-010, filed 3/12/79.]

OTS-3459.1

AMENDATORY SECTION (Amending WSR 04-06-047, filed 3/1/04, effective 4/1/04)

WAC 246-294-001 Purpose. This chapter implements chapter ((70.119A)) 70A.125 RCW and sets operating permit requirements to help assure Group A water systems provide safe and reliable drinking water to the public consistent with chapter 246-290 WAC, state board of health drinking water regulations and chapter 246-292 WAC, water works operator certification regulations.

[Statutory Authority: Chapter 70.119A RCW. WSR 04-06-047, § 246-294-001, filed 3/1/04, effective 4/1/04; WSR 93-03-047 (Order 325), § 246-294-001, filed 1/14/93, effective 2/14/93.]

AMENDATORY SECTION (Amending WSR 12-05-079, filed 2/16/12, effective 3/18/12)

WAC 246-294-010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

- (1) **"Adequacy"** means an assessment, based upon evaluation of the department's records, of a water system's current ability to provide safe and reliable drinking water in accordance with applicable drinking water statutes and regulations.
- (2) **"Community water system"** means any Group A water system:
 - (a) With ~~((fifteen))~~ 15 or more services used by residents for ~~((one hundred eighty))~~ 180 or more days within a calendar year, regardless of the number of people; or
 - (b) Regularly serving ~~((twenty-five))~~ 25 or more residents for ~~((one hundred eighty))~~ 180 or more days within the calendar year, regardless of the number of services.
- (3) **"Department"** means the Washington state department of health.
- (4) **"Drinking water regulations"** means the provisions of chapter ~~((70.119A))~~ 70A.125 RCW, chapter 246-290 WAC, state board of health drinking water regulations and chapter 246-292 WAC, water works operator certification regulations, that help assure Group A public water systems provide safe and reliable drinking water.
- (5) **"Dwelling unit"** means a structure, or unit within a structure, with independent living facilities for one or more persons that include permanent provisions for living, sleeping, eating, cooking, and sanitation. A dwelling unit includes, but is not limited to:
 - (a) A single family residence; or
 - (b) Each unit of an apartment building or multifamily building.
- (6) **"EPA"** means the Environmental Protection Agency.
- (7) **"ERU (equivalent residential unit)"** means a system-specific unit of measure used to express the amount of water consumed by a typical full-time single family residence.
- (8) **"Group A water systems"** are defined as community and noncommunity water systems.
 - (a) Community water system means any Group A water system providing service to ~~((fifteen))~~ 15 or more service connections used by year-round residents for ~~((one hundred eighty))~~ 180 or more days within a calendar year, regardless of the number of people, or regularly serving at least ~~((twenty-five))~~ 25 year-round (i.e., more than ~~((one hundred eighty))~~ 180 days per year) residents.
 - (b) Noncommunity water system means a Group A water system that is not a community water system. Noncommunity water systems are further defined as:
 - (i) **Nontransient** (NTNC) water systems that provide service opportunity to ~~((twenty-five))~~ 25 or more of the same nonresidential people for ~~((one hundred eighty))~~ 180 or more days within a calendar year.
 - (ii) **Transient** (TNC) water systems that serve:
 - (A) Twenty-five or more different people each day for ~~((sixty))~~ 60 or more days within a calendar year;
 - (B) Twenty-five or more of the same people each day for ~~((sixty))~~ 60 or more days, but less than ~~((one hundred eighty))~~ 180 days in a calendar year; or
 - (C) One thousand or more people for two or more consecutive days within a calendar year.

(9) "**MCL (maximum contaminant level)**" means the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user, measured at the locations identified under WAC 246-290-300, Table 3.

(10) "**Nonresident**" means a person having access to drinking water from a public water system who lives elsewhere. Examples include travelers, transients, employees, students, etc.

(11) "**Nonresidential service connection**" means a connection to a public water system that provides potable water including, but not limited to a:

- (a) Commercial property;
- (b) Industrial property;
- (c) Civic property;
- (d) Municipal property;
- (e) Institutional property;
- (f) School; or

(g) Other authorized use that provides potable water to a nonresidential population.

(12) "**NTNC**" means nontransient noncommunity.

(13) "**Owner**" means any agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that holds as property, a public water system.

(14) "**Public water system**" means any system, providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm. The term includes:

(a) Collection, treatment, storage, and/or distribution facilities under control of the purveyor and used primarily in connection with the system.

(b) Collection or pretreatment storage facilities not under control of the purveyor, but primarily used in connection with the system.

(15) "**Recreational service connection**" means a connection to a public water system that provides potable water to each:

- (a) Campsite; or
- (b) Recreational vehicle site.

(16) "**Resident**" means an individual living in a dwelling unit served by a public water system.

(17) "**Residential service connection**" means a connection to a public water system that provides potable water to a dwelling unit. When the service connection provides water to a residential population without clearly defined dwelling units, the following formulas are used to determine the number of residential service connections to be included on the WFI form:

(a) Divide the average population served each day by two and one-half; or

(b) Using actual water use data, calculate the total ERUs represented by the service connection in accordance with department design guidance.

(c) The calculated number of services is not less than one.

(18) "**SMA (satellite management agency)**" means an individual, purveyor, or entity that is approved by the department in accordance with chapter 246-295 WAC to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems.

(19) **"Service connection"** means a residential, nonresidential, or recreational service connection as defined in this section.

(20) **"SSNC (state significant noncomplier)"** means a system that is violating or has violated department rules, and violations may create, or have created an imminent or a significant risk to human health. Such violations include, but are not limited to, repeat violations of monitoring requirements, failure to address exceedance of permissible levels of regulated contaminants, failure to comply with treatment technique standards or requirements, failure to comply with water works operator certification requirements, or failure to submit to a sanitary survey.

(21) **"TNC"** means transient noncommunity.

(22) **"WFI (water facilities inventory)"** means the department form summarizing each public water system's characteristics.

[Statutory Authority: RCW 70.119A.110. WSR 12-05-079, § 246-294-010, filed 2/16/12, effective 3/18/12. Statutory Authority: Chapter 70.119A RCW. WSR 04-06-047, § 246-294-010, filed 3/1/04, effective 4/1/04; WSR 93-03-047 (Order 325), § 246-294-010, filed 1/14/93, effective 2/14/93.]

AMENDATORY SECTION (Amending WSR 12-05-079, filed 2/16/12, effective 3/18/12)

WAC 246-294-070 Fees. (1) The fees for Group A water system operating permits are authorized under RCW (~~(70.119A.110)~~) 70A.125.100 and are listed in Table 2.

**TABLE 2
OPERATING PERMIT FEES**

Classification	2012	2013	2014 and following years
Base fee for all water systems	\$100.00	\$100.00	\$100.00
Per connection fee:			
14 or fewer services	\$0.65	\$0.98	\$1.30
15 - 99 services	\$0.63	\$0.94	\$1.25
100 - 499 services	\$0.60	\$0.90	\$1.20
500 - 999 services	\$0.58	\$0.86	\$1.15
1,000 - 9,999 services	\$0.55	\$0.83	\$1.10
10,000 - 95,000 services	\$0.53	\$0.79	\$1.05
95,001 or more services	\$50,000.00 per year	\$75,000.00 per year	\$100,000.00 per year
SMA	Use the per connection fee amount above to calculate the fee based on total number of all service connections owned plus a \$100 base fee	Use the per connection fee amount above to calculate the fee based on total number of all service connections owned plus a \$100 base fee	Use the per connection fee amount above to calculate the fee based on total number of all service connections owned plus a \$100 base fee
Late fee (late fee is charged seventy days after the department mails the renewal application)	Add 10% to applicable fee or \$25.00, whichever is greater	Add 10% to applicable fee or \$25.00, whichever is greater	Add 10% to applicable fee or \$25.00, whichever is greater

(2) For purposes of determining the operating permit fee, service connections shall be counted as follows:

(a) For community water systems, the operating permit fee is based on the total number of residential service connections and non-residential service connections.

(b) Nonresidential service connections are counted as one service connection for each property as defined in WAC 246-294-010(11) regardless of how many buildings are on the property.

(3) For NTNC and TNC systems, owners shall pay the fee in Table 2 based on equivalent number of service connections. Population information used in calculating equivalent number of service connections shall come from the WFI. The department shall use the following formulas to determine equivalent number of service connections:

(a) For NTNC populations, divide the average population served each day by two and one-half; and

(b) For TNC populations, which include recreational service connections, divide the average population served each day by (~~twenty-five~~) 25.

[Statutory Authority: RCW 70.119A.110. WSR 12-05-079, § 246-294-070, filed 2/16/12, effective 3/18/12. Statutory Authority: Chapter 70.119A RCW. WSR 04-06-047, § 246-294-070, filed 3/1/04, effective 4/1/04; WSR 93-03-047 (Order 325), § 246-294-070, filed 1/14/93, effective 2/14/93.]

AMENDATORY SECTION (Amending WSR 04-06-047, filed 3/1/04, effective 4/1/04)

WAC 246-294-090 Enforcement. The department may initiate appropriate enforcement actions if an owner is out of compliance with these rules or any applicable drinking water regulations. These actions may include any one or combination of the following:

(1) Issuance of informal letters instructing or requiring appropriate corrective measures; or

(2) Issuance of a compliance agreement or schedule; or

(3) Issuance of departmental orders requiring any person to apply for an operating permit as required by these rules and RCW (~~70.119A.110~~) 70A.125.100 or to comply with applicable drinking water regulations imposed as part of an operating permit; or

(4) Issuance of civil penalties for up to (~~five thousand dollars~~) \$5,000 per day per violation for failure to comply with departmental orders issued in accordance with subsection (3) of this section; or

(5) Legal action by the attorney general or local prosecutor.

[Statutory Authority: Chapter 70.119A RCW. WSR 04-06-047, § 246-294-090, filed 3/1/04, effective 4/1/04; WSR 93-03-047 (Order 325), § 246-294-090, filed 1/14/93, effective 2/14/93.]

OTS-3460.1

AMENDATORY SECTION (Amending WSR 94-18-108, filed 9/6/94, effective 10/7/94)

WAC 246-295-001 Purpose. (1) The purpose of these rules is to:

- (a) Establish criteria for approving satellite system management agencies hereafter referred to as satellite management agencies (SMAs) pursuant to RCW ((70.116.134)) 70A.100.130;
 - (b) Delineate the process organizations and/or individuals must follow to be considered an approved SMA; and
 - (c) Outline procedures for coordination between water users, purveyors, SMAs, local government and the department.
- (2) This chapter is specifically designed to ensure:
- (a) The enhancement of public health through the use of SMAs;
 - (b) SMAs are capable of providing high quality drinking water in a reliable manner and in a quantity suitable for intended use;
 - (c) SMAs are capable of meeting the requirements of the federal Safe Drinking Water Act, P.L. 93-523 and P.L. 99-339; and
 - (d) Uniformity in the SMAs determination and compliance processes.
- (3) Other statutes relating to this chapter are:
- (a) Chapter 43.20 RCW, State board of health;
 - (b) RCW 43.20B.020 Fees for services—Department of health and department of social and health services;
 - (c) Chapter 43.70 RCW, Department of health;
 - (d) Chapter ((70.116)) 70A.100 RCW, Public Water System Coordination Act of 1977;
 - (e) Chapter ((70.119)) 70A.120 RCW, Public water supply systems—Certification and regulation of operators; and
 - (f) Chapter ((70.119A)) 70A.125, Public water systems—Penalties and compliance.

[Statutory Authority: RCW 70.116.134. WSR 94-18-108, § 246-295-001, filed 9/6/94, effective 10/7/94.]

AMENDATORY SECTION (Amending WSR 94-18-108, filed 9/6/94, effective 10/7/94)

WAC 246-295-030 Potential satellite management agencies (SMAs).

- (1) Pursuant to RCW ((70.116.134(2))) 70A.100.130(2), each county shall identify and submit a list of potential SMAs to the department by January 1, 1995, for areas within the county:
- (a) Which are not within a designated future service area of any utility pursuant to the Water System Coordination Act; or
 - (b) Where an existing purveyor has agreed or where a legal determination has been made that an existing purveyor is unable or unwilling to provide service.
- (2) After January 1, 1995, counties may submit names of additional potential SMAs to the department on an ongoing basis.

[Statutory Authority: RCW 70.116.134. WSR 94-18-108, § 246-295-030, filed 9/6/94, effective 10/7/94.]

AMENDATORY SECTION (Amending WSR 94-18-108, filed 9/6/94, effective 10/7/94)

WAC 246-295-100 SMA compliance. (1) A SMA:

(a) Shall comply with all statutes and regulations governing public water systems including but not limited to chapters ((~~70.116, 70.119 and 70.119A~~)) 70A.100, 70A.120, and 70A.125 RCW and chapters 246-290, 246-291, 246-292, 246-293 and 246-294 WAC and the requirements of this chapter; and

(b) Shall adhere to its SMA plan.

(2) The department may revoke, suspend, modify or deny the certification or application of any SMA or applicant which:

(a) Fails to timely submit required information;

(b) Has been subject to departmental enforcement action for violation of statutes or regulations governing public water systems;

(c) Violates or has violated statutes or regulations governing public water systems;

(d) Fails to comply with its SMA plan;

(e) Fails to have or maintain required staff;

(f) Fails to comply with all applicable local ordinances, regulations, plans and policies;

(g) Fails to demonstrate financial viability whether at the time of application or subsequently;

(h) Fails to bring a noncomplying system into regulatory compliance within the time frame established under WAC 246-295-110; or

(i) Operates in a manner that threatens public health.

(3) Any SMA or applicant aggrieved by the department's decision to revoke, suspend, modify or deny their approval or application may appeal such decision in accordance with chapter 246-10 WAC and chapter 34.05 RCW.

(4) An approved SMA that files a timely appeal of a decision to revoke, suspend or modify its approval under chapter 246-10 WAC and/or chapter 34.05 RCW may continue to operate until a final departmental decision is issued, unless protection of the public health, safety and welfare requires summary action.

(5) If a SMA is removed from the approved list and desires reinstatement, the SMA must submit a new notice of intent to become an approved SMA and follow the process outlined in WAC 246-295-040, provided that the reapplication shall be subject to any limitations imposed by final departmental order or if applicable, order on judicial review.

[Statutory Authority: RCW 70.116.134. WSR 94-18-108, § 246-295-100, filed 9/6/94, effective 10/7/94.]

WSR 22-03-054

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed January 14, 2022, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-06-027.

Title of Rule and Other Identifying Information: WAC 246-72-010, 246-72-030, 246-72-050, 246-72-080, 246-72-090, 246-72-100, 246-72-110, and 246-72-120, medical marijuana consultant certification. The department of health (DOH) is proposing amendments to various sections within chapter 246-72 WAC to enhance and clarify training program requirements, education, and other requirements of an instructor; continuing education, practice parameters of a medical marijuana certified consultant, and other housekeeping amendments.

Hearing Location(s): On February 22, 2022, at 9:30 a.m. In response to the coronavirus disease 2019 (COVID-19), DOH will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN_X_UV8T5zTim6YEqkkgvSCA](https://us02web.zoom.us/join/https://us02web.zoom.us/webinar/register/WN_X_UV8T5zTim6YEqkkgvSCA). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: March 1, 2022.

Submit Written Comments to: Allyson Clayborn, P.O. Box 47850, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2820, by February 22, 2022.

Assistance for Persons with Disabilities: Contact Allyson Clayborn, phone 360-236-2820, fax 360-236-2901, TTY 711, email allyson.clayborn@doh.wa.gov, by February 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In response to a rule petition, the department is proposing amendments to portions of the chapter regarding continuing education (CE) for certified consultants. This includes requiring successful completion of a two-hour course provided by the department, allowing the use of self-study programs, and clarifying specific topics to be included in each training.

Additionally, the department is proposing amendments to chapter 246-72 WAC to clarify the following: (1) The definitions of "designated provider" and "qualifying patient"; (2) training program requirements; (3) practice parameters of a certified consultant (e.g. assisting medical marijuana card holders with their purchases); (4) education and other requirements to be an instructor of an initial consultant training course; and (5) correcting citations and other housekeeping items.

The overall goal of this proposal is to ensure certified consultants have a solid understanding of their role and knowledge of industry regulations, rules, and laws in order to ensure accurate information is being shared on the front end with the qualifying patients, designated providers, and consumers they are assisting.

Reasons Supporting Proposal: The proposed rules are necessary to set and clarify operational and administrative standards of the database and certification standards and practice parameters for consultant certification. Specifically, the rule revisions clarify inconsistencies and knowledge gaps in medical marijuana consultant training per chapter 69.51A RCW by clearly defining expected training stand-

ards, necessary certification requirements and practice parameters for consultants in chapter 246-72 WAC. Amending such rules are necessary to provide the best public health and welfare.

The proposed amendments are intended to eliminate confusion about training standards and the role and knowledge of the certified medical marijuana consultant related to the authorization database and consultant certification which places patient privacy and safety at risk. Currently medical marijuana patients experience frustration with registering in the database and confusion when selecting products that may benefit their medical condition. The proposed rules are critical to ensuring that medical marijuana consultants are well trained and sharing consistent, accurate information with the patient community.

Statutory Authority for Adoption: RCW 69.51A.290.

Statute Being Implemented: RCW 69.51A.290.

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

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Allyson Clayborn, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2820.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Allyson Clayborn, P.O. Box 47850, Olympia, WA 98504, phone 360-236-2820, fax 360-236-2901, TTY 711, email medicalmarijuana@doh.wa.gov.

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

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

Explanation of exemptions: Proposed changes to WAC 246-72-030, 246-72-050, 246-72-080, and 246-72-090 are exempt under RCW 34.05.310 (4) (d).

WAC 246-72-010 Definitions, proposed changes to this section do not meet the definition of a significant rule under RCW 34.05.328 (5) (c) (iii). Defined terms do not set standards, rather they are intended to provide clarity of the meaning of the terms used throughout the chapter.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

In response to a rule petition, the department is proposing amendments to portions of the chapter regarding CE for certified consultants. This includes a possible two-hour required course provided by the department, consideration of self-study programs, and clarifying specific topics to be included in each training.

Additionally, the department is proposing amendments to chapter 246-72 WAC to clarify the following: (1) Terms such as "designated provider" and "qualifying patient"; (2) practice parameters of a certified consultant (e.g., assisting medical marijuana cardholders with their purchases); (3) education and other requirements to be an instructor of an initial consultant training course; and (4) correcting citations and other housekeeping items.

The overall goal of this proposal is to ensure certified consultants have a solid understanding of their role and knowledge of indus-

try regulations, rules, and laws in order to ensure accurate information is being shared on the front end with the qualifying patients, designated providers, and consumers they are assisting.

The following businesses are required to comply with the proposed rule. The North American Industry Classification System (NAICS) codes are used and the minor cost thresholds are identified.

NAICS Code: 611710.

NAICS Business Description: Educational support services.

of businesses in WA: 1,220.

Minor Cost Threshold = 1% of Average Annual Payroll: \$3,009.92.

Minor Cost Threshold = .3% of Average Annual Receipts: \$1,185.90.

Analysis of the probable cost of compliance. The following identifies the probable costs to comply with the proposed rule, including: cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

1. Amending WAC 246-72-100 Continuing education.

Description of the proposed rule: A medical marijuana consultant certificate holder must complete 10 hours of continuing education in order to renew their annual certification. The proposed rule amendments require two of the 10 hours be provided by the department at no cost to the consultant. Topics may include cannabis compliant products, cannabis laws and rules, and consultant roles and responsibilities. For the remaining eight hours of required continuing education, the proposed rule adds self-study to in-person and distance learning as another method to obtain hours. Self-study would be limited to two hours of the total 10 required hours.

Cost: There are no anticipated additional costs imposed by the rule proposal. There are potential cost savings for the certified consultants. The two-hour training program offered by the department and required as part of the annual continuing education will be provided at no cost to the consultant and would only require the consultant's time. The same is true for the two hours of self-study, which would be at no anticipated additional cost but a potential cost savings to the consultant and would only require the consultant's time.

2. Amending WAC 246-72-110 Training program requirements.

Description of the proposed rule: Medical marijuana consultant training programs go through an approval process administered by the department. The proposed rule clarifies the minimum level of subject matter to be included in the five hours of training dedicated to Washington state laws and rules. These include purchase and possession limits, pesticide use, medical marijuana authorization process, and labeling and testing requirements. The proposed rule amendment specifies that the department must be notified if an instructor of a training course is placed on a disciplinary order. Also, the proposal expands the list of potential instructors to include those with a bachelor's degree and at least seven years of verified experience in the regulated cannabis industry.

Cost: The proposed rule is anticipated to have a cost impact to the state-approved training programs. We contacted the three state-approved training programs about potential costs to them due to amending this rule. Two of the three training programs indicated they will only need one to two hours of staff time to update references and make small adjustments. The department estimates that staff are making \$43.27 per hour and therefore the anticipated one-time costs range from \$43.27 to \$86.54. One-time cost is defined as a cost that will occur only once and will not be repeated. One of the three training

programs indicated that they will hire an attorney at a rate of \$200 per hour for an anticipated eight hours to make the changes required for compliance with the proposed rule. This training program indicated the proposed rule may cost \$1,600 for compliance. While this business may choose to hire professional services, the rule amendments do not require a training program to hire an attorney to make the proposed changes.

3. Amending WAC 246-72-120 Approval of training program.

Description of the proposed rule: The proposed rule would require an authorized representative from the state-approved medical marijuana consultant training programs to report any change of the instructor's credential to the department.

Cost: The proposed rule will have no anticipated cost impact to the initial training programs. A representative from the training programs is already required to report any changes from their initial application to the department and the proposed rule change only adds one additional item that would need to be reported should a change in the instructor's license status occur.

Cost Summary: Due to amending training program requirements in WAC 246-72-110, the department anticipates labor costs will be necessary from state-approved training programs to comply with the proposed rule. Two of the three existing state approved medical marijuana consultant training programs have indicated the updates should take just a few hours of the program staff's time (total cost per program \$43.27 to \$86.54), and one training program has indicated they would hire an attorney who charges an hourly rate of \$200 per hour, for a total of eight hours (total cost per program \$1,600) to make the updates to the training program, in order to comply with the amendments.

The following analyzes whether the proposed rule may impose more-than-minor costs on businesses in the industry.

Out of the three existing state-approved programs, one program provided estimates that the cost to comply to the amended rules (\$1,600) would impose more-than-minor costs (\$1,186) on businesses.

The proposed rules clarify which topics are required under the five hours of Washington state laws and rules that already exist in rule. Two of the three programs have indicated they already include the proposed topics, they would just want to reorganize the content to ensure they are clearly meeting the proposed new requirements. One of the three businesses (the business that falls above the minor-cost threshold) indicated they will hire an attorney to make the changes required in the proposed rule. While this business may choose to hire professional services, the rule amendments do not require a training program to hire an attorney to make the proposed changes.

Determination of whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

Based on this analysis this would not create a disproportionate impact on smaller businesses because larger businesses in the industry do not exist at this time. The entire industry in Washington state of medical marijuana consultant training programs consists of three small businesses.

The proposed rule does not have a disproportionate impact on small businesses because there are no large businesses to compare the impact of the smaller businesses against.

