

## WSR 24-17-001

## PERMANENT RULES

## HEALTH CARE AUTHORITY

[Filed August 8, 2024, 7:32 a.m., effective September 8, 2024]

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

Purpose: The health care authority is amending WAC 182-543-3300 to update medical necessity criteria based on evidence review(s).

Citation of Rules Affected by this Order: Amending WAC 182-543-3300.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 24-14-013 on June 21, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: August 8, 2024.

Wendy Barcus  
Rules Coordinator

## OTS-5427.1

AMENDATORY SECTION (Amending WSR 14-08-035, filed 3/25/14, effective 4/25/14)

**WAC 182-543-3300 Covered—Osteogenesis electrical stimulator (bone growth stimulator)—~~Noninvasive~~.** (1) The medicaid agency covers, with prior authorization, noninvasive osteogenesis electrical stimulators, also known as bone growth stimulators, limited to one per client, in a five-year period.

(2) The agency pays for the purchase of nonspinal bone growth stimulators, only when:

(a) The stimulators have pulsed electromagnetic field (PEMF) ~~((simulation))~~ stimulation; and

(b) The client meets one or more of the following clinical criteria:

(i) Has a nonunion of a long bone fracture (which includes clavicle, humerus, phalanx, radius, ulna, femur, tibia, fibula, metacarpal and metatarsal) where three months have elapsed since the date of injury without healing; or

(ii) Has a failed fusion of a joint, other than in the spine, where a minimum of nine months has elapsed since the last surgery; or

(iii) Diagnosed with congenital pseudarthrosis.

(3) The agency pays for the purchase of spinal bone growth stimulators, when:

(a) Prescribed by a neurologist, an orthopedic surgeon, or a neurosurgeon; and

(b) The client meets one or more of the following clinical criteria:

(i) Has a failed spinal fusion where a minimum of nine months ~~(have)~~ has elapsed since the last surgery; or

(ii) Is post-op from a multilevel spinal fusion surgery; or

(iii) Is post-op from spinal fusion surgery and there is a history of a previously failed spinal fusion.

(4) The agency pays for the purchase of ultrasonic noninvasive bone growth stimulators when:

(a) Prescribed by a neurologist, an orthopedic surgeon, or a neurosurgeon; and

(b) The client meets all the following clinical criteria:

(i) Nonunion confirmed by two radiographs minimum 90 days apart;  
and

(ii) Physician statement of no clinical evidence of fracture healing.

## WSR 24-17-003

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed August 8, 2024, 8:10 a.m., effective September 8, 2024]

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

Purpose: Behavioral health agency regulations as they relate to 23-hour crisis relief centers in Washington state.

The department of health (department) is adopting amendments to the behavioral health agency regulations in WAC 246-341-0110, 246-341-0200, 246-341-0365, 246-341-0901, 246-341-0912, 246-341-1140, and new WAC 246-341-0903, to implement 2SSB 5120 (chapter 433, Laws of 2023), an act concerning the establishment of 23-hour crisis relief centers in Washington state.

The department is also adopting amendments in WAC 246-341-0200, 246-341-0515, and 246-341-0901 to align the regulations with statutory changes passed by the 2023 legislature, in 2SHB 1724 (chapter 425, Laws of 2023) and 2SSB 5555 (chapter 469, Laws of 2023, partial veto).

Citation of Rules Affected by this Order: New WAC 246-341-0903; and amending WAC 246-341-0110, 246-341-0200, 246-341-0365, 246-341-0515, 246-341-0901, 246-341-0912, and 246-341-1140.

Statutory Authority for Adoption: RCW 71.24.037 and 2SSB 5120 (chapter 433, Laws of 2023), codified as RCW 71.24.916.

Other Authority: 2SSB 5120 (chapter 433, Laws of 2023), 2SHB 1724 (chapter 425, Laws of 2023), and 2SSB 5555 (chapter 469, Laws of 2023, partial veto) .

Adopted under notice filed as WSR 24-10-095 on April 30, 2024.

A final cost-benefit analysis is available by contacting Dan Overton, Department of Health, P.O. Box 47843, Olympia, WA 98504-7843, phone 564-201-0579, fax 360-236-2321, TTY 711, email dan.overton@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 7, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 7, Repealed 0.

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Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 7, Repealed 0.

Date Adopted: August 8, 2024.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

OTS-5377.1

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

**WAC 246-341-0110 Behavioral health—Available certifications.**

(1) A behavioral health agency licensed by the department must hold one or more of the following certifications:

- (a) Behavioral health information and assistance;
- (b) Behavioral health support;
- (c) Mental health peer respite;
- (d) Clubhouse;
- (e) Behavioral health outpatient intervention, assessment and treatment;
- (f) Behavioral health outpatient crisis (~~(, observation, and intervention)~~) services;
- (g) 23-hour crisis relief center services;
- (h) Designated crisis responder services;
- ~~((h))~~ (i) Opioid treatment program;
- ~~((i))~~ (j) Withdrawal management;
- ~~((j))~~ (k) Behavioral health residential or inpatient intervention, assessment and treatment;
- ~~((k))~~ (l) Involuntary behavioral health residential or inpatient;
- ~~((l))~~ (m) Intensive behavioral health treatment;
- ~~((m))~~ (n) Crisis stabilization unit (~~and triage~~);
- ~~((n))~~ (o) Competency restoration;
- ~~((o))~~ (p) Problem gambling and gambling disorder; or
- ~~((p))~~ (q) Applied behavior analysis.

(2) The type of certification(s) held by the agency determines which behavioral health services the agency is approved to provide.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

**WAC 246-341-0200 Behavioral health—Definitions.** The definitions in this section and RCW 71.05.020, 71.24.025, and 71.34.020 apply throughout this chapter unless the context clearly requires otherwise.

(1) "23-hour crisis relief center" has the same meaning as under RCW 71.24.025.

(2) "Administrator" means the designated person responsible for the day-to-day operation of either the licensed behavioral health agency, or certified treatment service, or both.

~~((2))~~ (3) "Adult" means an individual 18 years of age or older. For purposes of the medicaid program, adult means an individual 21 years of age or older.

~~((3))~~ (4) "ASAM criteria" means admission, continued service, transfer, and discharge criteria for the treatment of substance use disorders as published by the American Society of Addiction Medicine (ASAM).

~~((4))~~ (5) "Assessment" means the process of obtaining all pertinent bio-psychosocial information, as identified by the individual, and family and collateral sources, for determining a diagnosis and to plan individualized services and supports.

~~((5))~~ (6) "Behavioral health" means the prevention, treatment of, and recovery from any or all of the following disorders: Substance use disorders, mental health disorders, co-occurring disorders, or problem gambling and gambling disorders.

~~((6))~~ (7) "Behavioral health agency," "licensed behavioral health agency," or "agency" means an entity licensed by the department to provide behavioral health services under chapter 71.24, 71.05, or 71.34 RCW.

~~((7))~~ (8) "Behavioral health service" means the specific service(s) that may be provided under an approved certification.

~~((8))~~ (9) "Branch site" means a physically separate licensed site, governed by the same parent organization as the main site, where qualified staff provides certified treatment services.

~~((9))~~ (10) "Campus" means an area where all of the agency's buildings are located on contiguous properties undivided by:

(a) Public streets, not including alleyways used primarily for delivery services or parking; or

(b) Other land that is not owned and maintained by the owners of the property on which the agency is located.

~~((10))~~ (11) "Care coordination" or "coordination of care" means a process-oriented activity to facilitate ongoing communication and collaboration to meet multiple needs of an individual. Care coordination includes facilitating communication between the family, natural supports, community resources, and involved providers and agencies, organizing, facilitating and participating in team meetings, and providing for continuity of care by creating linkages to and managing transitions between levels of care.

~~((11))~~ (12) "Certified" or "certification" means the status given by the department that authorizes the agency to provide specific types of behavioral health services included under the certification category.

~~((12))~~ (13) "Child," "minor," and "youth" mean:

(a) An individual under the age of 18 years; or

(b) An individual age 18 to 21 years who is eligible to receive and who elects to receive an early and periodic screening, diagnostic, and treatment (EPSDT) medicaid service. An individual age 18 to 21 years who receives EPSDT services is not considered a "child" for any other purpose.

~~((13))~~ (14) "Clinical supervision" means regular and periodic activities performed by a mental health professional, co-occurring disorder specialist, or substance use disorder professional licensed, certified, or registered under Title 18 RCW. Clinical supervision may include review of assessment, diagnostic formulation, individual service plan development, progress toward completion of care, identification of barriers to care, continuation of services, authorization of care, and the direct observation of the delivery of clinical care. In the context of this chapter, clinical supervision is separate from clinical supervision required for purposes of obtaining supervised hours toward fulfilling requirements related to professional licensure under Title 18 RCW.

~~((14))~~ (15) "Complaint" means an alleged violation of licensing or certification requirements under chapters 71.05, 71.12, 71.24, 71.34 RCW, and this chapter, which has been authorized by the department for investigation.

~~((15))~~ (16) "Consent" means agreement given by an individual after being provided with a description of the nature, character, anticipated results of proposed treatments and the recognized serious

possible risks, complications, and anticipated benefits, including alternatives and nontreatment, that must be provided in a terminology that the individual can reasonably be expected to understand. Consent can be obtained from an individual's parent or legal representative, when applicable.

~~((16))~~ (17) "Consultation" means the clinical review and development of recommendations by persons with appropriate knowledge and experience regarding activities or decisions of clinical staff, contracted employees, volunteers, or students.

~~((17))~~ (18) "Co-occurring disorder" means the coexistence of both a mental health and a substance use disorder. Co-occurring treatment is a unified treatment approach intended to treat both disorders within the context of a primary treatment relationship or treatment setting.

~~((18))~~ (19) "Cultural competence" or "culturally competent" means the ability to recognize and respond to health-related beliefs and cultural values, disease incidence and prevalence, and treatment efficacy. Examples of culturally competent care include striving to overcome cultural, language, and communications barriers, providing an environment in which individuals from diverse cultural backgrounds feel comfortable discussing their cultural health beliefs and practices in the context of negotiating treatment options, encouraging individuals to express their spiritual beliefs and cultural practices, and being familiar with and respectful of various traditional healing systems and beliefs and, where appropriate, integrating these approaches into treatment plans.

~~((19))~~ (20) "Deemed" means a status that is given to a licensed behavioral health agency as a result of the agency receiving accreditation by a recognized behavioral health accrediting body which has a current agreement with the department.

~~((20))~~ (21) "Disability" means a physical or mental impairment that substantially limits one or more major life activities of the individual and the individual:

- (a) Has a record of such an impairment; or
- (b) Is regarded as having such impairment.

~~((21))~~ (22) "Face-to-face" means either in person or by way of synchronous video conferencing.

~~((22))~~ (23) "Individual service record" means either a paper, or electronic file, or both that is maintained by the behavioral health agency and contains pertinent behavioral health, medical, and clinical information for each individual served.

~~((23))~~ (24) "Licensed" or "licensure" means the status given to behavioral health agencies by the department under its authority to license and certify mental health and substance use disorder programs under chapters 71.05, 71.12, 71.34, and 71.24 RCW and its authority to certify problem gambling and gambling disorder treatment programs under RCW 43.70.080(5) and 41.05.750.

~~((24))~~ (25) "Medical practitioner" means a physician licensed under chapter 18.57 or 18.71 RCW, advance registered nurse practitioner (ARNP) licensed under chapter 18.79 RCW, or physician assistant licensed under chapter 18.71A RCW.

~~((25))~~ (26) "Mental health disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on a person's cognitive or volitional functions.

~~((26))~~ (27) "Mental health professional" or "MHP" means a person who meets the ~~(qualifications in WAC 246-341-0515-4))~~ definition in RCW 71.05.020.

~~((27))~~ (28) "Peer (~~counselor~~)" means ~~((the same))~~ a peer counselor as defined in WAC 182-538D-0200 or a certified peer specialist certified under chapter 18.420 RCW.

~~((28))~~ (29) "Peer support" means services provided by peer counselors to individuals under the supervision of a mental health professional or individual appropriately credentialed to provide substance use disorder treatment. Peer support provides scheduled activities that promote recovery, self-advocacy, development of natural supports, and maintenance of community living skills.

~~((29))~~ (30) "Problem gambling and gambling disorder" means one or more of the following disorders:

(a) "Gambling disorder" means a mental disorder characterized by loss of control over gambling, progression in preoccupation with gambling and in obtaining money to gamble, and continuation of gambling despite adverse consequences;

(b) "Problem gambling" is an earlier stage of gambling disorder that compromises, disrupts, or damages family or personal relationships or vocational pursuits.

~~((30))~~ (31) "Progress notes" means permanent written or electronic record of services and supports provided to an individual documenting the individual's participation in, and response to, treatment or support services, progress in recovery, and progress toward intended outcomes.

~~((31))~~ (32) "Secretary" means the secretary of the department of health.

~~((32))~~ (33) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement chapters 71.05, 71.24, and 71.34 RCW for delivery of behavioral health services.

~~((33))~~ (34) "Substance use disorder professional" or "SUDP" means a person credentialed by the department as a substance use disorder professional (SUDP) under chapter 18.205 RCW.

~~((34))~~ (35) "Substance use disorder professional trainee" or "SUDPT" means a person credentialed by the department as a substance use disorder professional trainee (SUDPT) under chapter 18.205 RCW.

~~((35))~~ (36) "Summary suspension" means the immediate suspension of either a facility's license or program-specific certification or both by the department pending administrative proceedings for suspension, revocation, or other actions deemed necessary by the department.

~~((36))~~ (37) "Supervision" means the regular monitoring of the administrative, clinical, or clerical work performance of a staff member, trainee, student, volunteer, or employee on contract by a person with the authority to give direction and require change.

~~((37))~~ (38) "Suspend" means termination of a behavioral health agency's license or program specific certification to provide behavioral health treatment program service for a specified period or until specific conditions have been met and the department notifies the agency of the program's reinstatement of license or certification.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

**WAC 246-341-0365 Agency licensure and certification—Fee requirements.** (1) An agency must include payment of licensing and cer-

tification fees required under this chapter with the initial application, renewal application, or with requests for other services.

(2) The department may refund one-half of the application fee if an application is withdrawn before certification or denial.

(3) The department will not refund fees when licensure or certification is denied, revoked, or suspended.

(4) The applicant shall submit the following fees for approved substance use disorder treatment programs:

New agency application	\$1,000
Branch agency application	\$500
Application to add one or more certifications	\$200
Application to change ownership	\$500
Initial and annual certification fees for withdrawal management, residential, and nonresidential services	
Withdrawal management and residential services	\$100 per licensed bed, per year, for agencies not renewing certification through deeming
	\$50 per licensed bed, per year, for agencies renewing certification through deeming per WAC 246-341-0310
Nonresidential services	\$750 per year for agencies not renewing certification through deeming
	\$200 per year for agencies certified through deeming per WAC 246-341-0310
Complaint/critical incident investigation fees	
All agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(5) An agency providing substance use disorder treatment programs must annually complete a declaration form provided by the department to indicate information necessary for establishing fees and updating certification information. Required information includes, but is not limited to:

(a) The number of licensed withdrawal management and residential beds; and

(b) The agency provider's national accreditation status.

(6) The applicant shall submit the following fees for approved mental health treatment programs:

Initial licensing application fee	\$1,000
Initial and annual licensing fees for agencies not deemed	
Annual service hours provided:	Initial and annual licensing fees:
0-3,999	\$728
4,000-14,999	\$1,055



15,000-29,999	\$1,405
30,000-49,999	\$2,105
50,000 or more	\$2,575
Annual licensing fees for deemed agencies	
Annual licensing fee for deemed agencies licensed by the department	\$500
Complaint/critical incident investigation fee	
All residential and nonresidential agencies	\$1,000 per substantiated complaint investigation and \$1,000 per substantiated critical incident investigation that results in a requirement for corrective action

(7) Agencies providing nonresidential mental health services or inpatient or residential mental health services in accordance with WAC 246-341-1118 must report the number of annual service hours provided.

(a) Existing licensed agencies must compute the annual service hours based on the most recent state fiscal year.

(b) Newly licensed agencies must compute the annual service hours by projecting the service hours for the first 12 months of operation.

(8) Agencies providing mental health peer respite services, 23-hour crisis relief center services, intensive behavioral health treatment services, evaluation and treatment services, and competency evaluation and restoration treatment services must pay the following certification fees:

(a) Ninety dollars initial certification fee, per bed or recliner; and

(b) Ninety dollars annual certification fee, per bed or recliner.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

**WAC 246-341-0515 Personnel—Agency staff requirements.** Each behavioral health agency must ensure that all of the following staff requirements are met:

(1) All staff providing clinical services are appropriately credentialed for the services they provide, which may include a co-occurring disorder specialist enhancement.

(2) All staff providing clinical services receive clinical supervision.

(3) An agency providing group counseling or group therapy must have a staff ratio of at least one staff member to every 16 individuals during group counseling or therapy sessions.

(4) ~~((A mental health professional is:~~

~~(a) A psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner (ARNP), psychiatric nurse, or social worker as defined in chapters 71.05 and 71.34 RCW;~~

~~(b) A person who is licensed by the department as a mental health counselor or mental health counselor associate, marriage and family therapist, or marriage and family therapist associate; or~~

~~(c) An agency staff member with a designation given by the department or an attestation by the licensed behavioral health agency that the person meets the following:~~

~~(i) Holds a master's degree or further advanced degree in counseling or one of the social sciences from an accredited college or university who has at least two years of experience in direct treatment of persons with mental illness or emotional disturbance, experience that was gained under the supervision of a mental health professional recognized by the department or attested to by the licensed behavioral health agency;~~

~~(ii) Who meets the waiver criteria of RCW 71.24.260, and the waiver was granted prior to 1986; or~~

~~(iii) Who had an approved waiver to perform the duties of a mental health professional (MHP), that was requested by the behavioral health organization (BHO) and granted by the mental health division prior to July 1, 2001.~~

~~(5)) An agency providing problem gambling and gambling disorder treatment services must ensure staffing in accordance with WAC 246-341-1200.~~

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

**WAC 246-341-0901 Behavioral health outpatient crisis (~~outreach, observation and intervention~~) services—Certification standards.**

(1) Agencies certified for outpatient behavioral health crisis (~~outreach, observation and intervention~~) services provide face-to-face and other means of services to stabilize an individual in crisis to prevent further deterioration, provide immediate treatment or intervention in the least restrictive environment at a location best suited to meet the needs of the individual which may be in the community, a behavioral health agency, or other setting.

(2) An agency certified for outpatient behavioral health crisis (~~outreach, observation and intervention~~) services does not need to meet the requirements in WAC 246-341-0640.

(3) An agency providing outpatient behavioral health crisis (~~outreach, observation and intervention~~) services for substance use disorder must ensure a professional appropriately credentialed to provide substance use disorder treatment is available or on staff 24 hours a day, seven days a week.

(4) An agency providing any outpatient behavioral health crisis (~~outreach, observation and intervention~~) services must:

(a) Provide crisis telephone support in accordance with WAC 246-341-0670;

(b) For mental health crisis, ensure face-to-face outreach services are provided by a mental health professional or department-credentialed staff person with documented training in crisis response;

(c) For a substance use disorder crisis, ensure face-to-face outreach services are provided by a professional appropriately credentialed to provide substance use disorder treatment, or individual who has completed training that covers substance use disorders;

(d) Develop and implement policies and procedures for training staff to identify and assist individuals in crisis before assigning the staff member unsupervised duties;

- (e) Resolve the crisis in the least restrictive manner possible;
  - (f) Require that trained staff remain with the individual in crisis in order to provide stabilization and support until the crisis is resolved or referral to another service is accomplished;
  - (g) Determine if an individual has a crisis plan and request a copy if available;
  - (h) Assure communication and coordination with the individual's mental health or substance use treatment provider, if indicated and appropriate;
  - (i) As appropriate, refer individuals to voluntary or involuntary treatment facilities for admission on a seven day a week, 24 hour a day basis, including arrangements for contacting the designated crisis responder;
  - (j) Maintain a current list of local resources for referrals, legal, employment, education, interpreter and social and health services;
  - (k) Transport or arrange for transport of an individual in a safe and timely manner, when necessary;
  - (l) Be available 24 hours a day, seven days a week; and
  - (m) Include family members, significant others, and other relevant treatment providers, as necessary, to provide support to the individual in crisis.
- (5) Documentation of a crisis service must include the following:
- (a) A brief summary of each crisis service encounter, including the:
    - (i) Date;
    - (ii) Time, including time elapsed from initial contact to face-to-face contact, if applicable; and
    - (iii) Nature and duration of the encounter.
  - (b) The names of the participants;
  - (c) A disposition including any referrals for services and individualized follow-up plan;
  - (d) Whether the individual has a crisis plan and any request to obtain the crisis plan; and
  - (e) The name and credential, if applicable, of the staff person providing the service.
- (6) An agency utilizing ~~((certified))~~ peers ~~((counselors))~~ to provide crisis outreach services must:
- (a) Ensure services are provided by a person recognized by the health care authority as a peer ~~((counselor))~~, as defined in WAC 246-341-0200;
  - (b) Ensure services provided by a peer ~~((counselor))~~ are within the scope of the peer's ~~((counselor's))~~ training and credential;
  - (c) Ensure peers ~~((counselors))~~ receive annual training that is relevant to their unique working environment.
- (7) When services are provided in a private home or nonpublic setting, the agency must:
- (a) Have a written plan for training, staff back-up, information sharing, and communication for staff members who respond to a crisis in an individual's personal residence or in a nonpublic location;
  - (b) Ensure that a staff member responding to a crisis is able to be accompanied by a second trained individual when services are provided in the individual's personal residence or other nonpublic location;
  - (c) Ensure that any staff member who engages in home visits is provided access, by their employer, to a wireless telephone or comparable device, for the purpose of emergency communication;

(d) Provide staff members who are sent to a personal residence or other nonpublic location to evaluate an individual in crisis prompt access to information about any history of dangerousness or potential dangerousness on the individual they are being sent to evaluate, that is documented in a crisis plan(s) or commitment record(s). This information must be made available without unduly delaying the crisis response.

(8) If utilizing peers ((~~counselors~~)) for crisis outreach response:

(a) Ensure that a peer ((~~counselor~~)) responding to an initial crisis visit is accompanied by a mental health professional or individual appropriately credentialed to provide substance use disorder treatment as appropriate to the crisis;

(b) Develop and implement policies and procedures for determining when peers ((~~counselors~~)) may provide follow-up crisis outreach services without being accompanied by a mental health professional or individual appropriately credentialed to provide substance use disorder treatment as appropriate to the crisis.

#### NEW SECTION

**WAC 246-341-0903 23-hour crisis relief center services—Certification standards.** (1) General requirements: An agency certified for 23-hour crisis relief center services must:

(a) Follow requirements for outpatient crisis services in WAC 246-341-0901;

(b) Provide services to address mental health and substance use crisis issues which may include treatment of chemical withdrawal symptoms;

(c) Limit patient stays to a maximum of 23 hours and 59 minutes, except in the following circumstances in which the patient may stay up to a maximum of 36 hours when:

(i) A patient is waiting on a designated crisis responder evaluation; or

(ii) A patient is making an imminent transition to another setting as part of an established aftercare plan;

(d) Be staffed 24 hours a day, seven days a week, with a multidisciplinary team capable of meeting the needs of individuals experiencing all levels of crisis in the community including, but not limited to, nurses, department-credentialed professionals who can provide mental health and substance use disorder assessments, peers, and access to a prescriber;

(e) Offer walk-in options and drop-off options for first responders and persons referred through the 988 system, without a requirement for medical clearance for these individuals;

(f) Only accept emergency medical services drop-offs of individuals determined to be medically stable by emergency medical services in accordance with department guidelines on transport to behavioral health service facilities developed pursuant to RCW 70.168.170 (available at <https://doh.wa.gov/BHA> or by contacting the department at [ochsfacilities@doh.wa.gov](mailto:ochsfacilities@doh.wa.gov) or 360-236-2957.

(g) Have a no refusal policy for law enforcement, including tribal law enforcement;

(h) Provide the ability to dispense medications and provide medication management in accordance with WAC 246-337-105, except that references to RTF in WAC 246-337-105 shall be understood to mean behavioral health agency (BHA);

(i) Maintain capacity to deliver minor wound care for nonlife-threatening wounds, and provide care for most minor physical or basic health needs that can be identified and addressed through a nursing assessment;

(j) Identify pathways to transfer individuals to more medically appropriate services if needed;

(k) If restraint or seclusion are used, follow requirements in WAC 246-337-110 (3) through (19) except that references to RTF in WAC 246-337-110 shall be understood to mean behavioral health agency (BHA);

(l) Establish and maintain relationships with entities capable of providing for reasonably anticipated ongoing service needs of clients, unless the licensee itself provides sufficient services:

(i) For individuals identifying as American Indian/Alaska Native (AI/AN), relationships will be with tribal behavioral health systems;

(ii) For individuals identifying as veterans, relationships will be with the local/regional Veterans Administration Medical Center (VAMC);

(m) When appropriate, coordinate connection to ongoing care; and

(n) Have an infection control plan inclusive of:

(i) Hand hygiene;

(ii) Cleaning and disinfection;

(iii) Environmental management; and

(iv) Housekeeping functions.

(2) Orientation and initial screening: An agency certified for 23-hour crisis relief center services must:

(a) Orient all walk-ins and drop-offs upon arrival;

(b) Screen all individuals for:

(i) Suicide risk and, when clinically indicated, engage in comprehensive suicide risk assessment and planning;

(ii) Violence risk and, when clinically indicated, engage in comprehensive violence risk assessment and planning;

(iii) Nature of the crisis; and

(iv) Physical and cognitive health needs, including dementia screening;

(c) Following initial screening, if admission is declined, the agency must:

(i) Document and make available to the department instances of declined admissions, including those that were not eligible for admission, declined due to no capacity, or those declined for any other reason;

(ii) Provide support to the individual to identify and, when appropriate, access services or resources necessary for the individual's health and safety.

(3) Admission: An agency certified for 23-hour crisis relief center services must:

(a) Accept eligible admissions 90 percent of the time when the facility is not at its full capacity; and

(b) Provide an assessment appropriate to the nature of the crisis to each individual admitted to a recliner. The assessment must inform the interval for monitoring the individual based on their medical condition, behavior, suspected drug or alcohol misuse, and medication status.

(4) For the purposes of this section:

(a) Eligible admission includes individuals 18 years of age or older who are identified upon screening as needing behavioral health crisis services, and whose physical health needs can be addressed by the crisis relief center in accordance with subsection (1)(i) of this section;

(b) Full capacity means all certified recliners are occupied by individuals receiving crisis services;

(c) An agency may temporarily exceed the number of certified recliners only to comply with the no refusal policy for law enforcement, up to the maximum occupancy allowed by the local building department for patient care spaces within the licensed unit;

(d) A recliner means a piece of equipment used by individuals receiving crisis services that can be in a sitting position and fully reclined.

(5) An agency certified to provide 23-hour crisis relief center services must be constructed in such a way to be responsive to the unique characteristics of the types of interventions used to provide care for all levels of behavioral health acuity and accessibility needs. These rules are not retroactive and are intended to be applied as outlined below.

(a) The construction review rules in subsections (6) and (7) of this section will be applied to the following agencies who are providing 23-hour crisis relief center services:

(i) New buildings to be certified to provide 23-hour crisis relief center services;

(ii) Conversion of an existing building or portion of an existing building certified or to be certified to provide 23-hour crisis relief center services;

(iii) Additions to an existing building certified or to be certified to provide 23-hour crisis relief center services;

(iv) Alterations to an existing building certified or to be certified to provide 23-hour crisis relief center services;

(v) Buildings or portions of buildings certified to provide 23-hour crisis relief center services and used for providing 23-hour crisis relief center services; and

(vi) Excludes nonpatient care buildings used exclusively for administration functions.

(b) The requirements of this chapter in effect at the time the complete construction review application and fee are received by the department, apply for the duration of the construction project.

(6) Standards for design and construction.

Facilities constructed and intended for use under this section shall comply with:

(a) The following sections of the 2022 edition of the *Guidelines for Design and Construction of Hospitals* as developed by the Facility Guidelines Institute and published by the Facility Guidelines Institute, 9750 Fall Ridge Trail, St. Louis, MO 63127 (available at <https://www.fgiguilines.org> or by contacting the department at [ochsfacilities@doh.wa.gov](mailto:ochsfacilities@doh.wa.gov) or 360-236-2957):

(i) 1.1 Introduction;

(ii) 1.2 Planning, Design, Construction, and Commissioning;

(iii) 2.1 Common Elements for Hospitals;

(iv) 2.2 - 3.2 Specific Requirements for General Hospitals, Behavioral Health Crisis Unit;

(v) Part 4: Ventilation of Health Care Facilities; and

(b) The following specific requirements:

- (i) A public walk-in entrance;
- (ii) A designated area for first responder drop-off;
- (iii) A bed in a private space for individuals who are admitted for greater than 24 hours per subsection (1)(c) of this section;
- (iv) A system or systems within the building that give staff awareness of the movements of individuals within the facility. If a door control system is used, it shall not prevent an individual from leaving the licensed space on their own accord, except temporary delays. Such systems include:
  - (A) Limited egress systems consistent with state building code, such as delayed egress;
  - (B) Appropriate staffing levels to address safety and security; and
  - (C) Policies and procedures that are consistent with the assessment of the individual's care needs and plan and do not limit the rights of a voluntary individual;
- (v) Access to a telephone for individuals receiving services.
- (7) Construction review process.
  - (a) Preconstruction. The applicant or licensee must request and attend a presubmission conference with the department for projects with a construction value of \$250,000 or more. The presubmission conference shall be scheduled to occur at the end of the design development phase or the beginning of the construction documentation phase of the project.
    - (b) Construction document review. The applicant or licensee must submit accurate and complete construction documents for proposed new construction to the department for review within 10 business days of submission to the local authorities. The construction documents must include:
      - (i) A written functional program outlining the types of services provided, types of individuals to be served, and how the needs of the individuals will be met including a narrative description of:
        - (A) Program goals;
        - (B) Staffing and health care to be provided, as applicable;
        - (C) Room functions;
        - (D) Safety and security efforts;
        - (E) Restraint and seclusion;
        - (F) Medication storage; and
        - (G) Housekeeping;
      - (ii) Drawings prepared, stamped, and signed by an architect or engineer licensed by the state of Washington under chapter 18.08 RCW. The services of a consulting engineer licensed by the state of Washington may be used for the various branches of the work, if appropriate;
      - (iii) Drawings with coordinated architectural, mechanical, and electrical work drawn to scale showing complete details for construction;
      - (iv) Specifications that describe with specificity the workmanship and finishes;
      - (v) Shop drawings and related equipment specifications;
      - (vi) An interim life safety measures plan to ensure the health and safety of occupants during construction and renovation; and
      - (vii) An infection control risk assessment indicating appropriate infection control measures, including keeping the surrounding occupied area free of dust and fumes during construction, and ensuring rooms or areas are well ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors.

(8) Copies of the reference material listed in subsections (1)(f) and (6)(a) of this section are available for public inspection at the department's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

**WAC 246-341-0912 Designated crisis responder (DCR) services—Certification standards.** Designated crisis responder (DCR) services are services provided by a DCR to evaluate an individual in crisis and determine if involuntary services are required. An agency providing DCR services must do all of the following:

- (1) Ensure that services are provided by a DCR;
- (2) Ensure staff members utilize the protocols for DCRs required by RCW 71.05.214;
- (3) Document that services provided to the individual were in accordance with the requirements in chapter 71.05 or 71.34 RCW, as applicable; and
- (4) Meet the outpatient behavioral health crisis (~~outreach, observation and intervention~~) services certification standards in WAC 246-341-0901.

AMENDATORY SECTION (Amending WSR 22-24-091, filed 12/6/22, effective 5/1/23)

**WAC 246-341-1140 Crisis stabilization unit (~~and triage~~)—Certification standards.** An agency certified to provide crisis stabilization unit (~~or triage~~) services must meet all of the following criteria:

- (1) (~~A triage facility must be licensed as a residential treatment facility under chapter 71.12 RCW.~~
- (~~2~~) If a crisis stabilization unit (~~or triage facility~~) is part of a jail, the unit must be located in an area of the building that is physically separate from the general population. "Physically separate" means:
  - (a) Out of sight and sound of the general population at all times;
  - (b) Located in an area with no foot traffic between other areas of the building, except in the case of emergency evacuation; and
  - (c) Has a secured entrance and exit between the unit and the rest of the facility.
- (~~3~~) (2) Ensure that a mental health professional is on-site at least eight hours per day, seven days a week, and accessible 24 hours per day, seven days per week.
- (~~4~~) (3) Ensure a mental health professional assesses an individual within three hours of the individual's arrival at the facility.
- (~~5~~) (4) For persons admitted to the crisis stabilization unit (~~or triage facility~~) on a voluntary basis, the individual service record must meet the individual service record requirements in WAC 246-341-0640.



((+6)) (5) An agency certified to provide crisis stabilization unit (~~(or triage)~~) services must meet the service standards for residential and inpatient behavioral health services in WAC 246-341-1105 and the applicable standards in WAC 246-341-1131 if providing involuntary crisis stabilization unit (~~(or triage)~~) services.

## WSR 24-17-004

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed August 8, 2024, 8:15 a.m., effective September 8, 2024]

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

Purpose: Discharge or transfer of patients from acute care hospitals to 23-hour crisis relief centers in Washington state.

To implement 2SSB 5120 (chapter 433, Laws of 2023), an act concerning the establishment of 23-hour crisis relief centers in Washington state, the department of health (department) is adopting an amendment to WAC 246-320-111 in order to clarify the regulatory requirements for licensed acute care hospitals that wish to discharge or transfer a patient to a 23-hour crisis relief center.

The adopted amendment adds a new subsection which prohibits hospitals licensed under chapter 70.41 RCW from discharging or transferring a patient to a 23-hour crisis relief center unless the hospital has a formal relationship with the 23-hour crisis relief center.

Citation of Rules Affected by this Order: Amending WAC 246-320-111.

Statutory Authority for Adoption: RCW 70.41.030 and 2SSB 5120 (chapter 433, Laws of 2023), codified as RCW 71.24.916.

Adopted under notice filed as WSR 24-10-090 on April 30, 2024.

A final cost-benefit analysis is available by contacting Dan Overton, Department of Health, P.O. Box 47843, Olympia, WA 98504-7843, phone 564-201-0579, fax 360-236-2321, TTY 711, email dan.overton@doh.wa.gov.

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

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

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

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

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

Date Adopted: August 7, 2024.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

OTS-5313.1

AMENDATORY SECTION (Amending WSR 09-07-050, filed 3/11/09, effective 4/11/09)

**WAC 246-320-111 Hospital responsibilities.** This section identifies a hospital obligation, actions and responsibilities to comply with the hospital law and rules.

(1) Hospitals must:

(a) Comply with chapter 70.41 RCW and this chapter;

(b) Only set up inpatient beds within the licensed bed capacity approved by the department or the medicare provider agreement; and

(c) Receive approval for additional inpatient beds as required in chapter 70.38 RCW before exceeding department approved bed capacity.

(2) A hospital accredited by the Joint Commission or American Osteopathic Association must:

(a) Notify the department of an accreditation survey within two business days following completion of the survey; and

(b) Notify the department in writing of the accreditation decision and any changes in accreditation status within (~~thirty~~) 30 calendar days of receiving the accreditation report.

(3) A hospital that wishes to discharge or transfer an inpatient to a 23-hour crisis relief center, as defined in RCW 71.24.025, that is not owned and operated by the hospital, must have a documented formal relationship, such as an agreement or memorandum of understanding, with the 23-hour crisis relief center the patient will be discharged or transferred to.

## WSR 24-17-005

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed August 8, 2024, 8:15 a.m., effective September 30, 2024]

Effective Date of Rule: September 30, 2024.

Purpose: Creating licensing requirements for organ transport services and vehicles. SHB 1271 (chapter 290, Laws of 2023) Organ transport vehicles and services, directed the department of health to issue a license to organ transport services that meet minimum licensing standards. This adopted new rule establishes minimum requirements for vehicle and equipment standards, as well as establishes the licensing process to obtain an organ transport license. The law and the adopted rules will allow licensed organ transport vehicles to use lights and sirens, high occupancy vehicle (HOV) lanes, and signal pre-emptive devices to transport time-critical organs and tissues within Washington state without compromising public health and safety.