The three training programs in Washington state were involved in the development of the proposed rule throughout the process. Depart-

ment staff worked closely with interested parties to collect input that informs rule revisions concerning the medical marijuana consultant certification program. Mutual interests were identified and considered through deliberations.

It is not estimated that any jobs will be lost or created as a result of compliance with the proposed rule. The scope of this rule is small and would not necessitate a full-time employee to implement or maintain changes needed to their programs. This would be a maximum of eight hours total to implement the changes through the proposed rules.

A copy of the statement may be obtained by contacting Allyson Clayborn, P.O. Box 47850 Olympia, WA 98504, phone 360-236-2820, fax 360-236-2901, TTY 711, email medicalmarijuana@doh.wa.gov.

January 13, 2022
 Kristin Peterson, JD
 Deputy Secretary
 Policy and Planning
 for Umair A. Shah, MD, MPH
 Secretary

OTS-3141.5

AMENDATORY SECTION (Amending WSR 16-07-086, filed 3/17/16, effective 3/18/16)

WAC 246-72-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Approved training program" means a school, college, or program approved by the secretary that meets the requirements of this chapter.

(2) "Certificate holder" means a person holding a valid medical marijuana consultant certificate issued by the secretary under chapter 69.51A RCW and this chapter.

(3) "Customer" means any patron of a retail outlet licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375.

(4) "Department" means the Washington state department of health.

(5) "Designated provider" means the same as defined in RCW 69.51A.010.

(6) "Marijuana product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products as defined in RCW 69.50.101.

~~((+6))~~ (7) "Qualifying patient" or "patient" means the same as defined in RCW 69.51A.010.

(8) "Secretary" means the secretary of the department of health or the secretary's designee.

[Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-010, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-030 Practice parameters. (1) A certificate holder may only provide services when acting in the capacity of an owner, employee, or volunteer of a retail outlet licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375.

(2) A certificate holder may:

(a) Perform regular job duties and business functions including, but not limited to, assisting a customer with the selection of marijuana product and other items sold at the retail outlet;

(b) Assist a ((customer)) qualifying patient or designated provider with the following:

(i) Selection of marijuana products and other items sold at the retail outlet that may benefit the ((customer's)) qualifying patient's terminal or debilitating medical condition;

~~((b) Describe)~~ (ii) Understanding the risks and benefits of marijuana products and other items sold at the retail outlet;

~~((e) Describe)~~ (iii) Understanding the risks and benefits of methods of administration of marijuana products sold at the retail outlet. Whenever practicable, a certificate holder shall encourage methods of administration other than smoking;

~~((d) Advise a customer)~~ (iv) Advice about the safe handling and storage of marijuana products, including strategies to reduce access by minors; (and

~~(e) Provide)~~ (v) Instruction and demonstration ((to a customer)) about proper use and application of marijuana products ((. However, nothing in this section allows a certificate holder to:

~~(i) Provide free samples of a marijuana product to a customer except pursuant to RCW 69.50.375;~~

~~(ii) Open or allow a customer to open a marijuana product on the premises;~~

~~(iii) Consume or allow a customer to consume a marijuana product on the premises); and~~

(vi) Processing the medical marijuana authorization form for the purpose of adding the qualifying patient or designated provider to the database according to WAC 246-71-020.

(3) When discussing a marijuana product with a ((customer)) qualifying patient or their designated provider, a certificate holder shall refer to the product using the cannabinoid profile labeling required by the Washington state liquor and cannabis board in addition to the represented strain name.

(4) A certificate holder shall not:

(a) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of marijuana products or any other means or instrumentality;

(b) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana products;

(c) Solicit or accept any form of remuneration directly or indirectly, overtly or covertly, in cash or any other form in return for recommending a certain product, producer, processor, clinic, or health care practitioner;

~~(d) ((Provide medical marijuana consultant services in any capacity other than as an owner, employee, or volunteer of retail out-~~

~~lets licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375;~~

~~(e))~~ Provide medical marijuana consultant services at any location other than at retail outlets licensed under RCW 69.50.354 and holding a medical endorsement under RCW 69.50.375 for which the certificate holder serves as an owner, employee, or volunteer; ~~((or~~

~~(f))~~ (e) Create ((his or her)) their own recognition card pursuant to chapter 246-71 WAC;

(f) Provide free samples of a marijuana product to a customer except pursuant to RCW 69.50.375;

(g) Open or allow a customer, including qualifying patients and designated providers to open a marijuana product on the premises; or

(h) Consume or allow a customer, including qualifying patients and designated providers, to consume any marijuana product on the premises.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-030, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-030, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 16-07-086, filed 3/17/16, effective 3/18/16)

WAC 246-72-050 Cooperation with investigation. (1) The secretary will notify an applicant or credential holder upon receipt of a complaint, except when the notification would impede an effective investigation. Upon request by the secretary, the applicant or credential holder shall submit a written statement about that complaint.

(2) An applicant or certificate holder must produce documents, records, or other items that are within ~~((his or her))~~ their possession or control within ~~((twenty-one))~~ 21 calendar days of service of a request by the secretary. If the ~~((twenty-one))~~ 21 calendar day limit results in a hardship upon the applicant or credential holder, ~~((he or she))~~ they may request, for good cause, an extension not to exceed ~~((thirty))~~ 30 additional calendar days.

(3) Failure to submit a full and complete written statement explaining the matter contained in a complaint pursuant to subsection (1) of this section or to comply with a request made pursuant to subsection (2) of this section may result in action by the secretary to refuse the application or revoke or suspend the certificate.

[Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-050, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-080 Renewals and updating license information. (1) Certificates must be renewed every year on the certificate holder's birthday. Initial certificates issued within ~~((ninety))~~ 90 days of the certificate holder's birthday do not expire until the person's next birthday.

(2) Renewals:

(a) Prior to the certificate expiration date, courtesy renewal notices are mailed to the address on file. Certificate holders must return the renewal notice when renewing their credential. Failure to receive a courtesy renewal notice does not relieve or exempt the renewal requirement.

(b) The certificate holder must attest to completion of annual certification requirements, including current CPR certification as outlined in WAC 246-72-020.

(c) Renewal fees are accepted by the department no sooner than (~~ninety~~) 90 days prior to the expiration date.

(3) Duplicate certificate: A certificate holder may obtain a duplicate certificate by submitting a written request to the department and paying the fee as required in WAC 246-72-990.

(4) Name changes: It is the responsibility of each certificate holder to maintain (~~his or her~~) their correct name on file with the department. Requests for name changes must be submitted in writing to the department along with documentation showing the name was legally changed.

(5) Address changes: It is the responsibility of each certificate holder to maintain (~~his or her~~) their current address on file with the department. Requests for address changes must be made in writing. The mailing address on file with the department will be used for mailing of all official matters to the certificate holder.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-080, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-080, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-090 Expired certificate. (1) A certificate holder may not practice at any time while (~~his or her~~) their certificate is expired. The certificate is expired if the certificate holder does not renew on or before the expiration date. Any renewal that is postmarked or presented to the department after midnight on the expiration date is expired and is subject to a late renewal penalty fee.

(2) If the certificate has been expired for more than three months and less than three years, the certificate holder must:

(a) Complete a late renewal application form;

(b) Pay the renewal fee;

(c) Pay the late renewal penalty fee;

(d) Pay the expired certificate reissuance fee;

(e) If requested by the secretary, provide proof of successful completion of required continuing education (~~under~~) as defined in WAC 246-72-100;

(f) Provide proof of current CPR certification as defined in WAC 246-72-020; and

(g) Provide any other documentation required by the secretary.

(3) If the certificate has been expired for three years or more, the certificate holder must:

(a) Complete an initial application form;

(b) Pay the current application fee;

- (c) Retake and provide proof of successful completion of ~~((an approved))~~ a training program approved under WAC 246-72-110 within the prior six months;
- (d) Provide proof of current CPR certification; and
- (e) Provide any other documentation required by the secretary.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-090, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-090, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 16-07-086, filed 3/17/16, effective 3/18/16)

WAC 246-72-100 Continuing education. (1) A certificate holder ~~((s))~~ must complete a minimum of ~~((ten))~~ 10 hours of continuing education each year in order to renew the certificate.

(2) Two of the 10 hours must be successful completion of a two-hour continuing education course offered by the department.

(3) Eight of the 10 continuing education hours may be earned through seminars, lectures, workshops, and professional conferences. Continuing education credits may be earned through in-person ~~((or))~~, distance learning, or self-study.

(a) Distance learning includes correspondence courses, webinars, audio/video broadcasting, audio/video teleconferencing e-learning, or webcasts.

(b) Self-study includes the use of multimedia devices or the study of books, research materials, marijuana industry tours or other publications. To receive credit for self-study, the credential holder shall draft and provide a one page, single spaced, 12-point font synopsis of what was learned. The time spent writing the synopsis is not reportable. Two hours of credit is allowed per report, and no more than one report may be submitted per reporting period.

(4) (a) Acceptable continuing education topics ~~((are))~~ for the hours required in subsection (3) of this section include:

~~((a))~~ (i) Washington state laws and rules relating to marijuana;

~~((b) Science-based)~~ (ii) Scientific research, studies, or similar information about marijuana;

~~((e))~~ (iii) Addiction and substance abuse;

~~((d))~~ (iv) Patient communication skills;

~~((e))~~ (v) Professional ethics and values;

(vi) Pesticides and chemicals in the context of marijuana agriculture; or

(vii) Qualifying medical conditions.

~~((3))~~ (b) Continuing education topics may not include:

~~((a))~~ (i) Business and management courses;

~~((b))~~ (ii) Health care training unrelated to marijuana; or

~~((e))~~ (iii) Any topic unrelated to the practice parameters of a medical marijuana consultant.

~~((4))~~ (5) Continuing education hours ~~((will))~~ may not be carried over from one reporting period to another.

~~((5))~~ (6) A certificate holder ~~((must))~~ shall provide acceptable documentation of completion of continuing education hours upon request of the secretary or an audit. Acceptable forms of documentation ~~((are))~~ include:

- (a) Transcripts;
- (b) Certificate of completion; (~~(e)~~)
- (c) If applicable for self-study, a type-written essay in accordance with subsection (3)(b) of this section; or
- (d) Other formal documentation, which include(~~(s)~~) the following:
 - (i) Participant's name;
 - (ii) Course title;
 - (iii) Course content;
 - (iv) Date(s) of course;
 - (v) (~~(Provider's)~~) Course provider's or instructor's name(s); and
 - (vi) Signature of the program sponsor or course instructor. Distance learning courses and self-study activities outlined in subsection (3)(b) of this section are exempt from the signature requirement.
- (~~(6)~~) (7) A certificate holder (~~(must)~~) shall verify compliance by submitting a signed declaration of compliance.
- (~~(7)~~) (8) At the secretary's discretion, up to (~~(twenty-five)~~) 25 percent of certificate holders (~~(are)~~) may be randomly audited for continuing education compliance after (~~(the)~~) a credential is renewed. If identified for an audit, it is the certificate holder's responsibility to submit documentation of completed continuing education activities at the time of the audit. Failure to comply with the audit documentation request or failure to supply acceptable documentation within (~~(sixty)~~) 60 days may result in licensing action, up to and including suspension or revocation of the certificate.
- (~~(8)~~) (9) A certificate holder must maintain records of continuing education completion for at least four years.

[Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-100, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

- WAC 246-72-110 Training program requirements.** (1) A training program(~~(s)~~) must include:
- (a) A minimum of (~~(twenty)~~) 20 total instruction hours in the following subjects:
 - (i) A minimum of five hours (~~(about)~~) of instruction on Washington state laws and rules relating to marijuana to include, but not be limited to, the following topics:
 - (A) Qualifying patient and designated provider cannabis home grow laws;
 - (B) Patient and designated provider marijuana purchase and possession limits;
 - (C) Marijuana product compliance, quality assurance testing, and labeling requirements, including pesticide labeling as defined under chapter 246-70 WAC;
 - (D) Pesticide use on cannabis products; and
 - (E) The medical marijuana authorization process;
 - (ii) A minimum of two hours (~~(about)~~) on qualifying conditions and the common symptoms of each;
 - (iii) A minimum of two hours (~~(about)~~) on the short- and long-term positive and negative effects of cannabinoids;
 - (iv) A minimum of five hours (~~(about)~~) on products that may benefit qualifying patients based on the patient's condition, any poten-

tial contraindications and the risks and benefits of various routes of administration;

(v) A minimum of two hours (~~(about)~~) on safe handling of marijuana products, including strategies to reduce access by minors;

(vi) A minimum of two hours (~~(about)~~) on ethics and (~~(customer)~~) patient privacy and rights; and

(vii) A minimum of two hours (~~(about)~~) on the risks and warning signs of overuse, abuse and addiction.

(b) An examination comprised of at least five questions for each hour of instruction must be given for each subject. The applicant must pass the examination for each subject with a minimum score of (~~(seventy)~~) 70 percent. Questions must be randomly selected from a sufficient supply of questions to ensure the validity of the examination. The secretary reserves the right to approve or deny individual questions and answers.

(2) Training may be provided in-person or electronically. If the training is provided electronically, students must have real-time access to the instructor during at least half of the instruction hours for each subject.

(3) Instructors must have demonstrated knowledge and experience related to marijuana and to the subject matter, and hold:

(a) An active license to practice as a health care professional as defined in RCW 69.51A.010(5). A licensee whose credential is placed under a disciplinary order must request review and secretary approval to begin or continue as an instructor for the approved training program;

(b) An active license to practice law in the state of Washington;

(c) A bachelor's degree or higher from an accredited college or university in:

(i) Agriculture, botany, or horticulture; (~~(or~~

~~(d) A bachelor's degree or higher in)) (ii) Nursing ((and)), provided the instructor also holds an active license to practice as a registered nurse under chapter 18.79 RCW; or~~

(iii) Any other discipline, provided the intended instructor also submits a curriculum vitae with a written statement which demonstrates at least seven years of experience in the regulated cannabis industry.

(4) An owner, agent, principal, or instructor of a training program shall not have a direct or indirect financial interest in a marijuana business licensed by the Washington state liquor and cannabis board under chapter 69.50 RCW.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-110, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-110, filed 3/17/16, effective 3/18/16.]

AMENDATORY SECTION (Amending WSR 18-07-030, filed 3/12/18, effective 4/12/18)

WAC 246-72-120 Approval of training program. The secretary will consider for approval any training program which meets the requirements as outlined in this chapter.

(1) The authorized representative of the training program shall request approval on an application provided by the department.

- (2) The application for approval of a training program must include, but is not limited to, documentation required by the secretary (~~(pertaining)~~) related to:
- (a) Detailed syllabus;
 - (b) Identification and qualifications of instructors;
 - (c) Training locations and facilities;
 - (d) Outline of curriculum plan specifying all subjects, and the length in hours each subject is taught;
 - (e) Class objectives;
 - (f) Whether the training will be provided in-person or electronically;
 - (g) Methods of evaluating the course and instructors by the training program and training participants;
 - (h) Policies and procedures for maintaining training and testing records; and
 - (i) A sample of the training program's certificate of successful completion. At minimum, the certificate must contain the following information:
 - (i) Name and license number of the training program;
 - (ii) Name of the student; and
 - (iii) Date the student successfully completed the program.
- (3) Any training program that is required to be licensed by private vocational education under chapter 28C.10 RCW or Title 28B RCW, or any other statute, must complete these requirements before being considered by the secretary for approval.
- (4) The secretary will evaluate the application and may conduct a site inspection of the training program prior to granting approval.
- (5) Upon the evaluation of a complete application, the secretary will grant or deny approval.
- (6) If the secretary notifies the training program of the secretary's intent to deny an application, the training program, through its authorized representative, may request an adjudicative proceeding. A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within (~~(twenty-eight)~~) 28 days of the applicant's receipt of the adverse notice. The authorized representative of the training program may submit a new application for the secretary's consideration.
- (7) Training and testing records must be kept for a minimum of three years. The secretary may audit the records at any time.
- (8) The authorized representative of an approved training program shall notify the secretary in writing of all changes with respect to information provided in the application, including changes in instructors or the instructor's credential status, within (~~(thirty)~~) 30 days of such changes.
- (9) The secretary may inspect, audit or review an approved training program at reasonable intervals for compliance or to investigate a complaint. The secretary may withdraw approval if the secretary finds failure to comply with the requirements of statute, administrative rules, or representations in the application.
- (10) If the secretary notifies an approved training program of the secretary's intent to revoke approval, the training program, through its authorized representative, may request an adjudicative proceeding. A request for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice and be served on and received by the department within (~~(twenty-eight)~~) 28 days of the applicant's or license holder's

receipt of the adverse notice. If a request for adjudicative proceeding is not received by the department within (~~twenty-eight~~) 28 days of the date of the training program's receipt of the adverse notice, the secretary's decision is final. The authorized representative of the training program must provide proof that the deficiencies which resulted in withdrawal of the secretary's approval have been corrected before requesting reapproval. Training programs seeking reapproval shall follow the requirements outlined in this section.

[Statutory Authority: RCW 69.51A.230. WSR 18-07-030, § 246-72-120, filed 3/12/18, effective 4/12/18. Statutory Authority: RCW 69.51A.290. WSR 16-07-086, § 246-72-120, filed 3/17/16, effective 3/18/16.]

WSR 22-03-067

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed January 14, 2022, 2:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-08-005.

Title of Rule and Other Identifying Information: Chapter 137-56

WAC.

Hearing Location(s): On February 22, 2022, at 2:00 p.m., Microsoft Teams meeting. Please contact rules coordinator at vvchebotar@doc1.wa.gov to register. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Date of Intended Adoption: March 22, 2022.

Submit Written Comments to: Vadim V. Chebotar, Senior Contracts Attorney, Department of Corrections (DOC), Contracts and Legal Affairs, P.O. Box 41114, Tumwater, WA 98504-1114, email vvchebotar@doc1.wa.gov, by February 17, 2022.

Assistance for Persons with Disabilities: Contact Vadim V. Chebotar, senior contracts attorney, email vvchebotar@doc1.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Make administrative changes, as necessary, to ensure WAC complies with department policy. Establish current and relevant rule violations with progressive discipline for partial confinement settings under the jurisdiction of the department. This process includes adding Graduated reentry—Electronic home monitoring, work/training release facilities and the Community parenting alternative—FOSA.

Reasons Supporting Proposal: WAC should accurately comply with department policy.

Statutory Authority for Adoption: RCW 72.01.090.

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

Name of Proponent: DOC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Carrie Trogdon-Oster, DOC Headquarters, 253-377-7636; Enforcement: Susan Leavell, DOC Headquarters, 360-970-3650.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

January 5, 2022

Cheryl Strange

Secretary

OTS-3232.2

Chapter 137-56 WAC
((COMMUNITY RESIDENTIAL PROGRAMS, WORK/TRAINING RELEASE)) PARTIAL CONFINEMENT, REENTRY CENTERS and ELECTRONIC HOME DETENTION

AMENDATORY SECTION (Amending WSR 82-08-055, filed 4/5/82)

WAC 137-56-005 Purpose. The purpose of this chapter is to set forth the rules and regulations governing the administration of the department's ~~((work/training release))~~ partial confinement programs.

[Statutory Authority: RCW 72.65.100. WSR 82-08-055 (Order 82-06), § 137-56-005, filed 4/5/82. Formerly Title 275 WAC.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-010 Definitions. (1) "Secretary" is the secretary of the department of corrections or ~~((his/her))~~ their designee.

(2) "Department" is the department of corrections.

(3) ~~((("Work/training release facility"))~~ "Partial confinement" is reentry centers or electronic home detention programs operated by the department.

(4) "Community corrections supervisor" is a staff member assigned by the ~~((community corrections regional))~~ senior reentry administrator(s) to administer and supervise a specific ~~((work/training release facility))~~ partial confinement program and includes ~~((his/her))~~ their designee.

~~((4))~~ "Work/training release community corrections officer" (5) "Partial confinement community corrections officer or reentry specialist" is a staff member also known as a "case manager" assigned by the ~~((work/training release facility))~~ partial confinement supervisor, also known as the community corrections supervisor to supervise and counsel a caseload of ~~((work/training release residents at a specific work/training release facility))~~ individuals assigned to a reentry center or electronic home detention.

~~((5))~~ (6) "Contract staff" is the staff member(s) of an agency under contract to the department of corrections to provide housing and monitoring for ~~((work/training release residents))~~ reentry center individuals.

~~((6))~~ "Work/training release offender" (7) "Partial confinement individual" is any ~~((offender))~~ individual committed to or transferred to the department's custody pursuant to a valid criminal conviction who has been approved by the department for placement in a designated ~~((work/training release facility))~~ reentry center or on electronic home detention.

~~((7))~~ (8) "Sponsor-escort" is a responsible citizen ~~((as signed))~~ screened and approved to escort and monitor ~~((a resident))~~ an individual during official and social activities outside of the ~~((work/training release facility))~~ reentry center.

~~((8) "Work/training release facility"))~~ (9) "Partial confinement program" is an establishment approved for housing and monitoring of ~~((work/training release residents))~~ reentry center individual during the ~~((resident's))~~ individual's stay in a ~~((work/training release program))~~ reentry center. It also includes individuals who have been screened and approved for placement on electronic home detention.

~~((9) "One working day"))~~ (10) "Business day" is a nine-hour day, 8:00 a.m. to 5:00 p.m. excluding weekends and holidays.

~~((10))~~ (11) "Hearing officer" means an employee of the department authorized to conduct disciplinary/department hearings.

~~((11))~~ (12) "Hearings program administrator" means the administrator of the hearings unit of the department, or the hearing program administrator's designee.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-010, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-010, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-010, filed 2/21/86; WSR 82-08-055 (Order 82-06), § 137-56-010, filed 4/5/82. Formerly chapter 275-92 WAC.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-015 Disposition of earnings. Reasonable payment, as determined by the department ~~((of))~~, for board and room charges will be deducted from the ~~((work/training release residents'))~~ reentry center individuals' earnings. For purposes of this section, earnings shall constitute all income and money received or possessed by the ~~((work/training release offender))~~ reentry center individual while under ~~((a work release))~~ an approved partial confinement plan. Nothing in this section shall prohibit the department's authority to obtain reimbursement for moneys advanced to a ~~((work/training release offender))~~ reentry center individual by the department.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-015, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-015, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-039 (Order 86-04), § 137-56-015, filed 3/3/86.]

AMENDATORY SECTION (Amending WSR 82-08-055, filed 4/5/82)

WAC 137-56-020 Secretary's authority to grant or deny. The secretary or ~~((his or her))~~ their designee may grant or deny ~~((work/training release))~~ placement in partial confinement programs as authorized by chapter 72.65 RCW subject to the rules of this chapter.

[Statutory Authority: RCW 72.65.100. WSR 82-08-055 (Order 82-06), § 137-56-020, filed 4/5/82. Formerly WAC 275-92-315.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-030 Reasons for placement in a ((work-release)) partial confinement programs. ((Work/training-release)) Partial confinement may be authorized for one or more of the following:

- (1) To participate in full-time employment or part-time employment at specialized programs;
- (2) To participate in a vocational training program, including attendance at an accredited college.
- (3) To secure services to support transition back to the community.
- (4) As a sanction for violating ((community supervision)) electronic home detention conditions.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-030, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-030, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 82-08-055 (Order 82-06), § 137-56-030, filed 4/5/82. Formerly WAC 275-92-320.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-040 Eligibility criteria. (1) An ((offender)) individual is eligible for ((work/training-release)) partial confinement programs provided that:

- (a) ((He-or-she)) Individual has a minimum security status;
- (b) ((He-or-she)) Individual is within the last ((one-hundred eighty)) 180 days of their confinement.
- (2) ((Offenders)) Individual convicted of rape in the first degree shall not be eligible for ((work/training-release)) partial confinement programs at any time during the first three years of confinement.
- (3) ((Offenders)) Individual convicted of murder first degree are not eligible for ((work/training-release)) partial confinement programs, without the written approval of the secretary.
- (4) ((Offender)) Individual who violates condition(s) of ((community supervision)) electronic home detention and is sanctioned to a reentry center for a term less than ((one-hundred eighty)) 60 days.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-040, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-040, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 82-08-055 (Order 82-06), § 137-56-040, filed 4/5/82. Formerly WAC 275-92-325.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-050 Application—Consideration. (1) Based on the ((offender's)) individual's request to participate in ((a-work-re-

lease)) partial confinement programs and/or the ((~~offender's~~)) individual's need to transition through a ((~~work release~~)) partial confinement program(s), the ((~~facility~~)) prison classification review team will refer the ((~~offender~~)) individual to the appropriate program.

(2) The ((~~community corrections officer can~~)) case manager may make recommendation for placement in a ((~~work release program~~)) reentry center as a result of violation of conditions of ((~~supervision~~)) electronic home detention in the community.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-050, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-050, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 82-08-055 (Order 82-06), § 137-56-050, filed 4/5/82. Formerly WAC 275-92-330.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-070 Screening referrals. (1) The ((~~work/training release facility supervisor or his or her designee~~)) partial confinement programs supervisor/designee shall screen the ((~~offenders~~)) individual's referred to the programs.

(2) The ((~~work/training release~~)) partial confinement programs participation is subject to a screening process ((~~will be~~)) based on established criteria.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-070, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-070, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 82-08-055 (Order 82-06), § 137-56-070, filed 4/5/82. Formerly WAC 275-92-340.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-080 Plan—Approval or denial. (1) The ((~~work release~~)) partial confinement programs supervisor or designee's screening decision will be documented by the ((~~work/training release facility~~)) partial confinement programs supervisor/designee ((~~on the offender tracking system~~)) in the individual's electronic file indicating the action taken.

(2) Approved ((~~offenders~~)) individuals will be placed in the program based on priority with high risk ((~~offenders~~)) individuals being placed first. Disapproved ((~~offenders~~)) individuals can obtain the reasons for the denial, as documented ((~~on~~)) in the ((~~offender tracking system~~)) individual's electronic file.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-080, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-080, filed 3/14/94, effective 5/1/94.]

tive 5/1/94. Statutory Authority: RCW 72.65.100. WSR 82-08-055 (Order 82-06), § 137-56-080, filed 4/5/82. Formerly WAC 275-92-345.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-090 Plan—Restrictions. The work or training site shall be within reasonable commuting distance (in most circumstances not more than ~~((fifty))~~ 50 miles) of the ~~((work/training release facility))~~ partial confinement program in which the ~~((offender))~~ individual is confined.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-090, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-090, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 82-08-055 (Order 82-06), § 137-56-090, filed 4/5/82. Formerly WAC 275-92-350.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-095 Orientation. (1) At the time of admission, each ~~((work/training release offender))~~ partial confinement individual shall be advised in writing of:

- (a) Program goals and services available.
- (b) Rules governing conduct and program rules.
- (c) Incentives earned, as defined in policy, for positive behavior and program completions.
- (d) Disciplinary action which may be taken in the event of a serious ~~((infraction or))~~ violation of rules or special conditions. To include, but not be limited to:
 - (i) Remain confined to the ~~((work/training release))~~ partial confinement premises at all times other than the time necessary to implement the plan or when authorized under WAC 137-56-140. Any ~~((work/training release resident))~~ partial confinement individual approved for placement under a ~~((work/training release))~~ partial confinement plan who willfully fails to report to his or her designated assignment or return to the designated place of confinement at the time specified may be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a felony and sentenced in accordance with state law.
 - (ii) Have employment or other approved resources in order to maintain ~~((himself or herself))~~ themselves financially.
 - (iii) Not consume, ingest, inject, or possess nonprescription narcotic or "dangerous" drugs or controlled substances, or any mood altering drug, or alcoholic beverages.
 - (iv) Report all income to the ~~((work/training facility supervisor or his or her designee))~~ partial confinement programs supervisor/designee. All income, for individual's in a reentry center, from any source shall be immediately placed in the ~~((resident's inmate))~~ individual's banking account by the ~~((facility))~~ reentry center supervisor or ~~((his/her))~~ their designee. A receipt will be issued.

(2) All amendments or additions to disciplinary rules, policies, and procedures shall be posted at a specifically designated place or places in each (~~(work/training release facility)~~) reentry center in advance of their effective date if possible and for at least (~~(thirty)~~) 30 days after their effective date. (~~(Work/training release of offenders)~~) Partial confinement individuals shall be responsible for informing themselves of such postings. Complete and up-to-date copies of these rules and all program rules shall be available at each (~~(work/training release facility for examination)~~) reentry center and provided to each individual on electronic home detention for review.

(3) The (~~(work/training release facility)~~) partial confinement programs supervisor shall ensure that each (~~(work/training release resident)~~) individual has the opportunity to understand rules which relate to (~~(his/her)~~) their conduct. If the (~~(resident)~~) individual is unable to read or understand English, the rules shall be read to (~~(him/her promptly in his/her)~~) them promptly in their accustomed language.

(4) All (~~(offenders)~~) individuals will receive orientation within (~~(forty-eight)~~) 48 hours of (~~(arrival)~~) placement in a partial confinement program. Orientation must be completed before the (~~(offender)~~) individual can leave the (~~(facility)~~) reentry center or leave the approved electronic home detention location. The (~~(offender)~~) individual must sign the appropriate form indicating (~~(he/she)~~) they will comply with all the (~~(work release)~~) partial confinement programs policies and program rules.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-095, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-095, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-095, filed 2/21/86.]

NEW SECTION

WAC 137-56-101 Application of behavior management chapter. The definitions and serious violations described herein apply to individuals committed to partial confinement programs.

[]

NEW SECTION

WAC 137-56-105 Definitions. For the purposes of serious violations, the following terms have the following meanings:

(1) Assault - A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

(2) Attempting - Putting forth an effort to commit any violation.

(3) Bodily harm - Physical pain or injury, illness, or impairment of physical condition.

(4) Conspiring - Entering into an agreement with another person(s) to commit a violation.

(5) Individual - Offender or inmate as defined in RCW 72.09.015.

(6) Possessing - When an item(s) is found on an individual or in an individual's assigned area of responsibility.

(7) Sex act - Includes, but is not limited to, any of the following acts: Genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration; genital or anal contact/penetration with an inanimate object; masturbation; sadistic/masochistic abuse; bondage; bestiality; and/or bodily excretory behavior which appears to be sexual in nature.

(8) Sexual assault against a staff member - An incident in which one or more of the following actions is taken or threatened against a staff member without his/her consent or when he/she is unable to consent or refuse:

(a) Contact between genitalia (i.e., penis, vagina) or between genitalia and the anus involving penetration, however slight. This does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

(b) Contact between the mouth and the penis, vagina, or anus.

(c) Penetration of the anal or genital opening of the staff member by hand, finger, or other object.

(9) Sexual contact against a staff member - Contact against a staff member without his/her consent or when the staff member is unable to consent or refuse which includes intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttock of the staff member. This does not include kicking, grabbing, or punching when the intent is to harm or debilitate rather than to sexually exploit.

(10) Sexual harassment against a staff member, visitor, or community member - Any word, action, gesture, or other behavior taken against a staff member, visitor, or community member that is sexual in nature and that would be offensive to a reasonable person.

(11) Staff member - A department of corrections employee, contract staff, or volunteer.

(12) Violation - The act of failing to comply with a rule enumerated in this chapter.

[]

NEW SECTION

WAC 137-56-107 Adoption or revision of serious violations. (1) The secretary may adopt and/or revise serious violations.

(2) Before adopting or revising a serious violation, the secretary shall, when applicable, follow the rule-making procedures of chapter 34.05 RCW, Administrative Procedure Act.

(3) Nothing herein shall be construed as limiting the department of corrections' exclusion from the Administrative Procedure Act under RCW 34.05.030 (1)(c).

[]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-110 (~~(Serious infractions.)~~) Serious violations.

~~((Refer to chapter 137-25 WAC, serious infractions.))~~ (1) Any of the following types of behavior may constitute a serious violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation.

(2) If contraband or another violation is discovered in an individual's assigned area of responsibility, such as within the confines or contents of an assigned room, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all individuals assigned responsibility for that area.

<u>Seriousness Level: Category A: Egregious Acts/Inflicting Harm/Violence</u>	
<u>402</u>	<u>Committing an act that would constitute a felony or misdemeanor and that is not otherwise included in these rules.</u>
<u>403</u>	<u>Taking or holding any person hostage.</u>
<u>405</u>	<u>Possessing, manufacturing, or introducing an explosive device, any firearm, ammunition, weapon, sharpened instrument, knife, poison, or any components thereof.</u>
<u>611</u>	<u>Committing sexual assault against a staff member.</u>
<u>613</u>	<u>Committing any act of sexual contact against a staff member.</u>
<u>635</u>	<u>Committing sexual assault against another offender, as defined in department policy (i.e., aggravated sexual assault or offender-on-offender sexual assault).</u>
<u>637</u>	<u>Committing sexual abuse against another offender, as defined in department policy.</u>
<u>Seriousness Level: Category B: High Profile/Harmful/Violence Against Persons/Safety</u>	
<u>401</u>	<u>Assaulting another person.</u>
<u>404</u>	<u>Escaping from partial confinement.</u>
<u>406</u>	<u>Rioting, or inciting others to riot.</u>
<u>407</u>	<u>Setting fire.</u>
<u>408</u>	<u>Engaging in or inciting a group demonstration.</u>
<u>409</u>	<u>Fighting with another person.</u>

<u>415</u>	<u>Possessing, transferring, or soliciting any person's identification information, including current employees/contract staff or their immediate family members when not voluntarily given. Identification information includes Social Security numbers, home addresses, telephone numbers, driver's license numbers, medical, personnel, financial, or real estate information, bank or credit card numbers, or other like information not authorized by the community corrections supervisor.</u>
<u>416</u>	<u>Counterfeiting/forgery of official documents.</u>
<u>419</u>	<u>Possessing clothing or assigned equipment of an employee/contract staff.</u>
<u>437</u>	<u>Engaging in a sex act within facility boundaries.</u>
<u>438</u>	<u>Indecent exposure.</u>
<u>549</u>	<u>Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in department policy.</u>
<u>463</u>	<u>Making any drug, alcohol, or intoxicating substance, or possessing ingredients, equipment, items, formulas, or instructions that are used in making any drug, alcohol, or intoxicating substance.</u>
<u>701</u>	<u>Failing to complete or administrative termination from a DOSA treatment program. Note: This violation must be initiated by authorized employees/contract staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC. A guilty finding will result in reclassification.</u>
<u>702</u>	<u>Failure to comply with the DOSA program. Note: This violation must be initiated by authorized employees/contract staff and heard by a community corrections hearings officer in accordance with chapter 137-24 WAC. A guilty finding may result in reclassification or lesser sanctions.</u>
<u>Seriousness Level: Category C: Noncompliance/Attitudes and Behaviors/Court and DOC Conditions Related</u>	
<u>410</u>	<u>Threatening another with bodily harm or with any offense against any person or property.</u>
<u>411</u>	<u>Extorting or blackmailing another person.</u>
<u>412</u>	<u>Refusing a direct order from an employee/contract staff member to proceed to or disperse from a particular area.</u>

<u>413</u>	<u>Interfering with an employee/contract staff or other personnel, in the performance of their duties.</u>
<u>414</u>	<u>Tampering with a locking device.</u>
<u>417</u>	<u>Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense.</u>
<u>418</u>	<u>Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices.</u>
<u>420</u>	<u>Stealing property, possessing stolen property, or possessing another individual's property.</u>
<u>423</u>	<u>Participating or engaging in the activities of any unauthorized club, organization, gang, or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang, or security threat group.</u>
<u>425</u>	<u>Causing an innocent person to be penalized or proceeded against by providing false information.</u>
<u>659</u>	<u>Committing sexual harassment against another offender, as defined in department policy.</u>
<u>896</u>	<u>Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, marital status or status as a state registered domestic partner, disability, veteran's status, or genetic information.</u>
<u>661</u>	<u>Committing sexual harassment against a staff member, visitor, or community member.</u>
<u>461</u>	<u>Introducing or transferring any unauthorized drug or drug paraphernalia.</u>
<u>462</u>	<u>Refusing to submit to or cooperate in a search, urinalysis, oral swab, breath alcohol test, or any testing required by policy, statute, or court order, not otherwise included in these rules, when ordered to do so by an employee/contract staff member.</u>
<u>464</u>	<u>Possessing or using an unauthorized drug, intoxicating substance or alcohol; receiving a positive test for an unauthorized drug, alcohol or intoxicating substance; possession of paraphernalia.</u>
<u>465</u>	<u>Providing a diluted, altered, or substituted urine sample.</u>

<u>472</u>	<u>Unauthorized contact with prohibited persons as defined in case plan.</u>
<u>899</u>	<u>Failing to obtain prior written authorization from the sentencing court, contrary to RCW 9.94A.645, prior to commencing or engaging in any civil action against any victim or family of the victim of any serious violent crime the individual committed.</u>
<u>477</u>	<u>Being in the community without authorization, being in an unauthorized location in the community, unaccounted time, or having unauthorized contact with prohibited persons in the community.</u>
<u>810</u> <u>*Mandatory programming 72.09</u>	<u>Refusing to seek/maintain employment, training, or programming, or being terminated from work, training, education, or other programming for negative or substandard performance.</u>
<u>557</u> <u>*Mandatory programming 72.09</u>	<u>Refusing to participate in an available work, training, education, or other mandatory programming assignment.</u>
<u>481</u>	<u>Violating conditions of furlough.</u>
<u>485</u>	<u>Using the mail, telephone, or electronic communications in violation of any law, court order, or previous written warning, direction, and/or documented disciplinary action, or initiating communication with a minor without the approval of that minor's parent or guardian.</u>
<u>494</u>	<u>Receiving or possessing contraband.</u>
<u>Seriousness Level: Category D: Self-Destructive Behavior/Risky Behavior/Case Plan Related</u>	
<u>421</u>	<u>Using facility phones, information technology resources/systems, or related equipment intended for employee/contract staff use without authorization.</u>
<u>422</u>	<u>Possessing, manufacturing, or introducing an unauthorized tool.</u>
<u>424</u>	<u>Damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband.</u>
<u>435</u>	<u>Intentional destruction, damage or altering any item that is not the individuals personal property, the value of which is ten dollars or more.</u>
<u>436</u>	<u>Possessing any sexually explicit material(s), as defined in WAC 137-48-020.</u>
<u>439</u>	<u>Urinating, defecating, or placing feces or urine in any location other than a toilet or authorized receptacle.</u>

<u>474</u>	<u>Unauthorized modification or noncompliance of an approved case plan.</u>
<u>482</u>	<u>Violating an imposed special condition.</u>
<u>483</u>	<u>Failing to comply with any administrative or post-hearing sanction imposed for committing any violation.</u>
<u>484</u>	<u>Operating motor vehicle or being in a motor vehicle without permission.</u>
<u>486</u>	<u>Telephoning, or sending written or electronic communication to any offender in a correctional facility, directly or indirectly, without prior written approval of the superintendent/community corrections supervisor/designee.</u>
<u>Seriousness Level: Category E: General Noncompliance</u>	
<u>471</u>	<u>Failing to comply with written rules, handbook, or case plan.</u>
<u>475</u>	<u>Entering into an unauthorized contract.</u>
<u>476</u>	<u>Failing to report/turn in all earnings.</u>
<u>487</u>	<u>Possession of unauthorized items, to include money or other negotiable instruments without proper authorization.</u>
<u>491</u>	<u>Introducing, possessing, or using a cell phone, electronic/wireless device, or related equipment, without proper authorization.</u>
<u>492</u>	<u>Misusing or wasting issued supplies, goods, services, or property.</u>
<u>493</u>	<u>Out-of-bounds: Being in the room/dorm assigned to another individual under department jurisdiction or an area of the facility without authorization.</u>
<u>495</u>	<u>Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels.</u>

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-110, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 99-16-078, § 137-56-110, filed 8/3/99, effective 8/18/99; WSR 94-07-065, § 137-56-110, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-110, filed 2/21/86.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-120 Provisions of supervision. (1) In meeting its responsibilities for providing supervision of ~~((offenders))~~ individuals in the ~~((program))~~ reentry center(s), the following will be provided ~~((at the work release facility))~~:

~~((1))~~ (a) Staff on duty ~~((twenty-four))~~ 24 hours a day, seven days a week;

~~((2))~~ (b) A check-in and check-out system to ensure that the stated whereabouts of the ~~((offender))~~ individual is known at all times, including telephonic and on-site checks at school, work, furlough, sponsored outing, pass, etc.;

~~((3))~~ (c) Bed checks or head counts to account for the ~~((resident's))~~ individual's whereabouts; a minimum of three counts daily shall be required;

~~((4))~~ (d) Provide adequately for the ~~((resident))~~ individual with respect to sleeping quarters, bathroom facilities, and accommodations for cooking, dining, lounging and leisure time activities;

~~((5))~~ (e) Comply with state and local fire codes and applicable building, safety, and sanitation codes.

(2) In meeting its responsibilities for providing supervision of individuals on electronic home detention, the following will be provided:

(a) Case managers available during business hours;

(b) A system of approved movement in the community to ensure that the stated whereabouts of the individual is known at all times, including telephonic and on-site checks at school, work, furlough, sponsored outing, pass, detention location, etc.;

(c) Reviews of electronic home monitoring equipment to ensure movement in the community was approved;

(d) Approve residential placement for the individual to ensure adequate sleeping quarters, bathroom facilities, and accommodations for cooking, dining, lounging and leisure time activities.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-120, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-120, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 82-08-055 (Order 82-06), § 137-56-120, filed 4/5/82. Formerly WAC 275-92-405.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-140 Limits of confinement. A ~~((work/training release offender))~~ partial confinement individual shall be confined to the ~~((facility))~~ reentry center/approved residence at all times except:

(1) When seeking or arranging for registration at a school or training facility;

(2) When working at paid employment or attending a training facility in a vocational or academic program;

(3) When in a reentry center, authorized a point-to-point pass not to exceed two hours, excluding travel, for the purpose of transacting personal business including a treatment regimen, between the hours of 7:00 a.m. and 10:00 p.m. and/or outside that time frame with

written permission of the (~~facility~~) reentry center supervisor or designee;

(4) When authorized to participate in social and recreational activities (~~in company with a~~) accompanied by an authorized sponsor-escort between 8:00 a.m. and midnight;

(5) When on furlough;

(6) When on authorized medical/mental health appointments, substance use disorder treatment, or court appearances;

(7) When ordered to perform community service/restitution;

(8) When seeking employment (~~as approved~~) on an approved job search pass;

(9) When on electronic home detention, movement allowed as approved by the case manager/designee.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-140, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-140, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 82-08-055 (Order 82-06), § 137-56-140, filed 4/5/82. Formerly WAC 275-92-410.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-150 Sponsor-escort. (1) A sponsor-escort shall be a responsible citizen who shall accompany and monitor a (~~work/training release offender~~) reentry center individual during a preapproved social or recreational activity. The sponsor-escort must be approved by the (~~work/training release facility supervisor or designee~~) reentry center supervisor/designee; and the sponsor and (~~resident~~) individual must sign an agreement with the department which describes his or her responsibilities.

(2) Persons who are on active/inactive felony probation or parole or under an active SRA sentence, shall not be approved as sponsor-escorts. Persons who have a past felony conviction and who have earned a discharge may be approved as sponsor-escorts on an individual basis by the (~~work release supervisor, or his or her designee~~) reentry center supervisor/designee.

(3) Sponsor-escorts must complete a sponsor orientation provided by the (~~work/training release facility~~) case manager at the reentry center before eligibility under this section.

(4) Sponsor-escorts may not be party to an active no-contact order with the (~~offender~~) individual.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-150, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-150, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 82-08-055 (Order 82-06), § 137-56-150, filed 4/5/82. Formerly WAC 275-92-415.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-160 Termination of plan. At any time after approval has been granted to any ~~((work/training release offender))~~ partial confinement program individual to participate in the ~~((work/training release))~~ program, such approval may be revoked, and the ~~((offender))~~ individual may be sent to a state correctional institution or jail. A ~~((work release offender))~~ partial confinement individual may be terminated from the program as a result of a disciplinary or classification decision or the following:

- (1) If requested in writing by the ~~((work/training release of-fender))~~ partial confinement individual;
- (2) If the ~~((work/training release offender))~~ partial confinement individual lacks aptitude for the assignment or is improperly placed; or
- (3) If the ~~((work/training release offender))~~ partial confinement individual has been unable to adjust or adapt to the conditions of the ~~((work/training release facility))~~ partial confinement program; or
- (4) If the ~~((work/training release offender's))~~ partial confinement individual's situation and circumstances have significantly changed; or
- (5) If the individual is on electronic home detention and their circumstances, situation or living arrangements change, they may be returned to a reentry center to develop a new plan; or
- (6) If the ~~((work/training release offender))~~ partial confinement individual has failed to comply with federal or state laws or local ordinances.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-160, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-160, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-160, filed 2/21/86; WSR 82-08-055 (Order 82-06), § 137-56-160, filed 4/5/82. Formerly WAC 275-92-510.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-170 Service of notice of proposed disciplinary action. (1) If disciplinary action is proposed, the ~~((work/training release facility))~~ partial confinement program supervisor or ~~((community corrections officer))~~ case manager may suspend the ~~((work/training release))~~ partial confinement plan and place the ~~((offender in custody))~~ individual in total confinement pending a formal disciplinary hearing.

(2) The ~~((work/training release facility))~~ partial confinement program supervisor or designee shall advise the ~~((offender))~~ individual in writing of the factual allegations which provide the basis for the proposed disciplinary action within one working day after the suspension of the ~~((work/training release))~~ partial confinement plan.

(3) If the ~~((work/training release))~~ partial confinement plan is not suspended pending the disciplinary hearing, then the ~~((facility))~~ program supervisor or designee shall advise the ~~((offender))~~ individual at least ~~((twenty-four))~~ 24 hours prior to the scheduled hearing.

(4) The factual allegations may be amended and/or new allegations added at any time prior to the disciplinary hearing, provided that the (~~(work/training release offender)~~) partial confinement individual shall have notice of such new and/or amended allegations at least (~~(twenty-four)~~) 24 hours prior to the disciplinary hearing unless such notice shall be waived in writing by the (~~(offender)~~) individual.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-170, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-170, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-170, filed 2/21/86; WSR 82-08-055 (Order 82-06), § 137-56-170, filed 4/5/82. Formerly WAC 275-92-515.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-175 Alternatives to the formal disciplinary hearing.