Citation of Rules Affected by this Order: New WAC 246-976-360.

Statutory Authority for Adoption: RCW 18.73.081, 43.70.040, and SHB 1271 (chapter 290, Laws of 2023), codified in RCW 18.73.290.

Adopted under notice filed as WSR 24-11-155 on May 22, 2024.

A final cost-benefit analysis is available by contacting Jason Norris, P.O. Box 47853, Olympia, WA 98504-7853, phone 360-236-2380, TTY 711, email HSQA.EMS@doh.wa.gov.

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

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

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

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

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

Date Adopted: August 7, 2024.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

**OTS-5376.3**NEW SECTION**WAC 246-976-360 Organ transport service and vehicle license.**

(1) The secretary licenses organ transport services and vehicles. To become licensed an applicant shall:

(a) Comply with RCW 18.73.290;

(b) Submit a completed application on forms provided by the department; and

(c) Meet the minimum organ transport vehicle standards in subsection (2) of this section.

(2) A licensed organ transport vehicle must meet the following standards:

(a) Essential equipment for driver and passenger safety and comfort must be in good working order;

(b) A paper copy of current state organ transport vehicle license must be made immediately available upon request;

(c) Tires must be in good condition;

(d) Electrical system. All regular and special electrical equipment must be functional at all times:

(i) Interior lighting in the driver compartment must be designed and located so that no glare is reflected from surrounding areas to the driver's eyes or line of vision from the instrument panel, switch panel, or other areas which may require illumination while the vehicle is in motion;

(ii) Exterior lights must be fully operational;

(iii) Emergency warning lights must be provided in accordance with RCW 46.37.190, as administered by the state patrol; and

(iv) Emergency audible warning signals may be used in accordance with RCW 46.37.380;

(e) Windshield wipers and washers must be dual, electric, multi-speed, and functional at all times;

(f) Battery system. The battery must be capable of sustaining all systems. It must be located in a ventilated area sealed off from the vehicle interior, and completely accessible for checking and removal;

(g) Vehicle brakes, heating and cooling units, and window glass, must be functional at all times;

(h) Equipment, organs, and tissue donors must be secured in the vehicle to prevent items from sliding, rolling, and vertical movement;

(i) Functioning seat belts that comply with Federal Motor Vehicle Safety Standards 207, 208, 209, and 210. Restraints must be provided in all seat positions in the vehicle;

(j) Mirrors on the left side and right side of the vehicle. The location of mounting must provide maximum rear vision from the driver's seated position;

(k) One 5-B:C fire extinguisher must be secured in a manner that prevents sliding, rolling, and vertical movement; and

(l) Exterior surfaces must be smooth, with appurtenances kept to a minimum.

(3) Drivers of organ transport vehicles must comply with RCW 18.73.290.

(4) Licenses for organ transport services and vehicles must be renewed every two years. To renew a license, an applicant shall submit an application to the department at least 30 days prior to expiration.

**WSR 24-17-020**  
**PERMANENT RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed August 8, 2024, 3:30 p.m., effective September 8, 2024]

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

Purpose: Update the RCW citations for the Washington State Clean Air Act (CAA) in the NWCAA Regulation to reflect the RCW renumbering by the state legislature under SHB 2246, effective on June 11, 2020. Originally, the CAA was in chapter 70.94 RCW, but is now renumbered to chapter 70A.15 RCW. No changes were made to the CAA language.

Citation of Rules Affected by this Order: Amending Sections 100, 103, 120, 121, 131, 132, 133, 200, 300, 305, 309, 320, 322, 324, 350, 502, 504, and 506 of the Regulation of the Northwest Clean Air Agency.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 24-11-157 on May 22, 2024.

Date Adopted: August 8, 2024.

Mark Buford  
Executive Director

AMENDATORY SECTION

**SECTION 100 - NAME OF AGENCY**

100.1 The multi-county agency, consisting of Island, Skagit and Whatcom Counties, having been formed pursuant to the Washington State Clean Air Act RCW 70A.15 (~~(70.94)~~), shall be known and cited as the "Northwest Clean Air Agency", and hereinafter may be cited as the "NWCAA" or the "Authority."

100.2 Any reference to the Northwest Air Pollution Authority, the Authority or the NWAPA in any document previously issued by the agency, including without limitation orders, permits, judgments, letters and the like shall be deemed reference to the Northwest Clean Air Agency or the NWCAA.

AMENDED: July 14, 2005, August 8, 2024

AMENDATORY SECTION

**SECTION 103 - DUTIES AND POWERS**

103.1 Pursuant to the provisions of the Washington Clean Air Act RCW 70A.15 (~~(70.94)~~) and RCW 43.21A and 43.21B, the Board may take such reasonable action as may be necessary to prevent air pollution which may include control or measurement of emissions of air contaminants from a source.

The Board shall appoint a Control Officer competent in the field of air pollution control whose sole responsibility shall be to observe and enforce the provisions of all ordinances, orders, resolution, or rules and regulations of the NWCAA pertaining to the control and prevention of air pollution. The Board shall establish such procedures and take such action as may be required to implement Section 102 in a manner consistent with the State Act and other applicable laws.

103.2 The Board shall require that the Control Officer maintain appropriate records and prepare periodic reports.

103.3 The Board shall receive minutes of meetings of the Advisory Council as required. The decisions of the Advisory Council shall be forwarded to the Board in writing and shall include minority opinions in cases of serious disagreement.

103.4 The Control Officer is empowered by the board to sign official complaints and/or issue violations and/or apply to any court of

competent jurisdiction for necessary orders and with Board approval or ratification, commence legal action. Nothing herein contained shall be construed to limit the Control Officer from using any other legal means to enforce the provisions of the Regulations of the NWCAA.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, April 14, 1993, August 8, 2024

AMENDATORY SECTION

**SECTION 120 - HEARINGS**

120.1 The Board shall retain authority to hold hearings, issue subpoenas for witnesses and evidence, and take testimony under oath and do all things not prohibited by or in a conflict with state law, in any hearing held under the Regulations of the NWCAA.

120.11 The Board shall admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. The Board shall give effect to the rules of privilege recognized by law. The Board shall exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

120.12 All evidence, including but not limited to records, and documents in the possession of the Board of which it desired to avail itself, shall be offered and made a part of the record in the case, and no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

120.13 Every party shall have the right to cross examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

120.14 The Board may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified either before or during hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The Board may utilize their experience, technical competence, and their specialized knowledge in the evaluation of the evidence presented to them.

120.2 Any hearings held under this section, under the Washington Clean Air Act (RCW 70A.15 (~~(70.94)~~) and 43.21B) shall be pursuant to the provisions of RCW 34.05 as now or hereafter amended.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1977, April 14, 1993, November 8, 2007, August 8, 2024

AMENDATORY SECTION

**SECTION 121 - ORDERS**

121.1 The NWCAA may issue such orders as may be necessary to effectuate and enforce the purposes of chapter 70A.15 (~~(70.94)~~) RCW or the rules adopted thereunder.

121.2 If the NWCAA has reason to believe that any provision of chapter 70A.15 (~~(70.94)~~) RCW or the rules adopted thereunder has been violated, the NWCAA may, in addition to any other remedy of law, issue an order that requires corrective action be taken within a reasonable time. Such compliance orders may include dates by which the violation or violations shall cease and may set time schedules for necessary action in preventing, abating, or controlling the emissions.

121.3 Orders of approval related to the establishment of a source are addressed under NWCAA 300, in lieu of the requirements in this section.

121.4 General Orders of Approval are issued under WAC 173-400-560, as adopted in NWCAA 104.1, in lieu of the requirements in this section.

121.5 Any order issued under this section that includes an action listed in NWCAA 305.2(A) is subject to the public involvement provisions of NWCAA 305.

121.6 For regulatory orders related to a RACT determination, a fee shall be assessed in accordance with NWCAA 309.7. For all other orders issued under NWCAA 121, the NWCAA shall assess a fee as specified in NWCAA 324.7 to cover the costs of processing and issuing such order.

121.7 When an applicant requests a regulatory order to limit the potential to emit of any air contaminant or contaminants pursuant to WAC 173-400-091, as adopted in NWCAA 104.1, or requests a modification to such an order, the NWCAA shall issue such order consistent with the requirements of WAC 173-400-091 as adopted in NWCAA 104.1 in addition to the requirements of this Regulation.

PASSED: January 8, 1969 AMENDED: July 8, 1970, February 14, 1973, November 8, 2007, March 14, 2013, August 8, 2024

#### AMENDATORY SECTION

##### **SECTION 131 - NOTICE TO VIOLATORS**

131.1 At least 30 days prior to the commencement of any formal enforcement action under RCW 70A.15.3150 (~~(70.94.430)~~) or 70A.15.3160 (~~(70.94.431)~~), or NWCAA 132 or 133, the NWCAA shall cause written notice of violation to be served upon the alleged violator. The notice shall specify the provisions of chapter 70A.15 (~~(70.94)~~) RCW or the orders, rules, or regulations adopted pursuant thereto alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order pursuant to NWCAA 121 directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the Control Officer may require that the alleged violator appear before the Board for a hearing pursuant to NWCAA 120. Every notice of violation shall offer to the alleged violator an opportunity to meet with the NWCAA prior to the commencement of enforcement action.

131.2 The NWCAA, upon issuance of notice of violation, may require the alleged violator to respond in writing or in person within thirty (30) days of the notice and specify the corrective action being taken. Failure to respond shall constitute a prima facie violation of this Regulation and the NWCAA may initiate action pursuant to Sections 132, 133, 134, 135 of this Regulation.

PASSED: January 8, 1969 AMENDED: February 14, 1973, March 13, 1997, July 14, 2005, November 8, 2007, March 14, 2013, August 8, 2024

#### AMENDATORY SECTION

##### **SECTION 132 - CRIMINAL PENALTY**

132.1 Any person who knowingly violates any of the provisions of Chapter 70A.15 (~~(70.94)~~) RCW as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation in force pursuant thereto, including the Regulation of the NWCAA, is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$10,000, or by imprisonment in the county jail for up to 364 days, or by both for each separate violation.

132.2 Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is



guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for up to 364 days, or both.

132.3 Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than \$50,000, or by imprisonment for not more than five years, or both.

132.4 Any person who knowingly fails to disclose a potential conflict of interest under RCW 70A.15.2000 (~~(70.94.100)~~) as referenced in NWCAA 104.1 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than \$5,000.

132.5 Any person who knowingly renders inaccurate any required monitoring device or method required by chapter 70A.15 (~~(70.94)~~) RCW as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation in force pursuant thereto, including the Regulation of the NWCAA is guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$10,000 per day for each separate violation.

132.6 Any person who knowingly makes any false material statement, representation, or certification in any form, in any notice or report required by chapter 70A.15 (~~(70.94)~~) RCW as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation, in force pursuant thereto, including the Regulation of the NWCAA is guilty of a crime and shall, upon conviction, be punished by a fine of not less than \$10,000 per day for each separate violation.

PASSED: January 6, 1969 AMENDED: April 14, 1993, October 13, 1994, March 13, 1997, November 8, 2007, August 13, 2015, August 8, 2024

#### AMENDATORY SECTION

##### **SECTION 133 - CIVIL PENALTY**

133.1 In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70A.15 (~~(70.94)~~) RCW, or any of the rules in force pursuant thereto, including the Regulation of the NWCAA may incur a civil penalty in an amount not to exceed \$19,000 per day for each violation. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order shall be liable for a civil penalty of not more than \$19,000 for each day of continued noncompliance.

133.2 The penalty is due and payable 30 days after a notice is served unless an appeal is filed with the Pollution Control Hearings Board (PCHB).

(A) Within 30 days after the Notice is served, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Upon receipt of the application the Control Officer shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstance such as the presence of information or factors not considered in setting the original penalty.

(B) If such penalty is not paid to the NWCAA within 30 days after such payment is due, the Board or Control Officer may direct the attorney for the NWCAA to bring an action to recover the penalty in Superior Court.

(C) Any judgment will bear interest as provided by statute until satisfied.

133.3 Penalties incurred but not paid shall accrue interest, beginning on the 91st day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020. If penalties are appealed, interest shall not begin to accrue until the 31st day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

133.4 In addition to other penalties, persons knowingly under-reporting emissions or other information used to set fees, persons required to pay emission or permit fees who are more than 90 days late with such payments, or persons failing to file a relocation notice to relocate into NWCAA jurisdiction with required registration fee under NWCAA 514.3 may be assessed a penalty equal to 3 times the amount of the original fee owed.

133.5 The suspended portion of any civil penalty, issued under Section 133 of this Regulation, shall be due and payable in the event of future penalties against the same person within 5 years from the date of said suspension. After 5 years the suspended portion of the Penalty shall be considered void and of no force or effect.

PASSED: January 8, 1969 AMENDED: November 14, 1984, April 14, 1993, September 8, 1993, October 13, 1994, February 8, 1996, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 13, 2015, February 10, 2022, August 8, 2024

#### AMENDATORY SECTION

#### **SECTION 200 - DEFINITIONS**

The terms used in the Regulation of the NWCAA are defined in this section as follows:

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BEST AVAILABLE CONTROL TECHNOLOGY (BACT) - An emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70A.15 (~~(70.94)~~) RCW emitted from or which results from any new or modified stationary source, which the NWCAA, on a case-by-case basis, taking into account energy, environmental, and economic impacts, and other costs, determines is achievable for such stationary source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the Best Available Control Technology result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. Emissions from any stationary source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

\*\*\*

BUBBLE - A set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70A.15.2240 (~~(70.94.155)~~) and WAC 173-400-120.

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COMPLIANCE ORDER - An order issued by the NWCAA pursuant to the authority of RCW 70A.15.3010 (~~(70.94.332)~~) and 70A.15.2040(3) (~~(70.94.141(3))~~) that addresses or resolves a compliance issue regarding any requirement of chapter 70A.15 (~~(70.94)~~) RCW or the rules adopted thereunder. Compliance orders may include, but are not limited to, time schedules and/or necessary actions for preventing, abating, or controlling emissions.

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EMISSION STANDARD, EMISSION LIMITATION, or EMISSION LIMIT - A requirement established under the Federal Clean Air Act or chapter 70A.15 (~~(70.94)~~) RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a stationary source to assure continuous emission reduction and any design, equipment work practice, or operational standard adopted under the Federal Clean Air Act or chapter 70A.15 (~~(70.94)~~) RCW.

EMISSIONS UNIT - Any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70A.15 (~~(70.94)~~) RCW, chapter 70.98 RCW, or the Regulation of the NWCAA.

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ORDER - Any order issued by the NWCAA pursuant to chapter 70A.15 (~~(70.94)~~) RCW, including, but not limited to RCW 70.15A.3010 (~~(70.94.332)~~), 70A.15.2210 (~~(70.94.152)~~), 70A.15.2220 (~~(70.94.153)~~), 70A.15.2230 (~~(70.94.154)~~), and 70A.15.2040(3) (~~(70.94.141(3))~~), and includes, where used in the generic sense, the terms order, compliance order, order of approval, and regulatory order.

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REGULATORY ORDER - An Order issued by the NWCAA to an air contaminant source or sources pursuant to chapter 70A.15 (~~(70.94)~~) RCW including, but not limited to, RCW 70A.15.2040(3) (~~(70.94.141(3))~~). A Regulatory Order includes an Order that requires compliance with any applicable provision of chapter 70A.15 (~~(70.94)~~) RCW, rules adopted thereunder, or the NWCAA Regulation.

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STATE ACT - Washington Clean Air Act (chapter 70A.15 (~~(70.94)~~) RCW) and chapter 43.21B RCW.

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PASSED: January 8, 1969 AMENDED: October 31, 1969, September 3, 1971, June 14, 1972, July 11, 1973, February 14, 1973, January 9, 1974, October 13, 1982, November 14, 1984, October 13, 1994, February 8, 1996, May 9, 1996, March 13, 1997, November 12, 1998, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, November 17, 2011, March 14, 2013, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, February 10, 2022, December 14, 2023, August 8, 2024

#### AMENDATORY SECTION

##### SECTION 300 - NEW SOURCE REVIEW

300.1(A) A Notice of Construction (NOC) application must be filed by the owner or operator and an Order of Approval must be issued by the NWCAA, prior to beginning actual construction of any new source or making any modification, except for any of the following:

(1) Emissions units that are categorically exempt under NWCAA 300.3.

(2) Emissions units that are exempt under NWCAA 300.4.

(3) Any emissions unit covered under a General Order of Approval and operating in accordance with NWCAA 300.16.

(B) New source review of a modification is limited to the emissions unit or units proposed to be added to or modified at an existing stationary source and the air contaminants whose emissions would increase above the emission thresholds in NWCAA 300.4 as a result of the modification.

(C) New source review is required for an increase in a plant-wide cap or an emissions-unit-specific emission limit.

(D) The Control Officer may require that a new source or modification, that would otherwise be exempt under this section, submit a Notice of Construction application and be issued an Order of Approval as specified in this section. The Control Officer may also require that individual pollutant emission increases that would otherwise be exempt under this section be included in the Order of Approval review. This discretionary determination will be based on the nature of air pollution emissions from the stationary source and its potential effect on health, economic and social factors, or physical effects on property. Upon request, the proponent shall submit to the Control Officer appropriate information as necessary to make this determination.

300.2 In lieu of this section, any new major stationary source or major modification located in an attainment or unclassifiable area as defined in WAC 173-400-030 shall be processed in accordance with the requirements of WAC 173-400-113 and WAC 173-400-700 through 173-400-750, as applicable, for the pollutant for which the project is major. Additionally, any new major stationary source or major modification located in a nonattainment area as defined in WAC 173-400-030 shall be processed in accordance with the requirements of WAC 173-400-112 and WAC 173-400-800 through 173-400-860, as applicable, for the pollutant and for precursors of the pollutant for which the area is in nonattainment.

### 300.3 Categorical Exemptions from New Source Review

Construction of a new emissions unit that falls within one of the categories listed in NWCAA 300.3 is exempt from new source review. Modification of any emissions unit listed in NWCAA 300.3 is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The owner or operator shall keep sufficient records to document the exemption under this subsection.

#### (A) Maintenance/construction:

- (1) Cleaning and sweeping of streets and paved surfaces
- (2) Concrete application, and installation
- (3) Dredging wet spoils handling and placement
- (4) Paving application and maintenance, excluding asphalt plants
- (5) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine house keeping, architectural or maintenance coatings to stationary structures, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.)
- (6) Plumbing installation, plumbing protective coating application and maintenance activities
- (7) Roofing application and maintenance
- (8) Insulation application and maintenance, excluding products for resale
- (9) Janitorial services and consumer use of janitorial products

#### (B) Storage tanks:

- (1) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils
- (2) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation

(3) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and non-volatile aqueous salt solutions

(4) Process and white water storage tanks

(5) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity

(6) Operation, loading, and unloading of storage tanks less than or equal to 1,100 gallon capacity, with lids or other appropriate closure, that store materials that do not contain Toxic Air Pollutants, as defined in chapter 173-460 WAC, or that have a maximum vapor pressure of 550 mm mercury at 21°C

(7) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons

(8) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids with no VOC content

(C) New or modified fuel burning equipment with a heat input capacity (higher heating value) less than all of the following:

(1) 500,000 Btu/hr coal or other solid fuels with less than or equal to 0.5% sulfur

(2) 500,000 Btu/hr used oil, per the requirements of RCW 70A.15.4510 (~~(70.94.610)~~)

(3) 400,000 Btu/hr wood

(4) 1,000,000 Btu/hr gasoline, kerosene, #1 or #2 fuel oil and with less than or equal to 0.05% sulfur

(5) 10,000,000 Btu/hr natural gas, propane, or LPG. This includes combustion units that have natural gas as a primary fuel source and ultra-low sulfur diesel (less than 15 ppm by weight sulfur) as a secondary fuel source that is combusted only during testing or periods of natural gas curtailment beyond the control of the source.

(D) Material handling:

(1) Continuous digester chip feeders

(2) Grain elevators not licensed as warehouses or dealers by either the Washington State Department of Agriculture or the U.S. Department of Agriculture

(3) Storage and handling of water based lubricants for metal working where organic content of the lubricant is less than or equal to 10%

(4) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon capacity with lids or other appropriate closure. The high boiling point organic material shall not have an atmospheric boiling point of less than 150°C or a vapor pressure more than 5 mm mercury at 21°C.

(E) Water treatment:

(1) Septic sewer systems, not including active wastewater treatment facilities

(2) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease

(3) De-aeration (oxygen scavenging) of water where Toxic Air Pollutants as defined in chapter 173-460 WAC are not emitted

(4) Process water filtration system and demineralizer vents

(5) Sewer manholes, junction boxes, sumps, and lift stations associated with wastewater treatment systems

(6) Demineralizer tanks

(7) Alum tanks

(8) Clean water condensate tanks

(F) Laboratory testing and quality assurance/control testing equipment, including fume hoods, used exclusively for chemical and physical analysis, teaching, or experimentation, used specifically in achieving the purpose of the analysis, test, or teaching activity. Non-production bench scale research equipment is also included.

(G) Monitoring/quality assurance/testing:

(1) Equipment and instrumentation used for quality control/assurance or inspection purpose

(2) Hydraulic and hydrostatic testing equipment

(3) Sample gathering, preparation, and management

(4) Vents from continuous emission monitors and other analyzers

(H) Dry Cleaning: Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers and carbon absorption to recover the cleaning solvent

(I) Emergency Stationary Internal Combustion Engines (ICE): Any stationary internal combustion engine whose operation is limited to emergency situations and required testing and maintenance, and operates in these capacities for less than 500 hours a year. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc. Stationary ICE used to supply power to an electric grid or that supply power as part of a financial arrangement with another entity are not considered to be emergency engines.

(J) Miscellaneous:

(1) Single-family residences and duplexes

(2) Plastic pipe welding

(3) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting

(4) Comfort air conditioning

(5) Flares used to indicate danger to the public

(6) Natural and forced air vents and stacks for bathroom/toilet activities

(7) Personal care activities

(8) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires

(9) Tobacco smoking rooms and areas

(10) Noncommercial smokehouses

(11) Blacksmith forges for single forges

(12) Vehicle maintenance activities, not including vehicle surface coating

(13) Vehicle or equipment washing

(14) Wax application

(15) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment

(16) Ozone generators and ozonation equipment

(17) Solar simulators

(18) Ultraviolet curing processes, to the extent that Toxic Air Pollutant gases as defined in chapter 173-460 WAC are not emitted

(19) Electrical circuit breakers, transformers, or switching equipment installation or operation

(20) Pulse capacitors

- (21) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives, excluding pneumatic conveying
- (22) Fire suppression equipment
- (23) Recovery boiler blow-down tank
- (24) Screw press vents
- (25) Drop hammers or hydraulic presses for forging or metal working
- (26) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight
- (27) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities
- (28) Solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm mercury at 21°C not emitting Toxic Air Pollutants as defined in chapter 173-460 WAC
- (29) Surface coating and dip coating operations using materials containing less than or equal to 1% by weight VOC and 1% by weight Toxic Air Pollutants as defined in chapter 173-460 WAC
- (30) Cleaning and stripping activities and equipment using solutions containing less than or equal to 1% by weight VOC and 1% by weight Toxic Air Pollutants as defined in chapter 173-460 WAC. Acid solutions used on metallic substances are not exempt
- (31) Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from Toxic Air Pollutant analysis pursuant to chapter 173-460 WAC
- (32) Crushing operations less than 4,500 tons per calendar day
- (33) Relocation of a subject portable source operating in accordance with a NWCAA Order of Approval
- 300.4 Emissions Threshold Exemptions from New Source Review
- (A) Construction of a new emissions unit that has an uncontrolled potential to emit emission rate below all of the threshold levels listed in the table contained in NWCAA 300.4(D) is exempt from new source review.
- (B) A modification to an existing emissions unit that increases the unit's actual emissions by less than all of the threshold levels listed in the table contained in NWCAA 300.4(D) is exempt from new source review.
- (C) Greenhouse gas emissions are exempt from new source review under this section except to the extent required under WAC 173-400-720, Prevention of Significant Deterioration. The owner or operator of a source or emissions unit may request that the NWCAA issue an Order to impose emission limits and/or operation limitations for greenhouse gas emissions.
- (D) Exemption threshold levels:
- POLLUTANT THRESHOLD LEVEL (ton per year)
- (1) Total Suspended Particulates: 1.25
  - (2) PM<sub>10</sub>: 0.75
  - (3) PM<sub>2.5</sub>: 0.5
  - (4) Sulfur Dioxide: 2.0
  - (5) Nitrogen Oxides: 2.0
  - (6) Volatile Organic Compounds, total: 2.0
  - (7) Carbon Monoxide: 5.0
  - (8) Lead: 0.005
  - (9) Ozone Depleting Substances, total: 1.0

(10) Toxic Air Pollutants: The small quantity emission rate (SQER) specified for each TAP in WAC 173-460-150

300.7 Notice of Construction - Submittal Requirements

Each Notice of Construction application shall be submitted on forms provided by the NWCAA and be accompanied by the appropriate new source review fee specified in NWCAA 324.2.

300.8 Notice of Construction - Completeness Determination.

(A) Within 30 days after receiving a Notice of Construction application, the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of the additional information necessary to complete the application.

(B) A complete application contains all the information necessary for processing the application. At a minimum, the application shall include information on the nature and amounts of emissions to be emitted by the proposed new source or increased as part of a modification, as well as the location, design, construction, and operation of the new source as needed to enable the NWCAA to determine that the construction or modification will meet the applicable requirements. Designating an application complete for purposes of permit processing does not preclude the NWCAA from requesting or accepting additional information.

(C) An application is not complete until the State Environmental Policy Act (SEPA) has been addressed under chapter 197-11 WAC and NWCAA Section 155.

(D) An application is not complete until the new source review fee specified in NWCAA 324.2 has been paid.

300.9 Notice of Construction - Final Determination

(A) Within 60 days after receipt of a complete Notice of Construction application, the NWCAA shall either issue a final decision on the application or initiate public notice under NWCAA Section 305 as applicable on a preliminary decision, followed as promptly as practicable by a final decision.

(B) An Order of Approval cannot be issued for the Notice of Construction application until the following criteria are met for those proposed emissions units and pollutants that triggered new source review, as applicable:

(1) Comply with all applicable New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAP), National Emission Standards for Hazardous Air Pollutants for source categories (NESHAP), emission standards adopted under chapter 70A.15 ((70.94)) RCW and all applicable NWCAA emission standards.

(2) Employ Best Available Control Technology (BACT).

(3) Allowable emissions will not cause or contribute to a violation of any ambient air quality standard. In addition, if located in a nonattainment area, allowable emissions will not violate the requirements for reasonable further progress established by the State Implementation Plan (SIP). If NWCAA has reason to be concerned that the construction or modification would cause or contribute to a violation of a NAAQS, NWCAA may require modeling using the guideline models and procedures of Appendix W of 40 CFR Part 51 as referenced in NWCAA 104.2. Written approval from the EPA must be obtained for any modification to or substitution for a guideline model.

(4) Comply with the applicable requirements of NWCAA Section 305.

(5) Comply with the applicable requirements of WAC 173-400-200 and 173-400-205.

(6) All fees required under NWCAA 324.2 have been paid.



(C) In addition to the requirements of NWCAA 300.9(B), an Order of Approval cannot be issued until the new project meets the Toxic Air Pollutant requirements of WAC 173-400-110 (2)(d).

(D) A person seeking approval to construct a new source or modification that requires an operating permit may elect to integrate review of the operating permit application or amendment required under chapter 173-401 WAC and the Notice of Construction application required by this section. A Notice of Construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC and must comply with NWCAA Section 305.

(E) Every final determination on a Notice of Construction application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the NWCAA.

#### 300.10 Order of Approval - Appeals

(A) The issuance of an Order of Approval, any conditions contained in an Order of Approval, or the denial of a Notice of Construction application may be appealed to the pollution control hearings board as provided in chapter 43.21B RCW.

(B) The NWCAA shall promptly mail copies of each Order approving or denying a Notice of Construction application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the pollution control hearings board.

#### 300.11 Order of Approval - Time Limitations

(A) An Order of Approval becomes invalid if the owner or operator has not begun actual construction within 18 months of approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the approval period upon a satisfactory showing that an extension is justified. A written request for an extension shall include an updated BACT analysis submitted prior to the expiration of the current approval period. No single extension of time shall be longer than 18 months. The cumulative period between initial permit issuance and the end of any approved time extensions shall not exceed 54 months.

(B) This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must begin actual construction within 18 months of the approved commencement date.

#### 300.12 Order of Approval - Revision

(A) The owner or operator may request a revision to an Order of Approval and the NWCAA may approve the request provided that the revision:

(1) Will not cause the source to exceed an emissions standard set by regulation or rule;

(2) Will not result in an exceedance of any ambient air quality standard;

(3) Will not adversely impact the ability to determine compliance with an emissions standard;

(4) Will continue to require Best Available Control Technology (BACT), Lowest Achievable Emission Rate (LAER), and Toxic Air Pollutant Best Available Control Technology (T-BACT), as applicable, for each new source or modification approved by the original Order of Approval (BACT and T-BACT as defined at the time of original approval); and

(5) Will meet the requirements of NWCAA 300.7 through 300.13 and NWCAA Section 305, as applicable.

(B) A revision under NWCAA 300.12 only addresses projects where the emissions increase from each emissions unit qualifies as exempt under NWCAA 300.4.

(C) Each Order of Approval revision request shall be submitted and will be processed as a Notice of Construction application. The application shall be submitted with the appropriate new source review fee specified in NWCAA 324.2.

#### 300.13 Order of Approval - Requirements to Comply

Owners and operators of a source or emissions unit shall:

(A) Comply with the conditions in the Order of Approval or General Order of Approval, as applicable.

(B) Install and operate in accordance with the information submitted in the Notice of Construction application or application for coverage under a General Order of Approval.

#### 300.14 Notice of Construction Application Inapplicability Determination

An owner or operator may submit a written request to the NWCAA to obtain a written determination that a project is exempt from new source review under NWCAA 300.1 or from replacement or substantial alteration of control technology under NWCAA 300.25. The request shall include a summary of the project, a narrative describing why the project should be exempt from applicability, and the appropriate fee in accordance with NWCAA 324.2.

Within 30 days after receiving a request under this subsection, the NWCAA shall either provide the written determination of inapplicability, notify the applicant in writing that the project requires an Order of Approval, or notify the applicant in writing of the additional information necessary to complete the request.

#### 300.16 General Order of Approval

In lieu of filing a Notice of Construction application under NWCAA 300.7, the owner or operator of a qualifying emissions unit may apply for coverage under a General Order of Approval issued under this section.

(A) The NWCAA may issue a General Order of Approval applicable to a specific source type or emissions unit. A General Order of Approval shall identify criteria by which a source or emissions unit may qualify for coverage under the General Order of Approval and shall include terms and conditions under which the owner or operator agrees to install and/or operate the covered source or emissions unit.

(1) These terms and conditions shall include as appropriate:

(a) Emissions limitations and/or control requirements based on Best Available Control Technology (BACT) and/or BACT for Toxic Air Pollutants (T-BACT);

(b) Operational restrictions, such as:

(i) Criteria related to the physical size of the source or emissions unit(s) covered;

(ii) Criteria related to raw materials and fuels used;

(iii) Criteria related to allowed or prohibited locations; and

(iv) Other similar criteria as determined by the NWCAA;

(c) Monitoring, reporting, and recordkeeping requirements to ensure compliance with the applicable emission limits and/or control requirements;

(d) Initial and periodic emission testing requirements;

(e) Compliance with WAC 173-400-112, NWCAA 300.9(B), and 300.9(C), as applicable;

(f) Compliance with 40 CFR Parts 60, 61, 62, and 63; emission standards adopted under chapter 70A.15 ((70.94)) RCW; and all applicable NWCAA emission standards; and

(g) The application and approval process to obtain coverage under the specific General Order of Approval.

(2) The original issuance and any revisions to a General Order of Approval must comply with NWCAA Section 305, as applicable.

(3) The NWCAA may review and revise a General Order of Approval at any time. Revisions to General Orders of Approval shall only take effect prospectively.

(B) Application for coverage under a General Order of Approval.

(1) In lieu of applying for an individual Order of Approval under NWCAA 300.7, an owner or operator of a source or emissions unit may apply for and receive coverage from the NWCAA under a General Order of Approval if:

(a) The owner or operator of the source or emissions unit applies for coverage under a General Order of Approval in accordance with NWCAA 300.16 and any conditions of the specific General Order of Approval related to application for and the granting of coverage;

(b) The source or emissions unit meets all the applicability qualifications listed in the requested General Order of Approval;

(c) The requested source or emissions unit is not part of a new major stationary source or major modification subject to the requirements of WAC 173-400-113 (3) and (4), WAC 173-400-700 through 173-400-750, or 173-400-800 through 173-400-860; and

(d) The requested source or emissions unit does not trigger applicability of the Air Operating Permit program under NWCAA Section 322, or trigger a required modification of an existing Air Operating Permit.

(2) Owners or operators of sources or emissions units applying for coverage under a General Order of Approval shall do so using the forms provided by the NWCAA and include the application fee as specified in NWCAA 324.2. The application must include all information necessary to determine qualification for, and to assure compliance with, a General Order of Approval.

(3) An application is incomplete until the NWCAA has received all required fees.

(4) The owner or operator of the proposed source or emissions unit that qualifies for coverage under a General Order of Approval shall not begin actual construction of the proposed source or emissions unit until written confirmation of coverage from the NWCAA has been received in accordance with the procedures established in NWCAA 300.16(C).

(C) Each General Order of Approval shall include a section on how an applicant is to request coverage and how the NWCAA will grant coverage.

(1) Within 30 days after receipt of an application for coverage under a General Order of Approval, the NWCAA shall either provide written confirmation of coverage under the General Order of Approval or notify the applicant in writing that the application is incomplete, inaccurate, or does not qualify for coverage under the General Order of Approval. If an application is incomplete, the NWCAA shall notify the applicant of the information needed to complete the application. If an application does not qualify for coverage under the General Order of Approval, the NWCAA shall notify the applicant of the reasons why the application does not qualify. Coverage under a General Order

of Approval is effective as of the date of issuance of the written confirmation of coverage under the General Order.

(2) Failure of an owner or operator to obtain written confirmation of coverage under NWCAA 300.16 prior to beginning actual construction is considered failure to obtain an Order of Approval pursuant to NWCAA 300.1.

(D) An owner or operator who has received confirmation of coverage under a specific General Order of Approval may later request to be excluded from coverage under that General Order of Approval by applying to the NWCAA for an individual Order of Approval under NWCAA 300.7 or for coverage under another General Order of Approval. If the NWCAA issues an individual Order of Approval or confirms coverage under a different General Order of Approval, coverage under the original General Order of Approval is automatically terminated, effective on the effective date of the individual Order of Approval or confirmation of coverage under the new General Order of Approval.

(E) The Control Officer may require that a new source or modification, that would otherwise be covered under a General Order of Approval, submit a Notice of Construction application and be issued an individual Order of Approval under NWCAA 300.7 through 300.13. This discretionary determination shall be based on the nature of air pollution emissions from the source and its potential effect on health, economic and social factors, or physical effects on property. Upon request, the owner or operator shall submit to the Control Officer, appropriate information as necessary to make this determination.

300.25 Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source.

(A) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source or emissions unit shall file a Notice of Construction application with the NWCAA. Replacement or substantial alteration of control technology does not include routine maintenance, repair, or similar parts replacement.

(B) For emissions units and associated pollutants not otherwise reviewable under NWCAA Section 300, the NWCAA may:

(1) Require that the owner or operator employ RACT for the affected emissions unit;

(2) Prescribe reasonable operation and maintenance conditions for the control equipment; and

(3) Prescribe other requirements as authorized by chapter 70A.15 (~~(70.94)~~) RCW.

(C) Within 30 days after receiving a Notice of Construction application under this subsection, the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of the additional information necessary to complete the application. Within 30 days of receipt of a complete Notice of Construction application under this section the NWCAA shall either issue an Order of Approval or a proposed RACT determination for the proposed project.

(D) An owner or operator shall not begin actual construction on a project subject to review under this section until the NWCAA issues a final Order of Approval. However, any Notice of Construction application filed under this section shall be deemed to be approved without conditions if the NWCAA takes no action within 30 days of receipt of a complete Notice of Construction application.