When addressing serious (~~(infractions)~~) violations, the (~~(work/training release community corrections officer)~~) partial confinement case manager may, with the (~~(facility)~~) partial confinement supervisor's permission, choose to address the (~~(infraction)~~) violation behavior through a reentry support team intervention meeting, or using (~~(either)~~) a department authorized stipulated agreement or the negotiated sanction agreement process.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-175, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-175, filed 3/14/94, effective 5/1/94.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-180 Disciplinary hearing. (1) A (~~(work/training release offender)~~) partial confinement individual served with allegations providing the basis for a proposed disciplinary action shall be notified in writing that a hearing has been set before department hearing officer. An allegation involving the commission by the (~~(offender)~~) individual of a serious (~~(infraction)~~) violation may be amended at anytime by the department, provided that (~~(twenty-four)~~) 24 hours notice be given to the (~~(offender)~~) individual or the (~~(offender)~~) individual agrees in writing to waive notice to respond to the allegations. The hearing will be held within eight working days of the suspension of the (~~(work/training release)~~) partial confinement plan, unless a longer time is approved by the hearings program administrator or (~~(his or her)~~) their designee. The written notice of hearing shall be given to the (~~(offender)~~) individual at least (~~(twenty-four)~~) 24 hours before the hearing unless notice is waived, in writing, and advise the (~~(offender of his or her)~~) individual of their rights, including the following:

(a) The (~~(offender)~~) individual shall be present at all stages of the hearing, except during deliberation in appropriate circumstances.

(b) The ~~((offender))~~ individual shall present ~~((his or her))~~ their own case to the hearing officer. If there is a language or communications barrier, the hearing officer shall appoint an advisor.

(c) The ~~((offender))~~ individual may have an attorney present at ~~((his/her))~~ their expense, only when a felony has been alleged. Such representation is limited to advising the ~~((offender of his or her))~~ individual of their rights to remain silent, and does not include the right to act as an advocate throughout the hearing.

(d) The ~~((offender))~~ individual may testify during the hearing or remain silent, and ~~((his or her))~~ their silence will not be held against ~~((him or her))~~ them.

(e) The ~~((work/training release offender))~~ partial confinement individual may, in preparation for the hearing, ask the hearing officer that certain department or contract staff members, other ~~((work/training release offenders))~~ partial confinement individuals, and other persons be present as witnesses at the hearing. The hearing officer shall grant such request if it is determined by the hearing officer that to do so would not be unduly hazardous to the ~~((work/training release))~~ partial confinement facility's safety or correctional goals: Provided, however, limitations may be made by the hearing officer if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the ~~((work/training release offender's))~~ partial confinement individual's case.

(2) Attendance at the hearing shall be limited to parties directly concerned. The hearing officer may exclude unauthorized persons.

(3) Hearings shall be recorded and a copy of the recording maintained in accordance with the statewide retention schedule.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-180, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 95-22-060, § 137-56-180, filed 10/30/95, effective 12/1/95. WSR 94-07-065, § 137-56-180, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-180, filed 2/21/86; WSR 82-08-055 (Order 82-06), § 137-56-180, filed 4/5/82. Formerly WAC 275-92-520.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-200 Disciplinary hearing—Waiver. (1) At any time after having been served with an allegation providing the basis for a proposed disciplinary action, the ~~((offender))~~ individual may choose to waive ~~((his or her))~~ their right to a hearing by signing an admission of the allegation and request that the hearing be dispensed with entirely or limited only to questions of disposition. Also, the ~~((offender))~~ individual may waive, in writing, the ~~((twenty-four))~~ 24 hour notice.

(2) The ~~((offender))~~ individual may admit in writing to part of the allegations and thereby limit the scope of the hearing.

(3) In those cases where the allegation involves misbehavior or other culpability on the part of the ~~((offender, he or she))~~ individual, they shall be advised in writing that in admitting the violation and waiving the hearing, a report will be submitted which may result

in the loss of (~~work/training release~~) partial confinement status, good time credits and/or the extension of the minimum term.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-200, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-200, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-200, filed 2/21/86; WSR 82-08-055 (Order 82-06), § 137-56-200, filed 4/5/82. Formerly WAC 275-92-530.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-210 Disciplinary hearing—Rules of evidence. (1) All relevant and material evidence is admissible which, in the opinion of the hearing officer, is the best evidence reasonably obtainable having due regard for its necessity, availability, and trustworthiness.

(2) All evidence material to the issues raised in the hearing shall be offered into evidence. All evidence forming the basis for the hearing officer's decision in a matter shall be offered into evidence.

(3) The (~~work/training release offender~~) partial confinement individual shall be allowed to call witnesses approved by the hearing officer pursuant to WAC 137-56-180 (1) (e) and to present documentary evidence in (~~his/her~~) their defense at the hearing when permitting the (~~work/training release offender~~) partial confinement individual to do so will not be unduly hazardous to the (~~work/training release facility's~~) partial confinement program's safety or correctional goals unless the testimony to be presented by the witness and/or the information desired to be presented is deemed by the hearing officer to be irrelevant, immaterial, unnecessarily duplicative of other information and/or testimony before the hearing officer, or otherwise found to be unnecessary to the adequate presentation of the (~~work/training release offender's~~) partial confinement individual's case. The testimony of all witnesses from outside the (~~work/training release facility~~) partial confinement program shall be considered in writing. In the event the hearing officer determines that the presence of a witness is appropriate, the hearing officer should call the witness, or in its discretion, may continue the hearing if the witness is unavailable, but will become available within a reasonable period of time: Provided, however, that if the witness is unavailable, the hearing officer may, in his or her discretion, consider the written testimony previously submitted.

(4) The (~~work/training release offender~~) partial confinement individual may question witnesses against (~~him/her~~) them at the discretion of the hearing officer. If the hearing officer determines that a source of information would be subject to risk or harm if (~~his/her~~) their identity were disclosed, testimony of the confidential source may be introduced by the testimony of a staff member. The confidential testimony may be provided by the source or by the written and signed statement of the source. If the staff member to whom the source provided information is unavailable, the written statement of this staff member may be used. The hearing officer shall, out of the presence of all (~~work/training release offenders~~) partial confinement individuals and off the record, identify the confidential source,

and how the testifying staff member received the confidential information. The staff member presenting the information from a confidential source shall identify the source and the circumstances surrounding the receipt of the confidential information to the hearing officer, off the record. The hearing officer shall make an independent determination regarding the reliability of the confidential source, the credibility of the confidential information, and the necessity of not revealing the source of the confidential information. In determining whether the confidential source is reliable and the confidential information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

- (a) Evidence from other staff members that the confidential source has previously given reliable information;
- (b) Evidence that the confidential source had no apparent motive to fabricate information;
- (c) Evidence that the confidential source received no benefit from providing the information;
- (d) Whether the confidential source is giving first-hand information;
- (e) Whether the confidential information is internally consistent and is consistent with other known facts; and
- (f) The existence of corroborating evidence.

The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information. The reliability and credibility determination and the need for confidentiality must be made on the record.

(5) Documentary evidence, including written statements submitted by interested parties on behalf of the (~~offender~~) individual, may be received. Such evidence may include copies of documents, excerpts from documents and incorporation of written material by reference, including depositions.

(6) The hearing officer should determine if the (~~offender~~) individual is competent to understand the charges and proceedings or needs an interpreter to participate therein. If the (~~offender~~) individual is not competent or needs an interpreter, the hearing officer should postpone the hearing to secure a report on the competency of the (~~offender~~) individual, provide an interpreter, or take such other action as will assure the fairness and orderliness of the hearings.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-210, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 95-22-060, § 137-56-210, filed 10/30/95, effective 12/1/95. WSR 94-07-065, § 137-56-210, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-210, filed 2/21/86; WSR 82-08-055 (Order 82-06), § 137-56-210, filed 4/5/82. Formerly WAC 275-92-535.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-220 Disciplinary hearing—Findings and conclusions.

(1) At the conclusion of the hearing, the hearing officer will make a finding of fact as to whether or not the allegations made against the

((offender)) individual have been proven by a preponderance of the evidence presented at the hearing.

(2) If the hearing officer determines that the allegations have not been proven by a preponderance of the evidence presented at the hearing, the ((offender)) individual shall be restored/continued on ((~~work/training release~~)) partial confinement status.

(3) If the hearing officer determines that one or more of the allegations have been proven by a preponderance of the evidence presented at the hearing, the hearing officer will proceed to a disposition.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-220, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-220, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-220, filed 2/21/86; WSR 82-08-055 (Order 82-06), § 137-56-220, filed 4/5/82. Formerly WAC 275-92-540.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-230 Disciplinary hearing—Disposition. (1) The hearing officer shall seek and consider input from the ((~~community corrections officer, the facility contract staff~~)) case manager, the reentry center contract/custody staff, if applicable, and pertinent treatment providers.

(2) The hearing officer will consider the ((~~offender's~~)) individual's total background, any previous interventions, adjustment on ((~~work/training release~~)) partial confinement, attitude, recommendations of interested parties, and any other information relative to the ((~~offender's~~)) individual's ability to continue ((~~in the program~~)) on partial confinement. The hearing officer shall make a determination as to whether or not the ((~~offender~~)) individual has earned good time credits toward release, and whether the matter should be referred to the indeterminate sentence review board or the court for possible increase in the inmate's or ((~~offender's~~)) individual's minimum term.

(3) The ((~~offender~~)) individual shall be present at all stages of the hearing, except for deliberation and even during deliberation when appropriate, and shall have the opportunity to make argument in ((~~his or her~~)) their own behalf.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-230, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-230, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-230, filed 2/21/86; WSR 82-08-055 (Order 82-06), § 137-56-230, filed 4/5/82. Formerly WAC 275-92-545.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-240 Disciplinary hearing—Decision. (1) The hearing officer may:

(a) Restore the ~~((work/training release offender to his or her work/training release))~~ partial confinement individual to their partial confinement status under the same or modified conditions as the original plan; or

(b) Restrict the ~~((offender))~~ individual to the ~~((work/training release facility))~~ partial confinement program for up to ~~((thirty))~~ 30 days; or

(c) Require restitution be made by the ~~((work/training release offender))~~ partial confinement individual; or

(d) Require extra duty to be performed by the ~~((offender))~~ individual; or

(e) Revoke approval of an approved sponsor; or

(f) Deny good conduct time; or

(g) Terminate the ~~((work/training release))~~ partial confinement plan and return the ~~((work/training release offender to an institution/jail, or facility))~~ partial confinement individual from a reentry center to a prison/institution/jail, or an electronic home monitoring individual to a reentry center or a prison/institution/jail.

(2) Nothing in this section shall preclude subsequent reclassification of the ~~((work/training release offender))~~ partial confinement individual or placement into administrative segregation if demonstrable cause exists to support this action and is approved by the administrator.

(3) The hearing officer shall notify the ~~((offender))~~ individual orally within one working day and confirm the decision in writing within five working days. The written decision shall specify the evidence upon which the hearing officer relied and shall include a description of the circumstances surrounding the allegation(s) upon which the termination of the ~~((work/training release))~~ partial confinement is based, the reasons for the decision, a discussion of the ~~((offender's))~~ individual's personal culpability in the actions which have led to the termination, and an evaluation of the ~~((offender's))~~ individual's progress, attitudes, need for further programs including ~~((work training))~~ reentry center alternatives.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-240, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 94-07-065, § 137-56-240, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-240, filed 2/21/86; WSR 82-08-055 (Order 82-06), § 137-56-240, filed 4/5/82. Formerly WAC 275-92-550.]

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-56-250 Disciplinary hearing—Appeal. The ~~((offender))~~ individual may appeal the decision of the hearing officer to the area appeals panel. Appeal requests must be in writing, must be specific and based on objection to the procedures used or the information available to the hearing officer in making his or her decision. Appeals must be submitted within seven calendar days of the hearing officer's written decision. For reasons of community protection, all sanctions ordered by the hearing officer will be imposed following the hearing and will not be stayed. The appeals panel, upon receipt of an

appeal, will review the findings and decision of the hearing officer and either:

- (1) Affirm, or affirm and modify to a lesser sanction the decision of the hearing officer; or
- (2) Reverse the decision of the hearing officer; or
- (3) Remand for a rehearing.

[Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-56-250, filed 11/28/05 and 12/28/05, effective 5/1/06. WSR 95-22-060, § 137-56-250, filed 10/30/95, effective 12/1/95. WSR 94-07-065, § 137-56-250, filed 3/14/94, effective 5/1/94. Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-250, filed 2/21/86; WSR 83-10-042 (Order 83-05), § 137-56-250, filed 5/2/83; WSR 82-08-055 (Order 82-06), § 137-56-250, filed 4/5/82. Formerly WAC 275-92-555.]

AMENDATORY SECTION (Amending WSR 86-06-012, filed 2/21/86)

WAC 137-56-280 Applicability. WAC 137-56-170 through 137-56-260 shall not apply to the termination of a (~~work/training release~~) partial confinement plan pursuant to WAC 137-56-160 (2) (a), (b), or (c). WAC 137-56-080 and 137-56-170 through 137-56-260 shall not apply to the termination or modification of a (~~work/training release~~) partial confinement plan by the secretary pursuant to WAC 137-56-160(1).

[Statutory Authority: RCW 72.65.100. WSR 86-06-012 (Order 86-02), § 137-56-280, filed 2/21/86.]

WSR 22-03-068

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed January 14, 2022, 2:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-08-004.

Title of Rule and Other Identifying Information: Chapter 137-25

WAC.

Hearing Location(s): On February 22, 2022, at 2:00 p.m., Microsoft Teams meeting. Please contact rules coordinator at vvchebotar@doc1.wa.gov to register. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Date of Intended Adoption: March 22, 2022.

Submit Written Comments to: Vadim V. Chebotar, Senior Contracts Attorney, Department of Corrections (DOC), Contracts and Legal Affairs, P.O. Box 41114, Tumwater, WA 98504-1114, email vvchebotar@doc1.wa.gov, by February 17, 2022.

Assistance for Persons with Disabilities: Contact Vadim V. Chebotar, senior contracts attorney, email vvchebotar@doc1.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Make administrative changes, as necessary, to ensure WAC complies with department policy. The purpose of making changes to this section of the WAC is to remove work release from the applicability. This change allows for the update to chapter 137-56 WAC which will separate partial and total confinement, include all partial confinement programs, and identify progressive discipline within partial confinement.

Reasons Supporting Proposal: WAC should accurately comply with department policy.

Statutory Authority for Adoption: RCW 72.01.090.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Carrie Trogdon-Oster, DOC Headquarters, 253-377-7636; Enforcement: Susan Leavell, DOC Headquarters, 360-970-3650.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

January 5, 2022
Cheryl Strange
Secretary

OTS-3231.2

Chapter 137-25 WAC
SERIOUS VIOLATIONS—TOTAL ((AND PARTIAL)) CONFINEMENT FACILITIES

AMENDATORY SECTION (Amending WSR 15-20-011, filed 9/24/15, effective 1/8/16)

WAC 137-25-010 Application of chapter. The definitions and serious violations described herein apply to offenders committed to ((both)) total ((and partial)) confinement facilities.

[Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-25-010, filed 9/24/15, effective 1/8/16. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-25-010, filed 11/28/05 and 12/28/05, effective 5/1/06.]

AMENDATORY SECTION (Amending WSR 19-24-045, filed 11/26/19, effective 12/13/19)

WAC 137-25-030 Serious violations. (1) Any of the following types of behavior may constitute a serious violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation, with the exception of attempting an aggravated assault. Attempting to commit an aggravated assault will be charged as violation:

- (a) #633 When against another offender;
- (b) #704 When against a staff member; or
- (c) #711 When against a visitor or community member.

Category A

501 - Committing homicide
502 - Committing aggravated assault against another offender
507 - Committing an act that would constitute a felony and that is not otherwise included in these rules
511 - Committing aggravated assault against a visitor or community member
521 - Taking or holding any person hostage
550 - Escaping
601 - Possessing, manufacturing, or introducing an explosive device or any ammunition, or any component thereof
602 - Possessing, manufacturing, or introducing any firearm, weapon, sharpened instrument, knife, or poison, or any component thereof
603 - Introducing or transferring any unauthorized drug or drug paraphernalia

604 - Committing aggravated assault against a staff member
611 - Committing sexual assault against a staff member
613 - Committing an act of sexual contact against a staff member
635 - Committing sexual assault against another offender, as defined in department policy (i.e., aggravated sexual assault or offender-on-offender sexual assault)
637 - Committing sexual abuse against another offender, as defined in department policy
650 - Rioting, as defined in RCW 9.94.010
651 - Inciting others to riot, as defined in RCW 9.94.010
830 - Escaping from work/training release with voluntary return within 24 hours
831 - While in work/training release, failing to return from an authorized sign out
882 - While in prison, introducing, possessing, or using a cell phone, electronic/wireless communication device, or related equipment without authorization

Category B - Level 1

504 - Engaging in a sex act with another person(s) within the facility that is not otherwise included in these rules, except in an approved extended family visit
553 - Setting a fire
560 - Possessing items or materials likely to be used in an escape without authorization
633 - Assaulting another offender
704 - Assaulting a staff member
711 - Assaulting a visitor or community member
744 - Making a bomb threat
884 - Urinating, defecating, or placing feces or urine in any location other than a toilet or authorized receptacle
886 - Adulterating any food or drink
892 - Giving, selling, or trading any prescribed medication, or possessing another offender's prescribed medication

Category B - Level 2

505 - Fighting with another offender
556 - Refusing to submit to or cooperate in a search when ordered to do so by a staff member
607 - Refusing to submit to a urinalysis and/or failing to provide a urine sample within the allotted time frame when ordered to do so by a staff member
608 - Refusing or failing to submit to a breath alcohol test or other standard sobriety test when ordered to do so by a staff member
609 - Refusing or failing to submit to testing required by policy, statute, or court order, not otherwise included in these rules, when ordered to do so by a staff member
652 - Engaging in or inciting a group demonstration

655 - Making any drug, alcohol, or intoxicating substance, or possessing ingredients, equipment, items, formulas, or instructions that are used in making any drug, alcohol, or intoxicating substance
682 - Engaging in or inciting an organized work stoppage
707 - Introducing or transferring alcohol or any intoxicating substance not otherwise included in these rules
716 - Using an over the counter medication without authorization or failing to take prescribed medication as required when administered under supervision
736 - Possessing, manufacturing, or introducing an unauthorized key or electronic security access device
750 - Committing indecent exposure
752 - Possessing, or receiving a positive test for use of, an unauthorized drug, alcohol, or intoxicating substance
778 - Providing a urine specimen that has been diluted, substituted, or altered in any way

Category B - Level 3

503 - Extorting or blackmailing, or demanding or receiving anything of value in return for protection against others or under threat of informing
506 - Threatening another with bodily harm or with any offense against any person or property
509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area
525 - Violating conditions of a furlough
549 - Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in department policy
558 - Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties
600 - Tampering with, damaging, blocking, or interfering with any locking, monitoring, or security device
605 - Impersonating any staff member, other offender, or visitor
653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction
654 - Counterfeiting or forging, or altering, falsifying, or reproducing any document, article of identification, money, or security or other official paper without authorization
660 - Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is five dollars or more
709 - Out-of-bounds: Being in another offender's cell or being in an area in the facility with one or more offenders without authorization
738 - Possessing clothing or assigned equipment of a staff member

739 - Possessing, transferring, or soliciting any person's identification information, including current staff members or their immediate family members, when not voluntarily given. Identification information includes Social Security numbers, home addresses, telephone numbers, driver's license numbers, medical, personnel, financial, or real estate information, bank or credit card numbers, or other like information not authorized by the superintendent
745 - Refusing a transfer to another facility
746 - Engaging in or inciting an organized hunger strike
762 - Noncompliance with the DOSA program. Note: This violation must be initiated by authorized <u>employees/contract</u> staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC
777 - Causing injury to another person by resisting orders, assisted movement, or physical efforts to restrain
813 - Being in the community without authorization, or being in an unauthorized location in the community
814 - While in work/training release, violating an imposed special condition
879 - Operating or being in a motor vehicle without permission or in an unauthorized manner or location
889 - Using facility phones, information technology resources/systems, or related equipment without authorization

Category C - Level 1

508 - Spitting or throwing objects, materials, or substances in the direction of another person(s)
557 - Refusing to participate in an available work, training, education, or other mandatory programming assignment
563 - Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices
610 - While in prison, receiving or possessing prescribed medication without authorization
620 - Receiving or possessing contraband during participation in off-grounds or outer perimeter activity or work detail
659 - Committing sexual harassment against another offender, as defined in department policy
661 - Committing sexual harassment against a staff member, visitor, or community member
663 - Using physical force, intimidation, or coercion against any person
702 - Possessing, manufacturing, or introducing an unauthorized tool
708 - Organizing or participating in an unauthorized group activity or meeting
717 - Causing a threat of injury to another person by resisting orders, assisted movement, or physical efforts to restrain
720 - Flooding a cell or other area of the facility
724 - Refusing a cell or housing assignment

734 - Participating or engaging in the activities of any unauthorized club, organization, gang, or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang, or security threat group
810 - Failing to seek/maintain employment or training or maintain oneself financially, or being terminated from a work, training, education, or other programming assignment for negative or substandard performance
893 - Damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband
896 - Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, marital status or status as a state registered domestic partner, disability, veteran's status, or genetic information
899 - Failing to obtain prior written authorization from the sentencing court, contrary to RCW 9.94A.645, prior to commencing or engaging in any civil action against any victim or family of the victim of any serious violent crime the offender committed

Category C - Level 2

552 - Causing an innocent person to be penalized or proceeded against by providing false information
554 - Damaging, altering, or destroying any item that is not the offender's personal property, the value of which is ten dollars or more
710 - Acquiring an unauthorized tattoo/piercing/scar, tattooing/piercing/scarring another, or possessing tattoo/piercing/scarring paraphernalia
718 - Using the mail, telephone, or electronic communications in violation of any law, court order, or previous written warning, direction, and/or documented disciplinary action
726 - Telephoning, sending written or electronic communication, or otherwise initiating communication with a minor without the approval of that minor's parent or guardian

Category C - Level 3

606 - Possessing, introducing, or transferring any tobacco, tobacco products, matches, or tobacco paraphernalia
657 - Being found guilty of four or more general violations arising out of separate incidents within a 90-day period
658 - Failing to comply with any administrative or posthearing sanction imposed for committing any violation
812 - Failing to report/turn in all earnings

Category D

517 - Committing an act that would constitute a misdemeanor and that is not otherwise included in these rules

551 - Providing false information to the hearing officer or in a disciplinary appeal
555 - Stealing property, possessing stolen property, or possessing another offender's property
559 - Gambling or possessing gambling paraphernalia
656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service
662 - Soliciting goods or services for which the provider would expect payment, when the offender knows or should know that he/she lacks sufficient funds to cover the cost
706 - Giving false information when proposing a release plan
714 - Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is ten dollars or more
725 - Telephoning or sending written or electronic communication to any offender in a correctional facility, directly or indirectly, without prior written approval of the superintendent/community corrections supervisor/designee
728 - Possessing any sexually explicit material(s), as defined in WAC 137-48-020
740 - Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense
741 - Stealing food, the value of which is five dollars or more
742 - Establishing a pattern of creating false emergencies by feigning illness or injury
755 - Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is ten dollars or more
811 - Entering into an unauthorized contract
861 - Performing or taking part in an unauthorized marriage
890 - Failing to follow a medical directive and/or documented medical recommendations, resulting in injury

(2) If contraband or another violation is discovered in an offender's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all offenders assigned responsibility for that area.

[Statutory Authority: RCW 72.01.090 and 72.65.100. WSR 19-24-045, § 137-25-030, filed 11/26/19, effective 12/13/19. Statutory Authority: RCW 72.01.090, 72.65.100, and 72.09.130. WSR 15-20-011, § 137-25-030, filed 9/24/15, effective 1/8/16. WSR 14-12-095, § 137-25-030, filed 6/4/14, effective 7/1/14. Statutory Authority: RCW 72.09.130, 72.01.090, and 72.65.100. WSR 11-17-119, § 137-25-030, filed 8/23/11, effective 9/23/11; WSR 09-01-195, § 137-25-030, filed 12/24/08, effective 1/24/09; WSR 06-21-054, § 137-25-030, filed 10/13/06, effective 11/13/06. Statutory Authority: RCW 72.01.090, 72.09.130, and 9.94.070. WSR 05-24-009 and 06-02-038, § 137-25-030, filed 11/28/05 and 12/28/05, effective 5/1/06.]

Reviser's note: Under RCW 34.05.030 (1)(c), as amended by section 103, chapter 288, Laws of 1988, the above section was not adopted under the Administrative Procedure Act, chapter 34.05 RCW, but was published in the Washington State Register and codified into the Washington Administrative Code exactly as shown by the agency filing with history notes added by the code reviser's office.

WSR 22-03-074

WITHDRAWAL OF PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed January 18, 2022, 8:34 a.m.]

The health care authority requests withdrawal of proposed rule making filed as WSR 22-02-073, distributed in the 22-02 State Register issue. The agency is revising the text and will refile and hold the public hearing at a later date.

Wendy Barcus
Rules Coordinator

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The Washington student achievement council (WSAC) has worked with participating higher education institutions on an ongoing basis and will continue to do so following adoption of this rule to implement changes in student eligibility, campus practices, and policies beginning with the 2022-23 academic year.

Name of Proponent: WSAC, governmental.

Name of Agency Personnel Responsible for Drafting: Carla Idohl-Corwin, WSAC, 360-485-1302; Implementation and Enforcement: Becky Thompson, WSAC, 360-485-1301.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to rules adopted by this agency.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

January 18, 2022
Carla Idohl-Corwin
Senior Associate Director
Need Based Programs and Operations

OTS-3500.2

**Chapter 250-100 WAC
PASSPORT TO CAREERS PROGRAM**

NEW SECTION

WAC 250-100-010 Purpose. Recognizing the low college-going rates of youth in and alumni of foster care and unaccompanied youth experiencing homelessness in Washington state, the legislature created the passport to careers program. The program's purpose is:

(1) To encourage current and former youth in foster care and unaccompanied youth experiencing homelessness to prepare for, attend, and successfully complete higher education, a registered apprenticeship and/or preapprenticeship program;

(2) To improve the high school graduation outcomes of youth in foster care and unaccompanied youth experiencing homelessness through coordinated P-20 and child welfare outreach, intervention, and planning; and

(3) To improve postsecondary outcomes by providing current and former youth in foster care and unaccompanied youth experiencing homelessness with the educational planning, information, institutional support, and direct financial resources necessary for them to succeed in either higher education or a registered apprenticeship or preapprenticeship program.

[]

NEW SECTION

WAC 250-100-015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Academic year" is that period of time typically between July 1st and the following June 30th, and may include summer terms, during which a full-time student would normally be expected to complete the equivalent of two semesters or three quarters or 900 clock hours of instruction.

(2) "Agency" refers to the Washington student achievement council (WSAC).

(3) "Apprentice" as defined in WAC 296-05-003 means a person enrolled in a state approved, federally registered, or reciprocally recognized apprenticeship program as defined in WAC 296-05-011.

(4) "Apprenticeship" means an apprenticeship training program approved or recognized by the state apprenticeship council or similar federal entity as defined in WAC 296-05-011.

(5) "Cost of attendance" means the cost associated with attending a particular institution of higher education as determined by the office including, but not limited to, tuition, fees, room, board, books, personal expenses, and transportation, plus the cost of reasonable additional expenses incurred by an eligible student and approved by a financial aid administrator at the student's school of attendance.

(6) "Council" means the 10-member council of the Washington student achievement council.

(7) "Federal foster care system" means the foster care program under the federal unaccompanied refugee minor program, Title 8 U.S.C. Sec. 1522 of the Immigration and Nationality Act.

(8) "Financial need" shall be determined as defined in WAC 250-21-010(4) in accordance with industry standards and provisions as recognized and modified by the office.

(9) "Homeless" or "homelessness" means without a fixed, regular, and adequate nighttime residence as set forth in the federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. Sec. 11301 et seq., or as amended.

(10) "Institution of higher education" means any institution eligible for and participating in the Washington college grant program.

(11) "Occupational-specific costs" means the costs associated with entering an apprenticeship or preapprenticeship including, but not limited to, fees, tuition for classes, work clothes, rain gear, boots, occupation-specific tools, as defined by the office.

(12) "Office" means the WSAC office of student financial assistance.

(13) "Preapprenticeship" means an apprenticeship preparation program recognized by the state apprenticeship council and as defined in RCW 28C.18.162.

(14) "Program" means the passport to careers program created in chapter 28B.117 RCW.

(15) "Satisfactory academic progress" shall be defined in accordance with WAC 250-21-010(16) and is the student's successful comple-

tion of a minimum number of credit or clock hours for each term in which the grant was received.

(16) "State foster care system" means out-of-home care pursuant to a dependency and includes the placement of dependents from other states who are placed in Washington pursuant to orders issued under the interstate compact on the placement of children, chapter 26.34 RCW.

(17) "Student budgets" are determined by institutions of higher education and subject to approval by the office. The student budget consists of that amount required to support an individual as a student for nine months and may take into consideration cost factors for maintaining the student's dependents. Additional adjustment may be needed for varying enrollment periods.

(18) "Tribal court" has the same meaning as defined in RCW 13.38.040.

(19) "Tribal foster care system" means an out-of-home placement under a dependency order from a tribal court.

(20) "Unaccompanied youth experiencing homelessness" means a person that meets age requirements of the passport program, is not in the physical custody of a parent or guardian, and lacks a fixed, regular, and adequate nighttime residence.

(21) "Verification" means that a student's eligibility for passport has been documented by the department of children, youth, and families (DCYF), department of social and health services (DSHS), office of superintendent of public instruction (OSPI), tribal authorities, the office and/or established through the institution's financial aid office based on appropriate documentation.

[]

NEW SECTION

WAC 250-100-020 Institutional eligibility. An eligible institution is one that:

(1) Meets the requirements for Washington college grant eligibility defined in RCW 28B.92.030 and WAC 250-21-021;

(2) Agrees to abide by all program rules adopted by the office;

(3) Completes an agreement to participate in state aid programs;

(4) Provides the eligible student all available need-based and merit-based grant and scholarship aid for which the student qualifies; and

(5) If participating in the incentive grant program referred to as the student support fund, completes a program addendum to the agreement to participate and has developed a viable student support plan authorized in WAC 250-100-060.

[]

NEW SECTION

WAC 250-100-030 Identification of eligible foster youth. The program requires early and accurate identification of current and former youth in foster care so they can be linked to the financial assis-

tance and other services that will help them succeed in college. The sharing of information to identify eligible youth who experienced foster care is facilitated by chapter 28B.117 RCW.

(1) The office will seek verification from the department of children, youth, and families (DCYF), department of social and health services (DSHS), office of the superintendent of public instruction (OSPI), tribal authorities and/or as established through the institutions' financial aid offices awarding the passport funds based on appropriate documentation that applicants meet the passport student eligibility definition when:

(a) The office may enter into data share agreements with the DCYF, OSPI, DSHS and/or tribal authorities for the purpose of identifying and providing services to passport eligible students. In the event the office must initiate eligibility confirmation, the office will secure appropriate consent from the student.

(b) The student has completed the free application for federal student aid or the alternate approved application for state aid as provided by the office, giving the office and the institutions permission to verify information supplied on that application.

(2) The office will confirm the eligibility of foster youth to eligible institutions of higher education.

(3) The office will protect personally identifiable information in accordance with the Family Educational Rights and Privacy Act (34 C.F.R. Part 99) and other applicable privacy standards.

(4) The office will maintain the consent and verification information for the period of the youth's passport eligibility. Thereafter, records will be maintained according to the record retention schedule in RCW 40.14.060.

[]

NEW SECTION

WAC 250-100-040 Student eligibility for passport scholarship.

(1) To the extent that sufficient funds have been appropriated for this purpose, a student is eligible for the passport to college promise program, if the student:

(a) Meets one of the following:

(i) Were in the care of the state foster care system, tribal foster care system, or federal foster care system in Washington state at any time before age 21 subsequent to age 13 as of July 1, 2020; or

(ii) Beginning July 1, 2019, was verified on or after July 1st of the prior academic year as an unaccompanied youth experiencing homelessness, before age 21.

(b) Is a Washington state resident student as defined in RCW 28B.15.012(2), or if unable to establish residency because of homelessness or placement in out-of-state foster care under the interstate compact for the placement of children, has residency determined through verification by the office;

(c) Is enrolled or will enroll on at least a half-time basis with an institution of higher education or enroll in a registered apprenticeship or recognized preapprenticeship in Washington state before the age of 22;

(d) Demonstrates financial need as defined by the office and according to industry standards;

- (e) Has not earned a bachelor's or professional degree;
 - (f) Is not pursuing a degree in theology;
 - (g) Is making satisfactory progress toward the completion of a degree, certificate program or registered apprenticeship or recognized preapprenticeship;
 - (h) Has not received a passport scholarship for more than 10 semesters, or 15 full-time quarters, or an equivalent combination of the two;
 - (i) May receive a passport to college promise scholarship for a combined maximum of five years of full time equivalent eligibility after the student first enrolls with an institution of higher education or until the student turns age 26, whichever occurs first. If a student turns age 26 during an academic year, and would otherwise be eligible for a scholarship, the student shall continue to be eligible for a scholarship for the remainder of the academic year; and
 - (j) Does not owe a refund or repayment on other state aid programs and is not in default on a state loan program.
- (2) Recipients may utilize passport to college promise or passport to apprenticeship opportunities at different times, but not concurrently; and
- (3) The total award an individual may receive in any combination of the programs shall not exceed the equivalent amount that would have been awarded for the individual to attend a public university for five years with the highest annual tuition and state-mandated fees in the state.

[]

NEW SECTION

- WAC 250-100-050 Determining the amount of the passport to college promise scholarship.** (1) Eligible students may receive the passport scholarship.
- (2) The scholarship shall not exceed the student's financial need.
- (3) The office sets the scholarship award on an annual basis not to exceed resident undergraduate tuition and fees at the highest-priced public institution of higher education in the state.
- (4) In calculating need, initially based on an established cost of attendance, the institution of higher education and any contracted nongovernmental organization administering passport to careers apprenticeship is encouraged to further examine the student's costs on a case-by-case basis to identify any extenuating circumstances, so actual costs borne by the individual are recognized.

[]

NEW SECTION

- WAC 250-100-060 Passport student support fund to provide student support services.** Passport student support funds are grant payments to institutions based on recruitment, retention, and support of pass-

port eligible students. The payment is available only to institutions agreeing to provide specified student support services.

Institutional participation in the passport student support fund is voluntary. An otherwise eligible student can receive a passport scholarship to attend an eligible college even if the institution does not participate in the passport student support fund option.

To the extent that funds are allotted for this purpose, the amount of passport student support fund payments to institutions will be reviewed and determined annually by the office based on projected enrollments, appropriations, and other relevant factors.

Participating institutions shall meet the following criteria:

(1) Include on their applications for admission or on their registration materials a question asking whether the applicant has been in foster care in state, tribal or federal foster care in Washington state or is an unaccompanied youth experiencing homelessness under the parameters in RCW 26B.117.040 (1) and (2). All other institutions of higher education, whether participating in the student support fund or not, are strongly encouraged to include this question on their admission application.

(2) Have a viable student support plan. The scope of a viable student support plan is one that generally:

- (a) Identifies those students eligible for assistance under this program;
- (b) Tracks and enhances academic progress of eligible students;
- (c) Addresses their unique needs for assistance during school vacation and academic interims; and
- (d) Links eligible students to appropriate sources of assistance in their transition to adulthood.

At a minimum, each institution's viable plan shall:

- (i) Designate campus support staff;
- (ii) Provide a comprehensive financial aid package taking into account available federal, state, institutional and private funding that, to the extent possible, meets the student's financial need;
- (iii) Build a lasting institutional commitment to serve current and former foster youth and unaccompanied youth experiencing homelessness; and
- (iv) As appropriate, communicate with social services and independent living providers.

(3) Institutions choosing to participate will sign an addendum. The addendum to the state student financial aid participation agreement specifies the services that are to be provided through the institution's viable plan.

[]

NEW SECTION

WAC 250-100-070 Payment of passport to college promise student scholarship and student support funds. The office will provide participating colleges with an allocation that aligns with the program purpose and intent to establish an equitable opportunity for eligible students across the state. This method will be reviewed periodically.

[]

NEW SECTION

WAC 250-100-075 Passport to apprenticeship program. The passport to apprenticeship opportunities pathway was added in 2019.

(1) (a) The office will provide financial assistance through a nongovernmental entity or entities in RCW 28B.117.055 for registered apprenticeship and recognized preapprenticeship entrance requirements and occupational-specific costs that does not exceed the individual's financial need; and

(b) Extend financial assistance to any eligible applicant for a maximum of six years after first enrolling with a registered apprenticeship or recognized preapprenticeship, or until the applicant turns 26, whichever occurs first. If a registered apprentice turns age 26 during an award year, and would otherwise be eligible for an apprenticeship award, the registered apprentice shall continue to be eligible for the award for the remainder of the award year.

(2) Recipients may utilize passport to college promise or passport to apprenticeship opportunities at different times, but not concurrently.

(3) The total award an individual may receive in any combination of the programs shall not exceed the equivalent amount that would have been awarded for the individual to attend a public university for five years with the highest annual tuition and state-mandated fees in the state.

[]

NEW SECTION

WAC 250-100-080 Institutional fund management requirements. Institutions must adhere to all fund management requirements as outlined in WAC 250-21-051 for Washington college grant purposes. These requirements include the identification of eligible students, award calculation, student directive requirements for private institutions, frequency of reporting, detailed student reconciliation and records retention, and repayment requirements.

[]

NEW SECTION

WAC 250-100-090 Program administration and audits. (1) The staff of the office under the direction of the executive director will manage the administrative functions relative to the passport to careers programs.

(2) The office will review institutional administrative compliance as outlined in WAC 250-21-061. Any student who has obtained passport to careers funding through means of willfully false statement or failure to reveal any material fact affecting eligibility will be subject to applicable civil or criminal penalties and repayment similar to processes and procedures outlined in WAC 250-21-051.

[]

NEW SECTION**WAC 250-100-100 Request for review and student complaints.**

Should a student question their passport to college scholarship eligibility or award, the student should direct questions and complaints to the financial aid officer at the institution they attend prior to contacting the office for assistance if necessary. Should an apprentice question their passport to careers apprenticeship eligibility, the student should direct questions and complaints to the nongovernmental entity providing the program prior to contacting the office for assistance if necessary.

[]

NEW SECTION

WAC 250-100-110 Suspension or termination of institutional or nongovernmental entity participation. Institutions and nongovernmental entities may be suspended or terminated from participation in state financial aid programs. Refer to WAC 250-21-081 for Washington college grant for complete information.

[]

NEW SECTION

WAC 250-100-120 Appeal process. An institution or nongovernmental entity may appeal their termination to participate in state financial aid programs. Refer to WAC 250-21-091 for Washington college grant for the complete process.

[]

NEW SECTION

WAC 250-100-130 The agency's responsibilities. (1) Administering agency. The Washington student achievement council shall administer the passport to careers program. This program has two programmatic pathways: The passport to college promise program and the passport to apprenticeship opportunities.

(2) The office will ensure colleges are packaging all available need-based and merit-based grant and scholarship aid for which the passport to college promise student qualifies. The office may request or collect additional information from the institution to verify students received such aid.

(3) The office will ensure nongovernmental agencies awarding passport to apprenticeship funds will utilize and award moneys as outlined in the contract.

[]

OTS-3501.1

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 250-83-010	Purpose.
WAC 250-83-020	Institutional eligibility.
WAC 250-83-030	Identification of eligible foster youth.
WAC 250-83-040	Student eligibility for passport scholarship.
WAC 250-83-050	Determining the amount of the passport student scholarship.
WAC 250-83-060	Institutional incentive grant to provide student support services.
WAC 250-83-070	Reserve of funds and payment of student scholarship and institutional incentive grant.
WAC 250-83-080	Board's responsibilities.
WAC 250-83-090	Definitions.

WSR 22-03-091

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed January 18, 2022, 1:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-069.

Title of Rule and Other Identifying Information: WAC 182-535-1270
Oral health connections pilot project.

Hearing Location(s): On February 22, 2022, at 10:00 a.m. The health care authority (HCA) remains closed in response to the coronavirus disease 2019 (COVID-19) public health emergency. Until further notice, HCA continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance for this public hearing https://zoom.us/webinar/register/WN_HfseM1FyQGq25WaelxhZSg. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than February 22, 2022.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by February 22, 2022.

Assistance for Persons with Disabilities: Contact HCA rules coordinator, phone 360-725-1306, fax 360-586-9727, telecommunication[s] relay service 711, email arc@hca.wa.gov, by February 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these rules to extend the program through December 31, 2023. Additionally, the agency is removing age limits and dual eligibility exclusions. The enhanced rate will now include an additional adult prophylaxis, an additional fluoride varnish application, two periodic exams, and two silver diamine fluoride treatment[s]. This proposal was initially filed under WSR 22-02-073 on January 5, 2022, and withdrawn under WSR 22-03-074 on January 18, 2022. The agency revised the proposed text and removed the language in subsection (1) "*... or until pilot funds are exhausted, whichever comes first.*"

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Pixie Needham, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-9967.

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

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

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

January 18, 2022
Wendy Barcus
Rules Coordinator

OTS-3505.3

AMENDATORY SECTION (Amending WSR 18-24-077, filed 11/30/18, effective 1/1/19)

WAC 182-535-1270 Oral health connections pilot project. (1) The oral health connections pilot project is effective for dates of service from January 1, 2019, through December 31, ~~((2021))~~ 2023.

(2) The purpose of the oral health connections pilot project is to test the effect that enhanced oral health services have on the overall health of diabetic or pregnant medicaid clients receiving services in Cowlitz, Spokane, and Thurston counties.

(3) To be eligible for the oral health connections pilot project, a client must ~~((be))~~:

(a) ~~((Age twenty one to sixty four;~~

~~(b) Pregnant, diabetic, or both))~~ Be diabetic and age 21 or older; or

(b) Be pregnant and 16 years of age or older; and

(c) Be receiving services under subsection (6) of this section in Cowlitz, Spokane, or Thurston counties; and

(d) Be referred by a nondental primary health care provider, managed care organization, or a designated community organization to a qualified oral health connections pilot project dental provider. For the purposes of this section, a designated community organization is defined as an auxiliary group or groups that partner with the agency and Arcora foundation to implement the oral health connections pilot project or provide an attestation showing the client has been diagnosed with diabetes or pregnancy, or both.

(4) A client who qualifies for the oral health connections pilot project due to pregnancy may continue receiving services through the duration of the maternity cycle as defined in WAC 182-533-0315, but must ~~((actually))~~ be pregnant at the start of services.

(5) The following are excluded from the oral health connections pilot project:

(a) Family planning only ~~((and TAKE CHARGE))~~ programs under chapter 182-532 WAC; and

(b) Medical care services (MCS) program under WAC 182-508-0005 ~~((and~~

~~(c) Clients who are enrolled in both medicaid and medicare))~~.

(6) Under the oral health connections pilot project, the medicaid agency pays an enhanced rate for the following services:

(a) One comprehensive oral exam, per client, per provider in a five-year period;

(b) One periodic exam, per client, per provider, every six months;

(c) One complete series of intraoral radiographic images per client in a three-year period;

~~((e))~~ (d) Four bitewing X-rays (radiographs) once per client in a ~~((twelve-month))~~ 12-month period;

~~((d))~~ (e) One adult prophylaxis, per client, every six months;

(f) Periodontal scaling and root planing - Four or more teeth per quadrant, once per quadrant per client in a two-year period;

~~((e))~~ (g) Periodontal scaling and root planing - Three or more teeth per quadrant, once per quadrant per client in a two-year period;

~~((and~~
~~((f))~~ (h) Up to three additional periodontal maintenance visits in a ~~((twelve-month))~~ 12-month period. At least ~~((ninety))~~ 90 days must elapse following periodontal scaling and root planing or at least ~~((ninety))~~ 90 days must elapse following initial periodontal maintenance, and then every ~~((ninety))~~ 90 days afterwards for a total of three additional periodontal maintenance visits per eligible client in a ~~((twelve-month))~~ 12-month period;

(i) One fluoride varnish application, per client, every six months; and

(j) One silver diamine fluoride treatment, per tooth, per client, every six months.

(7) The services listed in subsection (6) of this section are the only services the agency pays at the enhanced rate. The agency pays for all other covered dental services at the standard rate.

(8) To receive the enhanced rate, dental providers must:

(a) Be enrolled to participate in the oral health connections pilot project;

(b) Meet the qualifications in WAC 182-535-1070;

(c) Provide the services in Cowlitz, Spokane, or Thurston counties; and

(d) Complete training designed specifically for the oral health connections pilot project.

(9) The agency assigns a special identifier to providers who complete the training in subsection (8)(d) of this section which allows them to receive the enhanced rate.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 2017 c 1. WSR 18-24-077, § 182-535-1270, filed 11/30/18, effective 1/1/19.]

WSR 22-03-092

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed January 18, 2022, 1:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-22-027.

Title of Rule and Other Identifying Information: WAC 458-20-17001 Government contracting—Construction, installations, or improvements to government real property, is the rule that explains the taxation of businesses engaged in government contracting and the reporting requirements for persons engaged in these activities.

Hearing Location(s): On February 23, 2022, at 10:00 a.m., virtual meeting. Contact Keith Dacus at KeithD@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: March 16, 2022.

Submit Written Comments to: Patrick Watkins, P.O. Box 47453, Olympia, WA 98504-7453, email patrickw@dor.wa.gov, fax 360-534-1539, by February 25, 2022.

Assistance for Persons with Disabilities: Contact Julie King or Renee Cosare, phone 360-704-5733 or 360-704-5734, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is updating this rule to ensure consistency with statutory language, improve readability, format to current standards, and provide guidance on reporting requirements.

Reasons Supporting Proposal: Businesses engaged in government contracting will find that the updates to the rule will clarify statutory language while providing examples that will assist with reporting requirements.

Statutory Authority for Adoption: RCW 82.01.060(2), 84.32.300.