(E) Approval to replace or substantially alter emission control technology shall become invalid if the owner or operator has not begun

actual construction within 18 months of approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the 18-month approval period upon a satisfactory showing that an extension is justified. No single extension of time shall be longer than 18 months. The cumulative period between initial permit issuance and the end of any approved time extensions shall not exceed 54 months. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must begin actual construction within 18 months of the approved commencement date.

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#### AMENDATORY SECTION

##### **SECTION 305 - PUBLIC INVOLVEMENT**

###### 305.1 Internet Notice

(A) A notice shall be published on the NWCAA website for each Notice of Construction (NOC) application received by the NWCAA under NWCAA 300.7 and each revision request to an Order of Approval received under NWCAA 300.12. The internet notice shall remain on the NWCAA website for a minimum of 15 consecutive days and shall include the following information:

- (1) name and location of the affected facility,
- (2) brief description of the proposed action, and
- (3) a statement that a public comment period may be requested within 15 days of the initial date of the internet posting.

(B) Requests for a public comment period must be submitted in writing via letter, fax, or email and received by the NWCAA during the 15-day internet notice period. A public comment period shall be provided in accordance with NWCAA 305.3 for any NOC application or proposed Order of Approval revision that receives such a request. Any NOC application or proposed Order of Approval revision for which a public comment period is not requested may be processed without further public involvement at the end of the 15-day request period except as provided in NWCAA 305.2.

###### 305.2 Actions Subject to a Mandatory Public Comment Period

(A) The NWCAA shall provide public notice and a public comment period in accordance with NWCAA 305.3, before approving or denying any of the following types of applications or other actions:

- (1) Use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 as referenced in NWCAA 104.2 as part of review under NWCAA Section 300.
- (2) An Order to determine Reasonably Available Control Technology (RACT) pursuant to NWCAA 309.4 (B), (C), (D), or (E).
- (3) An Order to establish a compliance schedule or a variance.
- (4) An Order to demonstrate the creditable height of a stack which exceeds the good engineering practice (GEP) formula height and 65 meters, by means of a fluid model or a field study, for the purposes of establishing an emission limit.

(5) An Order to authorize an emissions bubble pursuant to WAC 173-400-120.

(6) A Regulatory Order to establish or debit emission reduction credits (ERC) issued under WAC 173-400-136.

(7) An Order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit.

(8) An extension of the deadline to begin actual construction of a major stationary source or major modification in a nonattainment area.

(9) The original issuance and any revisions to a General Order of Approval issued under NWCAA 300.16.

(10) An Notice of Construction application or other proposed action for which the NWCAA determines there is substantial public interest.

(11) A Notice of Construction application or proposed Order of Approval revision that receives a request for a public comment period under NWCAA 305.1.

(12) A Notice of Construction application that would result in an emissions increase as follows:

Air Pollutant	Emission Rate in Tons per Year
Carbon Monoxide (CO)	100
Volatile Organic Compounds (VOC)	40
Sulfur Dioxide (SO <sub>2</sub> )	40
Nitrogen Oxides (NO <sub>x</sub> )	40
Particulate Matter (PM)	25
Fine Particulate Matter (PM <sub>10</sub> )	15
Fine Particulate Matter (PM <sub>2.5</sub> )	10
Lead	0.6
Fluorides	3
Sulfuric Acid Mist (H <sub>2</sub> SO <sub>4</sub> )	7
Hydrogen Sulfide (H <sub>2</sub> S)	10
Total Reduced Sulfur (including H <sub>2</sub> S)	10
Reduced Sulfur Compounds (including H <sub>2</sub> S)	10

(13) An increase in emissions of a Toxic Air Pollutant with impacts greater than the Acceptable Source Impact Level (ASIL) for that Toxic Air Pollutant as regulated under chapter 173-460 WAC.

(14) A Notice of Construction Order of Approval with a second tier component as regulated under chapter 173-460 WAC.

(B) Any Notice of Construction application designated for integrated review with an application to issue or modify an Air Operating Permit shall be processed in accordance with the Air Operating Permit program procedures and deadlines set forth in chapter 173-401 WAC.

305.3 Public Comment Period

(A) Public comment period notice for the actions listed under NWCAA 305.2 shall be posted on the NWCAA website for the duration of the public comment period. The NWCAA may supplement this method of notification by advertising in a newspaper of general circulation in the area of the proposed action or by other methods appropriate to notify the local community. The public comment period shall be initiated only after the NWCAA has made a preliminary determination. In the case of a permit action, the cost of providing all noticing shall be borne by the applicant.

(B) The public comment period shall extend at least 30 days following the date the public notice is first published. If a public hearing is held, the public comment period shall extend at least through the hearing date and thereafter for such period as specified in the notice of public hearing.

(C) The NOC application and any written preliminary determination by the NWCAA shall be available for the duration of the public comment period on the NWCAA website, excluding any confidential information as provided in NWCAA Section 114. In addition, the NOC application and any written determination may be made available for public inspection in at least one location near the proposed project. The NWCAA's written preliminary determination shall include the conclusions, determinations and pertinent supporting information from the NWCAA's analysis of the effect of the proposed project on air quality.

(D) The public comment period notice shall include:

(1) Date the notice is posted;

(2) Name, location, and a brief description of the project;

(3) A description of the air contaminant emissions including the type of pollutants and quantity of emissions that would increase under the proposal;

(4) Location of documents made available for public inspection;

(5) Start date and end date of the public comment period;

(6) A statement that a public hearing may be held if the NWCAA determines that significant public interest exists; and

(7) The name, telephone number, and email address of a person at the NWCAA whom interested persons may contact for additional information.

(E) The NWCAA shall distribute a copy of the notice for all actions subject to a mandatory public comment period under NWCAA 305.2, except for NWCAA 305.2 (13) and (14), to the US Environmental Protection Agency Region 10 Regional Administrator.

#### 305.5 Public Hearings

(A) Any person, interested governmental entity, group or the applicant, may request a public hearing during the comment period specified in the public notice. Any such request shall indicate, in writing, the interest of the entity filing it and why a hearing is warranted. The NWCAA may, in its discretion, hold a public hearing if it determines that significant public interest exists. Any such hearing shall be held upon such notice and at a time and place as the NWCAA deems reasonable.

(B) At least 30 days prior to the hearing, the NWCAA shall provide notice of the hearing as follows:

(1) Post the public hearing notice on the NWCAA website as directed by NWCAA 305.3(A). The NWCAA may supplement the web posting by advertising in a newspaper of general circulation in the area of the proposed source or action, or by other methods appropriate to notify the local community. In the case of a permit action, the cost of providing all noticing shall be borne by the applicant.

(2) The hearing legal notice shall include the date, time, and location of the hearing along with the information in NWCAA 305.3(D).

(3) Distribute via email or written letter the notice of public hearing to any person who submitted written comments on the application or requested a public hearing and, in the case of a permit action, to the applicant.

(C) The public hearing notice requirements may be addressed as part of the public comment period notice requirements under NWCAA 305.3.

## 305.6 Consideration of Public Comments

The NWCAA shall not issue a final decision until the public comment period has ended and any comments received during the public comment period have been considered.

## 305.7 Public Information

All information, except information protected from disclosure under any applicable law including, but not limited to, NWCAA Section 114 and RCW 70A.15.2510 (~~(70.94.205)~~), is available for public inspection at the NWCAA. This includes copies of Notice of Construction applications, Orders, and applications to modify Orders.

PASSED: July 14, 2005 AMENDED: November 8, 2007, June 9, 2011, November 17, 2011, April 11, 2019, August 8, 2024

AMENDATORY SECTION**SECTION 309 - REASONABLY AVAILABLE CONTROL TECHNOLOGY**

309.1 Reasonably Available Control Technology (RACT) is required for all existing sources except as otherwise provided in RCW 70A.15.3000(9) (~~(70.94.331(9))~~).

309.2 Where current controls are determined by the NWCAA to be less than RACT, the NWCAA shall define RACT for that source or source category and issue a rule or an order under NWCAA 121 requiring the installation of RACT.

309.3 RACT for each source category containing three or more sources shall be determined by rule, except as provided in NWCAA 309.4.

309.4 Source-specific RACT determinations may be performed under any of the following circumstances:

(A) For replacement or substantial alteration of existing control equipment under NWCAA 300.25;

(B) When required by the federal Clean Air Act;

(C) For sources in source categories containing fewer than three sources;

(D) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(E) When a source-specific RACT determination is needed to address either specific air quality problems, for which the source is a significant contributor, or source-specific economic concerns.

309.5 The Control Officer shall have the authority to perform a RACT determination, to hire a consultant to perform relevant RACT analyses in whole or in part, or to order the owner or operator to perform RACT analyses and submit the results to the NWCAA.

309.6 In determining RACT, the NWCAA shall utilize the factors set forth in the RACT definition in NWCAA 200 and shall consider RACT determinations and guidance made by the EPA, other states, and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, the NWCAA shall address, where practicable, all air contaminants deemed to be of concern for that source or source category.

309.7 The NWCAA shall assess a fee to be paid by any source included in a RACT determination to cover the direct and indirect costs of developing, establishing, or reviewing categorical or source-specific RACT determinations. The fee for RACT determinations shall be as established in NWCAA 324.6. The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for the particular source or the pro rata portion of the direct and indirect



costs of establishing the requirement for the relevant source category.

309.8 Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance shall be considered RACT for purposes of operating permit issuance or renewal.

309.9 Replacement or substantial alteration of control equipment under NWCAA 300.13 shall be subject to the New Source Review fees under NWCAA 324.2, in lieu of RACT fees under this section.

PASSED: March 14, 2013 AMENDED: October 8, 2015, November 10, 2022, August 8, 2024

AMENDATORY SECTION

**SECTION 320 - REGISTRATION PROGRAM**

320.1 Program Authority, Applicability and Purpose. As authorized by RCW 70A.15.2200 (~~(70.94.151)~~), the Board, by the NWCAA Regulation, requires registration and reporting for specified classes of stationary air contaminant sources which may cause or contribute to air pollution. This classification is made according to levels and types of emissions and other characteristics that cause or contribute to air pollution with special reference to effects on health, economic and social factors, and physical effects on property. The purpose of the registration program is to develop and maintain a current and accurate record of stationary air contaminant sources within the NWCAA jurisdiction. Information collected through the registration program is used to evaluate the effectiveness of air pollution control strategies and to verify source compliance with applicable air pollution requirements.

320.2 Registration and Reporting. The owner or operator of a stationary air contaminant source for which registration and reporting are required, shall register the source with the NWCAA. The owner or operator shall make reports to the NWCAA containing information as may be required by the NWCAA concerning location, size, and height of air contaminant outlets, processes employed, nature of the air contaminant emission, and such other information as is relevant to air pollution and available or reasonably capable of being assembled. All records and reports required by the NWCAA Regulation for registered sources shall be maintained for at least 3 years from the date of generation and be made available to NWCAA personnel upon request.

320.3 Annual Registration Fees. Registered sources shall pay an annual registration fee. The Board has determined the fee for registered sources as specified in Section 324.1. The amount of fees collected shall not exceed the costs of implementing this registration program. Implementing the registration program includes, but is not limited to:

(A) Review of registered source emission reports and other periodic reports and conducting related compilation and reporting activities;

(B) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a registered source is complying with permit, Order, or regulatory requirements, as applicable, including determination of registration applicability;

(C) The share attributable to registered sources of the development and maintenance of emissions inventories;

(D) The share attributable to registered sources for data storage and retrieval systems necessary for support of the registration program;

(E) Registered source fee determinations, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(F) The share attributable to registered sources for administration of the program including costs of clerical support, supervision, and management; tracking of time, revenues and expenditures; accounting activities; required fiscal audits and reporting activities; enforcement activities and penalty assessment, excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement.

320.4 Any registered source that does not pay the applicable annual registration fee by the deadline shall be considered in permanent shutdown unless notified in writing by the NWCAA.

#### 320.5 Registration Required

(A) Source categories. Except as provided in NWCAA 320.6, the owner or operator of a source that falls into at least one of the following source categories shall register with the NWCAA:

Any source subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) under 40 CFR Part 61 other than Subpart M (National Emission Standard for Asbestos).

Any source subject to 40 CFR Part 62.

Any affected source subject to a National Emission Standard for Hazardous Air Pollutants for Source Categories (NESHAP) under 40 CFR Part 63.

Any source that has elected to opt-out of the operating permit program by limiting its potential-to-emit (synthetic minor) or is required to report periodically to demonstrate nonapplicability of EPA requirements under 40 CFR Part 63.

Any source that is subject to an Order of Approval or has been confirmed to be covered by a General Order of Approval by the NWCAA.

Any source with a facility-wide uncontrolled potential to emit emission rate of one or more pollutants equal to or greater than the emission rates listed in NWCAA 300.4(D).

(B) Source types. Except as provided in NWCAA 320.6, the owner or operator of a source that falls into at least one of the following source types shall register with the NWCAA:

Abrasive blasting operations.

Agricultural chemical facilities engaged in the manufacturing of liquid or dry fertilizers or pesticides including, but not limited to, ammonium sulfate.

Agricultural drying and dehydrating operations.

Asphalt and asphalt products production facilities, not including asphalt laying equipment.

Casting facilities and foundries, ferrous and nonferrous.

Coffee roasting facilities.

Commercial smoke houses.

Composite fabrication and repair facilities including fiberglass boat building and repair, and miscellaneous parts fabrication.

Composting operations (commercial, industrial, and municipal).

Concrete product manufacturers and ready mix and premix concrete plants.

Flexible vinyl and urethane coating and printing operations.

Gasoline dispensing facilities and bulk gasoline plants.

Glass manufacturing plants.

Grain, seed, animal feed, legume, and flour processing operations and handling facilities.

Graphic art systems including, but not limited to, lithographic and screen printing operations.

Material handling and transfer facilities that emit fine particulate to the atmosphere, which may include pneumatic conveying, cyclones, baghouses, and industrial housekeeping vacuuming systems.

Metal plating and anodizing operations.

Crushing operations.

Perchloroethylene dry cleaners.

Soil and groundwater remediation projects including soil vapor extraction (active), thermal soil desorption, or groundwater air stripping operations.

Surface coating operations, including coating of motor vehicles, mobile equipment, boats, ships, metal, cans, pressure sensitive tape, labels, coils, wood, plastic, rubber, glass, paper and other substrates.

Wastewater treatment plants.

Welding and metal cutting operations.

Wood products mills, including lumber, plywood, shingle, wood-chip, veneer operations, dry kilns, pulpwood insulating board, cabinet works, casket works, furniture, wood by-products, or any combination thereof.

(C) Equipment classification list. Except as provided in NWCAA 320.6, the owner or operator of the following equipment shall register with the NWCAA:

Any affected source subject to a New Source Performance Standard (NSPS) under 40 CFR Part 60, other than Subpart AAA (Standards of Performance for New Residential Wood Heaters).

Chemical concentration evaporators.

Crematoria or animal carcass incinerators.

Degreasers of the cold or vapor type where the solvent for which contains more than 5 percent halogenated compounds or Toxic Air Pollutants.

Ethylene oxide (ETO) sterilizers.

Fuel burning equipment (except natural gas only) with a heat input of more than 1 million Btu per hour, except comfort heating, air conditioning systems, or ventilation systems not designed to remove contaminants generated by or released from equipment.

Fuel burning equipment that fires only natural gas with a heat input of more than 10 million Btu per hour.

Gas collection systems with flares or other combustion devices.

Gas or odor control equipment having a rated capacity greater than or equal to 200 cfm including, but not limited to:

- (1) Activated carbon adsorption
- (2) Barometric condenser
- (3) Biofilter
- (4) Catalytic oxidizer
- (5) Chemical oxidation
- (6) Dry sorbent injection
- (7) Non-selective catalytic reduction (NSCR)
- (8) Refrigerated condenser
- (9) Selective catalytic reduction (SCR)
- (10) Selective non-catalytic reduction (SNCR)
- (11) Wet scrubber

Incinerators;

Ovens, burn-out or heat-treat.

Particulate control equipment having a rated capacity greater than or equal to 2,000 cfm including, but not limited to:

- (1) Baghouse
- (2) Cyclone
- (3) Demister
- (4) Electrostatic precipitator (ESP), dry or wet
- (5) High efficiency particulate air (HEPA) filter
- (6) High velocity air filter
- (7) Mat or panel filter
- (8) Mist eliminator
- (9) Multiclones
- (10) Rotoclone
- (11) Screen
- (12) Venturi scrubber
- (13) Water curtain

Stationary internal combustion engines and turbines rated at 500 horsepower or more.

Storage tanks, reservoirs, or containers with:

- (1) a rated capacity greater than 6,000 gallons storing volatile organic liquids, other than petroleum liquids, having a true vapor pressure equal to or greater than 1.5 psia or
- (2) a rated capacity greater than 40,000 gallons storing petroleum liquids having a true vapor pressure equal to or greater than 1.5 psia.

Waste oil burners rated at greater than 0.5 million Btu per hour.

(D) The Control Officer may require that any source or equipment, that would otherwise be exempt, be registered as specified in this section. This discretionary determination will be based on the amount and nature of air contaminants produced, or the potential to contribute to air pollution, with special reference to effects on health, economic and social factors, and physical effects on property.

#### 320.6 Exemptions from Registration

(A) Exclusion or exemption from registration does not absolve the owner or operator from complying with all other requirements of the NWCAA Regulation.

(B) The following sources are exempt from registration:

Chapter 401 sources, as defined in WAC 173-401-200. For Chapter 401 sources operating Sewage Sludge Incinerators (SSI), those emissions units not included in the Air Operating Permit shall be subject to registration as applicable with the NWCAA and incur associated fees.

Residential and agricultural composting activities.

(C) The Control Officer may exempt any source or equipment, including any listed in NWCAA Section 320.5, from registration. This discretionary determination will be based on the amount and nature of air contaminants produced, or the potential to contribute to air pollution, with special reference to effects on health, economic and social factors, and physical effects on property.

(D) An exemption from new source review under NWCAA Section 300 is not explicitly an exemption from registration under NWCAA Section 320.

PASSED: January 8, 1969 AMENDED: February 14, 1973, August 9, 1978, February 8, 1996, November 12, 1998, November 12, 1999, July 14, 2005, June 9, 2011, April 11, 2019, February 10, 2022, August 8, 2024

#### AMENDATORY SECTION

##### **SECTION 322 - AIR OPERATING PERMIT PROGRAM (AOP)**

322.1 Purpose. The purpose of this section is to provide for a comprehensive operating permit program consistent with the require-

ments of Title V of the Federal Clean Air Act (FCAA) Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW 70A.15.2260 (~~(70.94.161)~~) and its implementing regulation Chapter 173-401 of the Washington Administrative Code (WAC).

322.2 Applicability. The provisions of this section shall apply to all sources within the NWCAA jurisdiction excluding those regulated by the Washington State Department of Ecology Industrial Section subject to the requirements of Section 7661(a) of the FCAA or Chapter 173-401-300 WAC.

322.3 Compliance. It shall be unlawful for any person to cause or allow the operation of any source subject to the requirements of Chapter 173-401 WAC without complying with the provisions of Chapter 173-401 WAC and any permit issued under its authority.

322.4 Air Operating Permit Fees.

a) The NWCAA shall levy annual operating permit program fees as set forth in this section to cover the cost of administering its operating permit program.

b) Commencing with the effective date of the operating permit program, the NWCAA shall assess and collect annual air operating permit fees in its jurisdiction for any source specified in Section 7661(a) of Title V of the FCAA or Chapter 173-401-300 WAC (excluding sources regulated by the Washington State Department of Ecology Industrial Section). The total fees required by the NWCAA to administer the program shall be determined by a workload analysis conducted by the staff and approved annually by a resolution by the Board of Directors. Allocation of the fees to individual affected sources shall be based on the following:

1) Ten percent (10%) of the total fees shall be allocated equally among all affected sources.

2) Ninety percent (90%) of the total fees shall be allocated based on actual emissions of regulated pollutants identified in the most recent annual emission inventory or potential emissions if actual data are unavailable. A regulated pollutant for fee calculation shall include:

Nitrogen oxides (NOX);

Volatile organic compounds (VOC's);

Particulate matter with an aerodynamic particle diameter less than or equal to 10 micrometers (PM<sub>10</sub>);

Sulfur dioxide (SO<sub>2</sub>);

Lead; and

Any pollutant subject to the requirements under Section 112(b) of the FCAA not included in any of the above categories.

c) Upon assessment by the NWCAA, fees are due and payable and shall be deemed delinquent if not fully paid within 90 days. Any source that fails to pay a fee imposed under this section within 90 days of the due date shall be assessed a late penalty in the amount of 50 percent of the fee. This late penalty shall be in addition to the fee assessed under this section.

d) The NWCAA shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology to cover the Department of Ecology's program development and oversight costs attributable to subject sources within the NWCAA jurisdiction. Fees for the Department of Ecology shall be allocated to affected sources in the same manner specified in this section.

e) An affected source subject to the operating permit program that is required to pay an annual operating permit program fee shall not be required to pay a registration fee as specified in Section 324.

PASSED: November 12, 1998 AMENDED: November 12, 1999, June 9, 2011, November 17, 2011, August 8, 2024

AMENDATORY SECTION

**SECTION 324 - FEES**

324.1 Annual Registration Fees

(A) All registered air pollution sources shall pay the appropriate fee(s), which shall be established to cover the cost of administering the program, adjusted periodically based on the three-year average change of the "December annual average - Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

(B) Upon assessment by the NWCAA, registration fees are due and payable. A source shall be assessed a late penalty in the amount of 25 percent of the registration fee for failure to pay the registration fee within 30 days after the due date. The late penalty shall be in addition to the registration fee.

324.2 New Source Review Fees

(A) New source review fees and fees for review of an application to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall be submitted with each Notice of Construction (NOC) application or request for a NOC applicability determination.

(B) The applicable fee(s) shall be established to cover the direct and indirect costs of processing an application, adjusted periodically based on the three-year average change of the "December annual average - Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution by the Board of Directors of the NWCAA.

324.3 Variance Fee. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.4 Issuance of Emission Reduction Credits. The applicable fee(s) shall be established in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.5 Plan and examination, filing, SEPA review, and emission reduction credit fees may be reduced at the discretion of the Control Officer by up to 75 percent for existing stationary sources implementing pollution prevention or undertaking voluntary and enforceable emission reduction projects.

324.6 RACT Fee. The applicable fee(s) shall be established to cover the costs of developing, establishing, or reviewing categorical or case-by-case RACT requirements, adjusted periodically based on the three-year average change of the "December annual average - Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA. Fees shall be due and payable upon receipt of invoice and shall be deemed delinquent if not fully paid within 30 days of invoice.

324.7 Order Fee. The applicable fee(s) shall be established to cover the direct and indirect costs of administering the program, adjusted periodically based on the three-year average change of the "De-

ember annual average - Seattle/Tacoma/Bremerton Consumer Price Index for all Urban Consumers", rounded to the nearest dollar or other index, as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.8 Asbestos Program Fee. The applicable fee(s) shall be established to cover the direct and indirect costs of administering the program as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.9 Agricultural Burning Fee. The applicable fee(s) shall be established as described in RCW 70A.15.5090 (~~(70.94.6528)~~) and WAC 173-430-041 as referenced in NWCAA 104.1 as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.10 Outdoor Burning Fee. The applicable fee(s) shall be established to cover the cost of administering the program as set forth in the current fee schedule adopted by Resolution of the Board of Directors of the NWCAA.

324.20 Procedure for Adoption and Revision of Fee Schedules. A proposed resolution that adopts or changes any fee schedules described in this section shall be posted on the NWCAA website for not less than 30 days prior to the Board of Directors meeting at which the Board takes action on the resolution. In addition, an electronic version of the proposed fee schedule or proposed fee schedule changes shall be provided by e-mail to any person requesting notice of proposed fee schedules or proposed fee schedule changes, not less than 30 days prior to the Board meeting at which such changes are considered. It shall be the ongoing responsibility of a person requesting electronic notice of proposed fee schedule amendments to provide their current e-mail address to the NWCAA; however, no person is required to request such notice. Each notice of a proposed fee schedule or proposed fee schedule change shall provide for a comment period on the proposal of not less than 30 days. Any such proposal shall be subject to public comment at the Board meeting where such changes are considered. No final decision on a proposed fee schedule or proposed fee schedule change shall be taken until the public comment period has ended and any comments received during the public comment period have been considered.

PASSED: November 12, 1998 AMENDED: November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 9, 2012, March 14, 2013, September 11, 2014, August 8, 2024

#### AMENDATORY SECTION

#### **SECTION 350 - VARIANCES**

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

(A) The emissions occurring or proposed to occur do not endanger public health or safety; and

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

350.2 No variance shall be granted pursuant to this Section until the Board has considered the relative interests of the applicant, oth-

er owners or property likely to be affected by the discharge, and the general public.

350.3 Any variance or renewal thereof shall be granted within the requirements of Section 350.1 and for time periods and under conditions consistent with reasons therefore, and with the following limitations:

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

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

(C) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided in subsection 350.3(A) and 350.3(B), it shall be for not more than one year.

350.4 Any variance granted pursuant to this Section may be renewed on terms and conditions and for periods which would be appropriate under all circumstances including the criteria considered on the initial granting of a variance and that acquired during the existence of the variance. If a complaint is made to the board on account of the variance, no renewal thereof shall be granted unless, following a public hearing on the complaint on due notice, the board finds that renewal is justified. No renewal shall be granted except on application thereof. Any such application shall be made at least sixty (60) days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the Board shall give public notice of such application in accordance with the rules and Regulation of the Board.

350.5 A variance or renewal shall not be a right of the applicant or holder thereof but shall be at the discretion of the Board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the Board, may obtain judicial review thereof under the provisions of Section 123 or Chapter 43.21B RCW as now or hereafter amended.

350.6 Nothing in this Section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70A.15.6010 (~~(70.94.715)~~) to any person or his property.

PASSED: January 8, 1969 AMENDED: October 1, 1969, February 14, 1973, January 9, 1974, September 8, 1993, March 14, 2013, August 8, 2024

#### AMENDATORY SECTION

#### **SECTION 502 - OUTDOOR BURNING**

502.1 PURPOSE. This section establishes a program to implement the limited burning policy authorized by sections of the Washington Clean Air Act (chapter 70A.15 (~~(70.94)~~) RCW as referenced in NWCAA 104.1) pertaining to outdoor burning.



## 502.2 APPLICABILITY.

(A) This section specifically applies to:

- (1) Residential burning.
- (2) Land clearing burning.
- (3) Recreational fires.
- (4) Indian ceremonial fires.
- (5) Weed abatement fires.
- (6) Firefighting instruction fires.
- (7) Rare and endangered plant regeneration fires.
- (8) Storm or flood debris burning.
- (9) Tumbleweed burning.
- (10) Other outdoor burning.

(B) This section does not apply to:

(1) Agricultural burning (which is governed by chapter 173-430 WAC as referenced in NWCAA 104.1);

(2) Any outdoor burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreements); and

(3) Silvicultural burning (which is governed by chapter 332-24 WAC, the Washington state smoke management plan, and various laws including chapter 70A.15 ((~~70.94~~)) RCW as referenced in NWCAA 104.1).

502.3 DEFINITIONS. Unless a different meaning is clearly required by context, words and phrases used in this section shall have the following meanings:

**AGRICULTURAL BURNING** - Fires regulated under chapter 173-430 WAC as referenced in NWCAA 104.1, including, but not limited to, any incidental agricultural burning or agricultural burning for pest or disease control.

**AIR POLLUTION EPISODE** - A period when a forecast, alert, warning, or emergency air pollution stage is declared, as stated in chapter 173-435 WAC as referenced in NWCAA 104.1.

**CONSTRUCTION/DEMOLITION DEBRIS** - All material manufactured for or resulting from the construction, renovation, or demolition of buildings, roads, and other man-made structures.

**FIREFIGHTING INSTRUCTION FIRES** - Fires for instruction in methods of firefighting, including, but not limited to, training to fight structural fires, aircraft crash rescue fires, and forest fires.

**FIREWOOD** - Bare, untreated wood used as fuel in a solid fuel burning device, Indian ceremonial fire, or recreational fire.

**IMPAIRED AIR QUALITY** - A first or second stage impaired air quality condition declared by Ecology or the NWCAA in accordance with WAC 173-433-140 as referenced in NWCAA 104.1.

**INDIAN CEREMONIAL FIRE** - Fires necessary for Native American ceremonies (i.e., conducted by and for Native Americans) if part of a religious ritual.

**LAND CLEARING BURNING** - Outdoor burning of trees, stumps, shrubbery or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused).

**NATURAL VEGETATION** - Unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood.

**NONATTAINMENT AREA** - A clearly delineated geographic area designated by the Environmental Protection Agency at 40 CFR Part 81 as exceeding (or that contributes to ambient air quality in a nearby area that exceeds) a National Ambient Air Quality Standard (NAAQS) for a given criteria

pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

**NONURBAN AREAS** - Unincorporated areas within a county that are not designated as an urban growth area.

**NUISANCE** - For purposes of outdoor burning, an emission of smoke or any other air contaminant from an outdoor fire that unreasonably interferes with the use and enjoyment of the property upon which it is deposited.

**OTHER OUTDOOR BURNING** - Outdoor burning other than residential burning, land clearing burning, storm or flood debris burning, tumbleweed burning, weed abatement fires, firefighting instruction fires, rare and endangered plant regeneration fire, Indian ceremonial fires, and recreational fires. It includes, but is not limited to, any outdoor burning necessary to protect public health and safety.

**OUTDOOR BURNING** - The combustion of any material in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. Outdoor burning means all types of outdoor burning except agricultural burning, burning on lands within the exterior boundaries of Indian reservations (unless provided for by intergovernmental agreements), and silvicultural burning.

**PERMITTING AGENCY** - The agency responsible for issuing permits for a particular type of outdoor burning (including adopting a general permit) and/or enforcing all requirements of this section unless another agency agrees to be responsible for certain enforcement activities in accordance with WAC 173-425-060 (1)(a) and (6) as referenced in NWCAA 104.1.

**POLLUTANTS EMITTED BY OUTDOOR BURNING** - Carbon monoxide, carbon dioxide, particulate matter, sulfur dioxide, nitrogen oxides, lead, and various volatile organic compounds and toxic substances.

**RARE AND ENDANGERED PLANT REGENERATION FIRES** - Fires necessary to promote the regeneration of rare and endangered plants found within natural area preserves as identified in chapter 79.70 RCW.

**REASONABLE ALTERNATIVE** - A method for disposing of organic refuse (such as natural vegetation) that is available, reasonably economical, and less harmful to the environment than burning, including, but not limited to, waste reduction, recycling, energy recovery or incineration, and landfill disposal.

**RECREATIONAL FIRE** - Cooking fires, campfires, and bonfires using charcoal or firewood that occur in designated areas or on private property for cooking, pleasure, or ceremonial purposes. Fires used for debris disposal purposes are not considered recreational fires.

**RESIDENTIAL BURNING** - The outdoor burning of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by a responsible person.

**RESPONSIBLE PERSON** - Any of the following:

- (1) Any person who has applied for and received a permit for outdoor burning, or
- (2) Any person allowing, igniting or attending to an outdoor fire, or
- (3) Any person who owns or controls property on which an outdoor fire occurs.

**SILVICULTURAL BURNING** - Fires relating to the following activities for the protection of life or property and/or the public health, safety, and welfare:

- (1) Abating a forest fire hazard;

- (2) Prevention of a forest fire hazard;
- (3) Instruction of public officials in methods of forest fire-fighting;
- (4) Any silvicultural operation to improve the forest lands of the state; and
- (5) Silvicultural burning used to improve or maintain fire-dependent ecosystems for rare plants or animals within the state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

**STORM OR FLOOD DEBRIS BURNING** - Fires consisting of natural vegetation deposited on lands by storms or floods that have occurred in the previous two years and resulted in an emergency being declared or proclaimed in the area by the city, county, or state government and burned on such lands by a responsible person.

**TUMBLEWEED BURNING** - Outdoor burning to dispose of dry plants (typically Russian Thistle and Tumbleweed Mustard plants) that have been broken off and rolled about by the wind.

**URBAN GROWTH AREA** - Land, generally including and associated with an incorporated city, designated by a county for urban growth under RCW 36.70A.030.

**WEED ABATEMENT FIRES** - Outdoor burning to dispose of weeds that is not regulated under chapter 173-430 WAC as referenced in NWCAA 104.1, the Agricultural Burning rule.

**502.4 PROHIBITIONS AND RESTRICTIONS APPLYING TO ALL OUTDOOR BURNING.** The following general requirements apply to all outdoor burning regulated by this section, including any outdoor burning allowed without a permit, unless a specific exception is stated in this section. A fire protection agency, county, or conservation district may enforce its own controls that are stricter than those set forth in this section.

(A) No person may cause or allow an outdoor fire in an area where the type of burning involved is prohibited under NWCAA 502.6, or where it requires a permit under NWCAA 502.5(B), unless a permit has been issued and is in effect.

(B) **PROHIBITED MATERIALS.** It shall be unlawful for any person to cause or allow any outdoor fire containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction/demolition debris, metal or any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned except as follows:

(1) Aircraft crash rescue training fires approved and conducted in compliance with RCW 70A.15.5090 (~~(70.94.6528)~~) as referenced in NWCAA 104.1 may contain uncontaminated petroleum products.

(2) Ecology or the NWCAA may allow the limited burning of prohibited materials for other firefighting instruction fires, including those that are exempt from permits under NWCAA 502.5 (B)(6).

(3) Other outdoor burning necessary to protect public health and safety.

(C) **HAULED MATERIAL.**

(1) No outdoor fire may contain material (other than firewood) that has been hauled from an area where outdoor burning of the material is prohibited.

(2) Any outdoor burning of material hauled from areas where outdoor burning of the material is allowed requires an appropriate permit. Any property used for this purpose on an on-going basis must be:

(a) Limited to the types of burning listed in WAC 173-351-200  
(5)(b) as referenced in NWCAA 104.1 (criteria for municipal solid waste landfills), and

(b) Approved in accordance with other laws, including chapter 173-304 WAC as referenced in NWCAA 104.1 (minimum functional standards for solid waste handling) and chapter 173-400 WAC as referenced in NWCAA 104.1 (general regulations for air pollution sources).

(D) CURTAILMENTS. During episodes or periods of impaired air quality, a responsible person for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions for each day.

(1) No outdoor fire shall be ignited in a geographical area where:

(a) Ecology has declared an air pollution episode;

(b) Ecology or the NWCAA has declared an impaired air quality condition for the county; or

(c) The appropriate fire protection authority has declared a fire danger burn ban, unless the NWCAA grants an exception.

(2) A responsible person for an outdoor fire shall extinguish the fire when an air pollution episode, an impaired air quality condition, or fire danger burn ban that applies to the burning is declared.

(a) Smoke visible from all types of outdoor burning, except land clearing burning, after a time period of three hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared shall constitute prima facie evidence of unlawful outdoor burning.

(b) Smoke visible from land clearing burning after a time period of eight hours has elapsed from the time an air pollution episode, impaired air quality condition, or fire danger burn ban is declared shall constitute prima facie evidence of unlawful outdoor burning.

(E) UNLAWFUL OUTDOOR BURNING/NUISANCE. It is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance.

(F) BURNING IN OUTDOOR CONTAINERS. Outdoor containers (such as burn barrels and other wood waste incinerators not regulated under NWCAA Section 458, used for outdoor burning, must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than 0.5 inch, and they may only be used in compliance with this section.

(G) OTHER GENERAL REQUIREMENTS.

(1) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(2) No fires are to be within 50 feet of structures.

(3) Permission from a landowner or owner's designated representative must be obtained before starting an outdoor fire.

#### 502.5 OUTDOOR BURNING PERMIT PROGRAM/REQUIREMENTS

(A) PERMIT PROGRAM.

(1) The NWCAA may consult with fire protection authorities, conservation districts, or counties to determine if any of these agencies are capable and willing to serve as the permitting agency and/or enforcing agency for particular types of burning.

(2) The NWCAA may enter into agreements with any capable agencies to identify the permitting agencies and enforcing agencies for each

type of burning and determine the type of permit appropriate for each where a permit is required.

(3) Permitting agencies may use a verbal, electronic, written, or general permit established by rule for any type of outdoor burning that requires a permit.

(4) A written permit should be used, where feasible, for land clearing burning, storm or flood debris burning in areas where residential burning and land clearing burning are prohibited under NWCAA 502.6 (A), (B), or (C), and other outdoor burning (except any other outdoor burning necessary to protect public health and safety).

(5) Any person having an outstanding penalty obligation to the NWCAA as a result of a violation of Section 502, except under appeal to the Pollution Control Hearings Board (PCHB) or other judicial body, shall be denied additional outdoor burning permits until the remaining balance is paid.

(B) TYPES OF BURNING THAT REQUIRE A PERMIT. Except as otherwise stated, a permit is required for the following types of outdoor burning:

(1) Residential burning (except in nonurban areas of any county with an unincorporated population of less than 50,000);

(2) Land clearing burning;

(3) Storm or flood debris burning;

(4) Tumbleweed burning (except in counties with a population of less than 250,000);

(5) Weed abatement fires;

(6) Firefighting instruction fires for training to fight structural fires in urban growth areas and cities with a population over 10,000, and all other firefighting instruction fires, except:

(a) Firefighting instruction fires for training to fight structural fires as provided in RCW 52.12.150;

(b) Aircraft crash rescue fires as provided in RCW 70.94.650(5) as referenced in NWCAA 104.1; and

(c) Forest fires;

(7) Rare and endangered plant regeneration fires;

(8) Indian ceremonial fires (except on lands within the exterior boundaries of Indian reservations unless provided for by intergovernmental agreement);

(9) Recreational fires with a total fuel area greater than three feet in diameter and/or two feet in height (except in the nonurban areas of counties with an unincorporated population of less than 50,000); and

(10) Other outdoor burning if specifically authorized by the NWCAA.

(C) FEES.

The fee for outdoor burning permits shall be as established in NWCAA 324.10. The amount of the fee will not exceed the level necessary to recover the costs of administering and enforcing a permit program.

(D) REQUIREMENTS FOR RESIDENTIAL BURNING.

The following conditions apply to all residential burning allowed without a permit under NWCAA 502.5 (B)(1) or allowed under a general, verbal, written, or electronic permit. Persons unable to meet these requirements and the requirements in NWCAA 502.4 must apply for and receive a written permit before burning. Failure to comply with all applicable requirements voids any applicable permit.

(1) A responsible person for the fire must contact the permitting agency and/or any other designated source for information on the burning conditions of each day.

(2) A fire may not be ignited, and must be extinguished, if an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning, is declared for the area.

(3) The fire must not include prohibited materials as listed in NWCAA 502.4(B).

(4) The fire must not include materials hauled from another property.

(5) If any emission from the fire is detrimental to the health, safety, or welfare of any person, if it causes damage to property or business, or if it causes a nuisance, the fire must be extinguished immediately.

(6) A person capable of extinguishing the fire must attend it at all times and the fire must be extinguished before leaving it.

(7) No fires are to be within 50 feet of structures.

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

(9) Any burn pile must not be larger than four feet in diameter and three feet high.

(10) Only one pile at a time may be burned, and each pile must be extinguished before lighting another.

(11) If an outdoor container is used for burning, it must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than 0.5 inch.

(12) No fire is allowed within 500 feet of forest slash.

(E) FIELD RESPONSE AND ENFORCEMENT

(1) Any agency that issues permits, or adopts a general permit for any type of burning in an area, is responsible for field response to outdoor burning complaints and enforcement of all permit conditions and requirements unless another agency has agreed to be responsible.

(2) Except for enforcing Section 502.4 (E)(1)(d), the NWCAA will be responsible for enforcing any requirements that apply to burning that are prohibited or exempt from permits in areas of its jurisdiction, unless another agency agrees to be responsible.

(3) Permitting agencies and enforcing agencies may require that corrective action be taken, and may assess penalties to the extent allowed if they discover noncompliance.

502.6 AREAS AND TYPES OF PROHIBITED OUTDOOR BURNING.

(A) NONATTAINMENT AREAS. Residential burning and land clearing burning shall not occur in any areas that exceed federal or state ambient air quality standards for pollutants emitted by outdoor burning. These areas are limited to all nonattainment areas and former nonattainment areas for carbon monoxide, particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>), sulfur dioxide, nitrogen dioxide, and lead.

(B) URBAN GROWTH AREAS. No person shall cause or allow residential burning and land clearing burning in any urban growth areas.

(C) CITIES OVER 10,000 POPULATION. Residential burning and land clearing burning shall not occur in any cities having a population greater than 10,000 people. Cities having this population must be identified by using the most current population estimates available for each city.

(D) HIGH DENSITY AREAS. Land clearing burning shall not occur in any area having a general population density of 1,000 or more persons per square mile. All areas having this density must be identified by using the most current population data available for each census block group and dividing by the land area of the block group in square miles.

(E) AREAS WITH A REASONABLE ALTERNATIVE TO BURNING. Residential burning, land clearing burning, storm or flood debris burning, tumbleweed burning, weed abatement fires and other outdoor burning of organic refuse shall not occur in any area, including the areas identified in subsections 502.6(A) through 502.6(D), when a reasonable alternative for that type of burning is found to exist in the area for that type of burning. A reasonable alternative for a particular type of burning exists when the alternative is available and reasonably economical and less harmful to the environment as defined in WAC 173-425-040(5) as referenced in NWCAA 104.1.

(F) No person shall cause or allow outdoor burning at permanently-located business establishments excluding land clearing operations.

PASSED: January 8, 1969 AMENDED: June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, September 11, 2014, August 8, 2024

AMENDATORY SECTION

**SECTION 504 - AGRICULTURAL BURNING**

504.1 Purpose. This Section establishes fees and controls for agricultural burning in the NWCAA jurisdiction in order to minimize adverse health effects and environmental impacts, consistent with best management practices and the responsibilities of the NWCAA under chapter 173-430 WAC as referenced in NWCAA 104.1, RCW 70A.15.5090 (~~((70.94.6528))~~) as referenced in NWCAA 104.1, 70A.15.5110 (~~((70.94.6532))~~) as referenced in NWCAA 104.1, and 70A.15.5070 (~~((70.94.6524))~~) as referenced in NWCAA 104.1. All agricultural burning as defined in chapter 173-430 WAC as referenced in NWCAA 104.1 shall be conducted in accordance with the provisions of that chapter.

504.2 Applicability. This Section applies to agricultural burning in all areas of the NWCAA jurisdiction unless specifically exempted. Nothing in Section 504 shall apply to silvicultural burning or other outdoor burning. Propane flaming for the purpose of vegetative debris removal is considered agricultural burning.

504.3 Conditions. All agricultural burning, except for agricultural burning that is incidental to commercial agricultural activities, requires a permit and payment of a fee issued by the NWCAA.

504.4 Fees. In accordance with RCW 70A.15.5090 (~~((70.94.6528))~~) as referenced in NWCAA 104.1, the NWCAA shall assess a fee for all agricultural burning permits as specified in NWCAA 324.9.

PASSED: February 14, 1973 AMENDED: August 9, 1978, June 7, 1990, May 9, 1996, May 14, 1998, November 12, 1998, November 8, 2007, September 11, 2014, August 8, 2024

AMENDATORY SECTION

**SECTION 506 - SOLID FUEL BURNING DEVICES**

506.1 PURPOSE

This Section establishes emission standards, certification standards and procedures, burn ban rules, and fuel restrictions for solid fuel burning devices in order to maintain compliance with the National Ambient Air Quality Standards (NAAQS) for PM<sub>2.5</sub> and to further the policy of the NWCAA as stated in Section 102 of this Regulation.

506.2 DEFINITIONS

All terms not defined herein shall have the meaning given them in WAC 173-433-030 as referenced in NWCAA 104.1 and NWCAA Section 200.

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CERTIFIED - Meeting at least one of the following:

(1) Has been determined by Ecology to meet Washington emission performance standards pursuant to RCW 70A.15.3530 (~~(70.94.457)~~) and WAC 173-433-100 as referenced in NWCAA 104.1;

(2) Meets EPA emission performance standards when tested by an accredited independent laboratory and labeled according to procedures specified by EPA in 40 CFR 60 Subpart AAA as referenced in NWCAA 104.2; or

(3) Was manufactured prior to 1989 and meets the "Oregon Department of Environmental Quality Phase 2" emissions standards contained in Subsections (2) and (3) of Section 340-21-115, and certified in accordance with "Oregon Administrative Rules, Chapter 340, Division 21 - Woodstove Certification" dated November 1984.

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#### 506.3 EMISSION PERFORMANCE STANDARDS

(A) Solid Fuel Burning Devices. Except as provided in Sections 506.3 (B) and (C), a person shall not advertise to sell, offer to sell, sell, bargain, exchange, or give away any solid fuel burning device unless it complies with WAC 173-433-100 as referenced in NWCAA 104.1 which includes meeting the following particulate air contaminant emission standards:

(1) 2.5 g/hr for catalytic woodstoves and

(2) 4.5 g/hr for all other solid fuel burning devices.

(B) Fireplaces. Except as provided in NWCAA 506.3(C), a person shall not advertise to sell, offer to sell, sell, bargain, exchange, or give away a factory-built fireplace unless it meets 40 CFR 60 Subpart AAA as referenced in NWCAA 104.2 or equivalent standard that may be established by the state building code council by rule. Particulate emissions from factory-built fireplaces shall not exceed 7.3 g/kg.

(C) Solid fuel burning devices which have been rendered permanently inoperable are exempt from NWCAA 506.3 (A) and (B).

#### 506.4 INSTALLATION OF SOLID FUEL BURNING DEVICES

(A) No new or used solid fuel burning device shall be installed in new or existing buildings unless such device meets Washington state emission performance standards in WAC 173-433-100 as referenced in NWCAA 104.1. Any solid fuel burning device not meeting the applicable standards at the time of installation must be removed or rendered permanently inoperable.

(B) An adequate source of heat other than a solid fuel burning device is required in all new and substantially remodeled residential and commercial construction. The rule shall apply to:

(1) Areas designated by a county to be an urban growth area under chapter 36.70A RCW and

(2) Areas designated by the EPA as being in nonattainment for particulate matter.

#### 506.5 OPACITY STANDARDS

(A) Opacity level. Any person shall not cause or allow emission of a smoke plume from any solid fuel burning device to exceed an average of 20 percent opacity for 6 consecutive minutes in any 1-hour period. This limit does not apply during the starting of a new fire for a period not to exceed 20 minutes in any 4-hour period.

(B) Test methods and procedures. EPA Method 9 or EPA Alternative Method 082 will be used to determine compliance with this Section.

(C) Enforcement. Smoke visible from a chimney, flue or exhaust duct in excess of the opacity standard shall constitute prima facie evidence of unlawful operation of an applicable solid fuel burning device. This presumption may be refuted by demonstration that the smoke was not caused by an applicable solid fuel burning device.



## 506.6 FUEL TYPES

(A) A person shall cause or allow only the following materials to be burned in a solid fuel burning device:

- (1) Seasoned wood,
- (2) An amount of paper necessary for starting a fire, and
- (3) Coal with sulfur content less than 1.0% by weight burned in a coal stove.

(B) All other materials are prohibited from being burned in a solid fuel burning device, including, but not limited to: garbage, treated pallets, treated lumber, fencing, treated wood, plastic and plastic products, rubber products, animal carcasses, asphaltic products, waste petroleum products, paints and chemicals, paper (other than an amount necessary to start a fire), or any substance that emits dense smoke or obnoxious odors when burned.

## 506.7 AIR QUALITY BURN BANS

## (A) Stage 1 Burn Ban

No person shall operate a solid fuel burning device located in a geographic area for which NWCAA has called a Stage 1 Burn Ban unless the solid fuel burning device is certified or a non-affected pellet stove except as provided in NWCAA 506.8.

(1) A Stage 1 Burn Ban may be called when forecasted meteorological conditions are predicted to cause PM<sub>2.5</sub> levels to reach or exceed 35 micrograms per cubic meter, measured on a 24-hour average, within 48 hours, except for areas of PM<sub>2.5</sub> nonattainment or areas at risk for PM<sub>2.5</sub> nonattainment.

(2) For a county containing PM<sub>2.5</sub> nonattainment areas or areas at risk for PM<sub>2.5</sub> nonattainment, and, when feasible, only for the necessary portions of the county, a Stage 1 Burn Ban may be called when forecasted meteorological conditions are predicted to cause PM<sub>2.5</sub> levels to reach or exceed 30 micrograms per cubic meter, measured on a 24-hour average, within 72 hours.

## (B) Stage 2 Burn Ban

No person shall operate a solid fuel burning device located in a geographic area for which NWCAA has called a Stage 2 Burn Ban except as provided in NWCAA 506.8.

(1) A Stage 2 Burn Ban may be called when:

(a) A Stage 1 Burn Ban is already in effect and has not reduced the trend of rising PM<sub>2.5</sub> levels adequately;

(b) The 24-hour average of PM<sub>2.5</sub> levels have already reached or exceeded 25 micrograms per cubic meter; and

(c) Forecasted meteorological conditions are not expected to allow levels of PM<sub>2.5</sub> to decline below 25 micrograms per cubic meter for a period of 24 hours or more from the time that PM<sub>2.5</sub> is measured at the trigger level.

(2) A Stage 2 Burn Ban may be called without first calling a Stage 1 Burn Ban only when all of the following occur:

(a) PM<sub>2.5</sub> levels have reached or exceeded 25 micrograms per cubic meter, measured on a 24-hour average;

(b) Meteorological conditions have caused PM<sub>2.5</sub> levels to rise rapidly;

(c) Meteorological conditions are predicted to cause PM<sub>2.5</sub> levels to exceed 35 micrograms per cubic meter, measured on a 24-hour average, within 24 hours; and

(d) Meteorological conditions are highly likely to prevent sufficient dispersion of PM<sub>2.5</sub>.

(3) For a county containing PM<sub>2.5</sub> nonattainment areas or areas at risk for PM<sub>2.5</sub> nonattainment and, when feasible, only the necessary portions of the county, a Stage 2 Burn Ban may be called without first calling a Stage 1 Burn Ban only when NWCAA 506.7 (B)(2)(a), (b), and (d) have been met and meteorological conditions are predicted to cause PM<sub>2.5</sub> levels to reach or exceed 30 micrograms per cubic meter, measured on a 24-hour average, within 24 hours.

(C) Air Pollution Episode Declared by Ecology

No person shall operate a solid fuel burning device located in a geographic area for which Ecology has declared an alert, warning, or emergency air pollution episode pursuant to WAC 173-433-150(3), chapter 173-435 WAC, and RCW 70A.15.6010 (~~70.94.715~~) as referenced in NWCAA 104.1.

(D) Upon declaration and for the duration of a Stage 1 or Stage 2 Burn Ban or an air pollution episode, new solid fuel shall be withheld from any solid fuel burning device that is restricted from operating under NWCAA 506.7 (A), (B), and (C).

(E) Smoke visible from a chimney, flue, or exhaust duct after 3 hours has elapsed from the time of declaration of a Stage 1 or Stage 2 Burn Ban or an air pollution episode shall constitute prima facie evidence of unlawful operation of a solid fuel burning device if that solid fuel burning device is restricted from operating under NWCAA 506.7 (A), (B), and (C). This presumption may be refuted by demonstration that the smoke was not caused by a restricted solid fuel burning device.

506.8 EXEMPTIONS

(A) The provisions of NWCAA 506.7 do not apply to any person who possesses a valid exemption approved by NWCAA. NWCAA may issue exemptions to any person who demonstrates any of the following to the satisfaction of NWCAA:

(1) One-Time 10-Day Temporary Exemption

NWCAA may issue one-time 10-day temporary solid fuel burning device exemptions if persons making such requests indicate they qualify for an exemption under NWCAA 506.8 (A)(2), (3), or (4) and provide all of the information below. Unless required otherwise by NWCAA, such exemption requests may be taken via telephone.

(a) Full name,

(b) Mailing address,

(c) Telephone number,

(d) The exemption under NWCAA 506.8 (A)(2), (3), or (4) for which the applicant believes they qualify,

(e) Physical address where the exemption applies,

(f) Description of the habitable space for which the exemption is being requested,

(g) A statement that the applicant has not previously requested such an exemption for the same physical address. Exceptions may be allowed for unrelated breakdowns of the primary heat source, and

(h) A statement that all of the information provided is accurate.

(2) Low Income

NWCAA may issue written low income exemptions. The applicant must demonstrate an economic need to burn solid fuel for residential space heating purposes by qualifying under the low income energy assistance program (LIEAP) pursuant to economic guidelines established by the U.S. Office of Management and Budget.

(3) Temporary Breakdown of Primary Heat Source

NWCAA may issue written exemptions for a residence or commercial establishment if all of the following apply:

(a) A person in a residence or commercial establishment does not have an adequate source of heat without using a solid fuel burning device.

(b) The applicant demonstrates that the primary heating system, other than a solid fuel burning device, is temporarily inoperable for reasons other than the applicant's own actions. When applying for this exemption, the applicant must submit a compliance schedule for bringing the primary heating system, other than a solid fuel burning device, back into operation to be used as the primary heating source. Unless otherwise approved by NWCAA, exemptions will be limited to 30 calendar days.

A person's income level is not a determining factor in the approval or denial of an exemption under this provision. Exemptions based on income level are addressed in NWCAA 506.8 (A)(2).

(4) No Adequate Source of Heat

NWCAA may issue written exemptions for a residence if both of the following apply:

(a) The residence was constructed prior to July 1, 1992 and

(b) A person in the residence does not have an adequate source of heat without using a solid fuel burning device.

A person's income level is not a determining factor in the approval or denial of an exemption under this provision. Exemptions based on income level are addressed in NWCAA 506.8 (A)(2).

(B) Exemption Duration and Renewals

Unless otherwise specified, written exemptions will expire June 30th of each year. Exemptions in NWCAA 506.8 (A)(2), (3), and (4) may be renewed by NWCAA, provided the applicant meets the applicable requirements at the time of exemption renewal. For renewals under NWCAA 506.8 (A)(2), the applicant must demonstrate the low income status is met each time application is made. Exemption requests may be denied by NWCAA, regardless of the applicant's exemption history.

(C) Residential and Commercial Exemption Limitations

Except for commercial establishments qualifying under NWCAA 506.8 (A)(3), exemptions are limited to residences. Exemptions are limited to normally inhabited areas of a residence, which includes areas used for living, sleeping, cooking, and eating. Exemptions will not be issued for attached and detached garages, shops, and outbuildings. For commercial establishments, exemptions will be limited to areas identified in the exemption.

PASSED: July 14, 2005 AMENDED: November 8, 2007, October 8, 2015, August 11, 2016, August 8, 2024

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

**WSR 24-17-025  
PERMANENT RULES  
OLYMPIC REGION  
CLEAN AIR AGENCY**

[Filed August 9, 2024, 3:12 p.m., effective September 9, 2024]

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

Purpose: To update the effective date of the federal regulations and state regulations that were previously adopted by the Olympic Region Clean Air Agency (ORCAA). This proposal changes the reference date to July 1, 2024.

Citation of Rules Affected by this Order: Amending ORCAA Regulations 1.11 and 1.12.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Adopted under notice filed as WSR 24-12-089 on June 5, 2024.

Date Adopted: July 10, 2024.

Jeff C. Johnston, Ph.D.  
Executive Director

**AMENDATORY SECTION**

**RULE 1.11 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202(~~3~~)4.

**AMENDATORY SECTION**

**RULE 1.12 STATE REGULATION REFERENCE DATE**

Whenever state regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202(~~3~~)4.

## WSR 24-17-038

## PERMANENT RULES

## DEPARTMENT OF LICENSING

[Filed August 13, 2024, 9:12 a.m., effective September 13, 2024]

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

Purpose: Amend WAC 308-104-050 to reflect the department of licensing's current process and recent statutory changes related to RCW 46.20.100 Persons under eighteen, per a rule-making petition from the public.

Citation of Rules Affected by this Order: Amending WAC 308-104-050 Waiver of driver education requirement—When granted.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, and 46.20.100 (2)(c)(iii) Persons under eighteen.

Adopted under notice filed as WSR 24-10-102 on May 1, 2024.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: August 13, 2024.

Ellis Starrett  
Rules and Policy Manager

## OTS-5336.2

AMENDATORY SECTION (Amending WSR 90-17-028, filed 8/8/90, effective 9/8/90)

**WAC 308-104-050 Waiver of driver education requirement—When granted.** No waiver of the traffic safety education course requirement for applicants under the age of 18 years shall be issued unless ~~((+ (1)))~~ the parent, guardian, responsible adult as defined in RCW 46.20.075 (9)(b), or other person having the care, custody and control of the applicant certifies that the applicant is:

~~((a))~~ (1) Unable to take or successfully complete a traffic safety education course and the reasons therefor ~~((r))~~; and

~~((b))~~ (2) That there exists ~~((an immediate))~~ a need to operate a motor vehicle. The ~~((immediate))~~ need shall be set forth in as much detail as possible. For the purpose of meeting this requirement, "~~((an immediate))~~ a need exists" shall be construed to mean that the capability to drive will reduce or help eliminate the negative consequences of the situation that created the ~~((immediate))~~ need to drive. If

operating a motor vehicle does not reduce the hardship which was created by the situation, "~~((an immediate))~~ a need" does not exist(~~(; and~~  
~~(2) The waiver is approved by a majority of a three member committee consisting of two department of licensing members which shall include any two of the following: The assistant director for driver services, the administrator of hearings, the administrator of driver responsibility, the administrator or assistant administrator(s) for driver operations, and one member who shall be the supervisor of driver and safety education in the office of the superintendent of public instruction or his/her designee. The committee shall have the power to set definite restrictions as to hours of the day and routes or areas of travel permitted under the waiver until the applicant has completed a driver education course or has reached the age of 18 years)).~~

## WSR 24-17-048

## PERMANENT RULES

## DEPARTMENT OF ECOLOGY

[Order 22-04—Filed August 14, 2024, 7:56 a.m., effective September 14, 2024]

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

Purpose: The Washington state department of ecology (ecology) is adopting amendments to chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington. We adopted revisions in this rule making to the following: WAC 173-201A-240 Toxic substances, specifically updating aquatic life toxics criteria in Table 240 and footnotes; and minor, nonsubstantive edits to rule language in WAC 173-201A-240 to correct typographical, calculation, and formatting errors, and to cite federal regulations for human health criteria where they apply for Clean Water Act purposes.

We are adopting revisions to aquatic life toxics criteria to provide additional water quality protection for organisms that live in water.

We reviewed all of Washington's current aquatic life toxics criteria to ensure they are consistent with nationally recommended water quality criteria issued by the Environmental Protection Agency (EPA). We evaluated the current published science for each of Washington's aquatic life toxic criteria and new aquatic life criteria for toxic substances. We also evaluated information on pollutant protection levels for endangered species in Oregon and Idaho and used that information to develop state-specific protection levels for endangered species and their populations in Washington's waters.

We evaluated current scientific data, methods, and modeling tools to update protection levels necessary for aquatic life in Washington's surface waters. We have also added new toxic substances into the water quality standards that EPA has recommended or that the state of Washington designates as high priority for the protection of aquatic life. In total, we added criteria for 14 new toxic chemicals and updated criteria for 16 toxic chemicals that are currently in our water quality standards.

The lists below show existing criteria that we updated, and new criteria we adopted that were not previously included in Washington's water quality standards for aquatic life toxics.

**Revisions to existing criteria in WAC 173-201A-240:**

- Aldrin (freshwater and saltwater acute)
- Arsenic (freshwater acute and chronic)
- Cadmium (freshwater acute and chronic and saltwater acute and chronic)
- Chromium III (freshwater acute and chronic)
- Chromium VI (freshwater acute and chronic)
- Copper (freshwater acute and chronic)
- Cyanide (freshwater acute and chronic)
- Dieldrin (freshwater acute and chronic)
- Endrin (freshwater acute and chronic)
- gamma-BHC (freshwater acute)
- Mercury (freshwater acute)
- Nickel (freshwater acute and chronic)
- Pentachlorophenol (freshwater acute and chronic and saltwater chronic)
- Selenium (freshwater acute and chronic)
- Silver (freshwater acute and saltwater acute)

- Zinc (freshwater acute and chronic)

**New criteria adopted into WAC 173-201A-240:**

- 6PPD-quinone (freshwater acute)
- Aluminum (freshwater acute and chronic)
- Acrolein (freshwater acute and chronic)
- Carbaryl (freshwater acute and chronic and saltwater acute)
- Demeton (freshwater and saltwater chronic)
- Diazinon (freshwater acute and chronic and saltwater acute and chronic)
- Guthion (freshwater and saltwater chronic)
- Malathion (freshwater and saltwater chronic)
- Methoxychlor (freshwater and saltwater chronic)
- Mirex (freshwater and saltwater chronic)
- Nonylphenol (freshwater acute and chronic and saltwater acute and chronic)
- PFOS (freshwater acute and chronic and saltwater acute)
- PFOA (freshwater acute and chronic and saltwater acute)
- Silver (freshwater and saltwater chronic)
- Tributyltin (freshwater acute and chronic and saltwater acute and chronic)

Citation of Rules Affected by this Order: Amending chapter 173-201A WAC.

Statutory Authority for Adoption: Water pollution control, chapter 90.48 RCW, provides clear and direct authority to ecology to revise the surface water quality standards, RCW 90.48.035.

Other Authority: 40 C.F.R. 131.20 requires states to periodically review and update the water quality standards.

Adopted under notice filed as WSR 24-07-035 on March 13, 2024.

Changes Other than Editing from Proposed to Adopted Version: Below is a summary of changes to WAC 173-201A-240, organized by toxic substance. For a full description of changes, including a table listing changes to the numeric criteria from the rule proposal to adoption, see the concise explanatory statement available on the rule-making web page, at <https://ecology.wa.gov/regulations-permits/laws-rules-rulemaking/rulemaking/wac-173-201a-aquatic-life-toxics-criteria>.

**Invasive Species:** We have decided to include invasive species into the criteria derivation if they have established resident populations in North America. This decision is based on EPA's comment that invasive species should be included because they can serve as a surrogate for native species in North America. The reincorporation of invasive species into criteria derivations has resulted in slight changes to the proposed criteria. We have detailed specific changes to criteria in the sections below.

**6PPD-quinone:** We integrated methods used in EPA's 6PPD-quinone screening level calculations that utilize time-weighted average median lethal concentrations (LC50s) and incorporated additional scientific studies released since the rule proposal, resulting in an increase (i.e., less stringent) in the 6PPD-quinone criterion.

**Aluminum and Copper:** We changed the geographical representation of default criteria for freshwater aluminum and copper (acute and chronic) criteria from eastern and western Washington to EPA level II ecoregions. Level II ecoregions represent three geographic areas in Washington state: Western cordillera, marine west coast forest, and cold desert. This better represents the geographical features that contribute to water quality conditions. Our dataset has limited geo-



spatial representation in some EPA level III ecoregions, and we were unable to develop default criteria at a finer scale.

**Aluminum:** We added a footnote to the freshwater aluminum multiple linear regression (MLR)-based criteria indicating the criteria are based on total recoverable aluminum. We further noted that analytical methods that measure the bioavailable fraction in ambient waters may be utilized when allowed by state and federal regulations (e.g., utilizing a less aggressive initial acid digestion, such as to a pH of approximately 4 or lower). The bioavailable fraction method more accurately reflects toxicity under natural instream conditions.

**Arsenic:** We changed the saltwater arsenic criteria (acute and chronic) from state-specific criteria to EPA national recommendations for aquatic life. The EPA's recommendations are less stringent than the saltwater arsenic criteria that were proposed during the rule proposal. During the rule proposal, we mistakenly used the 1st percentile of the genus sensitivity distribution for the saltwater arsenic criteria. Our rule strategy indicates that the 1st percentile should only be used when there is a jeopardy determination in another Region 10 state. While the Swinomish Tribe biological evaluation suggests effects from the saltwater arsenic criteria, we believe the data used in the analysis is out-of-date and that more recent data will significantly lower the magnitude of effects described. We encourage EPA and the services to reevaluate saltwater arsenic criteria when able. We did not find any new marine arsenic studies that would effectively lower the arsenic criteria using EPA 1985 guidance.

**Chromium III:** We changed the proposed freshwater chromium III (acute and chronic) from EPA national recommended values to more stringent state-specific criteria.

Our rule strategy includes evaluating new scientific studies when a Region 10 state received a "likely to adversely affect" ESA determination, which occurred for bull trout in Oregon. Two new toxicity studies have been incorporated into the freshwater acute chromium III criterion, leading to lower acute chromium III criteria compared to EPA recommendations. This subsequently led to a lower freshwater chronic chromium III criterion because the chronic criterion is based on an acute-to-chronic ratio (ACR). A chronic criterion dependent upon an ACR uses the final acute value to derive the criterion. Thus, the chronic criterion is directly linked to any changes to the acute criterion.

**Chromium VI:** We removed some toxicity studies used in the proposed rule that did not meet data qualifications. This resulted in an increased freshwater chronic chromium VI criterion compared to the rule proposal.

**Cyanide:** The incorporation of new scientific studies and recalculation of toxicity values to the free cyanide form led to a decrease (i.e., more stringent) in the criterion. This subsequently led to a decrease in the freshwater chronic cyanide criterion because the chronic criterion is based on an ACR. A chronic criterion dependent upon an ACR uses the final acute value to derive the criterion. Thus, the chronic criterion is directly linked to any changes to the acute criterion.

**Methoxychlor:** We incorrectly reported EPA recommended criteria as 0.3 micrograms per liter ( $\mu$ /L) for methoxychlor chronic criteria (freshwater and saltwater) in our proposed rule language. EPA recommends 0.03  $\mu$ /L. The number was incorrectly reported in the draft rule language, but correctly reported in the technical support document. We have made the correction in our final rule language.

**Nickel:** We incorporated new scientific studies into the freshwater acute and chronic nickel criteria that were suggested during the public comment period as well as the reincorporation of invasive species studies that were previously removed. The addition of new chronic studies allowed for the use of the eight-family approach for the derivation of the chronic criterion rather than the ACR ratio approach used in the rule proposal. The result is an increased (i.e., less stringent) acute and chronic criteria for nickel.

**Pentachlorophenol:** The freshwater acute pentachlorophenol criterion was recalculated using genus mean acute values (GMAVs) ranked 2-5, in accordance with EPA 1985 derivation guidelines for aquatic life criteria when there are greater than 59 GMAVs. This led to an increase (i.e., less stringent) in the freshwater acute pentachlorophenol criterion. This subsequently led to a reduced freshwater chronic pentachlorophenol criterion because the chronic criterion is based on ACR. A chronic criterion dependent upon ACR uses the final acute value to derive the criterion. Thus, the chronic criterion is directly linked to any changes to the acute criterion.

**Silver:** We removed scientific studies that did not meet data qualifications from the freshwater acute silver criterion derivation, resulting in a decrease (i.e., more stringent) in the criterion. This subsequently led to a lower freshwater chronic silver criterion because the chronic criterion is based on ACR. A chronic criterion dependent upon ACR uses the final acute value to derive the criterion. Thus, the chronic criterion is directly linked to any changes to the acute criterion.

We added a new scientific study to the saltwater acute derivation, resulting in an increased (i.e., less stringent) criterion. This subsequently led to a higher saltwater chronic silver criterion because the chronic criterion is based on ACR. A chronic criterion dependent upon ACR uses the final acute value to derive the criterion. Thus, the chronic criterion is directly linked to any changes to the acute criterion.

**Zinc:** We added scientific studies to the freshwater acute zinc criterion that met data qualifications, resulting in an increase in the criterion (i.e., less stringent). The freshwater acute zinc criterion was also recalculated using GMAVs ranked 2-5, in accordance with EPA 1985 derivation guidelines for aquatic life criteria when there are greater than 59 GMAVs.

The addition of new chronic studies allowed for the chronic zinc criterion to be calculated using the eight-family approach rather than the ACR ratio approach used in the rule proposal. The incorporation of new scientific studies into the freshwater chronic zinc criterion led to a decreased (i.e., more stringent) criterion.

A final cost-benefit analysis is available by contacting Marla Koberstein, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504, phone 360-628-6376, for Washington relay service or TTY call 711 or 877-833-6341, email [swqs@ecy.wa.gov](mailto:swqs@ecy.wa.gov), website <https://apps.ecology.wa.gov/publications/SummaryPages/2410033.html>.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: August 14, 2024.

Laura Watson  
Director

## OTS-5054.9

AMENDATORY SECTION (Amending WSR 20-02-091, filed 12/30/19, effective 1/30/20)

**WAC 173-201A-240 Toxic substances.** (1) Toxic substances shall not be introduced above natural background levels in waters of the state which have the potential either singularly or cumulatively to adversely affect characteristic water uses, cause acute or chronic toxicity to the most sensitive biota dependent upon those waters, or adversely affect public health, as determined by the department.

(2) The department shall employ or require chemical testing, acute and chronic toxicity testing, and biological assessments, as appropriate, to evaluate compliance with subsection (1) of this section and to ensure that aquatic communities and the existing and designated uses of waters are being fully protected.

(3) USEPA Quality Criteria for Water, 1986, as revised, shall be used in the use and interpretation of the values listed in subsection (5) of this section.

(4) Concentrations of toxic, and other substances with toxic propensities not listed in Table 240 of this section shall be determined in consideration of USEPA Quality Criteria for Water, 1986, and as revised, and other relevant information as appropriate.

(5) The following criteria, found in Table 240, shall be applied to all surface waters of the state of Washington. Values are µg/L for all substances except ammonia and chloride which are mg/L, tissue-based aquatic life criteria for selenium, perfluorooctane sulfonic acid (PFOS), and perfluorooctanoic acid (PFOA) which are mg/kg, and asbestos which is million fibers/L. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act. The department shall ensure there are early opportunities for public review and comment on proposals to develop revised criteria.

(a) **Aquatic life protection.** The department may revise the criteria in Table 240 for aquatic life on a statewide or water body-specific basis as needed to protect aquatic life occurring in waters of the state and to increase the technical accuracy of the criteria being applied. The department shall formally adopt any appropriate revised criteria as part of this chapter in accordance with the provisions established in chapter 34.05 RCW, the Administrative Procedure Act.

(b) **Human health protection.** The following provisions apply to the human health criteria in Table 240. All waters shall maintain a level of water quality when entering downstream waters that provides for the attainment and maintenance of the water quality standards of those downstream waters, including the waters of another state. The human health criteria in the tables were calculated using a fish consumption rate of 175 g/day. Criteria for carcinogenic substances were calculated using a cancer risk level equal to one-in-one-million, or as otherwise specified in this chapter. The human health criteria calculations and variables include chronic durations of exposure up to ((seventy)) 70 years. All human health criteria for metals are for total metal concentrations, unless otherwise noted. Dischargers have the obligation to reduce toxics in discharges through the use of AKART.