Statute Being Implemented: RCW 82.04.050, 82.04.190, 82.04.240, 82.04.280.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick Watkins, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1539; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule as defined by RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

January 18, 2022
Atif Aziz
Rules Coordinator

OTS-3384.3

AMENDATORY SECTION (Amending WSR 86-10-016, filed 5/1/86)

WAC 458-20-17001 Government contracting—Construction, installations, or improvements to government real property. (1) ~~((Special business and occupation tax applications and special sales/use tax applications pertain for prime and subcontractors who perform certain construction, installation, and improvements to real property of or for the United States, its instrumentalities, or a county or city housing authority created pursuant to chapter 35.82 RCW. These specific construction activities are excluded from the definition of "sale at retail" under RCW 82.04.050. All other sales to the United States, its agencies or instrumentalities are taxable as retail sales or wholesale sales, as appropriate. See WAC 458-20-190.~~

~~(2) The definitions of terms and general provisions contained in WAC 458-20-170 apply equally for this rule, as appropriate. In addition, the terms, "clearing land" and "moving earth" include well drilling, core drilling, and hole digging, whether or not casing materials are installed and any grading or clearing of land, including the razing of buildings or other structures.~~

Business and Occupation Tax

~~(3) Amounts derived from)~~ **Introduction.** This rule explains the taxation of businesses engaged in "government contracting"; i.e., constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, its instrumentalities, or a county or city housing authority created pursuant to chapter 35.82 RCW. It also explains the reporting requirements for persons engaged in these activities.

(a) **Examples.** Examples included in this rule identify a number of facts and then state a general conclusion; they should be used only as a general guide. The tax consequences of all situations must be determined after a review of all the facts and circumstances.

(b) **Other rules that may apply.** The following rules may contain additional relevant information for persons engaged in government contracting or persons working with or for government contractors:

(i) WAC 458-20-134 Commercial or industrial use;

(ii) WAC 458-20-170 Constructing and repairing of new or existing buildings or other structures upon real property;

(iii) WAC 458-20-171 Building, repairing or improving streets, roads, etc., 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;

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

(v) 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;

(vi) WAC 458-20-211 Leases or rentals of tangible personal property, bailments.

(c) **Definitions.** The definitions in WAC 458-20-170 apply equally for this rule, as appropriate. In addition, the terms "clearing land" and "moving earth" include any grading or clearing of land, including razing buildings or other structures, as well as well drilling, core

drilling, and digging holes, regardless of whether or not casing materials are installed.

(2) **Business and occupation tax.**

(a) **Manufacturing.** Government contractors that manufacture or produce any tangible personal property for their own commercial or industrial use in performing government contracting activities must report the value of the property manufactured under the manufacturing B&O tax classification. See RCW 82.04.240. In these circumstances, the government contractor is considered the consumer of the manufactured product and should not report the value of the manufactured product on either the retailing or wholesaling B&O tax classifications. The multiple activities tax credit is not allowed on this transaction.

(b) **Government contracting.** Persons, including subcontractors, engaged in constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property, including installing or attaching tangible personal property ((therein or thereto)) on the real property, and clearing land or moving earth, of or for the United States, its instrumentalities, or county or city housing authorities of chapter 35.82 RCW are taxable under the government contracting B&O tax classification ((of business and occupation tax)), on the gross income from those activities. See RCW 82.04.280 (1) (g). The measure of the tax is the gross contract price.

~~((4) Government contractors who manufacture or produce any tangible personal property for their own commercial or industrial use as consumers in performing government contracting activities are subject to the manufacturing classification of business and occupation tax measured by the value of the property manufactured or produced. See also, WAC 458-20-134. The manufacturing tax applies even though the property manufactured or produced for commercial use may be subsequently incorporated into buildings or other structures under the government contract and may thereby enhance the gross contract price.~~

Retail Sales Tax

~~(5))~~ (3) **Retail sales tax.**

(a) **Government contracting activities excluded.** The retail sales tax does not apply to ((the gross contract price, or any part thereof,)) any portion of the contract price for any business activities taxable under the government contracting B&O tax classification described in subsection (2) (b) of this section.

(b) **Materials.** Prime and subcontractors ((who perform such activities)) engaged in government contracting are ((themselves included within the statutory definition of)) "consumers" under RCW 82.04.190 and ((are required to)) must pay retail sales tax ((upon)) or use tax on all purchases of materials ((, including)). Examples of common materials on which sales or use tax would apply include prefabricated and precast items, equipment, and other tangible personal property ((which is)) installed, applied, attached, or otherwise incorporated in their government contracting work. ((This)) Sales tax applies ((for all such)) to the contractor's purchases ((of tangible personal property for installation, etc., even though)) notwithstanding that the full purchase price of ((such)) the property will be reimbursed by the government or housing authority in the gross contract price ((. It also applies)), and notwithstanding that the contract ((may contain an immediate title vesting clause which)) provides that the title to the property vests in the government or housing authority immediately upon its acquisition by the contractor.

~~((6) Also, the retail sales tax must be paid by government contractors upon their)) (c) **Tools and consumables.** Government contractors must pay retail sales tax on purchases and leases or rentals of tools, consumables, and other tangible personal property ~~((used by them))~~ they use as consumers in performing government contracting as described in subsection (2) (b) of this section.~~

~~((Use Tax~~

~~(7) The)) (4) **Use tax.**~~

~~(a) Use tax applies ((upon)) to the value of all materials, equipment, and other tangible personal property ((purchased)) a government contractor purchases at retail, ((acquired)) acquires as a bailee or donee, or ((manufactured)) manufactures or ((produced by the contractor)) produces for commercial use or industrial use ((in performing government contracting)) and upon which ((no retail sales tax has been paid by)) the contractor, its bailor, or its donor paid no retail sales tax.~~

~~((8) Thus the use tax applies to all property provided by the federal government to the contractor for installation or inclusion in the contract work as well as to all government provided tooling.~~

~~(9) The use tax is to be reported and paid by the government contractor who actually installs or applies the property to the contract. Where the actual installing contractor pays the tax, no further use tax is due upon such property by any other contractor.~~

~~(10) Note to contractors: The United States Supreme Court has sustained the government contracting tax applications for this state, even though the ultimate economic burden of the tax is borne by the United States Government (Washington v. US, 75 L.Ed 2d 264, 1983).~~

~~(11)) (b) Government contractors are required to remit use tax on the value of government-provided tooling as well as property provided by the federal government to the contractor for installation or inclusion in the contract work.~~

~~(c) Either the prime contractor or a subcontractor may be held responsible for payment of the applicable use tax unless there is proof that one of these persons has paid the tax to the department because both persons are "consumers" of the tooling/property under RCW 82.04.190(6).~~

Example 1. Prime Contracting LLC contracts directly with the United States government to construct a new mess hall on a military base. As part of the project, Prime Contracting LLC manufactures custom wall cabinet storage units at their workshop, then delivers and installs the units in the newly constructed kitchen. Prime Contracting LLC must report the value of the manufactured cabinets under the manufacturing B&O tax classification. Prime Contracting LLC is also subject to use tax on the value of the cabinets. The gross income from the government contract must be reported under the government contracting B&O tax classification.

Example 2. Assume the same facts as Example 1, except Prime Contracting LLC, after manufacturing the cabinets, hires a subcontractor, Classy Cabinets Ltd., to install them. If Prime Contracting LLC does not report and remit use tax on the value of the cabinets, Classy Cabinets would be responsible for paying the use tax. Both Prime Contracting LLC and Classy Cabinets Ltd. will report their income from the project under the government contracting B&O tax classification.

Example 3. Assume the same facts as Example 1, except Prime Contracting LLC hires subcontractor, Classy Cabinets Ltd., to build and install the custom cabinets. In this scenario, Classy Cabinets Ltd. is

the manufacturer of the cabinet units and must report the value of the manufactured cabinets under the manufacturing B&O tax classification. Both Prime Contracting LLC and Classy Cabinets Ltd. will report their income from the project under the government contracting B&O tax classification. Classy Cabinets Ltd. is also subject to use tax on the value of the cabinets. If Classy Cabinets Ltd. does not report and remit use tax on the value of the manufactured cabinets, Prime Contracting LLC would be responsible for paying the use tax.

Example 4. Assume the same facts as Example 3, except the United States government provides Classy Cabinets Ltd. with a tool necessary to install the manufactured cabinets. Classy Cabinets Ltd. is subject to use tax on the value of the tool used. See RCW 82.12.010(7) and WAC 458-20-178 (4)(f) for information on the use tax value of articles used in bailment situations. If Classy Cabinets Ltd. does not report and remit use tax on the value of the tool used, Prime Contracting LLC would be responsible for paying the use tax.

(5) This rule does not apply to public road construction. See WAC 458-20-171.

[Statutory Authority: RCW 82.32.300. WSR 86-10-016 (Order ET 86-9), § 458-20-17001, filed 5/1/86.]

WSR 22-03-093
PROPOSED RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed January 18, 2022, 2:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-019.

Title of Rule and Other Identifying Information: Chapter 132Q-10 WAC, Standards of conduct for students.

Hearing Location(s): On March 15, 2022, at 8:30 a.m., at Lodge Building, 3305 West Whistalks Way, Spokane, WA 99224. Virtual meeting option: Join Zoom meeting <https://ccs-spokane.zoom.us/j/83755648757?pwd=ZGZGaHhXdnFvaldjU25zOG0wZjJ0UT09&from=addon>, Meeting ID 837 5564 8757, Passcode 252751; Mobile US: +1 253 215 8782 or +1 346 248 7799 or +1 669 900 6833 or +1 312 626 6799 or +1 646 558 8656 or +1 301 715 8592. In-person attendees will be required to follow Community Colleges of Spokane (CCS) campus guidelines pertaining to COVID-19.

Date of Intended Adoption: March 15, 2022.

Submit Written Comments to: John O'Rourke, 501 North Riverpoint Boulevard, Mailstop 1006, Spokane, WA 99217-6000, email john.orourke@ccs.spokane.edu, mobile 509-220-4200, by October 14, 2021.

Assistance for Persons with Disabilities: Contact John O'Rourke, phone 509-434-5185, fax 509-434-5279, TTY 509-434-5275, email john.orourke@ccs.spokane.edu, mobile 509-220-4200, by March 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Updates to the rules are necessary in order to add new language clarifying the appeal process including that parties have the right to appeal the dismissal of a formal complaint, as well as language clarifying a president's authority to appoint an administrative law judge or third party to serve as hearing officer. In addition, on August 4, 2020, the Washington Court of Appeals Division III filed an opinion regarding academic misconduct in the *Daniel Nelson v. Spokane Community College* case (No. 36556-5-III). CCS will provide clarification regarding its treatment of academic misconduct to ensure compliance with the decision of the court of appeals.

Reasons Supporting Proposal: Clarifying the appeal process as well as language clarifying a president's authority to appoint an administrative law judge or third party to serve as hearing officer, and ensuring compliance with the decision of the court of appeals.

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

Statute Being Implemented: Title IX (20 U.S.C. § 1681 et seq.).

Rule is necessary because of federal law and state court decision, *Daniel Nelson v. Spokane Community College* case (No. 36556-5-III).

Name of Proponent: CCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick McEachern or Glen Cosby, Spokane, Washington, 509-533-3514 or 509-533-7015.

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

A cost-benefit analysis is not required under RCW 34.05.328. CCS is not a listed agency under RCW 34.05.328 and is therefore exempt from this provision.

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

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

January 18, 2022

John O'Rourke

WAC Coordinator

OTS-3575.1

AMENDATORY SECTION (Amending WSR 15-15-161, filed 7/21/15, effective 8/21/15)

WAC 1320-10-210 Academic dishonesty and ethical violations. (1)

Acts of academic dishonesty (~~will be reported to the student conduct officer and~~) include the following:

(a) Cheating which includes:

(i) Use of unauthorized assistance in taking quizzes, tests, or examinations.

(ii) Acquisition, without permission, of tests or other academic material belonging to a member of the college faculty or staff.

(iii) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes:

- Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;
- Counterfeiting a record of internship or practicum experiences;
- Submitting a false excuse for absence or tardiness;
- Unauthorized multiple submission of the same work; sabotage of others' work.

(iv) Engaging in any behavior specifically prohibited by a faculty member in the course syllabus or class discussion.

(v) Plagiarism which includes the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(vi) Facilitation of dishonesty, including not challenging academic dishonesty.

(b) Knowingly furnishing false information to any college official, faculty member, or office including submission of fraudulent transcripts from other institutions.

(c) Forgery, alteration or misuse of any college document, record or instrument of identification.

(d) Tampering with an election conducted by or for CCS college students.

(2) Acts of ethical violations will be reported to the student conduct officer and include the following: The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal.

[Statutory Authority: RCW 28B.50.140. WSR 15-15-161, § 132Q-10-210, filed 7/21/15, effective 8/21/15.]

NEW SECTION

WAC 132Q-10-221 Faculty member sanctions for academic dishonesty. (1) A faculty member need not give credit for course work that is the product of cheating, plagiarism, or other dishonesty. For any act of dishonesty that occurs during an instructional course, the faculty member may impose reprimands, educational opportunities, and/or adjust the student's grade accordingly for the particular examination, paper, or other work product where that dishonesty occurred. Any such grade adjustment shall not limit or preclude disciplinary sanction(s) for the same act of dishonesty.

(2) With regard to any act of course related dishonesty, the faculty member involved may notify their dean with supporting documentation. The dean then shall determine whether to refer the matter to the student conduct office for possible disciplinary action.

(3) A student who has received a grade adjustment by the faculty member on the basis of academic dishonesty may grieve that adjustment under the student complaint procedure; however, any disciplinary sanction that is imposed instead of or in addition to a faculty member's grade adjustment may be imposed and reviewed only under the student disciplinary procedure.

[]

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-600 Order of precedence. This supplemental procedure applies to allegations of sexual harassment subject to Title IX jurisdiction pursuant to regulations promulgated by the United States Department of Education. See 34 C.F.R. Part 106. To the extent these supplemental hearing procedures conflict with the Community Colleges of Spokane's standard disciplinary procedures, WAC 132Q-10-101 through 132Q-10-503, these supplemental procedures shall take precedence. The college may, at its discretion, contract with an administrative law judge or other person to act as presiding officer and assign such presiding officer to exercise any or all of the duties in lieu of the student conduct committee and committee chair.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13). WSR 21-10-010, § 132Q-10-600, filed 4/23/21, effective 5/24/21.]

AMENDATORY SECTION (Amending WSR 21-10-010, filed 4/23/21, effective 5/24/21)

WAC 132Q-10-608 Appeals. (1) ((The)) All parties, including the student conduct officer in their capacity as a representative of the

college shall have the right to appeal from the ((initial order's)) determination of responsibility and/or from a dismissal ((of an allegation(s) of sexual harassment in a formal complaint. The right to appeal will be subject to the same procedures and time frames set forth in WAC 1320-10-335.)), in whole or part, of a formal complaint during the investigative or hearing process. Appeals must be in writing and filed with the appropriate vice president's office within 21 days of service of the initial order or notice of dismissal. Appeals must identify the specific findings of fact and/or conclusions of law in the initial order or dismissal that the appealing party is challenging and must contain argument as to why the appeal should be granted. Failure to file a timely appeal constitutes a waiver of the right to appeal and the initial order or dismissal shall be deemed final.

(2) For appeals coming from Spokane Community College, the vice president of student affairs at Spokane Falls Community College will ~~((determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s). For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether the disciplinary sanction and condition(s) imposed in the initial order are affirmed, vacated, or amended, and, if amended, set forth any new disciplinary sanction and/or condition(s).~~

~~(3))~~ process the appeal. For appeals coming from Spokane Falls Community College, the vice president of student services at Spokane Community College will process the appeal.

(3) Upon receiving a timely appeal, the appropriately identified vice president's office will serve a copy of the appeal on all parties, who will have 10 days from the date of service to submit written responses to the appropriate vice president's office addressing issues raised in the appeal. Failure to file a timely response constitutes a waiver of the right to participate in the appeal. Upon receipt of written responses, the appropriate vice president shall serve copies of the responses to the other parties.

(4) Parties receiving a copy of the responses shall have five days in which to submit a written reply addressing issues raised in the responses to the appropriate vice president's office.

(5) The appropriate vice president or their delegate, based on their review of parties' submission and the hearing or investigative record, will determine whether the grounds for appeal have merit, provide the rationale for this conclusion, and state whether a dismissal if affirmed or denied, or if the disciplinary sanctions and conditions imposed in the initial order are affirmed, vacated, or amended, and if amended set for the new disciplinary sanctions and conditions.

(6) The appropriate vice president of student affairs/services shall serve the final decision on the parties simultaneously.

(7) All administrative decisions reached through this process are and may be judicially appealed pursuant to applicable provisions of chapter 34.05 RCW including, but not limited to, the timelines set forth in RCW 34.05.542. No decisions or recommendations arising from this disciplinary procedure will be subject to grievance pursuant to any collective bargaining agreement.

[Statutory Authority: Chapter 34.05 RCW and RCW 28B.50.140(13). WSR 21-10-010, § 132Q-10-608, filed 4/23/21, effective 5/24/21.]

WSR 22-03-094

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed January 18, 2022, 4:54 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-09-114.

Title of Rule and Other Identifying Information: Chapter 137-30 WAC, eligibility, earned release time.

Hearing Location(s): On February 24, 2022, at 2:00 p.m., Microsoft Teams meeting. Please contact rules coordinator at vvchebotar@doc1.wa.gov to register. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Date of Intended Adoption: March 24, 2022.

Submit Written Comments to: Vadim V. Chebotar, Senior Contracts Attorney, Department of Corrections (DOC), Contracts and Legal Affairs, P.O. Box 41114, Tumwater, WA 98504-1114, email vvchebotar@doc1.wa.gov, by February 17, 2022.

Assistance for Persons with Disabilities: Contact Vadim V. Chebotar, senior contracts attorney, email vvchebotar@doc1.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule makes administrative changes, as necessary, to ensure WAC complies with department policy. Also, to create equity for incarcerated individuals assigned to MAX custody by allowing them to accrue earned time while assigned to MAX, as long as they were in compliance with their assignment requirements.

Reasons Supporting Proposal: WAC should accurately comply with department policy.

Statutory Authority for Adoption: RCW 72.01.090.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Bowen, DOC Headquarters, 360-507-0771; Implementation and Enforcement: John Campbell, DOC Headquarters, 360-725-8207.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

January 18, 2022
Cheryl Strange
Secretary

OTS-2979.2

AMENDATORY SECTION (Amending WSR 15-08-066, filed 3/30/15, effective 4/30/15)

WAC 137-30-030 Eligibility. (1) ERT.

(a) (~~Offenders~~) Incarcerated individuals convicted of a serious violent offense or a class A felony sex offense may earn ERT as follows:

(i) Offense committed after June 30, 1990, and before July 1, 2003 - May not exceed fifteen percent of their sentence; and

(ii) Offense committed after June 30, 2003 - May not exceed ten percent of their sentence.

(b) (~~Offenders~~) Incarcerated individuals convicted before July 2, 2010, who are classified as moderate or low risk may earn ERT not to exceed fifty percent of their sentence regardless of the date of offense or sentencing, provided they have not been convicted of or have a prior:

(i) Sex offense;

(ii) Violent offense;

(iii) Crime against a person, including identity theft in the first or second degree committed on or after June 7, 2006;

(iv) Felony domestic violence;

(v) Residential burglary;

(vi) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture of, delivery of, or possession with intent to manufacture or deliver, methamphetamine;

(vii) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(viii) Gross misdemeanor stalking;

(ix) Violation of a domestic violence court order, including gross misdemeanors; or

(x) Any new felony committed while under community supervision.

(c) (~~Offenders~~) Incarcerated individuals may earn ERT not to exceed thirty-three and one-third percent of the sentence in all other cases not identified in this section.

(d) An (~~offender~~) incarcerated individual who has transferred from one sentence within a cause number to the next sentence, or from one cause number to the next cause number, may lose ERT associated with the previous sentence or cause. ERT may be taken on a consecutive sentence that is not yet being served.

(e) (~~Offenders~~) Incarcerated individuals found guilty of infraction 557 or 810 (WAC 137-25-030) will lose fifty percent eligibility and all available ERT and privileges as outlined by department policy. (~~Offenders~~) Incarcerated individuals found guilty of infraction 813 related to employment or programming while in work release will also lose all available ERT and privileges.

(2) (a) Earned release time - Eligibility.

(b) All incarcerated individuals will be eligible for earned release time, except:

(i) Incarcerated individuals sentenced to life without parole.

(ii) Community supervision violators sanctioned by the department on or after May 2, 2012.

(iii) Incarcerated individuals who are a community custody prison (CCP) return or community custody inmate (CCI) termination.

(iv) Incarcerated individuals under board jurisdiction whose minimum term has expired and who have not been paroled or transferred to a consecutive sentence. The ERT will be addressed to the correct sentence after the parole/transfer date is determined.

(v) Juvenile board incarcerated individuals who have not completed the minimum term of confinement.

(vi) Incarcerated individuals found guilty of 557 or 810, or 813 violation related to employment or programming while in work/training release.

(vii) Incarcerated individuals found guilty of a 762 violation will lose all available earned time and programming points for the month the violation occurred.

(3) Good conduct time.

(a) All ~~((offenders))~~ incarcerated individuals will be eligible for good conduct time, except:

(i) ~~((offenders))~~ incarcerated individuals sentenced to death or life without parole;

(ii) ~~((offenders))~~ incarcerated individuals serving the mandatory or flat time enhancement portion of their sentences;

(iii) Community custody violators sanctioned by the department on or after May 2, 2012;

(iv) ~~((offenders))~~ incarcerated individuals sanctioned to community custody prison return or community custody inmate termination; and

(v) Indeterminate ~~((offenders))~~ incarcerated individuals whose minimum term has expired and who have not been paroled or transferred to a consecutive sentence. Any good conduct time earned or denied will be addressed to the correct sentence after the parole/transfer date is determined.

(b) ~~((offenders))~~ incarcerated individuals may lose earned and future good conduct time if found guilty of certain serious infractions listed in WAC 137-25-030 and sanctioned per department policy.

(c) The following ~~((offenders))~~ incarcerated individuals may lose their good conduct time if found guilty of a serious infraction:

(i) Indeterminate ~~((offenders))~~ incarcerated individuals whose time has not been adopted by the indeterminate sentence review board (ISRB); and

(ii) Determinate ~~((offenders))~~ incarcerated individuals.

(d) The amount of time lost will be determined by the disciplinary hearing officer/community hearing officer/ISRB.

(e) Good conduct time lost as a result of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release, cannot be restored.

~~((3))~~ **(4) Earned time.**

(a) ~~((offenders))~~ incarcerated individuals who participate in approved programs, including work and school, are eligible for earned time for each calendar month as follows:

(i) Earned time eligible under ten percent rule - One and eleven one-hundredths days;

(ii) Earned time eligible under fifteen percent rule - One and seventy-six one-hundredths days;

(iii) Earned time eligible under thirty-three and one-third percent rule - Five days ~~((~~

~~iv) Earned time eligible under fifty percent rule - Ten days))~~.