**Table 240  
Toxics Substances Criteria**

((Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria – Freshwater		Aquatic Life Criteria – Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
<b>Metals:</b>								
Antimony	7440360	Metals, cyanide, and total phenols	-	-	-	-	12	180
Arsenic	7440382	Metals, cyanide, and total phenols	360.0 (e,dd)	190.0 (d,dd)	69.0 (e,ll,dd)	36.0 (d,cc,ll,dd)	10 (A)	10 (A)
Asbestos	1332214	Toxic pollutants and hazardous substances	-	-	-	-	7,000,000 fibers/L (C)	-
Beryllium	7440417	Metals, cyanide, and total phenols	-	-	-	-	-	-
Cadmium	7440439	Metals, cyanide, and total phenols	(i,e,dd)	(j,d,dd)	42.0 (e,dd)	9.3 (d,dd)	-	-
Chromium (III)	16065831	Metals, cyanide, and total phenols	(m,e,gg)	(n,d,gg)	-	-	-	-
Chromium (VI)	18540299	Metals, cyanide, and total phenols	15.0 (e,l,ii,dd)	10.0 (d,jj,dd)	1,100.0 (e,l,ll,dd)	50.0 (d,ll,dd)	-	-
Copper	7440508	Metals, cyanide, and total phenols	(o,e,dd)	(p,d,dd)	4.8 (e,ll,dd)	3.1 (d,ll,dd)	1,300 (C)	-
Lead	7439921	Metals, cyanide, and total phenols	(q,e,dd)	(r,d,dd)	210.0 (e,ll,dd)	8.1 (d,ll,dd)	-	-
Mercury	7439976	Metals, cyanide, and total phenols	2.1 (e,kk,dd)	0.012 (d,ff,s)	1.8 (e,ll,dd)	0.025 (d,ff,s)	(G)	(G)
Methylmercury	22967926	Nonconventional	-	-	-	-	-	-
Nickel	7440020	Metals, cyanide, and total phenols	(t,e,dd)	(u,d,dd)	74.0 (e,ll,dd)	8.2 (d,ll,dd)	150	190
Selenium	7782492	Metals, cyanide, and total phenols	20.0 (e,ff)	5.0 (d,ff)	290 (e,ll,dd)	71.0 (d,x,ll,dd)	120	480
Silver	7440224	Metals, cyanide, and total phenols	(y,a,dd)	-	1.9 (a,ll,dd)	-	-	-
Thallium	7440280	Metals, cyanide, and total phenols	-	-	-	-	0.24	0.27
Zinc	7440666	Metals, cyanide, and total phenols	(aa,e,dd)	(bb,d,dd)	90.0 (e,ll,dd)	81.0 (d,ll,dd)	2,300	2,900
<b>Other chemicals:</b>								
1,1,1-Trichloroethane	71556	Volatile	-	-	-	-	47,000	160,000
1,1,2,2-Tetrachloroethane	79345	Volatile	-	-	-	-	0.12 (B)	0.46 (B)
1,1,2-Trichloroethane	79005	Volatile	-	-	-	-	0.44 (B)	1.8 (B)
1,1-Dichloroethane	75343	Volatile	-	-	-	-	-	-
1,1-Dichloroethylene	75354	Volatile	-	-	-	-	1200	4100

((Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria – Freshwater		Aquatic Life Criteria – Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
1,2,4-Trichlorobenzene	120821	Base/neutral compounds	-	-	-	-	0.12 (B)	0.14 (B)
1,2-Dichlorobenzene	95501	Volatile	-	-	-	-	2000	2500
1,2-Dichloroethane	107062	Volatile	-	-	-	-	9.3 (B)	120 (B)
1,2-Dichloropropane	78875	Volatile	-	-	-	-	0.71 (B)	3.1 (B)
1,3-Dichloropropene	542756	Volatile	-	-	-	-	0.24 (B)	2 (B)
1,2-Diphenylhydrazine	122667	Base/neutral compounds	-	-	-	-	0.015 (B)	0.023 (B)
1,2-Trans-Dichloroethylene	156605	Volatile	-	-	-	-	600	5,800
1,3-Dichlorobenzene	541731	Volatile	-	-	-	-	13	16
1,4-Dichlorobenzene	106467	Volatile	-	-	-	-	460	580
2,3,7,8-TCDD (Dioxin)	1746016	Dioxin	-	-	-	-	0.00000064	0.00000064
2,4,6-Trichlorophenol	88062	Acid compounds	-	-	-	-	0.25 (B)	0.28 (B)
2,4-Dichlorophenol	120832	Acid compounds	-	-	-	-	25	34
2,4-Dimethylphenol	105679	Acid compounds	-	-	-	-	85	97
2,4-Dinitrophenol	51285	Acid compounds	-	-	-	-	60	610
2,4-Dinitrotoluene	121142	Base/neutral compounds	-	-	-	-	0.039 (B)	0.18 (B)
2,6-Dinitrotoluene	606202	Base/neutral compounds	-	-	-	-	-	-
2-Chloroethyvinyl Ether	110758	Volatile	-	-	-	-	-	-
2-Chloronaphthalene	91587	Base/neutral compounds	-	-	-	-	170	180
2-Chlorophenol	95578	Acid compounds	-	-	-	-	15	17
2-Methyl-4,6-Dinitrophenol (4,6-dinitro-o-cresol)	534521	Acid compounds	-	-	-	-	7.1	25
2-Nitrophenol	88755	Acid compounds	-	-	-	-	-	-
3,3'-Dichlorobenzidine	91941	Base/neutral compounds	-	-	-	-	0.0031 (B)	0.0033 (B)
3-Methyl-4-Chlorophenol (parachlorometa-cresol)	59507	Acid compounds	-	-	-	-	36	36
4,4'-DDD	72548	Pesticides/PCBs	-	-	-	-	0.000036 (B)	0.000036 (B)
4,4'-DDE	72559	Pesticides/PCBs	-	-	-	-	0.000051 (B)	0.000051 (B)
4,4'-DDT	50293	Pesticides/PCBs	-	-	-	-	0.000025 (B)	0.000025 (B)
4,4'-DDT (and metabolites)		Pesticides/PCBs	1.1 (a)	0.001 (b)	0.13 (a)	0.001 (b)	-	-
4-Bromophenyl Phenyl Ether	101553	Base/neutral compounds	-	-	-	-	-	-
4-Chorophenyl-Phenyl Ether	7005723	Base/neutral compounds	-	-	-	-	-	-
4-Nitrophenol	100027	Acid compounds	-	-	-	-	-	-
Aeenaphthene	83329	Base/neutral compounds	-	-	-	-	110	110
Aeenaphthylene	208968	Base/neutral compounds	-	-	-	-	-	-
Aerolein	107028	Volatile	-	-	-	-	1.0	1.1
Aerylonitrile	107131	Volatile	-	-	-	-	0.019 (B)	0.028 (B)
Aldrin	309002	Pesticides/PCBs	2.5 (a,e)	0.0019 (b,e)	0.71 (a,e)	0.0019 (b,e)	0.0000057 (B)	0.0000058 (B)
alpha-BHC	319846	Pesticides/PCBs	-	-	-	-	0.0005 (B)	0.00056 (B)

((Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria – Freshwater		Aquatic Life Criteria – Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
alpha-Endosulfan	959988	Pesticides/PCBs	-	-	-	-	9.7	10
Anthracene	120127	Base/neutral compounds	-	-	-	-	3,100	4,600
Benzene	71432	Volatile	-	-	-	-	0.44 (B)	1.6 (B)
Benzidine	92875	Base/neutral compounds	-	-	-	-	0.00002 (B)	0.000023 (B)
Benzo(a)-Anthracene	56553	Base/neutral compounds	-	-	-	-	0.014 (B)	0.021 (B)
Benzo(a)-Pyrene	50328	Base/neutral compounds	-	-	-	-	0.0014 (B)	0.0021 (B)
Benzo(b)-Fluoranthene	205992	Base/neutral compounds	-	-	-	-	0.014 (B)	0.021 (B)
Benzo(hi)-Propylene	191242	Base/neutral compounds	-	-	-	-	-	-
Benzo(k)-Fluoranthene	207089	Base/neutral compounds	-	-	-	-	0.014 (B)	0.21 (B)
beta-THC	319857	Pesticides/PCBs	-	-	-	-	0.0018 (B)	0.002 (B)
alpha-Endosulfan	33213659	Pesticides/PCBs	-	-	-	-	9.7	10
Bis(2-Chloroethoxy) Methane	111911	Base/neutral compounds	-	-	-	-	-	-
Bis(2-Chloroethyl)-Ether	111444	Base/neutral compounds	-	-	-	-	0.02 (B)	0.06 (B)
Bis(2-Chloroisopropyl) Ether	39638329	Base/neutral compounds	-	-	-	-	-	-
Bis(2-Ethylhexyl)-Phthalate	117817	Base/neutral compounds	-	-	-	-	0.23 (B)	0.25 (B)
Bromoform	75252	Volatile	-	-	-	-	5.8 (B)	27 (B)
Butylbenzyl Phthalate	85687	Base/neutral compounds	-	-	-	-	0.56 (B)	0.58 (B)
Carbon Tetrachloride	56235	Volatile	-	-	-	-	0.2 (B)	0.35 (B)
Chlordane	57749	Pesticides/PCBs	2.4 (a)	0.0043 (b)	0.09 (a)	0.004 (b)	0.000093 (B)	0.000093 (B)
Chlorobenzene	108907	Volatile	-	-	-	-	380	890
Chlorodibromomethane	124481	Volatile	-	-	-	-	0.65 (B)	3 (B)
Chloroethane	75003	Volatile	-	-	-	-	-	-
Chloroform	67663	Volatile	-	-	-	-	260	1200
Chrysene	218019	Base/neutral compounds	-	-	-	-	1.4 (B)	2.1 (B)
Cyanide	57125	Metals, cyanide, and total phenols	22.0 (e,ee)	5.2 (d,ee)	1.0 (e,mm,ee)	(d,mm,ee)	19 (D)	270 (D)
delta-BHC	319868	Pesticides/PCBs	-	-	-	-	-	-
Dibenzo(a,h)-Anthracene	53703	Base/neutral compounds	-	-	-	-	0.0014 (B)	0.0021 (B)
Dichlorobromomethane	75274	Volatile	-	-	-	-	0.77 (B)	3.6 (B)
Dieldrin	60571	Pesticides/PCBs	2.5 (a,e)	0.0019 (b,e)	0.71 (a,e)	0.0019 (b,e)	0.0000061 (B)	0.0000061 (B)
Diethyl Phthalate	84662	Base/neutral compounds	-	-	-	-	4,200	5,000
Dimethyl Phthalate	131113	Base/neutral compounds	-	-	-	-	92,000	130,000
Di-n-Butyl Phthalate	84742	Base/neutral compounds	-	-	-	-	450	510
Di-n-Octyl Phthalate	117840	Base/neutral compounds	-	-	-	-	-	-

((Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria – Freshwater		Aquatic Life Criteria – Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Endosulfan		Pesticides/PCBs	0.22 (a)	0.056 (b)	0.034 (a)	0.0087 (b)	-	-
Endosulfan Sulfate	1031078	Pesticides/PCBs	-	-	-	-	9.7	10
Endrin	72208	Pesticides/PCBs	0.18 (a)	0.0023 (b)	0.037 (a)	0.0023 (b)	0.034	0.035
Endrin Aldehyde	7421934	Pesticides/PCBs	-	-	-	-	0.034	0.035
Ethylbenzene	100414	Volatile	-	-	-	-	200	270
Fluoranthene	206440	Base/neutral compounds	-	-	-	-	16	16
Fluorene	86737	Base/neutral compounds	-	-	-	-	420	610
Hexachlorocyclohexane (gamma-BHC; Lindane)	58899	Pesticides/PCBs	2.0 (a)	0.08 (b)	0.16 (a)	-	15	17
Heptachlor	76448	Pesticides/PCBs	0.52 (a)	0.0038 (b)	0.053 (a)	0.0036 (b)	0.000099 (B)	0.00001 (B)
Heptachlor Epoxide	1024573	Pesticides/PCBs	-	-	-	-	0.0000074 (B)	0.0000074 (B)
Hexachlorobenzene	118741	Base/neutral compounds	-	-	-	-	0.000051 (B)	0.000052 (B)
Hexachlorobutadiene	87683	Base/neutral compounds	-	-	-	-	0.69 (B)	4.1 (B)
Hexachlorocyclopentadiene	77474	Base/neutral compounds	-	-	-	-	150	630
Hexachloroethane	67721	Base/neutral compounds	-	-	-	-	0.11 (B)	0.13 (B)
Indeno(1,2,3-cd) Pyrene	193395	Base/neutral compounds	-	-	-	-	0.014 (B)	0.021 (B)
Isophorone	78591	Base/neutral compounds	-	-	-	-	27 (B)	110 (B)
Methyl Bromide	74839	Volatile	-	-	-	-	520	2,400
Methyl Chloride	74873	Volatile	-	-	-	-	-	-
Methylene Chloride	75092	Volatile	-	-	-	-	16 (B)	250 (B)
Napthalene	91203	Base/neutral compounds	-	-	-	-	-	-
Nitrobenzene	98953	Base/neutral compounds	-	-	-	-	55	320
N-Nitrosodimethylamine	62759	Base/neutral compounds	-	-	-	-	0.00065 (B)	0.34 (B)
N-Nitrosodi-n-Propylamine	621647	Base/neutral compounds	-	-	-	-	0.0044 (B)	0.058 (B)
N-Nitrosodiphenylamine	86306	Base/neutral compounds	-	-	-	-	0.62 (B)	0.69 (B)
Pentachlorophenol (PCP)	87865	Acid compounds	(w,e)	(v,d)	13.0 (e)	7.9 (d)	0.046 (B)	0.1 (B)
Phenanthrene	85018	Base/neutral compounds	-	-	-	-	-	-
Phenol	108952	Acid compounds	-	-	-	-	18,000	200,000
Polychlorinated Biphenyls (PCBs)		Pesticides/PCBs	2.0 (b)	0.014 (b)	10.0 (b)	0.030 (b)	0.00017 (E)	0.00017 (E)
Pyrene	129000	Base/neutral compounds	-	-	-	-	310	460
Tetrachloroethylene	127184	Volatile	-	-	-	-	4.9 (B)	7.1 (B)
Toluene	108883	Volatile	-	-	-	-	180	410
Toxaphene	8001352	Pesticides/PCBs	0.73 (e,z)	0.0002 (d)	0.21 (e,z)	0.0002 (d)	0.000032 (B)	0.000032 (B)
Trichloroethylene	79016	Volatile	-	-	-	-	0.38 (B)	0.86 (B)
Vinyl Chloride	75014	Volatile	-	-	-	-	0.02 (B, F)	0.26 (B, F)

((Compound/Chemical	Chemical Abstracts Service (CAS)#	Category	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
			Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Ammonia (hh)		Noneconventional	(f,e)	(g,d)	0.233 (h,e)	0.035 (h,d)	-	-
Chloride (dissolved) (k)		Noneconventional	860.0 (h,e)	230.0 (h,d)	-	-	-	-
Chlorine (total residual)		Noneconventional	19.0 (e)	11.0 (d)	13.0 (e)	7.5 (d)	-	-
Chlorpyrifos		Toxic pollutants and hazardous substances	0.083 (e)	0.041 (d)	0.011 (e)	0.0056 (d)	-	-
Parathion		Toxic pollutants and hazardous substances	0.065 (e)	0.013 (d)	-	-	-	-

Footnotes for aquatic life criteria in Table 240:

- a. An instantaneous concentration not to be exceeded at any time.
- b. A 24-hour average not to be exceeded.
- e. A 1-hour average concentration not to be exceeded more than once every three years on the average.
- d. A 4-day average concentration not to be exceeded more than once every three years on the average.
- e. Aldrin is metabolically converted to Dieldrin. Therefore, the sum of the Aldrin and Dieldrin concentrations are compared with the Dieldrin criteria.
- f. Shall not exceed the numerical value in total ammonia nitrogen (mg N/L) given by:

$$\text{For salmonids present: } \frac{0.275}{1 + 10^{7.204 - pH}} + \frac{39.0}{1 + 10^{pH - 7.204}}$$

$$\text{For salmonids absent: } \frac{0.411}{1 + 10^{7.204 - pH}} + \frac{58.4}{1 + 10^{pH - 7.204}}$$

- g. Shall not exceed the numerical concentration calculated as follows:  
 Unionized ammonia concentration for waters where salmonid habitat is an existing or designated use:

$$0.80 \div (FT)(FPH)(RATIO)$$

where: RATIO = 13.5; 7.7 ≤ pH ≤ 9  
 RATIO =  $\frac{20.25 \times 10^{(7.7 - pH)}}{1 + 10^{(7.4 - pH)}}$ ; 6.5 ≤ pH ≤ 7.7  
 FT = 1.4; 15 ≤ T ≤ 30  
 FT =  $10^{[0.03(20 - T)]}$ ; 0 ≤ T ≤ 15  
 FPH = 1; 8 ≤ pH ≤ 9  
 FPH =  $(1 + 10^{(7.4 - pH)}) \div 1.25$ ; 6.5 ≤ pH ≤ 8.0

Total ammonia concentrations for waters where salmonid habitat is not an existing or designated use and other fish early life stages are absent:

~~$$\text{Chronic Criterion} = \left( \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right) \times (1.45 \times 10^{0.028(25 - A)})$$~~

where: A = the greater of either T (temperature in degrees Celsius) or 7.

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on average. The highest four-day average within the thirty-day period should not exceed 2.5 times the chronic criterion.

Total ammonia concentration for waters where salmonid habitat is not an existing or designated use and other fish early life stages are present:

~~$$\text{Chronic Criterion} = \left( \frac{0.0577}{1 + 10^{7.688 - pH}} + \frac{2.487}{1 + 10^{pH - 7.688}} \right) \times B$$~~

where: B = the lower of either 2.85, or  $1.45 \times 10^{0.028 \times (25 - T)}$ . T = temperature in degrees Celsius.

Applied as a thirty-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on the average. The highest four-day average within the thirty-day period should not exceed 2.5 times the chronic criterion.

- h. Measured in milligrams per liter rather than micrograms per liter.
- i.  $\leq (0.944)(e^{(1.128[\ln(\text{hardness})] - 3.828)})$  at hardness = 100. Conversion factor (CF) of 0.944 is hardness dependent. CF is calculated for other hardnesses as follows:  $CF = 1.136672 - [(\ln \text{hardness})(0.041838)]$ .
- j.  $\leq (0.909)(e^{(0.7852[\ln(\text{hardness})] - 3.490)})$  at hardness = 100. Conversion factor (CF) of 0.909 is hardness dependent. CF is calculated for other hardnesses as follows:  $CF = 1.101672 - [(\ln \text{hardness})(0.041838)]$ .



- k. Criterion based on dissolved chloride in association with sodium. This criterion probably will not be adequately protective when the chloride is associated with potassium, calcium, or magnesium, rather than sodium.
- l. Salinity dependent effects. At low salinity the 1-hour average may not be sufficiently protective.
- m.  $\leq (0.316)(e^{(0.8190[\ln(\text{hardness}) + 3.688])})$
- n.  $\leq (0.860)(e^{(0.8190[\ln(\text{hardness}) + 1.561])})$
- o.  $\leq (0.960)(e^{(0.9422[\ln(\text{hardness}) - 1.464])})$
- p.  $\leq (0.960)(e^{(0.8545[\ln(\text{hardness}) - 1.465])})$
- q.  $\leq (0.791)(e^{(1.273[\ln(\text{hardness}) - 1.460])})$  at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows:  $CF = 1.46203 - \{(\ln \text{hardness})(0.145712)\}$ .
- r.  $\leq (0.791)(e^{(1.273[\ln(\text{hardness}) - 4.705])})$  at hardness = 100. Conversion factor (CF) of 0.791 is hardness dependent. CF is calculated for other hardnesses as follows:  $CF = 1.46203 - \{(\ln \text{hardness})(0.145712)\}$ .
- s. If the four-day average chronic concentration is exceeded more than once in a three-year period, the edible portion of the consumed species should be analyzed. Said edible tissue concentrations shall not be allowed to exceed 1.0 mg/kg of methylmercury.
- t.  $\leq (0.998)(e^{(0.8460[\ln(\text{hardness}) + 3.3612])})$
- u.  $\leq (0.997)(e^{(0.8460[\ln(\text{hardness}) + 1.1645])})$
- v.  $\leq e^{[1.005(\text{pH}) - 5.290]}$
- w.  $\leq e^{[1.005(\text{pH}) - 4.830]}$
- x. The status of the fish community should be monitored whenever the concentration of selenium exceeds 5.0 ug/l in salt water.
- y.  $\leq (0.85)(e^{(1.72[\ln(\text{hardness}) - 6.52])})$
- z. Channel Catfish may be more acutely sensitive.
- aa.  $\leq (0.978)(e^{(0.8473[\ln(\text{hardness}) + 0.8604])})$
- bb.  $\leq (0.986)(e^{(0.8473[\ln(\text{hardness}) + 0.7614])})$
- cc. Nonlethal effects (growth, C-14 uptake, and chlorophyll production) to diatoms (*Thalassiosira aestivalis* and *Skeletonema costatum*) which are common to Washington's waters have been noted at levels below the established criteria. The importance of these effects to the diatom populations and the aquatic system is sufficiently in question to persuade the state to adopt the USEPA National Criteria value (36 µg/L) as the state threshold criteria; however, wherever practical the ambient concentrations should not be allowed to exceed a chronic marine concentration of 21 µg/L.
- dd. These ambient criteria in the table are for the dissolved fraction. The cyanide criteria are based on the weak acid dissociable method. The metals criteria may not be used to calculate total recoverable effluent limits unless the seasonal partitioning of the dissolved to total metals in the ambient water are known. When this information is absent, these metals criteria shall be applied as total recoverable values, determined by back calculation, using the conversion factors incorporated in the criterion equations. Metals criteria may be adjusted on a site-specific basis when data are made available to the department clearly demonstrating the effective use of the water effects ratio approach established by USEPA, as generally guided by the procedures in USEPA Water Quality Standards Handbook, December 1983, as supplemented or replaced by USEPA or ecology. The adjusted site specific criteria are not in effect until they have been incorporated into this chapter and approved by EPA. Information which is used to develop effluent limits based on applying metals partitioning studies or the water effects ratio approach shall be identified in the permit fact sheet developed pursuant to WAC 173-220-060 or 173-226-110, as appropriate, and shall be made available for the public comment period required pursuant to WAC 173-220-050 or 173-226-130(3), as appropriate. Ecology has developed supplemental guidance for conducting water effect ratio studies.
- ee. The criteria for cyanide is based on the weak acid dissociable method in the 19th Ed. Standard Methods for the Examination of Water and Wastewater, 4500-CN I, and as revised (see footnote dd, above).
- ff. These criteria are based on the total recoverable fraction of the metal.
- gg. Where methods to measure trivalent chromium are unavailable, these criteria are to be represented by total recoverable chromium.
- hh. The listed fresh water criteria are based on un-ionized or total ammonia concentrations, while those for marine water are based on un-ionized ammonia concentrations. Tables for the conversion of total ammonia to un-ionized ammonia for freshwater can be found in the USEPA's Quality Criteria for Water, 1986. Criteria concentrations based on total ammonia for marine water can be found in USEPA Ambient Water Quality Criteria for Ammonia (Saltwater) 1989, EPA 440/5-88-004, April 1989.
- ii. The conversion factor used to calculate the dissolved metal concentration was 0.982.
- jj. The conversion factor used to calculate the dissolved metal concentration was 0.962.
- kk. The conversion factor used to calculate the dissolved metal concentration was 0.85.
- ll. Marine conversion factors (CF) which were used for calculating dissolved metals concentrations are given below. Conversion factors are applicable to both acute and chronic criteria for all metals except mercury. The CF for mercury was applied to the acute criterion only and is not applicable to the chronic criterion. Conversion factors are already incorporated into the criteria in the table. Dissolved criterion = criterion x CF

Metal	CF
Arsenic	1.000
Cadmium	0.994
Chromium (VI)	0.993
Copper	0.83
Lead	0.951
Mercury	0.85
Nickel	0.990
Selenium	0.998
Silver	0.85
Zinc	0.946

mm: The cyanide criteria are: 2.8µg/l chronic and 9.1µg/l acute and are applicable only to waters which are east of a line from Point Roberts to Lawrence Point, to Green Point to Deception Pass; and south from Deception Pass and of a line from Partridge Point to Point Wilson. The chronic criterion applicable to the remainder of the marine waters is 1 µg/L.)

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
<b>Metals:</b>							

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Aluminum	7429905	Western Cordillera: 288 Marine West Coast Forest: 630 Cold Desert: 1400 (a,e)	Western Cordillera: 180 Marine West Coast Forest: 302 Cold Desert: 720 (b,e)	-	-	-	-
Antimony	7440360	-	-	-	-	12 (H)	180 (H)
Arsenic	7440382	300 (a,f)	130 (b,f)	69 (a,f,g)	36 (b,f,g)	10 (A,H)	10 (A,H)
Asbestos	1332214	-	-	-	-	7,000,000 fibers/L (C)	-
Beryllium	7440417	-	-	-	-	-	-
Cadmium	7440439	(a,f,h)	(b,f,i)	33 (a,f)	7.9 (b,f)	-	-
Chromium (III)	16065831	(a,j,k)	(b,j,l)	-	-	-	-
Chromium (VI)	18540299	18 (a,f,m)	6.6 (b,f,n)	1,100.0 (a,f,g)	50.0 (b,f,g)	-	-
Copper	7440508	Western Cordillera: 1.4 Marine West Coast Forest: 2.4 Cold Desert: 4.8 (a,f,o)	Western Cordillera: 1.2 Marine West Coast Forest: 1.8 Cold Desert: 3.2 (b,f,p)	4.8 (a,f,g)	3.1 (b,f,g)	1,300 (C)	-
Lead	7439921	(a,f,q)	(b,f,r)	210.0 (a,f,g)	8.1 (b,f,g)	-	-
Mercury	7439976	1.4 (a,f,s)	0.012 (b,t,u)	1.8 (a,f,g)	0.025 (b,t,u)	(G)	(G)
Methylmercury	22967926	-	-	-	-	-	- (H)
Nickel	7440020	(a,f,v)	(b,f,w)	74.0 (a,f,g)	8.2 (b,f,g)	150 (H)	190 (H)
Selenium	7782492	(x)	(y)	290 (a,f,g)	71.0 (b,f,g)	120 (H)	480 (H)
Silver	7440224	(a,f,z)	(b,f,aa)	2.3 (a,f,g)	0.91 (b,f,g)	-	-
Thallium	7440280	-	-	-	-	0.24	0.27
Zinc	7440666	(a,f,bb)	(b,f,cc)	90.0 (a,f,g)	81.0 (b,f,g)	2,300 (H)	2,900 (H)
<b>Other chemicals:</b>							
1,1,1-Trichloroethane	71556	-	-	-	-	47,000 (H)	160,000 (H)
1,1,1,2-Tetrachloroethane	79345	-	-	-	-	0.12 (B,H)	0.46 (B,H)
1,1,2-Trichloroethane	79005	-	-	-	-	0.44 (B,H)	1.8 (B,H)
1,1-Dichloroethane	75343	-	-	-	-	-	-
1,1-Dichloroethylene	75354	-	-	-	-	1200 (H)	4100 (H)
1,2,4-Trichlorobenzene	120821	-	-	-	-	0.12 (B,H)	0.14 (B,H)
1,2-Dichlorobenzene	95501	-	-	-	-	2000 (H)	2500 (H)
1,2-Dichloroethane	107062	-	-	-	-	9.3 (B,H)	120 (B,H)
1,2-Dichloropropane	78875	-	-	-	-	0.71 (B)	3.1 (B)

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
1,3-Dichloropropene	542756	=	=	=	=	0.24 (B)	2 (B)
1,2-Diphenylhydrazine	122667	=	=	=	=	0.015 (B,H)	0.023 (B,H)
1,2-Trans-Dichloroethylene	156605	=	=	=	=	600 (H)	5,800 (H)
1,3-Dichlorobenzene	541731	=	=	=	=	13 (H)	16 (H)
1,4-Dichlorobenzene	106467	=	=	=	=	460 (H)	580 (H)
2,3,7,8-TCDD (Dioxin)	1746016	=	=	=	=	0.000000064	0.000000064
2,4,6-Trichlorophenol	88062	=	=	=	=	0.25 (B)	0.28 (B)
2,4-Dichlorophenol	120832	=	=	=	=	25 (H)	34 (H)
2,4-Dimethylphenol	105679	=	=	=	=	85	97
2,4-Dinitrophenol	51285	=	=	=	=	60 (H)	610 (H)
2,4-Dinitrotoluene	121142	=	=	=	=	0.039 (B)	0.18 (B)
2,6-Dinitrotoluene	606202	=	=	=	=	=	=
2-Chloroethyvinyl Ether	110758	=	=	=	=	=	=
2-Chloronaphthalene	91587	=	=	=	=	170 (H)	180 (H)
2-Chlorophenol	95578	=	=	=	=	15	17
2-Methyl-4,6-Dinitrophenol (4,6-dinitro-o-cresol)	534521	=	=	=	=	7.1 (H)	25 (H)
2-Nitrophenol	88755	=	=	=	=	=	=
3,3'-Dichlorobenzidine	91941	=	=	=	=	0.0031 (B)	0.0033 (B)
3-Methyl-4-Chlorophenol (parachlorometa cresol)	59507	=	=	=	=	36	36
4,4'-DDD	72548	=	=	=	=	0.000036 (B,H)	0.000036 (B,H)
4,4'-DDE	72559	=	=	=	=	0.000051 (B,H)	0.000051 (B,H)
4,4'-DDT	50293	=	=	=	=	0.000025 (B,H)	0.000025 (B,H)
4,4'-DDT (and metabolites)	50293	1.1 (c)	0.001 (d)	0.13 (c)	0.001 (d)	=	=
4-Bromophenyl Phenyl Ether	101553	=	=	=	=	=	=
4-Chorophenyl Phenyl Ether	7005723	=	=	=	=	=	=
4-Nitrophenol	100027	=	=	=	=	=	=
Acenaphthene	83329	=	=	=	=	110 (H)	110 (H)
Acenaphthylene	208968	=	=	=	=	=	=
Acrolein	107028	3 (a)	3 (b)	=	=	1.0	1.1
Acrylonitrile	107131	=	=	=	=	0.019 (B)	0.028 (B)
Aldrin	309002	3 (c,dd)	0.0019 (d,dd)	1.3 (c,e)	0.0019 (d,dd)	0.0000057 (B,H)	0.0000058 (B,H)
alpha-BHC	319846	=	=	=	=	0.0005 (B,H)	0.00056 (B,H)
alpha-Endosulfan	959988	0.22 (c,ee)	0.056 (d,ee)	0.034 (c,ee)	0.0087 (d,ee)	9.7 (H)	10 (H)
Ammonia	7664417	(a,ff,ii)	(b,gg,ii)	0.233 (a,hh,ii)	0.035 (b,hh,ii)	=	=

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Anthracene	120127	=	=	=	=	3.100 (H)	4.600 (H)
Benzene	71432	=	=	=	=	0.44 (B)	1.6 (B)
Benzidine	92875	=	=	=	=	0.00002 (B)	0.000023 (B)
Benzo(a) Anthracene	56553	=	=	=	=	0.014 (B,H)	0.021 (B,H)
Benzo(a) Pyrene	50328	=	=	=	=	0.0014 (B,H)	0.0021 (B,H)
Benzo(b) Fluoranthene	205992	=	=	=	=	0.014 (B,H)	0.021 (B,H)
Benzo(ghi) Perylene	191242	=	=	=	=	=	=
Benzo(k) Fluoranthene	207089	=	=	=	=	0.014 (B,H)	0.21 (B,H)
beta-BHC	319857	=	=	=	=	0.0018 (B,H)	0.002 (B,H)
beta-Endosulfan	33213659	0.22 (c,ee)	0.056 (d,ee)	0.034 (c,ee)	0.0087 (d,ee)	9.7	10
Bis(2-Chloroethoxy) Methane	111911	=	=	=	=	=	=
Bis(2-Chloroethyl) Ether	111444	=	=	=	=	0.02 (B)	0.06 (B)
Bis(2-Chloroisopropyl) Ether	39638329	=	=	=	=	= (H)	= (H)
Bis(2-Ethylhexyl) Phthalate	117817	=	=	=	=	0.23 (B,H)	0.25 (B,H)
Bromoform	75252	=	=	=	=	5.8 (B,H)	27 (B,H)
Butylbenzyl Phthalate	85687	=	=	=	=	0.56 (B,H)	0.58 (B,H)
Carbaryl	63252	2.1 (a)	2.1 (b)	1.6 (a)	=	=	=
Carbon Tetrachloride	56235	=	=	=	=	0.2 (B)	0.35 (B)
Chlordane	57749	2.4 (c)	0.0043 (d)	0.09 (c)	0.004 (d)	0.000093 (B,H)	0.000093 (B,H)
Chloride (dissolved)	168870	860 (a,hh,jj)	230 (b,hh,jj)	=	=	=	=
Chlorine (total residual)	7782505	19 (a)	11 (b)	13 (a)	7.5 (b)	=	=
Chlorobenzene	108907	=	=	=	=	380 (H)	890 (H)
Chlorodibromomethane	124481	=	=	=	=	0.65 (B,H)	3 (B,H)
Chloroethane	75003	=	=	=	=	=	=
Chloroform	67663	=	=	=	=	260 (H)	1200 (H)
Chlorpyrifos	2921882	0.083 (a)	0.041 (b)	0.011 (a)	0.0056 (b)	=	=
Chrysene	218019	=	=	=	=	1.4 (B,H)	2.1 (B,H)
Cyanide	57125	8.2 (a,kk)	1.9 (b,kk)	1.0 (a,kk,ll)	1.0 (b,kk,ll)	19 (D,H)	270 (D,H)
delta-BHC	319868	=	=	=	=	=	=
Demeton	8065483	=	0.1 (b)	=	0.1 (b)	=	=
Diazinon	333415	0.17 (a)	0.17 (b)	0.82 (a)	0.82 (b)	=	=
Dibenzo(a,h) Anthracene	53703	=	=	=	=	0.0014 (B,H)	0.0021 (B,H)

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
Dichlorobromomethane	75274	-	-	-	-	0.77 (B,H)	3.6 (B,H)
Dieldrin	60571	0.24 (a,dd)	0.056 (b,dd)	0.71 (c,dd)	0.0019 (d,dd)	0.0000061 (B,H)	0.0000061 (B,H)
Diethyl Phthalate	84662	-	-	-	-	4,200 (H)	5,000 (H)
Dimethyl Phthalate	131113	-	-	-	-	92,000 (H)	130,000 (H)
Di-n-Butyl Phthalate	84742	-	-	-	-	450 (H)	510 (H)
Di-n-Octyl Phthalate	117840	-	-	-	-	-	-
Endosulfan Sulfate	1031078	-	-	-	-	9.7 (H)	10
Endrin	72208	0.086 (a)	0.036 (b)	0.037 (c)	0.0023 (d)	0.034 (H)	0.035 (H)
Endrin Aldehyde	7421934	-	-	-	-	0.034	0.035
Ethylbenzene	100414	-	-	-	-	200 (H)	270 (H)
Fluoranthene	206440	-	-	-	-	16 (H)	16 (H)
Fluorene	86737	-	-	-	-	420 (H)	610 (H)
Guthion	86500	-	0.01 (b)	-	0.01 (b)	-	-
Hexachlorocyclohexane (gamma-BHC; Lindane)	58899	0.95 (a)	0.08 (d)	0.16 (c)	-	15 (H)	17 (H)
Heptachlor	76448	0.52 (c)	0.0038 (d)	0.053 (c)	0.0036 (d)	0.0000099 (B,H)	0.00001 (B,H)
Heptachlor Epoxide	1024573	-	-	-	-	0.0000074 (B,H)	0.0000074 (B,H)
Hexachlorobenzene	118741	-	-	-	-	0.000051 (B,H)	0.000052 (B,H)
Hexachlorobutadiene	87683	-	-	-	-	0.69 (B,H)	4.1 (B,H)
Hexachlorocyclopentadiene	77474	-	-	-	-	150 (H)	630 (H)
Hexachloroethane	67721	-	-	-	-	0.11 (B,H)	0.13 (B,H)
Indeno(1,2,3-cd) Pyrene	193395	-	-	-	-	0.014 (B,H)	0.021 (B,H)
Isophorone	78591	-	-	-	-	27 (B)	110 (B)
Malathion	121755	-	0.1 (b)	-	0.1 (b)	-	-
Methoxychlor	72435	-	0.03 (b)	-	0.03 (b)	-	-
Methyl Bromide	74839	-	-	-	-	520 (H)	2,400
Methyl Chloride	74873	-	-	-	-	-	-
Methylene Chloride	75092	-	-	-	-	16 (B,H)	250 (B,H)
Mirex	2385855	-	0.001 (b)	-	0.001 (b)	-	-
N-(1,3-Dimethylbutyl)-N'-phenyl-p-phenylenediamine-quinone(6PPD-q)		0.012 (a)	-	-	-	-	-
Napthalene	91203	-	-	-	-	-	-
Nitrobenzene	98953	-	-	-	-	55 (H)	320 (H)
N-Nitrosodimethylamine	62759	-	-	-	-	0.00065 (B)	0.34 (B)

Compound/Chemical	Chemical Abstracts Service (CAS)#	Aquatic Life Criteria - Freshwater		Aquatic Life Criteria - Marine Water		Human Health Criteria for Consumption of:	
		Acute	Chronic	Acute	Chronic	Water & Organisms	Organisms Only
N-Nitrosodi-n-Propylamine	621647	-	-	-	-	0.0044 (B)	0.058 (B)
N-Nitrosodiphenylamine	86306	-	-	-	-	0.62 (B)	0.69 (B)
Nonylphenol	84852153	28 (a)	6.6 (b)	7 (a)	1.7 (b)	-	-
Parathion	56382	0.065 (a)	0.013 (b)	-	-	-	-
Pentachlorophenol (PCP)	87865	(a.mm)	(b.nn)	13 (a)	6.7 (b)	0.046 (B,H)	0.1 (B,H)
Perfluorooctane sulfonic acid (PFOS)		3000 (a)	(oo)	550 (a)	-	-	-
Perfluorooctanoic acid (PFOA)		49000 (a)	(pp)	7000 (a)	-	-	-
Phenanthrene	85018	-	-	-	-	-	-
Phenol	108952	-	-	-	-	18,000 (H)	200,000 (H)
Polychlorinated Biphenyls (PCBs)		2.0 (d)	0.014 (d)	10.0 (d)	0.03 (d)	0.00017 (E,H)	0.00017 (E,H)
Pyrene	129000	-	-	-	-	310 (H)	460 (H)
Tetrachloroethylene	127184	-	-	-	-	4.9 (B,H)	7.1 (B,H)
Toluene	108883	-	-	-	-	180 (H)	410 (H)
Toxaphene	8001352	0.73 (a)	0.0002 (b)	0.21 (a)	0.0002 (b)	0.000032 (B)	0.000032 (B)
Tributyltin		0.46 (a)	0.072 (b)	0.42 (a)	0.0074 (b)	-	-
Trichloroethylene	79016	-	-	-	-	0.38 (B,H)	0.86 (B,H)
Vinyl Chloride	75014	-	-	-	-	0.02 (B,F)	0.26 (B,F,H)

Footnotes for aquatic life criteria in Table 240:

- a. A 1-hour average concentration not to be exceeded more than once every three years on the average.
- b. A 4-day average concentration not to be exceeded more than once every three years on average.
- c. An instantaneous concentration not to be exceeded at any time.
- d. A 24-hour average not to be exceeded at any time.
- e. Criteria are calculated using the Aluminum Criteria Calculator V.2.0 that is published in EPA's "Final Aquatic Water Quality Criteria for Aluminum 2018" (EPA-822-R-1-001). Default criteria values were calculated for EPA Level II ecoregions and are applicable in the absence of water body or site-specific water quality data. The freshwater default acute criterion in the Western Cordillera ecoregion is 288 µg/L, 630 µg/L is the default acute criterion in the Marine West Coast Forest ecoregion, and 1400 µg/L is the default acute criterion in the Cold Desert ecoregion. The freshwater default chronic criterion in the Western Cordillera ecoregion is 180 µg/L, 302 µg/L is the default chronic criterion in the Marine West Coast Forest ecoregion, and 720 µg/L is the default chronic criterion in the Cold Desert ecoregion. The default criterion is used in the absence of concurrently sampled pH, hardness, and dissolved organic carbon for a site-specific location or water body. Criteria calculated using concurrently sampled pH, hardness, and dissolved organic carbon for a specific water body supersede the default criteria. The aluminum criteria are based on aluminum toxicity studies where aluminum was analyzed using total recoverable analytical methods. Washington may utilize total recoverable analytical methods to implement the criteria. For characterizing ambient waters, Washington may also utilize, as scientifically appropriate and as allowable by state and federal regulations, analytical methods that measure the bioavailable fraction of aluminum (e.g., utilizing a less aggressive initial acid digestion, such as to a pH of approximately 4 or lower, that includes the measurement of amorphous aluminum hydroxide yet minimizes the measurement of mineralized forms of aluminum such as aluminum silicates associated with suspended sediment particles or clays). Washington shall use measurements of total recoverable aluminum where required by federal regulations.
- f. These ambient criteria in the table are for the dissolved fraction. The cyanide criteria are based on the weak acid dissociable method. The metals criteria may not be used to calculate total recoverable effluent limits unless the seasonal partitioning of the dissolved to total metals in the ambient water are known. When this information is absent, these metals criteria shall be applied as total recoverable values, determined by back-calculation, using the conversion factors incorporated in the criterion equations. Metals criteria may be adjusted on a site-specific basis when data are made available to the department clearly demonstrating the effective use of the water effects ratio approach established by USEPA, as generally guided by the procedures in USEPA Water Quality Standards Handbook, December 1983, as supplemented or replaced by USEPA or ecology. The adjusted site-specific criteria are not in effect until they have been incorporated into this chapter and approved by EPA. Information which is used to develop effluent limits based on applying metals partitioning studies or the water effects ratio approach shall be identified in the permit fact sheet developed pursuant to WAC 173-220-060 or 173-226-110, as appropriate, and shall be made available for the public comment period required pursuant to WAC 173-220-050 or 173-226-130(3), as appropriate. Ecology has developed supplemental guidance for conducting water effect ratio studies.
- g. Marine conversion factors (CF) which were used for calculating dissolved metals concentrations are given below. Conversion factors are applicable to both acute and chronic criteria for all metals except mercury. The CF for mercury was applied to the acute criterion only and is not applicable to the chronic criterion. Conversion factors are already incorporated into the criteria in the table. Dissolved criterion = criterion x CF

Metal	CF
Arsenic	1.000
Cadmium	0.994

Chromium (VI)	0.993
Copper	0.83
Lead	0.951
Mercury	0.85
Nickel	0.990
Selenium	0.998
Silver	0.85
Zinc	0.946

- h. Acute criterion = (CF)(e<sup>(0.9789[ln(hardness)]-4.189)</sup>). Conversion factor (CF) is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.136672 - [(ln hardness)(0.041838)].
- i. Chronic criterion = (CF)(e<sup>(0.7977[ln(hardness)]-4.446)</sup>). Conversion factor (CF) is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.101672 - [(ln hardness)(0.041838)].
- j. Where methods to measure trivalent chromium are unavailable, these criteria are to be represented by total-recoverable chromium.
- k. Acute criterion = (0.316)(e<sup>(0.8190[ln(hardness)] + 3.533)</sup>)
- l. Chronic criterion = (0.860)(e<sup>(0.8190[ln(hardness)] + 0.4921)</sup>)
- m. The conversion factor used to calculate the dissolved metal concentration is 0.982.
- n. The conversion factor used to calculate the dissolved metal concentration is 0.962.
- o. The acute criterion is represented by the higher criteria value of the two equations: 1) Acute criterion = e<sup>(0.700\*ln(DOC) + 0.579\*ln(hardness) + 0.778\*pH - 6.738)</sup> and 2) Acute criterion = e<sup>(0.855\*ln(DOC) + 0.221\*ln(hardness) + 0.216\*pH - 1.183)</sup>. Default criteria values were calculated for EPA Level II ecoregions and are applicable in the absence of water body or site-specific water quality data. The freshwater default acute criterion in the Western Cordillera ecoregion is 1.4 µg/L, 2.4 µg/L is the default acute criterion in the Marine West Coast Forest ecoregion, and 4.8 µg/L is the default acute criterion in the Cold Desert ecoregion. The default criterion is used in the absence of concurrently sampled pH, hardness, and dissolved organic carbon for a site-specific location or water body. Criteria calculated using concurrently sampled pH, hardness, and dissolved organic carbon for a specific water body supersede the default criteria.
- p. Chronic criterion = e<sup>(0.855\*ln(DOC) + 0.221\*ln(hardness) + 0.216\*pH - 1.402)</sup>. Default criteria values were calculated for EPA Level II ecoregions and are applicable in the absence of water body or site-specific water quality data. The freshwater default chronic criterion in the Western Cordillera ecoregion is 1.2 µg/L, 1.8 µg/L is the default chronic criterion in the Marine West Coast Forest ecoregion, and 3.2 µg/L is the default chronic criterion in the Cold Desert ecoregion. 1.6 µg/L is applicable in western Washington and 1.8 µg/L is the applicable default chronic criterion in eastern Washington. The default criterion is used in the absence of concurrently sampled pH, hardness, and dissolved organic carbon for a site-specific location or water body. Criteria calculated using concurrently sampled pH, hardness, and dissolved organic carbon for a specific water body supersede the default criteria.
- q. Acute criterion = (CF)(e<sup>(1.273[ln(hardness)] - 1.460)</sup>). Conversion factor (CF) is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.46203 - [(ln hardness)(0.145712)].
- r. Chronic criterion = (CF)(e<sup>(1.273[ln(hardness)] - 4.705)</sup>). Conversion factor (CF) is hardness dependent. CF is calculated for other hardnesses as follows: CF = 1.46203 - [(ln hardness)(0.145712)].
- s. The conversion factor used to calculate the dissolved metal concentration is 0.85.
- t. These criteria are based on the total-recoverable fraction of the metal.
- u. If the four-day average chronic concentration is exceeded more than once in a three-year period, the edible portion of the consumed species should be analyzed. Said edible tissue concentrations shall not be allowed to exceed 1.0 mg/kg of methylmercury.
- v. Acute criterion = (0.998)(e<sup>(0.8460[ln(hardness)] + 0.1667)</sup>)
- w. Chronic criterion = (0.997)(e<sup>(0.8460[ln(hardness)] - 1.466)</sup>)
- x. There is no freshwater acute criterion for aquatic life for selenium. The freshwater chronic criterion is expected to adequately protect against acute effects.
- y. Freshwater chronic selenium criteria:
  - 15.1 mg/kg dry weight (egg-ovary tissue)<sup>1</sup>
  - 8.5 mg/kg dry weight (whole-body tissue)<sup>2</sup>
  - 11.3 mg/kg dry weight (muscle tissue)<sup>2</sup>
  - 1.5 µg/L (water lentic)<sup>3</sup>
  - 3.1 µg/L (water lotic)<sup>3</sup>
$$WQC_{int} = WQC - C_{bkgnd} (1 - f_{int}) / f_{int} \text{ (water lentic or lotic)}^{3,4}$$

<sup>1</sup> Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured, except as noted in footnote 4. Tissue criterion is not to be exceeded.

<sup>2</sup> Fish whole-body or muscle tissue supersedes the water column element when both fish tissue and water concentrations are measured, except as noted in footnote 4. Tissue criterion is not to be exceeded.

<sup>3</sup> Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. When selenium inputs are increasing, water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. Water column criteria are based on a 30-day average concentrations, except for WQC<sub>int</sub> (see footnote 4). Water column criteria are not to be exceeded more than once every three years on average.

<sup>4</sup> Where WQC<sub>int</sub> is the intermittent exposure concentration in µg/L; WQC is the applicable water column element, for either lentic or lotic waters; C<sub>bkgnd</sub> is the average daily background concentration occurring during the remaining time, integrated over 30 days; f<sub>int</sub> is the fraction of any 30-day period during which elevated selenium concentrations occur, with f<sub>int</sub> assigned a value ≥ 0.033 (corresponding to one day). Intermittent exposure criteria averaging period is the number of days per month with an elevated concentration.

z. Acute criterion = (0.85)(e<sup>(1.72[ln(hardness)] - 8.590)</sup>)

aa. Chronic criterion = (0.85)(e<sup>(1.72[ln(hardness)] - 9.511)</sup>)

bb. Acute criterion = (0.978)(e<sup>(0.8473[ln(hardness)] + 0.3313)</sup>)

cc. Chronic criterion = (0.986)(e<sup>(0.8473[ln(hardness)] - 0.6900)</sup>)

dd. Aldrin is metabolically converted to Dieldrin. Therefore, the sum of the Aldrin and Dieldrin concentrations are compared with the Dieldrin criteria.

ee. This value was derived from data for endosulfan. Where concentrations for both alpha-endosulfan and beta-endosulfan are available, the sum of alpha-endosulfan and beta-endosulfan concentrations shall be compared to the criteria.

ff. Shall not exceed the numerical value in total ammonia nitrogen (mg N/L) given by:

$$\begin{array}{l} \text{For salmonids present:} \\ \frac{0.275}{1 + 10^{7.204-pH}} \quad \pm \quad \frac{39.0}{1 + 10^{pH-7.204}} \\ \\ \text{For salmonids absent:} \\ \frac{0.411}{1 + 10^{7.204-pH}} \quad \pm \quad \frac{58.4}{1 + 10^{pH-7.204}} \end{array}$$

gg. Shall not exceed the numerical concentration calculated as follows:

Unionized ammonia concentration for waters where salmonid habitat is an existing or designated use:

$$0.80 \div (FT)(FPH)(RATIO)$$

where:  $RATIO = 13.5; 7.7 \leq pH < 9$   
 $RATIO = \frac{(20.25 \times 10^{(7.7-pH)})}{7.7} \div (1 + 10^{(7.4-pH)}); 6.5 \leq pH < 7.7$   
 $FT = 1.4; 15 \leq T \leq 30$   
 $FT = 10^{[0.03(20-T)]}; 0 \leq T \leq 15$   
 $FPH = 1; 8 \leq pH < 9$   
 $FPH = (1 + 10^{(7.4-pH)}) \div 1.25; 6.5 \leq pH < 8.0$

Total ammonia concentrations for waters where salmonid habitat is not an existing or designated use and other fish early life stages are absent:

$$Chronic\ Criterion = \left( \frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \times (1.45 \times 10^{0.028(25-A)})$$

where: A = the greater of either T (temperature in degrees Celsius) or 7.

Applied as a 30-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on average. The highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion.

Total ammonia concentration for waters where salmonid habitat is not an existing or designated use and other fish early life stages are present:

$$Chronic\ Criterion = \left( \frac{0.0577}{1 + 10^{7.688-pH}} + \frac{2.487}{1 + 10^{pH-7.688}} \right) \times B$$

where: B = the lower of either 2.85, or  $1.45 \times 10^{0.028 \times (25-T)}$ . T = temperature in degrees Celsius.

Applied as a 30-day average concentration of total ammonia nitrogen (in mg N/L) not to be exceeded more than once every three years on the average. The highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion.

hh. Measured in milligrams per liter rather than micrograms per liter.

ii. The listed freshwater criteria are based on un-ionized or total ammonia concentrations, while those for marine water are based on un-ionized ammonia concentrations. Tables for the conversion of total ammonia to un-ionized ammonia for freshwater can be found in the USEPA's Quality Criteria for Water, 1986. Criteria concentrations based on total ammonia for marine water can be found in USEPA Ambient Water Quality Criteria for Ammonia (Saltwater)-1989, EPA440/5-88-004, April 1989.

jj. Criterion based on dissolved chloride in association with sodium. This criterion probably will not be adequately protective when the chloride is associated with potassium, calcium, or magnesium, rather than sodium.

kk. The criteria for cyanide is based on the weak acid dissociable method in the 19th Ed. Standard Methods for the Examination of Water and Wastewater, 4500-CN I, and as revised (see footnote f, above).

ll. The cyanide criteria are: 2.8 µg/L chronic and 9.1 µg/L acute and are applicable only to waters which are east of a line from Point Roberts to Lawrence Point, to Green Point to Deception Pass; and south from Deception Pass and of a line from Partridge Point to Point Wilson. The chronic criterion applicable to the remainder of the marine waters is 1 µg/L.

mm. Acute criterion =  $e^{[1.005(pH) - 5.450]}$

nn. Chronic criterion =  $e^{[1.005(pH) - 6.155]}$

oo. Freshwater chronic PFOS criteria:

$$\frac{8.4 \mu\text{g/L (water)}^{1,2}}{0.937 \text{ mg/kg ww (invertebrate whole-body)}^{1,3,4}} \\ \frac{6.75 \text{ mg/kg ww (fish whole-body)}^{1,3,4}}{2.91 \text{ mg/kg ww (fish muscle)}^{1,3,4}}$$

<sup>1</sup> All water column and tissue criteria are intended to be independently applicable for compliance determinations and no one criterion takes primacy.

<sup>2</sup> Water column criteria are based on a four-day average concentration not to be exceeded more than once every three years on average.

<sup>3</sup> Tissue criteria derived from the chronic water column concentration with the use of bioaccumulation factors and are expressed as wet weight (ww) concentrations.

<sup>4</sup> Tissue data is an instantaneous point measurement that reflect integrative accumulation of PFOS over time and space. Criteria are not to be exceeded more than once every 10 years on average.

pp. Freshwater chronic PFOA criteria:

$$\frac{94 \mu\text{g/L (water)}^{1,2}}{1.11 \text{ mg/kg ww (invertebrate whole-body)}^{1,3,4}} \\ \frac{6.10 \text{ mg/kg ww (fish whole-body)}^{1,3,4}}{0.125 \text{ mg/kg ww (fish muscle)}^{1,3,4}}$$

<sup>1</sup> All water column and tissue criteria are intended to be independently applicable for compliance determinations and no one criterion takes primacy.

<sup>2</sup> Water column criteria are based on a four-day average concentration not to be exceeded more than once every three years on average.

<sup>3</sup> Tissue criteria derived from the chronic water column concentration with the use of bioaccumulation factors and are expressed as wet weight (ww) concentrations.

<sup>4</sup> Tissue data is an instantaneous point measurement that reflect integrative accumulation of PFOS over time and space. Criteria are not to be exceeded more than once every 10 years on average.

Footnotes for human health criteria in Table 240:



- A. This criterion for total arsenic is the maximum contaminant level (MCL) developed under the Safe Drinking Water Act. The MCL for total arsenic is applied to surface waters where consumption of organisms-only and where consumption of water + organisms reflect the designated uses. When the department determines that a direct or indirect industrial discharge to surface waters designated for domestic water supply may be adding arsenic to its wastewater, the department will require the discharger to develop and implement a pollution prevention plan to reduce arsenic through the use of AKART. Industrial wastewater discharges to a privately or publicly owned wastewater treatment facility are considered indirect discharges.
- B. This criterion was calculated based on an additional lifetime cancer risk of one-in-one-million ( $1 \times 10^{-6}$  risk level).
- C. This criterion is based on a regulatory level developed under the Safe Drinking Water Act.
- D. This recommended water quality criterion is expressed as total cyanide, even though the integrated risk information system RfD used to derive the criterion is based on free cyanide. The multiple forms of cyanide that are present in ambient water have significant differences in toxicity due to their differing abilities to liberate the CN-moiety. Some complex cyanides require even more extreme conditions than refluxing with sulfuric acid to liberate the CN-moiety. Thus, these complex cyanides are expected to have little or no "bioavailability" to humans. If a substantial fraction of the cyanide present in a water body is present in a complexed form (e.g.,  $\text{Fe}_4[\text{Fe}(\text{CN})_6]_3$ ), this criterion may be overly conservative.
- E. This criterion applies to total PCBs, (e.g., the sum of all congener or all isomer or homolog or Aroclor analyses). The PCBs criteria were calculated using a chemical-specific risk level of  $4 \times 10^{-5}$ . Because that calculation resulted in a higher (less protective) concentration than the current criterion concentration (40 C.F.R. 131.36) the state made a chemical-specific decision to stay at the current criterion concentration.
- F. This criterion was derived using the cancer slope factor of 1.4 (linearized multistage model with a twofold increase to 1.4 per mg/kg-day to account for continuous lifetime exposure from birth).
- G. ~~((The human health criteria for mercury are contained in 40 C.F.R. 131.36-)) EPA has removed Washington from the National Toxics Rule at 40 C.F.R. 131.36 for mercury and promulgated new human health criteria for methylmercury in the EPA's final federal rule at 40 C.F.R. 131.45.~~
- H. Human health criteria applicable for Clean Water Act purposes in the state of Washington are contained in 40 C.F.R. 131.45 and effective as of December 19, 2022 (87 FR 69183).

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

## WSR 24-17-053

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed August 15, 2024, 6:41 a.m., effective September 15, 2024]

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

Purpose: This rule-making order amends chapter 16-470 WAC, Quarantine—Agricultural pests, by:

(1) Expanding the boundaries of the Japanese beetle internal quarantine.

(2) Adding soil samples to the list of regulated articles in WAC 16-470-710(2), as well as conditions governing the movement of soil samples.

(3) Clarifying, in WAC 16-470-710(7), that cut flowers exposed to open air environments during their harvest, transportation, or trade are included as a regulated article.

(4) Adding conditions governing the movement of cut flowers for decorative purposes.

(5) Requiring businesses that are located within the internal quarantine area and are selling regulated articles under WAC 16-470-710 (4) or (7) to post signage to alert customers purchasing regulated articles that they may not be transported outside of the quarantine area.

Citation of Rules Affected by this Order: New WAC 16-470-711; and amending WAC 16-470-705, 16-470-710, and 16-470-717.

Statutory Authority for Adoption: RCW 17.24.011 and 17.24.041.

Adopted under notice filed as WSR 24-13-074 on June 17, 2024.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 3, Repealed 0.

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

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

Date Adopted: August 14, 2024.

Derek I. Sandison  
Director

## OTS-5250.1

AMENDATORY SECTION (Amending WSR 22-17-068, filed 8/15/22, effective 9/15/22)

**WAC 16-470-705 Areas under quarantine.** (1) Exterior: The entire states of Alabama, Arkansas, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hamp-

shire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, the District of Columbia, the Provinces of Ontario and Quebec, and any other state, province, parish, or county where infestations of Japanese beetle are detected are declared to be under quarantine for Japanese beetle.

(a) The director may exempt individual counties of the states under quarantine from meeting the conditions in WAC 16-470-715 if the director determines that:

(i) The state has adopted and is enforcing restrictions on the interstate and intrastate movement of regulated articles that are equivalent to or exceed the restrictions placed on the movement of regulated articles as provided in WAC 16-470-715; and

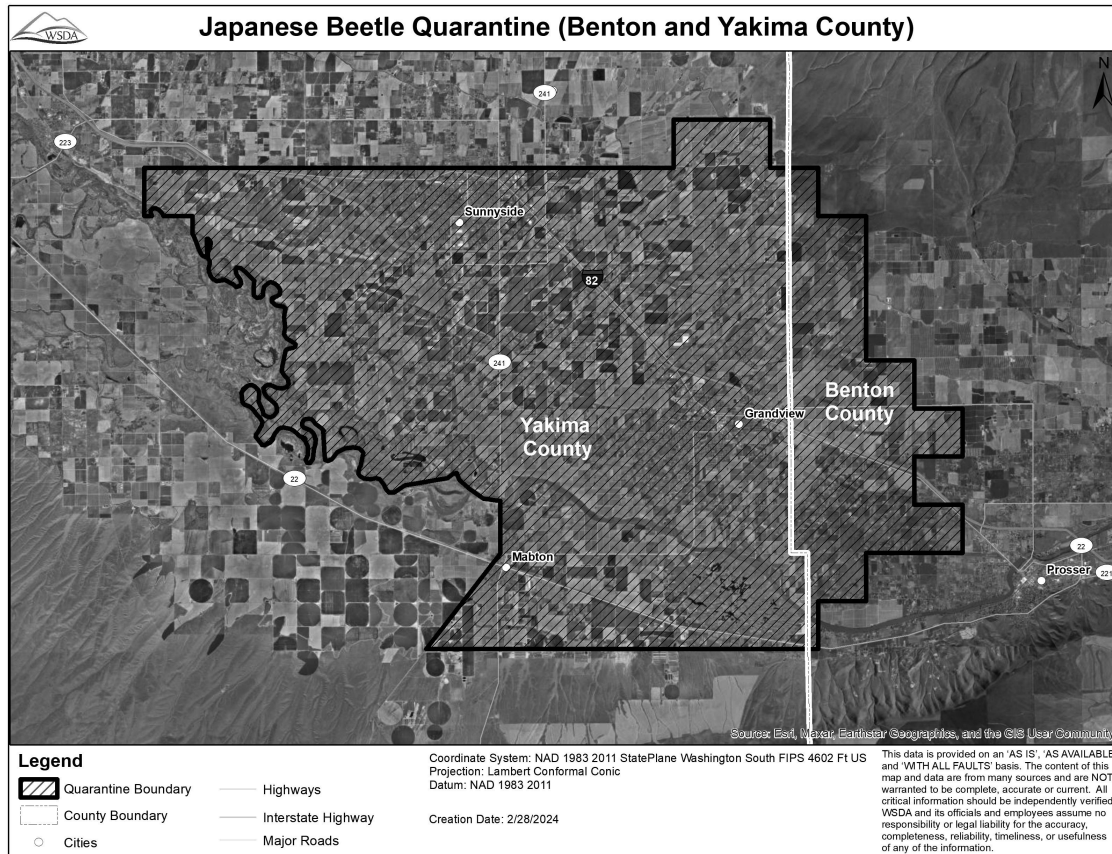
(ii) Annual surveys are conducted in such counties and the results of these surveys are negative for Japanese beetle; and

(iii) One or more neighboring counties are not subject to an unacceptable heavy Japanese beetle infestation.

(b) A plant health official of any state may request exemption of one or more counties under this subsection. The request must be in writing, and it must state the area surveyed, the survey method, personnel conducting the survey, and dates of any previous Japanese beetle infestations in that county.

(2) Interior: Within the state of Washington, those areas where infestations of Japanese beetle exist are declared to be under quarantine. These areas include the portion of Yakima and Benton counties designated as follows: Beginning within Yakima County at latitude (~~(N46°18'8" and longitude W120°0'26"; thence easterly across the Yakima-Benton County line to latitude N46°18'5" and longitude W119°51'39"; thence southerly to latitude N46°16'21" and longitude W119°51'40"; thence easterly to longitude W119°50'25"; thence southerly to latitude N46°13'44" and longitude W119°50'27"; thence westerly to latitude N46°13'44" and longitude W119°51'42"; thence southerly to latitude N46°12'00" and longitude W119°51'42"; thence westerly across the Yakima-Benton County line to latitude N46°12'3" and longitude W119°59'14"; thence northerly to latitude N46°14'39" and longitude W119°59'12"; thence westerly to longitude W120°0'28")~~) N46°19'54" and longitude W120°09'12"; thence easterly to latitude N46°19'51" and longitude W119°55'24"; thence northerly to latitude N46°20'43" and longitude W119°55'23"; thence easterly to latitude N46°20'42" and longitude W119°52'53"; thence southerly to N46°19'50" and longitude W119°52'53"; thence easterly across the Yakima-Benton County line to latitude N46°19'50"; and longitude W119°51'38" southerly to latitude N46°18'57" and longitude W119°51'39"; thence easterly to latitude N46°18'57" and longitude W119°50'24"; thence southerly to latitude N46°16'21" and longitude W119°50'25"; thence easterly to latitude N46°16'20" and longitude W119°49'10"; thence southerly to latitude N46°15'28" and longitude W119°49'11"; thence easterly to latitude N46°15'28" and longitude W119°47'56"; thence southerly to latitude N46°14'35" and longitude W119°47'56"; thence westerly to latitude N46°14'36" and longitude W119°49'12"; thence southerly to latitude N46°13'44" and longitude W119°49'12"; thence easterly to N46°13'43" and longitude W119°47'57"; thence southerly to latitude N46°12'51" and longitude W119°47'58"; thence westerly to latitude N46°12'52" and longitude W119°50'28"; thence southerly to latitude N46°11'60" and longitude W119°50'29"; thence westerly to latitude N46°12'00" and longitude W119°51'44"; thence southerly to latitude N46°11'08" and longitude W119°51'44"; thence westerly to latitude N46°11'11" and longitude W120°01'55";

thence northerly and easterly along the Yakama Nation Reservation boundary line; thence northerly and turning westerly along the Yakama Nation Reservation boundary to latitude N46°18'42" and longitude W120°07'57"; then northerly to latitude N46°19'02" and longitude W120°07'57"; then westerly to latitude N46°19'02" and longitude W120°08'42"; thence northerly and westerly and turning southerly along the Yakama Nation Reservation boundary to latitude N46°19'02" and longitude W120°09'00"; thence westerly to latitude N46°19'02" and longitude W120°09'12"; thence northerly to the point of beginning.



AMENDATORY SECTION (Amending WSR 22-17-068, filed 8/15/22, effective 9/15/22)

**WAC 16-470-710 Regulated articles.** The following are declared to be hosts or possible carriers of Japanese beetle and are regulated articles under the Japanese beetle quarantine:

(1) The upper eight inches of topsoil containing vegetative material from all properties including, but not limited to, residential, agricultural, and commercial properties (including construction sites);

(2) Humus and compost (except when produced commercially), ((and)) growing media (except when commercially packaged), and soil samples;

(3) Yard debris, meaning plant material commonly created in the course of maintaining yards and gardens and through horticulture, gardening, landscaping, or similar activities. Yard debris includes, but

is not limited to, grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, and vegetable garden debris;

(4) Plants for planting and propagation, except when dormant and bareroot and free from soil or growing media, including:

- (a) All plants with roots;
- (b) Plant crowns or roots;
- (c) Bulbs;
- (d) Corms;
- (e) Tubers; and
- (f) Rhizomes;

(5) Turfgrass (sod);

(6) Hop vines and unshucked corn ears harvested during the Japanese beetle adult flight season (May 15th through October 15th);

(7) Cut flowers for decorative purposes, including those exposed to open air environments during their harvest, transportation, or trade; and

(8) Any other plant, plant part, article, or means of conveyance when it is determined by the director to present a hazard of spreading live Japanese beetle due to either infestation, or exposure to infestation.

#### NEW SECTION

**WAC 16-470-711 Signage requirements.** Any business selling regulated articles under WAC 16-470-710 (4) or (7) which is located within the interior quarantine area (see WAC 16-470-705(2)) must post signage which is clearly visible at all business entrances, as well as points of sale and aisles in areas where these regulated articles are being sold. Businesses must use signage developed by or approved by the department, which must clearly state that regulated articles purchased cannot be transported outside of the quarantine area. Signs may be found on the department's website at <http://agr.wa.gov/beetles> and must be a minimum of 8.5" x 11" in size.

AMENDATORY SECTION (Amending WSR 22-17-068, filed 8/15/22, effective 9/15/22)

**WAC 16-470-717 Conditions governing the movement of regulated articles from internal quarantined areas.** Regulated articles within the state of Washington quarantined areas are prohibited from moving outside the quarantined area (from all properties, including commercial and private properties), except as provided for below:

(1) The upper eight inches of topsoil containing vegetative material from all properties; humus and compost (except when produced commercially), ~~(and)~~ growing media (except when commercially packaged), and soil samples, may be allowed to move from the quarantine area if they are first treated by one of the following methods. Treatments must be monitored by the department for compliance.

(a) Steam heated to a temperature of 140 degrees Fahrenheit for one hour, to kill all life stages of Japanese beetle;

(b) Soil samples may be transported to a laboratory for testing outside of the quarantine area if they are securely double bagged and clearly labeled with the following statement, "This soil sample origi-

rates from a Japanese beetle quarantine area. Sample must either be securely double bagged prior to disposal or incinerated." Laboratories located within Washington state that are receiving soil samples originating from the quarantine area must either securely double bag the samples prior to disposal or incinerate the samples.

(c) Other treatments determined to be effective at eradicating Japanese beetle and approved in writing by the director.

(2) Yard debris may be allowed to move from the quarantine area if it is first treated by one of the following methods. Treatments must be monitored by the department for compliance.

(a) Steam heated to a temperature of 140 degrees Fahrenheit for one hour, to kill all life stages of Japanese beetle;

(b) When consisting solely of woody materials containing no soil, yard debris may be chipped to a screen size of one inch in two dimensions or smaller during the Japanese beetle adult flight season (May 15th through October 15th). Woody material containing no soil can be moved outside of the Japanese beetle adult flight season without chipping;

(c) Another treatment determined to be effective at eradicating Japanese beetle and approved in writing by the director.

(3) Plants for planting and propagation (except when dormant and bareroot and free from soil or growing media), all plants with roots, plant crowns or roots, bulbs, corms, tubers and rhizomes, and turf-grass (sod) may be allowed to move from the quarantine area if each shipment complies with one of the treatment or inspection requirements detailed under (a) through (f) of this subsection. Before the shipment moves outside the quarantined area, the shipment must be approved by the department. Approval will be documented by the issuance of a certificate of treatment or inspection when the department determines that the shipment is in compliance with the treatment or inspection requirements. The certificate must accompany the shipment while the shipment is in transit. Treated plants must be safeguarded from reinfestation prior to shipping. Plants shipped dormant and bareroot with no soil or growing media attached are exempt from these requirements, and should be identified as bareroot on shipping documents.

(a) Production in an approved Japanese beetle free greenhouse/screenhouse. All the following criteria apply to be approved as a Japanese beetle free greenhouse/screenhouse. All media must be sterilized and free of soil. All planting stock must be free of soil (bareroot) before planting into the approved medium. The potted plants must be maintained within the greenhouse/screenhouse during the entire adult flight period (May 15th through October 15th). During the adult flight period, the greenhouse/screenhouse must be made secure so that adult Japanese beetles cannot enter. Such security measures must be approved by the department. No Japanese beetle contaminated material shall be allowed into the secured area at any time. The greenhouse/screenhouse will be officially inspected by the department for the presence of all life stages of Japanese beetle and must be specifically approved as a secure area. The plants and their growing medium must be appropriately protected from subsequent infestation while being stored, packed, and shipped. Certified greenhouse/screenhouse nursery stock may not be transported into or through any infested areas unless identity is preserved and adequate safeguards are applied to prevent possible infestation. Each greenhouse/screenhouse operation must be approved by the department as having met and maintained the above criteria. The certificate accompanying the plants shall bear the following additional declaration: "The rooted plants (or crowns) were produced in an ap-

proved Japanese beetle free greenhouse or screenhouse and were grown in sterile, soilless media."

(b) Production during a pest free window. The entire rooted plant production cycle (planting, growth, harvest, and shipping) will be completed within a pest free window (October 16th through May 14th), in clean containers with sterilized and soilless growing medium, and shipment will occur outside the adult Japanese beetle flight period (May 15th through October 15th). The accompanying phytosanitary certificate shall bear the following additional declaration: "These plants were produced outside the Japanese beetle flight season and were grown in sterile, soilless media."

(c) Application of approved regulatory treatments. All treatments will be performed under direct supervision of the department or under a compliance agreement. Treatments and procedures under a compliance agreement will be monitored throughout the season. State phytosanitary certificates listing and verifying the treatment used must accompany the shipment. Note that not all treatments or methods approved in the U.S. Domestic Japanese Beetle Harmonization Plan are acceptable for use within Washington state. The phytosanitary certificate shall bear the following additional declaration: "The rooted plants are in soilless media and were treated to control *Popillia japonica* according to the criteria for shipment to Category 1 states as provided in the U.S. Domestic Japanese Beetle Harmonization Plan and Washington state's Japanese beetle quarantine."

(d) Dip treatment - Not an approved treatment.

(e) Drench treatments - Container plants only. Not approved for ornamental grasses or sedges. Not approved for field potted plants. Potting media used must be sterile and soilless, containers must be clean. Only containerized nursery stock with rootballs 12 inches in diameter or smaller and free from field soil are eligible. This is a prophylactic treatment protocol targeting eggs and early first instar larvae. If the containers are exposed to a second flight season, they must be retreated with an approved insecticide. Chemicals approved for drench treatments of container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a Category 1 state, and must be labeled for use in Washington state.

(f) Media (granule) incorporation - Container plants only. Not approved for ornamental grasses or sedges. Only containerized nursery stock with rootballs 12 inches in diameter or smaller, planted in approved growing media, and free from field soil are eligible. Plants grown in field soil and then potted into soilless container substrates are not eligible for certification using this protocol, unless all field soil is removed from the roots so plants are bareroot at the time of potting. All pesticides used for media incorporation must be mixed thoroughly into the media before potting and plants should be watered at least two times following media incorporation before shipment can begin. Approved growing media used must be free from soil and consist of synthetic or other substances (other than soil) used singly or in combinations. Examples of approved growing media include conifer bark, hardwood bark, expanded or baked clay pellets, expanded polystyrene beads, floral foam, ground coconut husk, ground cocoa pods, ground coffee hulls, ground rice husk, peat, perlite, pumice, recycled paper, rock wool, sawdust, sphagnum, styrofoam, synthetic sponge, vermiculite, and volcanic ash or cinder. The media shall contain only substances that were not used previously for growing plants or other agricultural purposes. It must be free of plant pests, sand, and related matter, and safeguarded in such a manner as to prevent the intro-

duction of all life stages of Japanese beetle to the media. The granules must be incorporated into the media before potting. Plants being stepped up into treated potting media must first have undergone an approved drench treatment to eliminate any untreated volume of potting medium. This treatment protocol targets eggs and early first instar larvae and allows for certification of plants that have been exposed to only one flight season after application. If the containers are to be exposed to a second flight season, they must be repotted with a granular incorporated mix or retreated using one of the approved drench treatments. Chemicals approved for media (granule) incorporation for container plants under this protocol can be found in the Japanese Beetle National Harmonization Plan for shipping to a Category 1 state, and must be labeled for use in Washington state.