(b) ~~((offenders))~~ incarcerated individuals are not eligible for earned time if:

(i) ~~((They are serving an indeterminate sentence, and the ISRB has:~~

~~(A) Extended the cause to the maximum term; or~~

~~(B) Previously denied future earned time.~~

~~(ii)) Were sentenced under the presentencing Reform Act and the board has extended the cause to the maximum term or previously denied future earned time.~~

~~(ii) Refuse any transfer, excluding work/training release.~~

~~(iii) Serve twenty consecutive days or more in restrictive housing as defined in DOC 320.255 Restrictive housing for negative behavior or unfounded/unsubstantiated protection concerns. The incarcerated individual who transfer to court from restrictive housing will not be eligible for earned time. The incarcerated individual will be eligible for earned time when authorized to transfer/return to general population. Incarcerated individuals housed in maximum custody will be eligible for earned time, including time out to court, but will not be eligible for programming points. Incarcerated individuals must be in compliance with their current custody facility/case plan and behavior and programming plan.~~

~~(iv) Incarcerated individuals will be eligible for earned time if they are pending investigation for negative behavior in administrative segregation and the investigation does not result in serious violation(s) and/or custody demotion.~~

~~(v) They are not involved in ((mandatory)) programming as determined through the classification process and consistent with their case/custody facility plan. This includes refusing ((mandatory)) programming or being terminated from a ((mandatory)) program assignment for documented negative or substandard performance. An ((offender)) incarcerated individual who is on a waiting list and then refuses a program assignment will not earn earned time for the month in which she or he refused.~~

~~(• Offenders previously determined qualified to receive fifty percent earned time will participate in programming or activities targeted in the custody facility plan. The offender will not be penalized if programs and activities are not available.~~

~~(iii) They refuse any transfer, excluding work release. Earned time will not be earned for any calendar month the offender refuses assignment.~~

~~(iv) They serve twenty days or more in one calendar month in administrative segregation or disciplinary segregation for negative behavior or unfounded/unsubstantiated protection concerns. The offender is eligible to begin earning earned time when the superintendent approves transfer or return to general population. Offenders who are approved for transfer to general population and are scheduled for release to the community within sixty days will earn earned time unless found guilty of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release.~~

~~(v) They are serving the mandatory or flat time enhancement portion of their sentence, except for indeterminate offenders sentenced for crimes committed before July 1, 1984.~~

~~(vi) Offenders will receive a written record of all earned time denials.~~

~~(4) Offenders are not eligible for fifty percent earned time if the offender's risk management level is changed to high risk violent or high risk nonviolent; high risk violent or high risk nonviolent offenders may earn up to one-third of the sentence.) (c) The incarcerated individual will not be penalized if programs and activities are not available.~~

(d) Denials of earned time may be appealed per DOC 300.380 Classification and custody facility plan review.

[Statutory Authority: RCW 72.01.090 and 72.09.130. WSR 15-08-066, § 137-30-030, filed 3/30/15, effective 4/30/15; WSR 14-04-121, § 137-30-030, filed 2/5/14, effective 3/8/14. Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-030, filed 5/9/11, effective 6/9/11.]

AMENDATORY SECTION (Amending WSR 11-11-018, filed 5/9/11, effective 6/9/11)

WAC 137-30-070 Restoration of good conduct time. (1) For indeterminate sentences, once the good conduct time denial is addressed ~~((or))~~ and adopted by the ISRB, it cannot be returned to the ~~((offender))~~ individual without prior approval of the ISRB.

~~(2) ((At a regularly scheduled review, offenders may request restoration of good conduct time from the superintendent/CCS where the offender is housed.~~

~~(3) When the decision is made by the superintendent/CCS where the offender is housed, that decision is final and the offender may not request subsequent reviews for the same infractions.~~

~~(4) The unit team may recommend approval provided:~~

~~(a) The good conduct time has not been adopted by the ISRB, if the case requires an ISRB hearing for release;~~

~~(b) The offender has been free of serious infractions violations for at least one year from the date of the last serious infraction;~~

~~(c) The offender is not within six months of his/her ERD and the restoration will not put the offender less than one hundred twenty days to release;~~

~~(d) During the current incarceration, for the period of ten years prior to the request for restoration the offender has not committed a category A infraction;~~

~~(e) During the current incarceration, for the period of five years prior to the request for restoration, the offender has not committed a category A infraction 601 or 602;~~

~~(f) During the current incarceration, for the period of three years prior to the request for restoration, the offender has not committed a category A infraction 507, 603, 650, or 651.~~

~~(5) Review:~~

~~(a) The director or the deputy director may review and restore good conduct time for category A violations. This decision cannot be delegated below the deputy director level.~~

~~(b) The superintendent/CCS may review and restore good conduct time for category B and C violations.~~

~~(6) Good conduct time lost as the result of infraction 557, 810, 813 (related to employment or programming while in work release) or 857 will not be restored.~~

~~(7) When making the decision whether to restore good conduct time, the director/deputy director, or the superintendent/CCS will consider:~~

~~(a) Length of positive program participation;~~

~~(b) Period of infraction free behavior;~~

~~(c) Nature of infractions;~~

~~(d) Overall behavior during the commitment period; and~~

(e) Unit team recommendation.) Good conduct time, and earned time lost in lieu of good conduct time due to persistent prison misbehavior, is the only ERT that can be restored. Time may be restored on a current or consecutive sentence(s) being served during the current confinement term.

(a) The following violations will be eligible for restoration:

(i) 501, 502, 511, 521, 550, 604, 611, 613, 635, or 637 violation after ten years;

(ii) 601, 602, or 704 violation after five years;

(iii) 507, 603, 650, 651, or 882 violation after three years;

(iv) Any other serious violation after one year.

(b) Time will not be restored for the following:

(i) For individuals within one hundred twenty days of the ERD;

(ii) For individuals who have been found guilty of a serious violation within the last year;

(iii) When lost as a result of a 557, 762, 810, or 857 violation;

(iv) When lost as a result of an 813 violation related to employment or programming while in work/training release;

(v) Once addressed/adopted by the board for PAR individuals, unless approved in advance by the board.

(3) The case manager will establish/review good conduct time restoration plans with eligible individuals during each classification review, regardless of custody level or housing assignment. The restoration plan may be established before the applicable time frame for restoration, and will include:

(a) All eligible violations;

(b) Not place the individual within one hundred twenty days of the ERD;

(c) Be targeted for completion at least ten months before the ERD;

(d) Be documented in the custody facility/case plan and approved by the appointing authority/designee. Plans restoring time lost for a 501, 502, 511, 521, 550, 604, 611, 613, 635, or 637 violation(s) require approval from the appropriate deputy director.

(4) The appointing authority/designee or appropriate deputy director will consider all relevant information when determining whether to approve/deny the restoration plan.

(5) Restoration plans will be calculated based on the original sanction time and restored as follows:

(a) Category A violations - Maximum of fifty percent.

(b) Category B violations - Minimum of fifty percent up to one hundred percent.

(c) Category C violations - Minimum of seventy-five percent up to one hundred percent.

(6) Time lost will be restored if the individual remains serious violation free, follows the requirements as outlined in the plan, and it has been at least six months since the previous classification review.

(7) The restoration decision is final and cannot be appealed. Restoration plans will remain in effect when an individual transfers between facilities.

[Statutory Authority: RCW 72.09.130, 72.01.090, and 9.95.070. WSR 11-11-018, § 137-30-070, filed 5/9/11, effective 6/9/11.]

WSR 22-03-098

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed January 19, 2022, 8:47 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-094.

Title of Rule and Other Identifying Information: The state board of education (SBE) has proposed amendments to chapter 180-90 WAC regarding private schools.

Hearing Location(s): On February 23, 2022, at 2:00 p.m., online using Zoom at <https://us02web.zoom.us/j/81188445649> or phone by dialing US +1-253-215-8782 with webinar Meeting ID 811 8844 5649. There will not be an in-person attendance option for the public hearing due to the COVID-19 pandemic. Members of the public are encouraged to participate online due to COVID-19 health precautions by connecting to Zoom at <https://us02web.zoom.us/j/81188445649> or phone by dialing US +1-253-215-8782 with webinar Meeting ID 811 8844 5649.

Date of Intended Adoption: March 10, 2022.

Submit Written Comments to: Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, email rulescoordinatorSBE@k12.wa.us, fax 360-586-2357, by February 23, 2022.

Assistance for Persons with Disabilities: Contact Parker Teed, phone 360-742-4037, fax 360-586-2357, TTY 360-664-3631, email rulescoordinatorSBE@k12.wa.us, by February 23, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this emergency rule making on chapter 180-90 WAC is to clarify policy and establish administrative procedures regarding loss of private school approval.

The rule making clarifies that private schools must comply with state law, including all applicable health and safety requirements, and that noncompliance may result in suspension or rescission of approval.

The private school emergency rules provide for:

- Additional definitions.
- Clarification of the reasons for possible loss of private school approval.
- A brief adjudicative hearing process before a hearing officer on whether the private school should lose its approval.
- An initial decision with a written statement of the reasons for the decision issued by the hearing officer.
- An administrative review process for the initial decision.
- An emergency summary suspension of private school approval if there is a reasonable basis to believe there is immediate danger to the health, safety, or welfare of the private school students, staff, or others.
- Right of a private school to request a hearing on the summary suspension to determine whether the suspension should continue or be less restrictive in scope.
- Modification of annual certification of compliance process to align with current practice and for consistency with loss of approval standards.

Reasons Supporting Proposal: RCW 28A.195.040 provides that SBE shall adopt rules pertaining to private school approval. The revisions to the rules are necessary to clarify that all health and safety requirements private schools are subject to may be taken into considera-

tion in approval decisions by the board. The revisions also outline a clear process in situations where the agency may need to take action to suspend or rescind board approval

Statutory Authority for Adoption: RCW 28A.195.040, 28A.195.010, 28A.150.220.

Statute Being Implemented: RCW 28A.195.040, 28A.195.010, 28A.150.220.

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

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

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

A cost-benefit analysis is not required under RCW 34.05.328.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement for Proposed Rules for Chapter 180-90 WAC

January 2022

1. Summary of the Proposed Rules: The proposed rules amend sections of chapter 180-90 WAC, and add three additional sections. The purpose of these changes is to:

- Add new or modify existing definitions, including modifying definition of private school.
- Clarify the reasons for possible loss of private school approval for noncompliance with the law.
- Establish an administrative procedure for suspension or rescission of private school approval if a hearing officer determines the school is out of compliance with state or federal laws.
- Provide for a review process of the decision for suspension or rescission of private school approval.
- Establish an administrative procedure for summary suspension, an immediate suspension of private school approval to prevent or avoid the immediate danger to the health and safety of a private school's students or community.
- Modify annual certification of compliance process.

2. Summary of the Estimated Economic Impact of the Proposed Rules: It is estimated there would be little to no additional cost of the proposed rules on most private schools. Currently, a private school's approval by SBE requires compliance with current law and SBE has the ability to rescind a private school's approval for noncompliance. The proposed rules provide clarification. The added administrative procedures provide additional due process. SBE anticipates that the use of these procedures will be infrequent because most compliance issues are resolved informally. It is indeterminate whether the impact of the proposed rules would be disproportionate for small versus large private schools.

A survey of private school representatives indicated that nine of 12 respondents estimated no cost or indeterminate cost; three respondents were concerned that the rules would involve additional record-keeping, administrative, or professional services cost[s]. A summary of the survey results is included as section 7 of this statement.

3. A Brief Description of the Reporting, Recordkeeping, and Other Compliance Issues of the Proposed Rules:

It is not anticipated that there would be additional reporting, recordkeeping, or other compliance issues beyond what is required by current rules and law for most private schools. Under current law, private schools are required to annually apply for approval and certify that they are in compliance with current law. Schools are required to retain documentation of health and safety and fire inspections of school facilities, and keep current school policies available for examination if requested. Schools also must report on enrollment and staffing, including the required qualifications of their teaching staff. If the administrative procedures established by the proposed rules are needed, the currently required reporting, recordkeeping, and documentation of compliance should be sufficient for the private school to comply with the administrative procedures.

3.1. Professional services that a small business is likely to need to comply with the requirements of the proposed rules: It is not anticipated that the proposed rules would require private schools to engage additional professional services. Private schools that are in compliance with current law would not need additional professional services. If a private school was out of compliance with current law and the matter could not be resolved, then the administrative process may be initiated and the private school could choose to retain legal professional services. However, such services are not necessary to comply with the requirements of the proposed rules, and schools could engage in the administrative procedures without such services.

3.2. Analysis of the cost of compliance, including consideration of equipment, supplies, labor, professional services, and increased administrative costs: It is not anticipated that the proposed rules would require private schools to incur additional equipment, supplies, labor, or administrative costs to comply with the proposed rules.

3.3. Whether compliance with the rules will cause businesses to lose revenue: It is not anticipated that compliance with the proposed rules would cause private schools to lose revenue.

3.4. Whether there is a disproportionate cost on small businesses—the cost of compliance for the smallest 10 percent compared to the largest 10 percent of businesses required to comply with the proposed rules: It is anticipated that compliance with the proposed rules would have no additional cost to most private schools. For a school engaging in the administrative procedures established by the rules, the economic impact of the proposed rules on small versus large schools is indeterminate.

There are approximately 500 approved private schools in Washington state. Based on reporting in the 2020-21 school year, the smallest 50 schools have a teaching staff of one and an average enrollment of 13 students; the largest 50 schools have an average teaching staff of 40 teachers and an average enrollment of 593 students.

It is unclear whether involvement in administrative procedures established in the rules would have a disproportionate cost impact on a small versus a large school. A survey of private school representatives indicated that eight of 12 respondents estimated no disproportionate cost or indeterminate cost; four respondents were concerned that small and large schools would be impacted differently. These respondents indicated that larger schools would have more resources to absorb costs associated with implementing rules. A summary of the survey results is included as section 7 of this statement.

4. Steps Taken by the Agency to Reduce the Cost of the Rule on Small Businesses: It is anticipated that implementing and complying with the proposed rules would have no additional cost to most private schools. SBE has taken several significant steps in the past few years to reduce the cost to private schools of compliance with current law and the proposed rules. SBE has:

- Directed agency funds to a permanent staff position dedicated to supporting private schools, significantly increasing the ease with which private schools may obtain information and decreasing the time required to obtain answers to questions.
- Reduced the documentation schools are required to submit with their initial private school approval application and renewal application.
- Streamlined the annual application process.
- Updated the agency private school web pages so that information about compliance with private school law is more readily available.
- Established regular meetings with the Washington Federation of Independent Schools (WFIS) and the private school leaders.

5. A Description of How the Agency Will Involve Small Businesses in the Development of the Rules: One member of SBE is a private school representative. In developing rules, SBE staff consulted with SBE private school representative member[s] as well as the executive director of WFIS. In addition, WFIS, SBE staff, and leaders and representatives of private school organizations meet periodically. Private school representatives had the opportunity to review and give input on the draft proposed rules before adoption by SBE.

SBE meetings are public and there is a public comment period at each meeting. The draft proposed rules were discussed at two public meetings in November and December 2021. The proposed rules were adopted by the board in December 2021. A hearing on the rules will be scheduled and comments and feedback will be solicited from the private school community through WFIS and the private school advisory committee (a legislatively mandated committee staffed by the office of the superintendent of public instruction).

6. An Estimate of the Number of Jobs Created or Lost as a Result of Compliance with the Proposed Rules: It is not anticipated that jobs will be created or lost as a result of compliance with the proposed rules.

7. Summary of Survey Results of Private School Representatives Concerning the Proposed Private School Rules: A survey was sent to members of the private school advisory council, the board of WFIS, and private school constituency leaders.

A total of 12 responses were received from:

- Seven private school administrators (one respondent was both an administrator and a constituency leader).
- Three private school constituency leaders.
- Three private school association executive[s] or staff.

Question #1: Do you think the proposed rules, including the proposed administrative processes, would require private schools to have additional recordkeeping, reporting, labor, supplies, professional services or administrative costs?

- Four "Indeterminate."
- Five "No."

- Three "Yes"; comments from those who answered "Yes":
 - "Any time the SBE threatens to take away approval, and requires a hearing, a school will hire a lawyer. There will be a paper trail needed for record keeping and the school board will have to have a special meeting to address the issue. It takes staff to run the meeting and requires use of the building outside of school hours."
 - "Records to prove the processes followed by the private school to prove their viability and worth to the community will take much time/labor costs/emotional investment and more."
 - "Tracking compliance materials, and any work associated with a revocation of license should it occur."

Question #2: Do you think the proposed rules, including the proposed administrative processes, would have a disproportionate impact between the large private schools and small private schools?

- Three "Indeterminate."
- Five "No."
- Four "Yes"; comments from those who answered "Yes":
 - "Schools may be impacted differently. Smaller schools do not usually have regular access to a lawyer and do not have an administrative team to help deal with the board meeting, etc. Larger schools will have more people involved, which may mean more meetings. There is a huge financial burden on the schools to have approval taken away."
 - "Larger schools have more resources and more staff to keep records for additional required information."
 - "Matter of resources."
 - "Economy of Scale will impact a smaller school to a greater degree."

Question #3: Do you have concerns about the economic impact of these rules on your school, or on private schools generally? Please explain.

- Two responses indicated no concerns; five responses were left blank.
- "I do. The current SBE staff is reasonable and when there is an issue, works to resolve it. My concern is that a different staff may look for issues, hope to take approval away from schools and be influenced by the person making the complaint."
- "Private schools enrich the educational options offered to parents. They meet needs differently than [than] public schools and thus offer great value to the state. It is important that schools keep their "independence" while staying within reasonable expectations/laws. The cost of "proving" a choice a school may make for its constituency could be too much of a burden, and cause schools to close."
- "Not yet, but I'm not sure enough is known about the process and potential examples of the process in action."
- "Yes. Administrative issues come with costs, often unforeseen, that have to come from somewhere."
- "If a school's approval were suspended, I believe there could be an economic impact for a private school."

A copy of the statement may be obtained by contacting Parker Teed, 600 Washington Street S.E., Olympia, WA 98504, phone

360-742-4037, fax 360-586-2357, TTY 360-664-3631, email
rulescoordinatorSBE@k12.wa.us.

January 18, 2022
Randy Spaulding
Executive Director

OTS-3324.4

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-90-112 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "~~((Approved))~~ Private school" means a nonpublic school or nonpublic school district ~~((conducting a program consisting of kindergarten and at least grade one, or a program consisting of any or all of grades one through twelve which has been))~~ approved by the state board of education pursuant to RCW 28A.305.130, and chapter 28A.195 RCW and in accordance with the minimum standards for approval as prescribed in this chapter.

(2) (a) "Reasonable health requirements" means those standards contained in chapter 246-366 WAC as adopted by the state board of health, and other applicable health requirements for private schools.

(b) "Reasonable fire safety requirements" means those standards adopted by the state fire marshal pursuant to chapter 43.44 RCW.

(3) (a) "Minor deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel, and which does not impact the ability of the school to provide an educational program which is in substantial compliance with the minimum standards set forth in WAC 180-90-160, and which, therefore, does not preclude the granting of full approval.

(b) "Major deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel but may impact the ability of the school to provide an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160, but is not so serious as to constitute an unacceptable deviation.

(c) "Unacceptable deviation" means a variance from the standards established by these regulations which either:

(i) Constitutes a threat to the health or safety of students or school personnel; or

(ii) Demonstrates that the school is not capable of providing an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160.

(4) "Total instructional hour offering" means those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school staff, as directed by the administration and board of directors, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences

which are planned and scheduled by the approved private school for the purpose of discussing students' educational needs for progress, and exclusive of time actually spent for meals.

(5) (a) "Non-Washington state certificated teacher" means a person who does not have a Washington state certification consistent with WAC 181-79A-030(2), but who has:

(i) A K-12 teaching certificate from a nationally accredited preparation program, other than Washington state, recognized by the U.S. Department of Education; or

(ii) A minimum of a baccalaureate degree in the subject matter to be taught or in a field closely related to the subject matter to be taught; or

(iii) A minimum of one calendar year of experience in a specialized field. For purposes of this subsection the term "specialized field" means a specialized area of the curriculum where skill or talent is applied and where entry into an occupation in such field generally does not require a baccalaureate degree including, but not limited to, the fields of art, drama, dance, music, physical education, and career and technical or occupational education.

(b) "Exceptional case" means that a circumstance exists within a private school in which:

(i) The educational program offered by the private school will be significantly improved with the employment of a non-Washington state certificated teacher. Each teacher not holding a valid Washington state certificate shall have experience or academic preparation appropriate to K-12 instruction and consistent with the school's mission. Such experience or academic preparation shall be consistent with the provisions of (c) of this subsection; and

(ii) The school employs at least one Washington state certified teacher, administrator, or superintendent who provides general supervision to any non-Washington state certificated teacher. The school will annually report to the state board of education the academic preparations and experience of each non-Washington state certificated teacher providing k-12 instruction in an addendum to the certificate of compliance as provided in WAC 180-90-160; and

(iii) The non-Washington state certificated teacher of the private school, employed pursuant to this section, has been verified by the private school, as meeting the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), and has not had his or her teacher's certificate revoked by any state or foreign country consistent with WAC 181-79A-155 (5) (a).

(c) "Unusual competence": As applied to an exceptional case wherein the educational program as specified in RCW 28A.195.010 and WAC 180-90-160(7) will be significantly improved with the employment of a non-Washington state certificated teacher as defined in (a) of this subsection.

(d) "General supervision" means that a Washington state certificated teacher, administrator, or superintendent shall be generally available at the school site to observe and advise the teacher employed under provision of (c) of this subsection and shall evaluate pursuant to policies of the private school.

(6) "Business day" means a weekday, excluding weekends, state holidays, and state closures unless otherwise specified.

(7) "Filing" means the process by which a document is officially delivered to a state board of education staff member. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified state board of education staff member;

(b) By sending the document by email and first class mail to the specified state board of education email address and state board of education's office address on its website; or

(c) By submitting an initial or annual application and certification of compliance as required in WAC 180-90-130 or 180-90-160.

Documents required to be filed shall be deemed filed upon actual receipt during office hours at the office of the state board of education.

(8) "Executive director" means the executive director of the state board of education.

(9) "SBE private school officer" means the person designated by the executive director to administer the state board of education's private school program.

(10) "Hearing officer" means the person designated by the executive director to conduct a brief administrative proceeding on the loss of private school approval.

(11) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by both email, and by either certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(12) "Loss of approval" means either a suspension or rescission of a private school's approval by the state board of education. Suspension is for a set period of time or until specified conditions are met and rescission is permanent until a new application for approval is granted.

(13) "School" means and includes each building, facility, and location, including online program components, where any portions of a kindergarten and grades one through 12 program of education and related activities are conducted for two or more children by or in behalf of any private school or private institution subject to approval by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and this chapter.

(14) "Summary suspension" means the immediate, temporary suspension of a private school's approval in an administrative procedure.

(15) "Threat to health or safety" means the physical facilities, personnel, or practices of the school do not meet reasonable health requirements or reasonable fire safety requirements; or failure to meet the requirements, standards, or legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW.

(16) "School or district administrator" means administrative or executive authority of private schools or private school districts. The terms "head of school," "principal," or "superintendent" may also be used in rule or application materials to refer to the administrative or executive authority of the private school or private school district.

[Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-112, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-112, filed 12/1/15, effective 1/1/16. Statutory Authority: Chapter 28A.305 RCW,

RCW 28A.150.220, 28A.230.090, 28A.310.020, 28A.210.160, and 28A.195.040. WSR 10-23-104, § 180-90-112, filed 11/16/10, effective 12/17/10. Statutory Authority: RCW 28A.195.040. WSR 03-04-053, § 180-90-112, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-112, filed 12/2/85.]