(4) Hop vines and unshucked corn ears: Fields where hops or corn (intended to be shipped unshucked) are planted must be trapped and monitored by the department and found free of Japanese beetle for the entire adult flight period (May 15th through October 15th), or from the date of planting up to the date of harvest if both dates are within the flight period. Fields that are not sufficiently trapped will not be considered free from Japanese beetle. If the field is found free of Japanese beetle by the department, vines and unshucked corn ears may be moved outside the quarantined area. If the department determines there is evidence of Japanese beetle presence, vines and unshucked corn ears must be treated prior to harvest or movement by a method approved by the director in advance. All shipments of hop vines and unshucked corn ears to areas outside the quarantined area must be accompanied by a compliance document issued by the department stating the field of origin and destination addresses. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment.

(5) Cut flowers for decorative purposes: All shipments of cut flowers grown in the quarantined area, to areas outside the quarantined area must be accompanied by a compliance document issued by the department stating the field of origin and destination address. If a shipment is found to contain Japanese beetles, any further shipments from that field must be in vehicles sufficiently closed/covered to prevent reinfestation after treatment.



## WSR 24-17-054

## PERMANENT RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed August 15, 2024, 7:40 a.m., effective September 15, 2024]

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

Purpose: This rule making is necessary to incorporate into the employment security department's (department) rules the changes made by ESHB 1106 (2023), which amended RCW 50.20.050. RCW 50.20.050 sets forth the exclusive good cause reasons for which an individual can quit their job and receive unemployment benefits. Under the amendments to RCW 50.20.050, an individual can quit their job due to inaccessible care of a child or vulnerable adult in the claimant's care and due to an employer changing the claimant's regularly scheduled shift or split shift. This rule making will clarify the requirements for establishing good cause to quit due to inaccessible care of a child or vulnerable adult in the claimant's care. This rule making will also add a definition for "split shift" to the department's rules.

Citation of Rules Affected by this Order: New WAC 192-150-065; and amending WAC 192-150-145.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.050.

Other Authority: ESHB 1106 (2023).

Adopted under notice filed as WSR 24-11-139 on May 21, 2024.

A final cost-benefit analysis is available by contacting Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, phone 425-465-0313, fax 844-652-7096, TTY relay 771 [711], email [stephanie.frazee@esd.wa.gov](mailto:stephanie.frazee@esd.wa.gov), website <https://www.esd.wa.gov/newsroom/ui-rulemaking/expanding-good-cause-voluntary-quitting-employment>.

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

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

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

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

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

Date Adopted: August 15, 2024.

Joy E. Adams  
Employment System Policy and Integrity Division Director

OTS-5297.1

NEW SECTION

**WAC 192-150-066 Leaving work due to inaccessible care for a child or a vulnerable adult.** For separations occurring on or after July 7, 2024, and before July 8, 2029:

(1) **General rule.** To establish good cause for leaving work voluntarily because the care for a child or vulnerable adult in your care is inaccessible, you must demonstrate that:

(a) You left work primarily because of such caregiving inaccessibility;

(b) The caregiving inaccessibility made it necessary for you to leave work;

(c) You terminated your employment status and are not entitled to be reinstated to the same position or a comparable similar position; and

(d) You made reasonable efforts to preserve your employment prior to leaving work, including:

(i) Requesting changes in working conditions; changes to your work schedule that would accommodate the caregiving inaccessibility; or a leave of absence, notifying your employer of the reason(s) for the leave of absence before the date you begin the leave of absence; and

(ii) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(2) **Exception.** You may be excused from pursuing reasonable alternatives prior to leaving work as required by subsection (1)(d) of this section if you can show that doing so would have been a futile act.

**OTS-5298.1**

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

**WAC 192-150-145 Change in working conditions covered by RCW 50.20.050 (2) (b) (v) through (x) and (xiv).** (1) If you quit work due to a change in working conditions that meets the requirements of RCW 50.20.050 (2) (b) (v) through (x) or (xiv), the department will not deny benefits solely on the basis that you continued working for a brief period of time following the change. However, you must demonstrate to the department that the change in working conditions was the motivating factor for quitting work.

(2) "Brief period of time" means the amount of time a reasonably prudent person would have continued working after the change in circumstances.

(3) "Split shift" means a work schedule in which paid and working time periods are interrupted by nonpaid and nonworking time periods established by the employer, with the time period between shifts being longer than a bona fide rest or meal period and within the same work day.

**WSR 24-17-059**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed August 15, 2024, 10:03 a.m., effective September 15, 2024]

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

Purpose: The department of children, youth, and families' early learning division is amending rules to expand eligibility to people working in licensed child care centers and licensed family homes, specialty and therapeutic court participants, and undocumented children. This rule making will also establish eligibility for families with a parent participating in a state-registered apprenticeship with income less than 85 percent of the state median income who, within the last year, were approved for working connections child care. These rules are currently in effect under emergency status.

Citation of Rules Affected by this Order: Amending WAC 110-15-0003, 110-15-0005, 110-15-0015, 110-15-0024, 110-15-0045, and 110-15-0075.

Statutory Authority for Adoption: 2SSB 5225, 2SHB 1525; chapter 43.216 RCW.

Adopted under notice filed as WSR 24-14-137 on July 2, 2024.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: August 15, 2024.

Brenda Villarreal  
Rules Coordinator

**OTS-5105.6**

AMENDATORY SECTION (Amending WSR 22-12-072, filed 5/27/22, effective 7/1/22)

**WAC 110-15-0003 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

**"Able"** means being physically and mentally capable of caring for a child in a responsible manner.

**"Administrative error"** means an error made by ((DCYF)) the department through no fault of the consumer or provider.

**"Approved activity"** means an activity that a consumer is required to participate in at application and reapplication to be eligible to collect benefits.

**"Authorization"** means the transaction created by ((DCYF)) the department which allows the provider to claim payment during a certification period. The transaction may be adjusted based on the family need.

**"Available"** means being free to provide care when not participating in an approved activity under WAC 110-15-0040, 110-15-0045, or 110-15-0050 during the time child care is needed.

**"Benefit"** means a regular payment made by a government agency on behalf of a person eligible to receive it.

**"Calendar year"** means those dates between and including January 1st and December 31st.

**"Capacity"** means the maximum number of children the licensee is authorized to have in care at any given time.

**"Collective bargaining agreement"** or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

**"Consumer"** means the person eligible to receive:

(a) Working connections child care (WCCC) benefits as described in part II of this chapter; or

(b) SCC benefits as described in part III of this chapter.

**"Copayment"** means the amount of money the consumer is responsible to pay the child care provider each month toward the cost of child care, whether provided under a voucher or contract.

**"Days"** means calendar days unless otherwise specified.

**"Department of children, youth, and families (DCYF)"** or **"department"** means the Washington state department of children, youth, and families.

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

**"Early achievers"** means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

**"Electronic record"** means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

**"Electronic signature"** means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature, symbol, or process executed by a person with the intent to sign the record.

**"Eligibility"** means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

**"Eligibility period"** means the months for which households are eligible to receive WCCC or SCC program subsidies.

**"Employment"** or **"work"** means engaging in any legal, income generating activity that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S. This includes unsubsidized employment, as verified by ((DCYF)) the department, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

**"Existing child care provider"** means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

**"Fraud"** means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefits to themselves or another person. See RCW 74.04.004.

**"Full-time student"** means a consumer who attends a community, technical, or tribal college and meets its definition of full-time student.

**"Homeless"** means homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987 without a fixed, regular, and adequate nighttime residence.

**"In-home/relative provider" or "family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child care licensing standards and is approved for ~~((working connections child care~~ ~~(+))~~WCCC~~(+))~~ payment under WAC 110-15-0125.

**"In loco parentis"** means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

**"Infant"** means a child from birth to 11 months.

**"Living in the household"** means people who reside at the same physical address.

**"Lump-sum payment"** means a single payment that is not anticipated to continue.

**"Newly eligible consumer"** means a consumer that has at least one full calendar month break in benefit eligibility.

**"Night shift"** means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

**"Nonschool age child"** means a child who is six years of age or younger and is not enrolled in public or private school.

**"Overpayment"** means a payment or benefits received by a provider or consumer that exceeds the amount the provider or consumer is approved for or eligible to receive.

**"Parental control"** means a child is living with a biological or adoptive parent, stepparent, legal guardian verifiable by a legal or court document, adult sibling or step-sibling, nephew or niece, aunt, great-aunt, uncle, great-uncle, grandparent or great-grandparent, or an approved in loco parentis custodian responsible for exercising day-to-day care and control of the child.

**"Preschool age child"** means a child age 30 months through six years of age who is not attending kindergarten or elementary school.

**"Private school"** means a private school approved by the state under chapter 28A.195 RCW.

**"Program violation"** means a failure to adhere to program requirements, which results in an overpayment.

**"Sanction"** means deterrent action imposed by the department to address a program violation finding.

~~(("SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.))~~

**"School age child"** means a child who is between five years of age through 12 years of age and who is attending public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

**"Seasonal child care program (SCC)"** means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

**"Seasonally available agricultural related work"** means work that is directly related to the cultivation, production, harvesting, or processing of fruit trees or crops.

**"Second tier eligibility"** means an increased income limit for eligible families who reapply before the end of their current eligibility period.

**"Self-employment"** means engaging in a legal, income-generating activity earned directly from an individual's trade or business that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S.

**"Sign"** means placing a name or legal mark on a document by physically writing or using an electronic signature.

**"Specialty court"** means the same as defined in RCW 2.30.020.

**"State median income (SMI)"** means an annual income figure representing the point at which there are as many families earning more than that amount as there are earning less than that amount. The Census Bureau publishes median family income figures for each state each year, depending on family size.

**"TANF"** means temporary assistance for needy families, a cash assistance program administered by DSHS.

**"Technical assistance"** means a strategy that is focused on the resolution of a specific concern or need. This may be in writing or by phone call.

**"Therapeutic court"** means the same as defined in RCW 2.30.020.

**"To the extent of available funds"** means one or more of the following:

- (a) Limited or closed enrollment;
- (b) Subject to a priority list for new enrollees pursuant to applicable state and federal law and as described in WAC 110-15-2210; or
- (c) Subject to a waiting list.

**"Unintentional"** means not done willfully or on purpose.

**"Waiting list"** means a list of applicants or reapplicants eligible to receive subsidy benefits when funding becomes available.

**"Working connections child care (WCCC)"** means the working connections child care program, a child care subsidy program described in part II of this chapter that assists eligible families to pay for child care.

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

**WAC 110-15-0005 Eligibility.** (1) Consumers (~~(-At)~~) at the time of application and reapplication (~~(7)~~) must meet the following requirements to be eligible for WCCC (~~(, consumers must)~~):

- (a) Have parental control of one or more eligible children;
- (b) Live in (~~(the state of)~~) Washington state;
- (c) Participate in an approved activity or meet the eligibility special circumstances requirements under WAC 110-15-0020, 110-15-0023, or 110-15-0024;

~~(d) ((Have countable income at or below 60 percent of the SMI at initial application or at or below 65 percent of the SMI at reapplica-~~  
~~tion;~~

~~(e-))~~ Not have assets that exceed \$1,000,000; ~~((and~~

~~(f-))~~ (e) Have an agreed payment arrangement with any provider to whom any outstanding WCCC copayment is owed; and

(f) Have one of the following:

(i) Countable income at or below:

(A) Sixty percent of the SMI at initial application; or

(B) Sixty-five percent of the SMI at reapplication;

(ii) A household annual income adjusted for family size that does not exceed 75 percent of the SMI within the first 12 months of a state-registered apprenticeship program; or

(iii) Be employed by a licensed or certified child care provider as confirmed or verified in the department's electronic workforce registry and have a household annual income adjusted for family size that does not exceed 85 percent of the SMI.

(2) Parents currently attending high school or who are age 21 or younger and completing a high school equivalency certificate are eligible for WCCC if their income does not exceed 85 percent of the SMI at the time of application.

(3) Children ~~((=))~~ must meet the following requirements to be eligible for WCCC ~~((, children must))~~:

~~(a) ((Belong to one of the following groups as defined in WAC 388-424-0001:~~

~~(i) A U.S. citizen;~~

~~(ii) A U.S. national;~~

~~(iii) A qualified alien; or~~

~~(iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005.~~

~~(b) Legally))~~ Reside in Washington state ~~((, which will be determined by applying the criteria of WAC 388-424-0001 or 388-468-0005))~~; and

~~((e))~~ (b) Be less than ~~((13 years of))~~ age;

(i) Thirteen on the first day of eligibility; or

~~((d) Be less than 19 years of age, and;~~

~~(i-))~~ (ii) Nineteen and:

(A) Have a verified special need, ((according to)) as outlined in WAC 110-15-0020; or

~~((ii))~~ (B) Be under court supervision.

AMENDATORY SECTION (Amending WSR 19-12-058, filed 5/31/19, effective 7/1/19)

**WAC 110-15-0015 Determining family size.** (1) ~~((DCYF))~~ The department determines a consumer's family size ~~((as follows))~~ for:

(a) ~~((For a))~~ Single parents, including a minor parent living independently, ~~((DCYF counts))~~ by counting the consumer and the consumer's children;

(b) ~~((For))~~ Unmarried parents who have:

(i) At least one mutual child, ((DCYF counts)) by counting both parents and all of their children living in the household;

~~((e) Unmarried parents who have))~~ (ii) No mutual children ~~((are counted as separate WCCC households))~~, by counting the unmarried pa-

rents and their respective children when living in the same household as separate WCCC households;

~~((d) For)~~ (c) Married parents, ((DCYF counts)) by counting both parents and all of their children living in the household;

~~((e) For parents who are undocumented aliens as defined in WAC 388-424-0001, DCYF counts the parents and children, documented and undocumented, and all other family rules in this section apply. Children needing care must meet citizenship requirements described in WAC 110-15-0005;~~

~~(f) For a)~~ (d) The following individuals by counting only the children and only the children's income:

(i) Legal guardians verified by a legal or court document((7));

(ii) Adult siblings ((ex)), step-siblings, nephews, nieces, aunts, uncles, grandparents, any of these relatives with the prefix "great," such as a "great-nephew((7))"; or ~~((an-in))~~

(iii) In loco parentis custodians who ((is)) are not related to the child as ((described)) defined in WAC ((110-15-0005, DCYF counts only the children and only the children's income is counted)) 110-15-0003;

~~((g) For a)~~ (e) Parents who ((is)) are out of the household because of employer requirements, such as training or military service, and expected to return to the household, ((DCYF counts)) by counting the consumer, the absent parent, and the children;

~~((h) For a)~~ (f) Parents who ((is)) are voluntarily out of the household for reasons other than requirements of the employer, such as unapproved schooling and visiting family members, and is expected to return to the household, ((DCYF counts)) by counting the consumer, the absent parent, and the children((. WAC 110-15-0020 and all other family and household rules in this section apply));

~~((i) For a)~~ (g) Parents who ((is)) are out of the country and waiting for legal reentry ((in-to)) into the United States, ((DCYF counts)) by counting only the consumer and children residing in the United States ((and all other family and household rules in this section apply));

~~((j) An)~~ (h) Incarcerated ((parent is)) parents who are not part of the household ((count for)) by counting them when determining income and eligibility((. DCYF counts the remaining household members using all other family rules in this section)); and

~~((k) For a parent)~~ (i) Incarcerated parents residing at a Washington state correctional facility whose ((child)) children live((s)) with them at the facility, ((DCYF counts the parent)) by counting them and their child as their own household.

(2) When ~~((the))~~ households consist~~((s))~~ of the consumer's own ~~((child and another child))~~ children and other children identified in subsection (1)~~((-f))~~ (d) of this section, the household may be:

(a) Combined into one household; or

(b) Kept as distinct households for the benefit of the consumer.

AMENDATORY SECTION (Amending WSR 23-23-082, filed 11/13/23, effective 12/14/23)

**WAC 110-15-0024 Categorical eligibility ((for families receiving child protective, child welfare, or family assessment response services)).** (1) Families with children ~~((who have received))~~ are eligible for WCCC benefits for a 12-month period if the consumer is a Washing-



ton state resident and their children are living with a biological parent or guardian and:

(a) In the six months prior to application or reapplication for WCCC benefits, the family received:

(i) Child protective services (CPS) as defined and used by chapters 26.44 and 74.13 RCW((τ)); or

(ii) Child welfare services as defined and used by chapter 74.13 RCW((τ)); or

(iii) Services through a family assessment response, as defined and used by chapter 26.44 RCW ((in the six months previous to application or reapplication for working connections child care (WCCC) benefits are eligible for WCCC benefits for a 12-month period if, in addition the:

(a) Consumer is a Washington state resident;

(b) Family has been referred for child care as part of the family's case management as defined by RCW 74.13.020; and

(c) Child or children are residing with a biological parent or guardian); and

(iv) The family has been referred for child care as part of the family's case management as defined by RCW 74.13.020; or

(b) The children's parent or guardian:

(i) Is participating in or is listed as a victim in a case in a specialty or therapeutic court as defined by RCW 2.30.020; and

(ii) Was referred for child care as part of the specialty court or therapeutic court proceedings.

(2) Families eligible for WCCC under this section will:

(a) Have no copayment;

(b) Be authorized for full-time child care regardless of participation in an approved activity; and

(c) Be eligible to have benefits paid only to a provider that meets the requirements in WAC 110-15-0125.

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

**WAC 110-15-0045 Approved activities for applicants and consumers not participating in WorkFirst.** Applicants and consumers:

(1) ~~((Applicants and consumers))~~ Not participating in WorkFirst activities may be eligible for WCCC benefits for the following approved activities:

(a) Employment;

(b) Self-employment;

(c) Supplemental nutrition assistance program employment and training (SNAP E&T); or

(d) The following education programs:

(i) High school or working towards a high school equivalency certificate for consumers under age 22 ~~((years of age));~~

(ii) Part-time enrollment in a:

(A) Vocational education((τ));

(B) Adult basic education (ABE)((τ));

(C) High school equivalency certificate for consumers age 22 ~~((years of age)) and older((τ));~~ or

(D) English as a second language (ESL) program combined with an average of ~~((20));~~

(I) Twenty or more employment hours per week ~~((or 16));~~

(II) Sixteen or more work-study hours per week; or  
 (iii) For full-time students of a community, technical, or tribal college, enrollment in:

- (A) A vocational education program that leads to a degree or certificate in a specific occupation;
- (B) An associate degree program; or
- (C) A registered apprenticeship program.

~~((iv) "Full-time student" for the purpose of this subsection means a consumer attends a community, technical, or tribal college and meets its definition of full-time student.~~

~~(e) Applicants and consumers))~~ (2) Who meet the requirements of ((e) of this)) subsection (1)(d) of this section are eligible to receive subsidy payment for up to 10 hours per week of study time for approved classes.

~~((2) Applicants and consumers))~~ (3) Who are eligible for WCCC benefits under the terms of this section are eligible to receive subsidy payment for:

- (a) Transportation time between the child care location and the consumer's place of employment or approved activity; and
- (b) Up to eight hours of sleep time before or after a night shift.

AMENDATORY SECTION (Amending WSR 23-12-038, filed 5/30/23, effective 7/1/23)

**WAC 110-15-0075 Determining income eligibility and copayment amounts.** (1) ~~((DCYF takes the following steps to))~~ The department determines consumers' eligibility and copayments, when care is provided under a WCCC voucher or contract, by:

- (a) ~~((Determine their))~~ Family size as described in WAC 110-15-0015; and
- (b) ~~((Determine their))~~ Countable income as described in WAC 110-15-0065.

(2) ~~((DCYF))~~ The department calculates consumers' copayments as follows:

If the household's income is:	Then the household's maximum monthly copayment is:
At or below 20 percent of the SMI	Waived
Above 20 percent and at or below 36 percent of the SMI	\$65
Above 36 percent and at or below 50 percent of the SMI	\$90
Above 50 percent and at or below 60 percent of the SMI	\$165
At reapplication, above 60 percent and at or below 65 percent of the SMI	\$215

If the household's income is:	Then the household's maximum monthly copayment is:
<u>An applicant between 60 percent and 75 percent of the SMI for families participating in a state-registered apprenticeship</u>	<u>\$215</u>

(3) ((DCYF)) The department does not prorate copayments when consumers use care for only part of a month.

(4) ((For parents)) The department waives copayments for eligible consumers who are one or more of the following:

(a) Age 21 years or younger who attend high school or are working towards completing a high school equivalency certificate((~~r copayments are not required~~));

(b) Employed by a licensed or certified child care provider as confirmed or verified in the department's electronic workforce registry;

(c) Eligible under:

(i) WAC 110-15-0023; or

(ii) WAC 110-15-0024.

**WSR 24-17-063**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**CHILDREN, YOUTH, AND FAMILIES**

[Filed August 15, 2024, 1:00 p.m., effective September 15, 2024]

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

Purpose: The department of children, youth, and families' licensing division is developing rules to allow a family home to be licensed for both foster care and child care. The anticipated effects are more child care options within communities and increased placement options for children needing foster care. Furthermore, the proposed rules allow for continuity of care which is expected to create more stable experiences for impacted children.

Citation of Rules Affected by this Order: New WAC 110-300-0430; and amending WAC 110-148-1330 and 110-300-0425.

Statutory Authority for Adoption: RCW 74.15.030, 43.216.055, 43.216.065, and 43.216.250.

Adopted under notice filed as WSR 24-14-136 on July 2, 2024.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

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

Date Adopted: August 15, 2024.

Brenda Villarreal  
Rules Coordinator

**OTS-5568.1**

AMENDATORY SECTION (Amending WSR 22-11-091, filed 5/18/22, effective 6/18/22)

**WAC 110-148-1330 May I receive more than one in-home family license and what are the requirements for requesting and holding multiple licenses, certifications, or authorizations?** (1) ~~((In rare situations and at our discretion, we may allow a family to be licensed for foster care and another type of in-home family care. The LD senior administrator may grant approval if it appears to be in the best interest of a child.~~

~~(2) If you have more than one in-home family license:~~

~~(a) It must be clear that the health and safety of children is not compromised; and~~

~~(b) The total number of children allowed in your home will not be higher than DYCF's allowed maximum capacity. All licensing agencies~~

~~must be in agreement.))~~ The department may approve licensees' request to have more than one department license, certification, or authorization, e.g., child care license and foster care license.

(2) If providers hold both a child care license and a foster care license, the providers must comply with WAC 110-300-0300 and develop and follow a written individual care plan for every child in care with developmental, health, or behavioral needs.

(3) To offer overnight child care, licensees who hold both a child care early learning program license authorized under chapter 110-300 WAC, and a foster family home license authorized under this chapter, must comply with:

(a) WAC 110-300-0270; and

(b) All other applicable rules under this chapter and chapter 110-300 WAC.

(4) Applicants must submit a complete licensing application for each license they are seeking:

(a) The license application must be completed by the applicant pursuant to the laws and rules that govern each license; and

(b) For applicants who apply for more than one license, the department must conduct an individualized assessment of each complete license application prior to approving or denying an application for any license, certification, or authorization requested by the applicant.

(5) When requests are received for multiple licenses, the department will determine the capacity limits for each license based on the requirements in:

(a) Title 110 WAC; and

(b) The chapter within Title 110 WAC that authorizes the license.

(6) If the department determines that licensees are not in compliance with all applicable requirements and regulations for any license, certification, or authorization:

(a) The department and licensees may mutually agree to amend one or more of the licenses, certifications, or authorizations;

(b) The licensees may voluntarily agree to surrender or relinquish one or more of the licenses, certifications, or authorizations to the department; or

(c) The department may issue fines or suspend, deny, modify, or revoke one or more of the licenses as outlined in RCW 43.216.325 and 74.15.130.

## OTS-5569.1

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

**WAC 110-300-0425 Initial(~~(,)~~) and nonexpiring(~~(, dual)~~) licenses(~~(, and license)~~)—Reporting—License modification.** (1) The department may issue an initial license (~~when~~) authorized under RCW 43.216.315 to an early learning program applicant when they demonstrate(~~s compliance~~) their early learning program will be able to comply with the health and safety requirements (~~of~~) described in this chapter (~~but may not be in~~). They do not have to demonstrate

full compliance with all requirements (~~(, pursuant to RCW 43.216.315)~~) that are not related to health and safety for initial license eligibility.

(a) An initial license is valid for six months from the date issued (~~(-)~~);

(b) At the department's discretion, an initial license may be extended for up to three additional six-month periods, not to exceed a total of two years (~~(-)~~); and

(c) The department must evaluate the early learning provider's ability to follow requirements contained in this chapter during the initial license period.

(2) The department may issue a nonexpiring license to a licensee operating under an initial license who demonstrates compliance with the requirements of this chapter during the period of initial licensure, pursuant to RCW 43.216.305.

(3) (~~(A licensee)~~) Licensees must submit the following annual compliance documents at least ((thirty)) 30 calendar days ((prior to that provider's)) before their anniversary date ((. A provider's anniversary date)), which is the date ((the)) their first initial license was issued. ((Pursuant to RCW 43.216.305,)) The required annual compliance documents are:

(a) The annual nonrefundable license fee;

(b) A declaration on the department's form indicating:

(i) The intent to continue operating a licensed early learning program;

(ii) The intent to cease operation as a licensed early learning program;

(iii) A change in the early learning program's operational hours or dates; and

(iv) The intent to comply with all licensing rules.

(c) Documentation of completed background checks ~~((applications))~~ for required individuals as determined by the department's established schedule, pursuant to RCW 43.216.270(2) (~~(, and~~

~~(d))~~). For ~~((each))~~ individuals required to have a background check clearance, the early learning provider must either:

(i) Verify current background checks; or

(ii) Require ((the)) individuals to submit a background check application at least ((thirty)) 30 calendar days prior to the anniversary date.

(4) If ~~((a))~~ licensees fail ~~((s))~~ to meet the requirements for continuing a nonexpiring license by their anniversary date, ~~((the licensee's))~~ their current license will expire ((s. The early learning provider must)) and the licensee will be required to submit a new application for licensure ((, pursuant to RCW 43.216.305(3))).

(5) ~~((Nothing about))~~ The nonexpiring license process in this section may not interfere with the department's established monitoring practices, ~~((pursuant to))~~ as described in RCW 43.216.305 ~~((4)(a))~~.

~~((A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a nonexpiring license resulting from a failure to comply with the requirements of this section.))~~ The department may let a license expire, not be renewed, or not be continued when early learning providers fail to comply with the requirements of this section. Providers cannot appeal the department's decision and have no rights to a hearing.

~~((A licensee must have department approval to hold dual licenses (for example: An early learning program license and another care giving license, certification, or similar authorization).))~~

~~(8) If the department determines that a licensee is not meeting all applicable requirements and regulations:~~

~~(a) The department and licensee may agree to modify the child care license;~~

~~(b) The licensee may give up one of the licenses, certifications, or authorizations; or~~

~~(c) The department may suspend, deny, or revoke the early learning license, pursuant to RCW 43.216.325.~~

~~(9) An) Early learning providers must report the following information within ((twenty-four)) 24 hours of becoming aware to the:~~

~~(a) ((To the)) Department and local authorities((A)) if there has been, or is, a fire or other structural damage to the early learning program space or other parts of the premises((+)), including any structural damage caused by a natural disaster.~~

~~(b) ((To the)) Department:~~

~~(i) Allegations, a reasonable basis to believe, or findings of abuse or neglect that both:~~

~~(A) Are made against the early learning provider, an early learning provider employee or volunteer, or a household member; and~~

~~(B) Involve the abuse, neglect, maltreatment, or exploitation of a child, youth, or vulnerable adult;~~

~~(ii) A retirement, termination, death, incapacity, or change of the program director, or program supervisor((,-ex));~~

~~(iii) A change of ownership or incorporation of ((a provider;~~

~~(ii) When a provider becomes aware of a charge or conviction against themselves, a staff person or, applicable household member, pursuant to WAC 110-06-0043;~~

~~(iii) When a provider becomes aware of an allegation or finding of abuse, neglect, maltreatment, or exploitation of a child or vulnerable adult made against themselves, a staff person, or a household member, if applicable;~~

~~(iv)) the early learning provider's business entity that is responsible for providing the early learning program;~~

~~(iv) Criminal charges or convictions against:~~

~~(A) Themselves;~~

~~(B) An early learning program employee or volunteer; or~~

~~(C) An early learning provider's household member;~~

~~(v) A change in the number of household members living within a family home early learning program space. This includes individuals ((fourteen)):~~

~~(A) Age 14 years old or older that move in or out of the home((,- or a resignation or termination));~~

~~(B) Who resign or are terminated, pursuant to RCW 43.216.390((,-A birth or death affecting the number of household members must be reported within twenty-four hours or at first opportunity)); and~~

~~(C) Who are born or who have died; and~~

~~((+v)) (vi) Any changes in the early learning program hours of operation ((to include)), including planned closure dates.~~

~~((+10)) (8) Prior to increasing capacity of an early learning program, ((the licensee, center director, assistant director, or program supervisor must request and be approved to increase capacity by the department)) early learning providers must make a request to the department for a capacity increase. The department or tribal authority may approve or deny the early learning provider's capacity increase.~~

~~((+11) Licensee, center director, assistant director, or program supervisor must have) (9) The state fire marshal or department ((approval and comply with local building ordinances following a signifi-~~

~~eant change)) must approve any change or modification described under WAC 110-300-0402 (1) (a) through (c) (~~, if applicable~~)). All changes or modifications to the premises must comply with all building codes and ordinances.~~

~~((12)) (10) If the liability insurance described in RCW 43.216.700 is terminated, the licensee, center director, assistant director, or program supervisor must notify the department within ((thirty)) 30 calendar days ((when)) of the date the liability insurance ((coverage under RCW 43.216.700)) has ((lapsed or)) been terminated.~~

#### NEW SECTION

**WAC 110-300-0430 Authority and requirements to possess more than one license.** (1) The department may approve licensees' request to possess more than one department license, certification, or authorization, i.e., child care license and foster care license.

(2) In order to offer overnight child care, licensees who have both a child care early learning program license authorized under this chapter, and a foster family home license authorized under chapter 110-148 WAC, must comply with:

(a) WAC 110-300-0270; and

(b) All other applicable rules under this chapter and chapter 110-148 WAC.

(3) Applicants must submit a complete license application for each license they are seeking and:

(a) The license application must be completed by the applicant pursuant to the laws and rules that govern each license; and

(b) For applicants who apply for more than one license, the department must conduct an individualized assessment of each complete license application prior to approving or denying an application for any license, certification, or authorization requested by the applicant.

(4) When requests are received for multiple licenses, the department will determine the capacity for each license based on the requirements in:

(a) Title 110 WAC; and

(b) The chapter within Title 110 WAC that authorizes the license.

(5) If the department determines that licensees are not in compliance with all applicable requirements and regulations for any license, certification, or authorization:

(a) The department and licensees may mutually agree to amend one or more of the licenses, certifications, or authorizations;

(b) The licensees may voluntarily agree to surrender or relinquish one or more of the licenses, certifications, or authorizations to the department; or

(c) The department may issue fines or suspend, deny, modify, or revoke one or more of the licenses as outlined in RCW 43.216.325 and 74.15.130.



**WSR 24-17-074**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed August 16, 2024, 10:33 a.m., effective September 16, 2024]

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

Purpose: The purpose of the adoption is to amend the citation in subsection (2) pointing to WAC 388-112A-0010(3), which is incorrect and should be WAC 388-112A-0010(36); references in subsection (2)(a)(i) and (ii) dealing with alternative curriculum reference a submission date of June 30, 2018 (which is no longer needed); and numbers over 10 in subsections (5) and (6) do not conform to the current rules on style which require them to be numerals.

Citation of Rules Affected by this Order: Amending WAC 388-112A-0400.

Statutory Authority for Adoption: RCW 70.128.230, 74.39A.009, and 74.39A.070.

Adopted under notice filed as WSR 24-06-059 on March 4, 2024.

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

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

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

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

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

Date Adopted: August 16, 2024.

Katherine I. Vasquez  
Rules Coordinator

**SHS-5021.1**

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-0400 What is specialty training and who is required to take it?** (1) Specialty training refers to approved curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities.

(2) Specialty training classes are different for each population served and are not interchangeable. Specialty training curriculum must be DSHS developed, as described in WAC 388-112A-0010(~~(+3)~~) (36), or DSHS approved.

(a) In order for DSHS to approve a curriculum as a specialty training class, the class must use the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

~~((i) Training entities that currently use classes approved as alternative curriculum for specialty training must update and submit their curricula for approval prior to June 30, 2018.))~~

~~((ii) After July 1, 2018,))~~ (b) Training entities must not use classes approved as alternative curriculum for specialty training that are not using the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450 to meet the specialty training requirement.

~~((b))~~ (c) Curricula approved as specialty training may be integrated with basic training if the complete content of each training is included.

(3) Assisted living facility administrators or their designees, enhanced services facility administrators or their designees, adult family home applicants or providers, resident managers, and entity representatives who are affiliated with homes that service residents who have special needs, including developmental disabilities, dementia, or mental health, must take one or more of the following specialty training curricula:

(a) Developmental disabilities specialty training as described in WAC 388-112A-0420;

(b) Dementia specialty training as described in WAC 388-112A-0440;

(c) Mental health specialty training as described in WAC 388-112A-0450.

(4) All long-term care workers including those exempt from basic training who work in an assisted living facility, enhanced services facility, or adult family home who serve residents with the special needs described in subsection (3) of this section, must take a class approved as specialty training. The specialty training applies to the type of residents served by the home as follows:

(a) Developmental disabilities specialty training as described in WAC 388-112A-0420~~((-))~~;

(b) Dementia specialty training as described in WAC 388-112A-0440; and

(c) Mental health specialty training as described in WAC 388-112A-0450.

(5) Specialty training may be used to meet the requirements for the basic training population specific component if completed within ~~((one hundred twenty))~~ 120 days of the date of hire.

(6) For long-term care workers who have completed the ~~((seventy-five-hour))~~ 75-hour training and do not have a specialty training certificate that indicates completion and competency testing, the long-term care worker must complete specialty training when employed by the adult family home, enhanced services facility, or assisted living facility that serves residents with special needs.

## WSR 24-17-081

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed August 19, 2024, 8:27 a.m., effective September 19, 2024]

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

Purpose: Music therapists; the department of health (department) is adopting rules necessary to create a licensure program for music therapists to implement SHB 1247 (chapter 175, Laws of 2023), codified as chapter 18.233 RCW. Individuals working as a music therapist are required to be licensed by January 1, 2025. The adopted rules establish the new profession's licensure requirements which include: Education, training, and examination requirements for initial licensure; continuing education requirements; fees for licensing, examination, and renewal; and other qualifications as determined by the secretary.

Citation of Rules Affected by this Order: New WAC 246-837-010, 246-837-020, 246-837-030, 246-837-050, 246-837-060, 246-837-070, 246-837-080, 246-837-100, 246-837-110, and 246-837-990.

Statutory Authority for Adoption: RCW 18.122.050, 18.130.077, 18.233.060, 18.233.070, 43.70.250, and 43.70.613.

Other Authority: SHB 1247 (chapter 175, Laws of 2023) codified as chapter 18.233 RCW; ESSB 5229 (chapter 276, Laws of 2021); 2SHB 1724 (chapter 425, Laws of 2023); and chapter 18.130 RCW.

Adopted under notice filed as WSR 24-12-077 on June 4, 2024.

A final cost-benefit analysis is available by contacting Shelbee Scrimo, P.O. Box 47852, Olympia, WA 98504, phone 564-669-1564, TTY 711, email music.therapist@doh.wa.gov, website www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 10, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 10, Amended 0, Repealed 0.

Date Adopted: August 19, 2024.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

OTS-5449.1

**Chapter 246-837 WAC  
MUSIC THERAPIST**

NEW SECTION

**WAC 246-837-010 Music therapist—Definitions.** The definitions in this section apply throughout this chapter unless the context clearly states otherwise.

- (1) "AMTA" means American Music Therapy Association.
- (2) "CBMT" means the Certification Board for Music Therapists.
- (3) "Department" means the Washington state department of health.
- (4) "MT-BC" means Music Therapy Board Certification.
- (5) "Music therapist" means a person licensed to practice music therapy under chapter 18.233 RCW.
- (6) "Music therapy" has the same meaning as provided in RCW 18.233.010.
- (7) "Secretary" means the secretary of the Washington state department of health.

NEW SECTION

**WAC 246-837-020 Music therapist—Approved courses of instruction.** (1) The department recognizes and approves courses of instruction in music therapy by schools that have obtained accreditation of the program in music therapy from the AMTA.

(2) The department may approve other academic and clinical training programs for music therapy that are approved by other organizations that meet the following criteria:

- (a) Is an organization whose business is specific to music therapy;
- (b) Requires schools and universities that offer music therapy programs to be accredited by an accrediting agency that is recognized by the United States Department of Education or the Council for Higher Education Accreditation;
- (c) Requires music therapy programs to be based on a bachelor's degree or above;
- (d) Requires music therapy programs to be based on relevant competencies for music therapy; and
- (e) Requires music therapy programs to have a clinical training component that includes a minimum of 1,200 hours with at least 900 hours in internship experiences approved by the institution, the AMTA, or any department-approved organization.

NEW SECTION

**WAC 246-837-030 Music therapist—Approved examination.** (1) The department recognizes and approves the examination offered by the CBMT.

(2) The department may approve other examinations for music therapy that are approved by an organization that meet the following criteria:

- (a) Is an organization based in the United States whose business is specific to music therapy and who issues certifications in music therapy;

(b) Has current accreditation by the American National Standards Institute (ANSI) or the National Commission for Certifying Agencies (NCCA); and

(c) Bases the examination on relevant competencies for music therapy.

#### NEW SECTION

**WAC 246-837-050 Music therapist—Application.** (1) An applicant for a music therapist license shall meet the requirements in WAC 246-12-020.

(2) Applicants must submit the following supporting documentation:

(a) An official transcript provided as evidence of successful completion of education and training requirements in WAC 246-837-020;

(b) Verification of successful completion of the examination required in WAC 246-837-030 sent directly to the department by the CBMT or other approved organization;

(c) Fingerprint cards for national fingerprint-based background check pursuant to RCW 18.130.064(2), if requested by the department;

(d) Verification of licenses held in other states; and

(e) Any additional documentation or information requested by the department.

(3) Verification of the education, training, and examination requirements in subsection (2) (a) and (b) of this section are waived for an applicant who meets the requirements of RCW 18.130.077. The MT-BC certification issued by the CBMT is approved for this waiver. An applicant for waiver must submit proof directly from any state where the license holds a health care credential that the applicant has not been subject to disciplinary action or impairment in the two years preceding application and is not under investigation or subject to charges. In addition, the applicant must submit:

(a) Verification sent to the department from a state with substantially equivalent requirements that the applicant has held an active credential in that state for at least two years immediately preceding this application with no interruption in licensure that lasted longer than 90 days; or

(b) Verification that the applicant holds a current MT-BC certification issued by the CBMT.

#### NEW SECTION

**WAC 246-837-060 Continuing education requirements for a music therapist.** Every two years upon renewal, a music therapist must attest to completing the continuing education (CE) requirements in subsection (1) or (2) of this section.

(1) The department will accept the following as proof of meeting continuing education:

(a) A current MT-BC certification issued by the CBMT or another national certification board approved by the secretary that requires CE as part of certification; and

(b) Two hours of health equity continuing education credits as described in subsection (4) of this section.

(2) A music therapist who does not hold a current certification as described in subsection (1) of this section shall complete a minimum of 40 hours of CE related to the practice of music therapy.

(a) A minimum of 33 hours of activities must directly address music therapist skill development or music therapist clinical practice, as described in subsection (3) of this section.

(b) At least one hour must pertain to professional ethics and boundaries of a music therapist.

(c) At least two hours must be in health equity as described in subsection (4) of this section.

(d) No more than six hours may be in professional development activities that enhance the licensee's business practice as a music therapist. If audited, the credential holder must submit a certificate of completion or other proof of completion and documentation showing how this relates to their music therapy practice.

(e) Fifty minutes of CE contact time or direct instruction is equivalent to one CE hour.

(3) CE hours may be obtained through one or more of the following:

(a) Courses from a college or university accredited by the United States Department of Education may meet all the required CE hours.

(i) One academic semester credit is equivalent to 15 CE hours.

(ii) One academic quarter credit is equivalent to 10 CE hours.

(iii) Audit requirement is a course syllabus and transcript from the college or university.

(b) Courses from a CE provider.

(i) Courses from providers approved by the CBMT or a national certification board affiliated with music therapy approved by the secretary may meet all of the required CE hours.

(ii) Courses from providers not approved by a national certification board affiliated with music therapy may meet no more than six CE hours.

(iii) Audit requirement is a certificate of completion or letter from a CE provider that includes the course topic and CE hours completed.

(c) Licensee-led instruction of a CE course.

(i) College or university instruction may meet no more than 16 CE hours.

(ii) Any other type of instruction may meet no more than eight CE hours.

(iii) Repeated instruction in the same course may only qualify for CE credit one time in a single CE reporting period.

(iv) Instruction must be related to music therapy.

(v) Audit requirement is the title, description, and dates of course of instruction on a letter from the academic institution or education provider.

(d) Attendance at AMTA National and Regional Conference.

(i) Audit requirement for a full conference is the Certificate of Attendance.

(ii) Audit requirement for individual sessions is signed verification of attendance.

(e) Supervision of practicum student for five hours credit per student or an intern for 10 hours credit per student. Audit requirement is written verification from the music therapy university or facility coordinator.

(f) Develop a new AMTA Academic Program for 100 hours credit per academic program. Audit requirement is a letter of program approval from the AMTA.

(g) Establish a music therapy internship for 30 hours credit per university affiliated program or 50 hours credit per program that is on the AMTA national roster of internship programs. Audit requirement is written verification from the university or AMTA approval letter.

(4) A music therapist must complete two hours of health equity continuing education training every four years as described in WAC 246-12-800 through 246-12-830.

(5) A music therapist shall comply with the requirements of WAC 246-12-170 through 246-12-240.

#### NEW SECTION

**WAC 246-837-070 Expired license—Return to active status.** (1) A person holding an expired music therapist license may not practice until the license is returned to active status.

(2) If the music therapist license has expired for less than five years, they shall meet the requirements of WAC 246-12-040.

(3) If the music therapist license has been expired for five years or more, and they have a current MT-BC certification or currently practice as a licensed music therapist in another state that has substantially equivalent requirements, the applicant shall meet the requirements of WAC 246-12-040 and:

(a) Provide verification of a current MT-BC certification issued by the CBMT; or

(b) Provide verification of a current unrestricted active music therapist license in another state or U.S. jurisdiction which is substantially equivalent to the qualifications for the credential in the state of Washington.

(4) If a music therapist license has been expired for five years or more and the person does not meet the requirements of subsection (3) of this section, the applicant shall comply with WAC 246-12-040 and demonstrate competence by successfully passing an examination as identified in WAC 246-837-030 within six months prior to reapplying for the license.

#### NEW SECTION

**WAC 246-837-080 Inactive status.** A music therapist may obtain an inactive credential as described in WAC 246-12-090 through 246-12-110.

#### NEW SECTION

**WAC 246-837-100 Mandatory reporting.** All individuals credentialed under this chapter must comply with the mandatory reporting rules in chapter 246-16 WAC.

NEW SECTION

**WAC 246-837-110 Sexual misconduct.** All individuals credentialed under this chapter must comply with the sexual misconduct rule in chapter 246-16 WAC.

NEW SECTION

**WAC 246-837-990 Music therapist fees and renewal cycle.** (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC.

(2) The following nonrefundable fees will be charged:

<b>Title of Fee</b>	<b>Fee</b>
<b>Application-Original license</b>	\$300.00
<b>License renewal</b>	
Renewal	680.00
Late renewal penalty	170.00
Expired license reissuance	170.00
<b>Duplicate license</b>	10.00
<b>Verification of license</b>	25.00



## WSR 24-17-109

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed August 19, 2024, 9:02 a.m., effective September 19, 2024]

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

Purpose: Military spouses; removing barriers to temporary practice permits. 2SHB 1009 (chapter 165, Laws of 2023), codified as RCW 18.340.020, alters temporary practice permit requirements to expedite the issuance of professional licenses for military spouses who hold a license in another state by removing the need to first leave employment. The rule amendment aligns WAC 246-12-051 by striking language from the rule to match the changes made by 2SHB 1009 and codified in RCW 18.340.020.

Citation of Rules Affected by this Order: Amending WAC 246-12-051.

Statutory Authority for Adoption: 2SHB 1009 (chapter 165, Laws of 2023), codified as RCW 18.340.020.

Adopted under notice filed as WSR 24-06-028 on February 28, 2024.

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

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

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

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

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

Date Adopted: August 19, 2024.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

**OTS-5129.2**

AMENDATORY SECTION (Amending WSR 12-24-014, filed 11/27/12, effective 12/28/12)

**WAC 246-12-051 How to obtain a temporary practice permit—Military spouse.** A military spouse or state registered domestic partner of a military person may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for the profession. This section applies to any profession listed in RCW 18.130.040 (2) (a).

(1) A temporary practice permit may be issued to an applicant who is a military spouse or state registered domestic partner of a military person and:

(a) Is moving to Washington as a result of the military person's transfer to Washington;

~~(b) ((Left employment in another state to accompany the military person to Washington;~~

~~(e))~~ Holds an unrestricted, active license in another state that has substantially equivalent licensing standards for the same profession to those in Washington; and

~~((d))~~ (c) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body of the other state or states.

(2) A temporary practice permit grants the individual the full scope of practice for the profession.

(3) A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on the application is mailed to the applicant, unless the notice of decision on the application specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(4) To receive a temporary practice permit, the applicant must:

(a) Submit the necessary application, fee(s), fingerprint card if required, and documentation for the license;

~~(b) ((Attest on the application that he/she left employment in another state to accompany the military person;~~

~~(e))~~ Meet all requirements and qualifications for the license that are specific to the training, education, and practice standards for the profession;

~~((d))~~ (c) Provide verification of having an active unrestricted license in the same profession from another state that has substantially equivalent licensing standards for the profession in Washington;

~~((e))~~ (d) Submit a copy of the military person's orders and a copy of:

(i) The military-issued identification card showing the military person's information and the applicant's relationship to the military person;

(ii) A marriage license; or

(iii) A state registered domestic partnership; and

~~((f))~~ (e) Submit a written request for a temporary practice permit.

(5) For the purposes of this section:

(a) "Military spouse" means the husband, wife, or registered domestic partner of a military person.

(b) "Military person" means a person serving in the United States armed forces, the United States public health service commissioned corps, or the merchant marine of the United States.

## WSR 24-17-111

## PERMANENT RULES

## DEPARTMENT OF HEALTH

[Filed August 19, 2024, 9:08 a.m., effective September 19, 2024]

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

Purpose: Dietitian and nutritionist requirements in chapter 246-822 WAC. The department of health (department) amended chapter 246-822 WAC to clarify, streamline, and modernize rules for dietitians and nutritionists. The rules for dietitians and nutritionists were established in 1988-1989, with minor changes in later years. As a result, these updates resolve the items that were inconsistent with national standards and department processes.

The adopted amendments include: Updated rules that align with national professional standards for dietitians, clear standards for education, experience, and supervision requirements, rules that reflect current department processes, the removal of redundant mandatory reporting language, and updates and cross references for clarification. This adopted language is a result of interested party engagement and a second rule hearing to best capture the needs of the profession.

After the supplemental public rules hearing on June 5, 2024, the department made additional changes to the rule language in response to comments received during the June 5, 2024, public hearing and comment period. The changes made to the rule language as a result of the comments received were nonsubstantial changes and are described below in the PERMANENT RULE box.

Citation of Rules Affected by this Order: New WAC 246-822-132, 246-822-135, 246-822-141, 246-822-145, 246-822-147 and 246-822-175; repealing WAC 246-822-020, 246-822-030, 246-822-040, 246-822-050, 246-822-060, 246-822-070, 246-822-080, 245-822-090 and 246-822-170; and amending WAC 246-822-010, 246-822-120, 246-822-130, 246-822-150, 246-822-160, and 246-822-990.

Statutory Authority for Adoption: RCW 18.138.070.

Adopted under notice filed as WSR 24-10-088 on April 30, 2024.

Changes Other than Editing from Proposed to Adopted Version: During the supplemental public hearing on June 5, 2024, interested individuals requested that the term "Nutrition Care Process" be removed from WAC 246-822-010. After further consideration, the definition of "Nutrition Care Process" was moved out of WAC 246-822-010 and instead included under WAC 246-822-135 Dietitian minimum core curriculum. The department also further specified two citations to RCW by including subsections in the RCW citation and removed any reference to any profession type under the definition of "nutrition diagnosis."

A final cost-benefit analysis is available by contacting Kim-Boi Shadduck, Program Manager Dietitians and Nutritionists, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2912, fax 360-236-2901, TTY 711, email KimBoi.Shadduck@doh.wa.gov.

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

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 6, Amended 6, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 6, Amended 6, Repealed 9.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6, Amended 6, Repealed 9.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 6, Repealed 9.

Date Adopted: August 19, 2024.

Kristin Peterson, JD  
Chief of Policy  
for Umair A. Shah, MD, MPH  
Secretary

## OTS-4875.12

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

**WAC 246-822-010 Definitions.** The definitions in this section and RCW 18.138.010 apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accreditation council for education in nutrition and dietetics" or "ACEND" means a national organization that accredits dietetics education programs.

(2) "Accredited college or university" means a college or university accredited by a national or regional accrediting body recognized by the ((council on)) office of postsecondary education at the time the applicant completed the required education.

~~((2) "Continuous preprofessional experience" means a minimum of 900 hours of supervised competency-based practice in the field of dietetics accumulated over a maximum of thirty-six months. This competency-based practice should include, but not be limited to the following:~~

~~(a) Assuring that food service operations meet the food and nutrition needs of clients and target markets.~~

~~(b) Utilization of food, nutrition, and social services in community programs.~~

~~(c) Providing nutrition care through systematic assessment, planning, intervention, and evaluation of groups and individuals.~~

~~(d) Providing nutrition counseling and education to individuals and groups for health promotion, health maintenance, and rehabilitation.~~

~~(e) Applying current research information and methods to dietetic practice.~~

~~(f) Utilizing computer and other technology in the practice of dietetics.~~

~~(g) Integrating food and nutrition services in the health care delivery system.~~

~~(h) Promoting positive relationships with others who impact on dietetic service.~~

~~(i) Coordinating nutrition care with food service systems.~~

~~(j) Participating in the management of cost-effective nutrition care systems.~~

~~(k) Utilizing menu as the focal point for control of the food service system.~~

~~(l) Participating in the management of food service systems, including procurement, food production, distribution, and service.~~

- ~~(m) Participating in the management of human, financial, material, physical, and operational resources.~~
- ~~(n) Providing education and training to other professionals and supportive personnel.~~
- ~~(o) Engaging in activities that promote improved nutrition status of the public and advance the profession of dietetics.~~
- ~~(p) Recognizing the impact of political, legislative, and economic factors on dietetic practice.~~
- ~~(q) Utilizing effective communication skills in the practice of dietetics.~~
- ~~(r) Participating in the management of a quality assurance program.~~
- ~~(3) "Supervision" means the oversight and responsibility for the dietitian's or nutritionist's continued practice by a qualified supervisor. Methods of supervision may include face-to-face conversations, direct observation, or review of written notes or tapes.~~
- ~~(4) "Qualified supervisor" means a dietitian who is certified under this chapter or who is qualified for certification under this chapter.~~
- ~~(5) "Coordinated undergraduate program" means supervised dietetic practice that is part of a course of study.) (3) "Client" means a person who receives services from a certified dietitian or certified nutritionist; this term may be used interchangeably with "patient."~~
- ~~(4) "Commission on dietetic registration" or "CDR" means the credentialing organization of the academy of nutrition and dietetics, a professional organization for nutrition and dietetics practitioners.~~
- ~~(5) "Coordinated program" means supervised dietetic practice that is part of a course of study under WAC 246-822-145.~~
- ~~(6) "Dietitian" or "certified dietitian" means a person certified to practice dietetics under this chapter and chapter 18.138 RCW.~~
- ~~(7) "Nutritionist" or "certified nutritionist" means a person certified to provide general nutrition services under this chapter and chapter 18.138 RCW.~~
- ~~(8) "Qualified supervisor" means a dietitian who is credentialed by the department under this chapter or registered by the commission on dietetic registration as a registered dietitian.~~
- ~~(9) "Registered dietitian," "registered dietitian nutritionist," "RD," or "RDN" means a person registered as such with the commission on dietetic registration.~~
- ~~(10) "Supervision" means the oversight and responsibility for an individual's supervised preprofessional experience or coordinated program by a qualified supervisor under WAC 246-822-147.~~
- ~~(11) "Supervised preprofessional experience" means at least 900 hours of supervised competency-based practice in the field of dietetics under WAC 246-822-141.~~

AMENDATORY SECTION (Amending WSR 21-02-002, filed 12/23/20, effective 1/23/21)

**WAC 246-822-120 Nutritionist application requirements.** ((1) Individuals applying for certification as a certified dietitian must submit:

- ~~(a) A completed application form with fee; and~~
- ~~(b) Verification of current registration status with the commission on dietetic registration.~~

~~(2) Individuals applying for certification as a certified dietitian who have not passed the required written examination or who are not registered with the commission on dietetic registration must:~~

~~(a) Provide transcripts forwarded directly from the issuing college or university showing completion of a baccalaureate degree or higher in a major course of study in human nutrition, foods and nutrition, dietetics, or food management;~~

~~(b) Provide evidence of completion of a continuous preprofessional experience or coordinated undergraduate program in dietetics under the supervision of a qualified supervisor; and~~

~~(c) Take and pass the required written examination.~~

~~(3) Individuals applying)~~ An applicant for certification as a ((certified)) nutritionist ((must submit)) shall:

(1) Submit to the department:

~~(a) A completed application on forms ((with fee; and~~

~~(b) Documentation that the applicant meets the application requirements for certified dietitians, as set forth in subsection (1) or (2) of this section; or~~

~~(c)) provided by the department;~~

(b) The applicable fee in WAC 246-822-990; and

(2) Provide one of the following:

(a) Transcripts forwarded directly to the department from the issuing accredited college or university showing completion of a ((masters)) master's or doctorate degree in one of the following subject areas: Human nutrition, nutrition education, foods and nutrition, or public health nutrition with demonstration of meeting the nutritionist minimum core curriculum under WAC 246-822-130; or

(b) Documentation to the department of meeting requirements for certified dietitians in WAC 246-822-132.

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

**WAC 246-822-130 Nutritionist minimum core curriculum.** ((Training for certified nutritionist should include)) To be eligible for certification as a nutritionist, an applicant shall:

(1) Successfully complete a master's or doctorate degree in one of the following subject areas: Human nutrition, nutrition education, foods and nutrition, or public health nutrition, as required in RCW 18.138.030 (4) (b).

(2) Successfully complete coursework at the ((collegiate level or equivalent)) college or graduate level from an accredited college or university in the following areas:

~~((1))~~ (a) Basic science((-- Which should include)), including courses in one or more of the following:

~~((a))~~ (i) Physiology.

~~((b))~~ (ii) Biochemistry.

~~((2))~~ (b) Foods((-- Which should include)), including courses in one or more of the following:

~~((a))~~ (i) Selection.

~~((b))~~ (ii) Composition.

~~((c))~~ (iii) Food science.

~~((3))~~ (iv) Nutritional science.

~~((4))~~ (c) Applied nutrition((-- Which should include)), including courses in one or more of the following:

- ((a)) (i) Diet therapy.
- ((b)) (ii) Nutrition of the life cycle.
- ((c)) (iii) Cultural/anthropological nutrition.
- ((d)) (iv) Public health nutrition.
- ((5)) (d) Counseling/education(~~(--which should include)~~), including courses in one or more of the following:
  - ((a)) (i) Psychological counseling.
  - ((b)) (ii) Educational psychology.
  - ((c)) (iii) Communication.
  - ((d)) (iv) Psychology.
  - ((e)) (v) Education.

#### NEW SECTION

**WAC 246-822-132 Dietitian application requirements.** An applicant for certification as a dietitian shall:

- (1) Submit to the department:
  - (a) A completed application on forms provided by the department;
  - (b) The applicable fee in WAC 246-822-990; and
- (2) Provide to the department verification of current RDN registration or provide the following documentation:
  - (a) Transcripts sent directly from the issuing accredited college or university showing completion of a bachelor's degree or higher with a major course of study in human nutrition, foods and nutrition, dietetics, or food systems management and demonstration of meeting the dietitian minimum core curriculum under WAC 246-822-135;
  - (b) Evidence of completing either supervised preprofessional experience under WAC 246-822-141 or a coordinated program under WAC 246-822-145; and
  - (c) Passing RDN examination results sent directly from CDR to the department as provided in WAC 246-822-150.

#### NEW SECTION

**WAC 246-822-135 Dietitian minimum core curriculum.** (1) To apply for certification as a dietitian by completing a core curriculum, an applicant shall successfully complete a bachelor's degree or higher from an accredited college or university with coursework that includes at least the following topics:

- (a) Research skills, including methodology and interpretation or research literature;
- (b) Science of nutrition and dietetics, including organic chemistry, biochemistry, anatomy, physiology, pharmacology, genetics, microbiology, nutrient metabolism, and nutrition across the lifespan;
- (c) Implementation of the nutrition care process, and principles of medical nutrition therapy;
- (d) Food science, food safety and sanitation, and recipe and menu development;
- (e) Effective education and counseling techniques;
- (f) Public health policy, including legislative and regulatory structures, and health equity; and

(g) Professional practice skills, including professional ethics, client communication, documentation standards, coding and billing practices, and health care delivery systems.

(2) A didactic program in dietetics accredited by ACEND satisfies the requirements of this section.

(3) For the purpose of this section, the nutrition care process in subsection (1)(c) of this section includes all the following concepts:

(a) "Nutrition assessment" means assessing and evaluating the nutritional needs of individuals and groups using anthropometric, biochemical, nutrigenomic, clinical, metabolic, physiologic, dietary, and behavioral, social and demographic data for clinical, research and program planning purposes; and, determining resources in the practice setting, including ordering laboratory tests to check and track nutrition status and monitor effectiveness of nutrition plans or orders.

(b) "Nutrition care services" means and involves nutrition care, medical nutrition therapy, and nutrition-related services using knowledge, evidence-based practices, and clinical judgment to address health promotion and wellness, and prevention and management of acute or chronic diseases and conditions for individuals and groups. Nutrition care services involves using the four interrelated steps of the nutrition care process including nutrition assessment, nutrition diagnosis, nutrition intervention, and nutrition monitoring and evaluation.

(c) "Nutrition counseling" means the provision of dietary and nutrition counseling and education with the goal of facilitating knowledge, skill, and ability including concerning disease pathophysiology, clinical and biochemical data and data patterns, health-related behaviors, lifestyle choices, environmental factors, food and dietary patterns, nutrient and prescription drug interactions; provision of education and training on nutrition-related medical devices; and the development and administration of nutrition care standards.

(d) "Nutrition diagnosis" means identifying and labeling nutrition problems. It does not include the medical differential diagnosis of the health status of an individual.

(e) "Nutrition intervention" means purposefully planned actions and counseling intended to positively change a nutrition-related behavior, risk factor, environmental condition or aspect of the health status for an individual, including education and training on nutrition-related medical devices.

(i) Nutrition intervention includes using approved clinical privileges, physician/nonphysician practitioner-driven orders (i.e., delegated orders), protocols, or other facility-specific processes for order writing or for provision of nutrition-related services consistent with applicable specialized training, competence, medical staff, or organizational policy.

(ii) Nutrition intervention involves implementing, initiating, or modifying orders for therapeutic diets, medication and nutrition interactions, management, or nutrition-related services (e.g., medical foods/nutrition dietary supplements, food texture modifications, enteral and parenteral nutrition, intravenous infusions, laboratory tests, medications, and education and counseling).

(f) "Nutrition monitoring and evaluation" means identifying patient outcomes using data sources and technology-based applications relevant to the nutrition diagnosis and comparing the outcomes with the patient's previous health status, interventions, goals or reference standards to determine the progress made in achieving desired



outcomes or nutrition care and whether planned interventions should be continued or revised.

NEW SECTION

**WAC 246-822-141 Dietitian supervised preprofessional experience.**

(1) To apply for certification as a dietitian by completing supervised preprofessional experience, an applicant shall complete at least 900 hours of competency-based practice in the field of dietetics, supervised by a qualified supervisor. This must include practical experience that meets the competency standards of an ACEND accredited dietetic internship.

(a) Exhibiting professionalism in attitudes and interactions with clients;

(b) Understanding scientific research and incorporating new, evidence-based information into practice;

(c) Counseling and providing care to clients from diverse backgrounds, using culturally sensitive strategies; and

(d) Developing knowledge of health systems and referring clients to other professionals and services as appropriate.

(2) A dietetic internship accredited by ACEND satisfies the requirements of this section.

NEW SECTION

**WAC 246-822-145 Dietitian coordinated program.** (1) To apply for certification as a dietitian by completing a dietitian coordinated program, an applicant shall complete a coordinated program in dietetics that includes concurrent completion of:

(a) A dietetics education program that meets curriculum requirements in WAC 246-822-135; and

(b) A supervised preprofessional experience that meets the requirements in WAC 246-822-141.

(2) A coordinated program accredited by ACEND that satisfies the requirements of this section.

NEW SECTION

**WAC 246-822-147 Supervision and qualified supervisors.** (1) A qualified supervisor provides oversight and takes responsibility for an individual working to meet experience requirements. To be a qualified supervisor, an individual must be a dietitian certified by the department or registered as a registered dietitian nutritionist by CDR.

(2) Methods of supervision may include face-to-face supervision, direct supervision, distance supervision, and review of written notes or recordings.

(a) "Direct supervision" means the supervisor is on the premises and available for immediate consultation.

(b) "Distance supervision" means supervision provided through remote technology, used when a qualified supervisor and an applicant are not working in the same physical location.

(3) Distance supervision is not appropriate when an individual is providing direct client services where a provider's physical presence is necessary.

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

**WAC 246-822-150 Examinations.** (~~((1) A written examination will be given at least once annually to qualified applicants at a time and place determined by the secretary.~~)

~~(2) Applications must be received sixty days in advance of the scheduled examination.~~

~~(3) Applicants who fail the examination shall submit the appropriate fee for reexamination.)~~ (1) The department requires passage of the CDR registered dietitian examination. To register for the examination, an applicant must meet the CDR's eligibility requirements.

(2) The department must receive the passing examination results directly from the testing organization.

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

**WAC 246-822-160 Foreign degree equivalency.** (~~(Applicants who obtained their education outside of the United States and its territories must have their academic degree(s) validated as substantially equivalent to the baccalaureate, master's, or doctorate degree conferred by a regionally accredited college or university recognized by the council on postsecondary education at the time the applicant completed the required degree.)~~) (1) To become credentialed as a nutritionist in Washington, an applicant educated outside the United States and its territories shall:

(a) Have their academic degree assessed by a credential evaluation service to be validated as substantially equivalent to the education requirements in WAC 246-822-120 or 246-822-130 and submit the assessment with the application or become credentialed by CDR as a registered dietitian; and

(b) Apply to the department under WAC 246-822-120.

(2) To become credentialed as a dietitian in Washington, an applicant educated outside the United States and its territories shall:

(a) Become credentialed by CDR as a registered dietitian; and

(b) Apply to the department under WAC 246-822-132.

NEW SECTION

**WAC 246-822-175 Providing services.** (1) A certified dietitian may provide services as defined in RCW 18.138.010(1).

(2) A certified nutritionist may provide services as defined in RCW 18.138.010(2).

(3) A certified dietitian or nutritionist may provide services in person or through telehealth, to residents of Washington, as appropriate, based on the needs of the client.

AMENDATORY SECTION (Amending WSR 15-19-149, filed 9/22/15, effective 1/1/16)

**WAC 246-822-990 Dietitian and nutritionist fees and renewal cycle.** (1) ~~((Certificates))~~ A certification must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC ~~((Part 2))~~.

(2) The following nonrefundable fees will be charged:

<b>Title</b>	<b>Fee</b>
<b>Original application</b>	
Application	\$65.00
HEAL-WA* surcharge	16.00
<b>Renewal</b>	
Renewal	45.00
HEAL-WA* surcharge	16.00
Late renewal penalty	45.00
<b>Expired certificate reissuance</b>	50.00
<b>Duplicate certificate</b>	30.00
<b>Verification of certificate</b>	30.00

\*HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-822-020 General provisions.
- WAC 246-822-030 Mandatory reporting.
- WAC 246-822-040 Health care institutions.
- WAC 246-822-050 Dietitian or nutritionist associations or societies.
- WAC 246-822-060 Health care service contractors and disability insurance carriers.
- WAC 246-822-070 Professional liability carriers.
- WAC 246-822-080 Courts.
- WAC 246-822-090 State and federal agencies.
- WAC 246-822-170 Certification for dietitians—Grandfathering.

**WSR 24-17-125**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed August 20, 2024, 8:46 a.m., effective October 1, 2024]

Effective Date of Rule: October 1, 2024.

Purpose: The department of labor and industries (L&I) is adopting permanent sections in rule to allow the voluntary use of personal protective equipment (PPE) when workers feel the need to protect themselves from noise, dust, or possible infectious or contagious diseases. The voluntary use of PPE must not introduce hazards to the work environment and any PPE, including facial coverings, must not interfere with an employer's security requirements.

The adopted sections in rule model RCW 49.17.485 Personal protective devices and equipment—Public health emergency, but is not limited to declared public health emergencies. In the event a public health emergency is declared, the adopted sections in rule would already be effective and no material change would be needed to comply with RCW 49.17.485.

The adopted rule establishes the following safety standards:

- Employers must allow workers to voluntarily use appropriate and safe PPE when it is not otherwise required for the job.
- The voluntary use of PPE must not introduce hazards to the work environment.
- The voluntary use of PPE should not interfere with an employer's security requirements.
- An employer may verify that voluntary use of PPE meets all regulatory requirements for workplace health and safety.
- Employers do not have to purchase, store, maintain, or otherwise provide protective equipment for voluntary use by employees.

Citation of Rules Affected by this Order: WAC 296-155-249, 296-307-10030, and 296-800-16080.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 24-06-069 on March 5, 2024.

Changes Other than Editing from Proposed to Adopted Version: Added face masks and filtering-piece respirators to list of PPE examples and removed protective shields and barriers from the list of PPE examples to provide clarity of PPE options.

Updated the references to the current respiratory protection requirements under the new section added to chapter 296-307 WAC.

Updated the language regarding the voluntary use under this rule to the voluntary use of respirators other than considered filtering-facepiece respirators, such as elastomeric respirators, for clarity. The rule as adopted states that employers are not required to allow the voluntary use of respirators other than considered filtering-facepiece respirators, such as elastomeric respirators, under this rule and that the existing voluntary respiratory requirements under WAC 296-842-11005, 296-842-11010, 296-307-59805, and 296-307-59810 apply.

Added a new subsection to clarify that the voluntary use of PPE under this rule does not apply to situations under existing PPE rules where an employer allows employee-provided PPE to be used rather than the PPE the employer provides.

A final cost-benefit analysis is available by contacting Carmyn Shute, Administrative Regulations Analyst, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@Lni.wa.gov, website <https://www.Lni.wa.gov/rulemaking-activity>.

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

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

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

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

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

Date Adopted: August 20, 2024.

Joel Sacks  
Director

## OTS-4065.9

### NEW SECTION

**WAC 296-155-249 Voluntary use of personal protective equipment (PPE).** (1) Every employer that does not require employees or contractors to wear a specific type of personal protective equipment as determined under the PPE hazard assessment, employer policy, or where otherwise required to comply with safety and health standard rules, must allow its employee's or contractor's voluntary use of PPE (PPE is an item or items used to protect the eyes, face, head, body, arms, hands, legs, and feet such as face masks, filtering-facepiece respirators, goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, and safety shoes). This only applies when:

(a) The voluntary use of personal protective devices and equipment does not introduce hazards to the work environment and is consistent with applicable rules established by the department;

(b) The voluntary use of personal protective devices and equipment does not interfere with an employer's security requirements; and

(c) The voluntary use of these personal protective devices and equipment does not conflict with standards for that specific type of equipment established by the department of health or DOSH. WAC 296-842-11005 does not apply to the voluntary use of filtering-facepiece respirators, as defined under WAC 296-842-10200, under this section.

(2) Employers are not required to allow the voluntary use of respirators other than filtering-facepiece respirators under this section. All voluntary use of respirators other than filtering-facepiece respirators, such as elastomeric respirators, must comply with WAC 296-842-11005 and 296-842-11010.

(3) An employer may verify that voluntary use of personal protective equipment meets all regulatory requirements for workplace health and safety.

(4) Employers do not have to purchase, store, maintain, or otherwise provide protective devices or equipment for voluntary use by employees under this section.

(5) RCW 49.17.485 precludes DOSH from issuing variances under RCW 49.17.080 related to voluntary personal protective devices and equipment during a public health emergency as defined in RCW 49.17.485.

(6) This section does not apply to situations under WAC 296-155-200 where an employer allows employee provided personal protective equipment to be used rather than the personal protective equipment the employer provides.

## OTS-4066.10

### NEW SECTION

#### **WAC 296-307-10030 Voluntary use of personal protective equipment (PPE).**

(1) Every employer that does not require employees or contractors to wear a specific type of personal protective equipment as determined under the PPE hazard assessment, employer policy, or where otherwise required to comply with safety and health standards rules, must allow its employee's or contractor's voluntary use of PPE (PPE is an item or items used to protect the eyes, face, head, body, arms, hands, legs, and feet such as face masks, filtering-facepiece respirators, goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, and safety shoes). This only applies when:

(a) The voluntary use of personal protective devices and equipment does not introduce hazards to the work environment and is consistent with applicable rules established by the department;

(b) The voluntary use of personal protective devices and equipment does not interfere with an employer's security requirements; and

(c) The voluntary use of these personal protective devices and equipment does not conflict with standards for that specific type of equipment established by the department of health or DOSH. WAC 296-307-59805 does not apply to the voluntary use of filtering-facepiece respirators, as defined under WAC 296-307-622, under this section.

(2) Employers are not required to allow the voluntary use of respirators other than filtering-facepiece respirators under this section. All voluntary use of respirators other than filtering-facepiece respirators, such as elastomeric respirators, must comply with WAC 296-307-59805 and 296-307-59810.

(3) An employer may verify that voluntary use of personal protective equipment meets all regulatory requirements for workplace health and safety.

(4) Employers do not have to purchase, store, maintain, or otherwise provide protective devices or equipment for voluntary use by employees under this section.

(5) RCW 49.17.485 precludes DOSH from issuing variances under RCW 49.17.080 related to voluntary personal protective devices and equipment during a public health emergency as defined in RCW 49.17.485.

(6) This section does not apply to situations under WAC 296-307-10005 where an employer allows employee provided personal protective equipment to be used rather than the personal protective equipment the employer provides.

## OTS-4067.9

### NEW SECTION

**WAC 296-800-16080 Voluntary use of personal protective equipment (PPE).** (1) Every employer that does not require employees or contractors to wear a specific type of personal protective equipment as determined under the PPE hazard assessment, employer policy, or where otherwise required to comply with safety and health standards rules, must allow its employee's or contractor's voluntary use of PPE (PPE is an item or items used to protect the eyes, face, head, body, arms, hands, legs, and feet such as face masks, filtering-facepiece respirators, goggles, helmets, head covers, gloves, rubber slickers, disposable coveralls, and safety shoes). This only applies when:

(a) The voluntary use of personal protective devices and equipment does not introduce hazards to the work environment and is consistent with applicable rules established by the department;

(b) The voluntary use of personal protective devices and equipment does not interfere with an employer's security requirements; and

(c) The voluntary use of these personal protective devices and equipment does not conflict with standards for that specific type of equipment established by the department of health or DOSH. WAC 296-842-11005 does not apply to the voluntary use of filtering-facepiece respirators, as defined under WAC 296-842-10200, under this section.

(2) Employers are not required to allow the voluntary use of respirators other than filtering-facepiece respirators under this section. All voluntary use of respirators other than filtering-facepiece respirators, such as elastomeric respirators, must comply with WAC 296-842-11005 and 296-842-11010.

(3) An employer may verify that voluntary use of personal protective equipment meets all regulatory requirements for workplace health and safety.

(4) Employers do not have to purchase, store, maintain, or otherwise provide protective devices or equipment for voluntary use by employees under this section.

(5) RCW 49.17.485 precludes DOSH from issuing variances under RCW 49.17.080 related to voluntary personal protective devices and equipment during a public health emergency as defined in RCW 49.17.485.

(6) This section does not apply to situations under WAC 296-800-16045 where an employer allows employee provided personal protective equipment to be used rather than the personal protective equipment employer provides.