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-90-130 Approval—Annual certification—Adverse findings.

(1) All private organizations carrying out a program for any or all of the grades kindergarten through 12, with the exception of kindergarten only, are subject to annual approval by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and this chapter.

(2) At least ~~((ninety))~~ 90 days prior to the commencement of the annual school term or period, the ~~((chief administrator of each private))~~ school or district administrator shall file with the state board of education a certificate of compliance ~~((in the form and substance))~~ as set forth in WAC 180-90-160.

~~((2))~~ (3) The state board of education shall review each certificate. The review shall be completed within ~~((thirty))~~ 30 days after receipt of a completed application. The state board of education may request additional information as it deems necessary.

~~((3))~~ (4) If the state board of education finds deviation, the private school shall be notified through written or electronic communication of any minor, major, or unacceptable deviations which must be corrected.

~~((4))~~ (5) If the state board of education finds major or unacceptable deviations, the private school shall submit a narrative report indicating agreement or not with the findings of the state board of education and any proposed remedial action to address the reported deviations. Minor deviations will be resolved with the state board of education prior to approval. In the case of major deviations, the private school may request that the state board of education grant provisional status for up to one year so the private school may take action to meet the requirements.

(6) In reviewing a private school's application for annual approval, the state board of education may consider pending or completed proceedings for loss of approval of a private school, including any conditions or sanctions agreed to or placed upon a private school and any information obtained by the state board of education regarding potential loss of approval of a private school.

[Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-130, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-130, filed 12/1/15, effective 1/1/16; WSR 03-04-053, § 180-90-130, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-130, filed 12/2/85. Statutory Authority: RCW 28A.04.120(4). WSR 82-04-004 (Order 3-82), § 180-90-130, filed 1/21/82; Order 2-77, § 180-90-130, filed 3/24/77; Order 1-75, § 180-90-130, filed 2/4/75.]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-90-141 Loss of private school approval. The state board of education may suspend or rescind approval of a private school for one or more of the following reasons:

(1) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the state board of education for the said period of time.

(a) For the 2020-21 school year, schools that implement an online education program consistent with the provisions of RCW 28A.195.090 will not be subject to rescission based on a failure to have students enrolled in the school's physical facilities; and

(b) The school maintains a physical address in Washington and plans to resume classroom instruction when the governing body of the school determines it is safe to do so and resumption is allowable under state and local emergency status.

(2) Failure to provide verification that the approved private school teaching staff have a valid Washington state teaching certificate or meet the provisions of WAC 180-90-112(5).

(3) Failure to provide verification that the physical facilities, personnel, and practices of the school meet ((the)) all reasonable health requirements and all reasonable fire safety ((standards)) requirements.

(4) Failure to meet any of the requirements, standards, or legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-90-141, filed 12/10/20, effective 1/10/21. Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-141, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-141, filed 12/1/15, effective 1/1/16; WSR 03-04-053, § 180-90-141, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.02.204 [28A.02.240]. WSR 87-09-039 (Order 7-87), § 180-90-141, filed 4/14/87.]

NEW SECTION

WAC 180-90-142 Brief adjudicative proceedings—Initial hearing.

(1) A brief adjudicative proceeding is the process for rescission or suspension, other than summary suspension, of a private school's approval. Brief adjudicative proceedings shall be conducted by a hearing officer. The hearing officer may not participate in any case in which the hearing officer is involved as a complainant or witness, or in which the hearing officer has a direct or personal interest, prejudice, or bias.

(2) The parties to a brief adjudicative proceeding are the private school representative and the SBE private school officer. Before taking action, the hearing officer will conduct an informal hearing

and provide each party an opportunity to explain its view of the matter.

(3) The hearing officer will serve an initial decision upon both the private school representative and the SBE private school officer within 10 business days of the completion of the informal hearing. The initial decision must include:

(a) A brief written statement of the reasons for the decision, including a description of the acts or failures to act giving rise to any sanctions and reference to the provisions of the Washington Administrative Code or the law violated;

(b) Any sanctions against the private school, including suspension or rescission of approval, and any time period or conditions which must be met for a suspension; and

(c) Information about how to seek administrative review of the initial decision.

If no request for review is filed within 21 days of service of the initial decision, the initial decision is deemed the final decision. The hearing officer must include in the decision that the private school must provide a copy of the final decision to the families of all its students and all of its staff members.

[]

NEW SECTION

WAC 180-90-143 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the executive director or designee, provided a party makes an oral or a written request for review with the executive director within 21 days of service of the initial decision.

(2) The executive director or designee may not participate in any case in which the executive director or designee is involved as a party or witness, or in which the executive director or designee has a direct or personal interest, prejudice, or bias.

(3) During the review, the executive director or designee must give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions or conditions should be continued, modified, or removed.

(4) The decision on review must be in writing, and include a brief statement of the reason for the decision and the changes or modifications, if any, to the initial decision, and a notice that judicial review may be available pursuant to WAC 180-90-150. The decision on review must include in the decision that the private school must provide a copy of the final decision to the families of all its students and all of its staff members.

(5) The decision on review must be served on the parties within 20 days of the initial decision or the request for review whichever is later. The decision on review is the final decision.

[]

NEW SECTION

WAC 180-90-144 Emergency adjudicative proceeding—Summary suspension. (1) An emergency adjudicative proceeding is the process to enter an emergency order for summary suspension of a private school's approval and other such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare while an investigation and/or administrative procedure is pending.

(2) The SBE private school officer may issue an emergency order summarily suspending a private school's approval if there is reasonable basis to believe that a private school:

(a) Has violated any provision of WAC 180-90-141; and

(b) Presents an immediate danger to the health, safety, or welfare of the private school's students, staff, volunteers, visitors, or other members of the school community that justifies use of emergency adjudication.

(3) The emergency order must include a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the SBE private school officer's decision to take the specific action. The summary suspension can be a full or partial suspension of approval.

(4) Notice. The SBE private school officer must provide notice to a private school that its approval as a private school has been summarily suspended under an emergency order. The private school must be served with oral or written notice of the summary suspension. If oral notice is given, a written notification must be served on the private school within two business days of the oral notice.

The written notification will include:

(a) The reasons for imposing the summary suspension, including a description of the acts or failures to act giving rise to the summary suspension and reference to the provisions of the Washington Administrative Code, state or federal law, or other applicable requirements, standards, or authority allegedly violated;

(b) The conditions, if any, under which the private school may continue to operate during the summary suspension; and

(c) Information on how to request a hearing on the summary suspension.

(5) The private school has the right to request a hearing on the summary suspension. The hearing request must be in writing and filed with the SBE private school officer.

(6) The SBE private school officer will conduct a hearing on the summary suspension as soon as practicable after receipt of the private school's request for a hearing on the summary suspension.

(a) During the summary suspension hearing, the issue before the SBE private school officer is whether there is probable cause to believe that summary suspension should be continued pending further administrative proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The SBE private school officer must provide the private school with an opportunity to explain why summary suspension should not be continued while administrative proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the private school fails to appear at the designated hearing time, the SBE private school officer may order that the summary

suspension remain in place pending the conclusion of the administrative proceedings.

(d) As soon as practicable following the hearing, the SBE private school officer will issue a written decision which must include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) The SBE private school officer shall provide a copy of the decision to the private school. The SBE private school officer must include in the decision that the private school must provide a copy of the decision to the families of all its students and all of its staff members.

[]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-90-160 Minimum standards and certificate form. (1) The annual certificate of compliance required by WAC 180-90-130 shall be ~~((in substantial compliance with the form and substance of the following))~~ submitted to the state board of education and signed by the school or district administrator certifying compliance by the school or district. The certificate of compliance form and the submittal process will be determined by the state board of education. Information about annual private school approval and the submittal process will be posted on the state board of education website. The certificate of compliance affirms the school meets the requirements, standards, or legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW and the following standards with the exception only of such deviations or proposed deviations, if any, as are set forth in an attachment to the certificate of compliance:

~~((CERTIFICATE OF COMPLIANCE
WITH STATE STANDARDS
ESD/County/Public
School District
Private School/
District Address~~

~~I,, do hereby certify that I am the principal or chief administrator of the above named school; that said school is located at the address listed above, and conducts grades through with a projected enrollment of; and that said school is scheduled to meet throughout the school year, the following standards with the exception only of such deviations, if any, as are set forth in an attachment to this certificate of compliance~~

~~or~~

I, ~~.....~~, do hereby certify that I am the superintendent of the above named private school district; and that the private schools under my jurisdiction are scheduled to meet throughout the school year, the following standards with the exception only of such deviations as are set forth in an attachment to this certificate of compliance; and that a list of such schools, including the grades conducted and the projected enrollment for each school, accompanies this certificate:))

(a) Except as provided in chapter 180-111 WAC (~~for the 2019-20 school year~~), the minimum school year for instructional purposes consists of no less than (~~one hundred eighty~~) 180 school days or the equivalent in annual minimum instructional hour offerings as prescribed in RCW 28A.195.010.

(b) On each school day, pupils enrolled and in attendance at the school are engaged in educational activity planned by and under the direction of the school; and that pupils are provided an annual total instructional hour offering, as prescribed in RCW 28A.195.010, of at least:

(i) (~~450~~) Four hundred fifty hours for students in kindergarten.

(ii) (~~1000~~) One thousand hours for students in grades one through (~~twelve~~) 12.

(c) All classroom teachers hold appropriate Washington State certification except for:

(i) Teachers for religious courses or courses for which no counterpart exists in the public schools: Provided, That a religious course is a course of study separate from the courses of study defined in RCW 28A.195.010 including occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of the appreciation of art and music all in sufficient units for meeting state board of education graduation requirements, except as provided in chapter 180-111 WAC; and/or

(ii) A person of unusual competence who is not certified but who will teach students in an exceptional case under the general supervision of a Washington state certificated teacher, administrator, or superintendent pursuant to WAC 180-90-112. The non-Washington state certificated teacher, the Washington state certificated person who will supervise, and the exceptional circumstances are listed on the addendum to this certificate.

(d) If the school operates an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody, the extension program meets the following requirements:

(i) The parent, guardian, or custodian is supervised by a person certified under chapter 28A.410 RCW and who is employed by the school;

(ii) The planning by the certified person and the parent, guardian, or person having legal custody includes objectives consistent with (a), (b), (e) through (g) of this subsection;

(iii) The certified person spends a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the extension program;

(iv) Each student's progress is evaluated by the certified person; and

(v) The certified person does not supervise more than (~~thirty~~) 30 students enrolled in the approved private school's extension program.

(e) Measures have been taken to safeguard all permanent records against loss or damage through either the storage of such records in fire-resistant containers or facilities, or the retention of duplicates in a separate and distinct area;

(f) The physical facilities, personnel, and practices of the school are adequate to meet the program offered, and all school facilities, personnel, and practices are in ~~((substantial))~~ compliance with all reasonable health requirements and all reasonable fire safety ~~((standards))~~ requirements, as defined in WAC 180-90-112, and substantiated as required by current inspection reports of appropriate health and fire safety officials which are on file in the ~~((chief))~~ school or district administrator's office;

(g) The school's curriculum includes instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music in sufficient units for meeting state board of education graduation requirements, as set forth in chapter 180-51 WAC. A school may substitute courses specific to the mission or focus of the school to satisfy the career and technical education requirement of chapter 180-51 WAC and may waive requirements as provided in chapter 180-111 WAC;

(h) The school or its organized district maintains up-to-date policy statements related to the administration and operation of the school or district;

(i) The school does not engage in a policy of racial segregation or discrimination;

(j) The governing authority of this private school or private school district has been apprised of the requirements of chapter 180-90 WAC relating to the minimum requirements for approval of private schools and such governing authority has further been apprised of all deviations or proposed deviations from the rules and regulations of the state board of education and the standards contained in chapter 180-90 WAC. ~~((I have reported all such deviations herewith.~~

Dated this day of, 20...

.....

(signed)

.....

(title)

.....

(phone-number))

(2) Approval by the state board of education is contingent upon on-going compliance with the requirements, standards, and legal obligations that private schools are subject to including, but not limited to, those enumerated in this chapter or in chapter 28A.195 RCW and the standards ((certified)) herein. The school shall notify the state board of education of any deviation from these requirements, standards ((which)), or legal obligations that occurs after the approval action taken by the state board of education. Such notification shall be filed within ~~((thirty))~~ 30 days of occurrence of the deviation.

(3) Failure to comply with the requirements of this chapter may result in the ~~((revocation))~~ rescission or suspension of the approval of the private school and shall be considered in subsequent application for approval as a private school.

(4) ~~((Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board~~

~~of education approved accrediting body may be submitted annually in lieu of approval documents described in subsection (1)(a) through (j) of this section.)~~ The board may provide a shortened approval form or expedited approval process for private schools accredited by a state board of education-approved accrediting body.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-90-160, filed 12/10/20, effective 1/10/21. Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-160, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-160, filed 12/1/15, effective 1/1/16. Statutory Authority: 2014 c 217 and RCW 28A.230.090. WSR 14-19-032, § 180-90-160, filed 9/8/14, effective 10/9/14. Statutory Authority: RCW 28A.195.040. WSR 03-04-053, § 180-90-160, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.305.130(6), 28A.195.040 and 1996 c 83. WSR 96-15-099, § 180-90-160, filed 7/22/96, effective 8/22/96. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-90-160, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.02.240. WSR 89-01-038 (Order 23-88), § 180-90-160, filed 12/14/88; WSR 87-09-039 (Order 7-87), § 180-90-160, filed 4/14/87. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-160, filed 12/2/85. Statutory Authority: RCW 28A.04.120(4). WSR 82-04-004 (Order 3-82), § 180-90-160, filed 1/21/82. Statutory Authority: RCW 28A.02.201 et seq. and 28A.04.120(4). WSR 78-06-064 (Order 9-78), § 180-90-160, filed 5/25/78; Order 2-77, § 180-90-160, filed 3/24/77; Order 1-76, § 180-90-160, filed 2/3/76; Order 1-75, § 180-90-160, filed 2/4/75.]

WSR 22-03-099
PROPOSED RULES
GAMBLING COMMISSION
[Filed January 19, 2022, 10:44 a.m.]

Supplemental Notice to WSR 21-13-165, 21-21-094, 22-01-213.

Preproposal statement of inquiry was filed as WSR 20-15-154.

Title of Rule and Other Identifying Information: WAC 230-03-085 Denying, suspending, or revoking an application, license or permit.

Hearing Location(s): On March 10, 2022, at 9:00 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. The meeting time and location will be posted approximately one week prior to the meeting on our website at www.wsgc.wa.gov. Select "The Commission" and then select "Public Meetings" to confirm the hearing date, location, start time, and agenda items.

Date of Intended Adoption: March 10, 2022.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, www.wsgc.wa.gov, by March 2, 2022.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email julie.anderson@wsgc.wa.gov, www.wsgc.wa.gov, by March 2, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On March 25, 2020, Governor Jay Inslee signed HB 2638 authorizing sports wagering for Class III tribal facilities under terms negotiated in tribal-state compacts, and adding or amending several sections of the Gambling Act giving the gambling commission the authority to adopt and/or amend rules needed for the state's regulation of sports wagering. The proposed rules create a regulatory framework for sports wagering consistent with the Gambling Act and tribal-state compact amendments.

Draft language was initially filed under WSR 21-13-165, 21-21-094, and again under WSR 22-01-213. The proposed change is to withdraw the previous language filed under WSR 22-01-213 regarding adopting a new chapter 230-19 WAC, and instead proposes to amend WAC 230-03-085 Denying, suspending, or revoking an application, license or permit, to allow the gambling commission to [take] action if an applicant or a licensee fails to comply with all applicable tribal laws, or the provisions of the applicable tribal-state compact and its appendices related to sports wagering.

Reasons Supporting Proposal: The proposed change has been made based on feedback from tribal partners and vendor stakeholders.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Adam Teal, LLM, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3475; Implementation: Tina Griffin, Interim Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546; and Enforcement: Gary Drumheller, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 509-325-7904.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required per RCW 34.05.328 (5) (a) (i).

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

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

January 14, 2022
Ashlie Laydon
Rules Coordinator

OTS-3568.1

AMENDATORY SECTION (Amending WSR 20-08-095, filed 3/30/20, effective 4/30/20)

WAC 230-03-085 Denying, suspending, or revoking an application, license or permit. We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

- (1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or
- (2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person; or
- (3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or
- (4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned us to take action; or
- (5) Has failed to pay a quarterly license fee or submit a quarterly license report or has failed to pay a late fee assessed as a result of failure to pay a quarterly license fee or submit a quarterly license report; or
- (6) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4); or
- (7) Is the subject of an outstanding gross misdemeanor or felony arrest warrant; or
- (8) Fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within (~~thirty~~) 30 days after receiving a written request from us; or
- (9) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:
 - (a) Prior activities; or

- (b) Criminal record; or
- (c) Reputation; or
- (d) Habits; or
- (e) Associations; or

(10) Knowingly provides or provided goods or services to an entity that illegally operates gambling activities; or

(11) Has failed to comply with all applicable tribal laws, or the provisions of the applicable tribal-state compact and its appendices related to sports wagering, that are in effect at the time of the violation, and as posted on the National Indian Gaming Commission's website at www.nigc.gov (for tribal laws) or our agency website at www.wsgc.wa.gov (for compacts and appendices).

[Statutory Authority: RCW 9.46.070. WSR 20-08-095, § 230-03-085, filed 3/30/20, effective 4/30/20; WSR 18-05-029, § 230-03-085, filed 2/9/18, effective 7/1/18; WSR 07-21-116 (Order 617), § 230-03-085, filed 10/22/07, effective 1/1/08; WSR 06-07-157 (Order 457), § 230-03-085, filed 3/22/06, effective 1/1/08.]

WSR 22-03-101
PROPOSED RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed January 19, 2022, 11:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-16-110.

Title of Rule and Other Identifying Information: Chapter 196-23 WAC, Stamping and seals.

Hearing Location(s): On March 16, 2022, at 2:00 p.m., join via WebEx, Meeting number (access code) 2467 463 2744, Meeting password sqSgXc5mm43; join by phone +1-415-655-0001, US Toll +1-206-207-1700 United States Toll (Seattle). In response to the COVID-19 public health emergency, the board of registration for professional engineers and land surveyors will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical space, will be held instead. The public may participate in the hearing by accessing the hearing link on the board's rule-making page <https://brpels.wa.gov/about-us/laws-and-rules/rulemaking-activity> or calling the phone number provided.

Date of Intended Adoption: April 21, 2022.

Submit Written Comments to: Shanan Gillespie, P.O. Box 9025, Olympia, WA 98507-9025, email Shanan.Gillespie@brpels.wa.gov, by March 17, 2022.

Assistance for Persons with Disabilities: Contact Shanan Gillespie, phone 360-664-1570, TTY 711 or 1-800-833-5388, email Shanan.Gillespie@brpels.wa.gov, by March 11, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to WAC 196-23-020(1) adds land descriptions as a final document that must contain the seal/stamp, signature, and date of the licensee that prepared that document.

Amendments to WAC 196-23-020(5) allow licensees that review work prepared by another licensee to prepare a report only if required.

Reasons Supporting Proposal: Changes to current rule language provides clarification to land surveyor licensees of what final documents need [to be] stamped and removes the requirement of preparing a report each time an engineer reviews a document prepared by another engineer and may lessen the cost to the licensees.

Statutory Authority for Adoption: RCW 18.43.035.

Statute Being Implemented: RCW 18.43.070.

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

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting: Shanan Gillespie, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-664-1570; Implementation and Enforcement: Ken Fuller, 605 11th Avenue S.E., Suite 201, Olympia, WA 98501, 360-968-4805.

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

A cost-benefit analysis is not required under RCW 34.05.328. The board of registration for professional engineers and land surveyors is

not one of the agencies to which RCW 34.05.328 applies pursuant to RCW 34.05.328 (5) (a).

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

Is exempt under RCW 19.85.030 (1) (a).

Explanation of exemptions: Costs are minor and not disproportionate and therefore a small business [economic] impact statement is not necessary under RCW 19.85.030 (1) (a).

January 19, 2022

Ken Fuller

Director

OTS-3111.2

AMENDATORY SECTION (Amending WSR 08-10-009, filed 4/24/08, effective 7/1/08)

WAC 196-23-020 Seal/stamp usage. The use of the seal/stamp must be in accordance with chapter 18.43 RCW or as otherwise described herein:

(1) Final documents are those documents that are prepared and distributed for filing with public officials, use for construction, final agency approvals or use by clients. Any final document must contain the seal/stamp, signature and date of signature of the licensee who prepared or directly supervised the work. For the purpose of this section "document" is defined as plans, specifications, plats, surveys, land descriptions as defined in WAC 332-130-020, reports, and as-built documents prepared by the licensee (~~(, and reports)~~).

(2) Preliminary documents are those documents not considered final as defined herein, but are released or distributed by the licensee. Preliminary documents must be clearly identified as "PRELIMINARY" or contain such wording so it may be differentiated from a final document. Preliminary documents must be stamped, but need not be signed or dated by the licensee.

(3) Plan sets: Every page of a plan set must contain the seal/stamp, signature of the licensee(s) who prepared or who had direct supervision over the preparation of the work, and date of signature.

(a) Plans/plats containing work prepared by or under the direct supervision of more than one licensee should be sealed/stamped and dated by each licensee and shall clearly note the extent of each licensee's responsibility.

(b) As provided for in subsections (1) and (2) of this section, each page of a plan set must contain the seal/stamp of the licensee who prepared or who had direct supervision over the preparation of the work.

(c) Plan/plat sheets containing and/or depicting background and/or supporting information that is duplicated from other plans need only be sealed/stamped by the licensee(s) who prepared or was in direct supervision of the design. The origin of the background information shall be noted on the plan sheet.

(d) All design revisions to final plan/plat sheets shall clearly identify on each sheet (~~(+)~~) the revisions made and shall contain the

name and seal of the licensee((~~r~~)) and signature of the licensee with the date the sheet was sealed.

(4) Specifications: Specifications that are prepared by or under the direct supervision of a licensee shall contain the seal/stamp, signature of the licensee and the date of signature. If the specifications prepared by a licensee are a portion of a bound specification document that contains specifications other than that of an engineering or land surveying nature, the licensee need only seal/stamp that portion or portions of the documents for which the licensee is responsible. Nothing herein should be construed to require that each page of an engineering or land surveying specification be sealed/stamped by the licensee.

(5) Document review: When a licensee is required to review work prepared by another professional engineer or land surveyor, the reviewing licensee shall fully review those documents ((~~and~~)). If required, the licensee shall prepare a report that discusses the findings of the review with any supporting calculations and sketches. The reviewing licensee would then seal/stamp, sign and date the report. The report would make reference to and/or be attached to the subject document(s) reviewed.

[Statutory Authority: RCW 18.43.035. WSR 08-10-009, § 196-23-020, filed 4/24/08, effective 7/1/08; WSR 06-22-036, § 196-23-020, filed 10/25/06, effective 11/25/06; WSR 99-15-055, § 196-23-020, filed 7/15/99, effective 8/15/99.]