

WSR 22-05-051

PERMANENT RULES

BOARD OF TAX APPEALS

[Filed February 9, 2022, 10:08 a.m., effective March 12, 2022]

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

Purpose: The purpose of these changes is to clarify statutory language, simplify the calculation of deadlines, and streamline the formal hearings process.

Citation of Rules Affected by this Order: New WAC 456-09-551, 456-09-557, 456-09-743 and 456-09-763; repealing WAC 456-09-120, 456-09-130, 456-09-140, 456-09-215, 456-09-330, 456-09-762 and 456-09-970; and amending WAC 456-09-001, 456-09-010, 456-09-110, 456-09-210, 456-09-220, 456-09-230, 456-09-300, 456-09-310, 456-09-315, 456-09-325, 456-09-335, 456-09-340, 456-09-345, 456-09-510, 456-09-520, 456-09-530, 456-09-540, 456-09-545, 456-09-550, 456-09-552, 456-09-555, 456-09-560, 456-09-565, 456-09-570, 456-09-575, 456-09-740, 456-09-742, 456-09-745, 456-09-750, 456-09-755, 456-09-765, 456-09-910, 456-09-915, 456-09-920, 456-09-930, 456-09-955, and 456-09-960.

Statutory Authority for Adoption: RCW 82.03.170.

Adopted under notice filed as WSR 21-24-067 on November 30, 2021.

Changes Other than Editing from Proposed to Adopted Version: WAC 456-09-300, reincorporate 30-day timeline to acknowledge receipt of notice of appeal; WAC 456-09-335, remove requirement for responses to a notice of appeal in excise tax cases; WAC 456-09-550, added subsection for time in which to file responses and response briefs; WAC 456-09-555, prohibiting replies without prior written permission; and WAC 456-09-743, process of hearing allowing for rebuttal argument.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 4, Amended 37, Repealed 7.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 37, Repealed 3.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: February 9, 2022.

Andrea Vingo
Member

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-001 Purpose and application of chapter. (1) This chapter (~~(concerns administrative matters of)~~) explains the practice and procedure of formal hearings conducted before the board of tax appeals (board) (~~((and explains how adjudicative proceedings are conducted before the board))~~) in accordance with the Administrative Procedure

Act, chapter 34.05 RCW. This chapter (~~(augments)~~) adds to but does not (~~(supplant)~~) replace the provisions (~~(of)~~) in chapter 82.03 RCW.

(2) The rules of practice and procedure contained in this chapter (~~(govern the conduct of formal hearings before the board and)~~) will be construed to secure the just, speedy, and (~~(economical)~~) efficient determination of every (~~(action)~~) appeal.

(3) To the extent these rules (~~(of practice and procedure)~~) differ from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250 and (~~(found in)~~) chapter 10-08 WAC, these rules (~~(shall)~~) will prevail.

(4) Where procedures are not (~~(covered)~~) addressed by this chapter (~~(and)~~) or chapter 10-08 WAC, the board may, upon its own motion or upon written (~~(application)~~) motion by any party, refer to and apply any rule provided for in the Washington state superior court civil rules, including the rules of evidence.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-001, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-010 (~~(Distinction between)~~) Formal and informal hearings (~~(and converting an appeal)~~). (1) (~~(In all appeals over which the board has jurisdiction,)~~) A party making an appeal may (~~(elect in writing, with its notice of appeal,)~~) choose either a formal or informal hearing in its written notice of appeal. Formal hearings are conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, and the rules of practice and procedure of this chapter. Informal hearings are conducted pursuant to chapter 456-10 WAC. Failure to (~~(elect in writing)~~) choose a formal (~~(or informal)~~) hearing (~~(at the time of submitting the notice of appeal shall)~~) will result in the proceeding being conducted as informal.

(~~(a)~~) (2) A formal decision of the board is subject to judicial review pursuant to RCW 34.05.570. Judicial review is limited to the record made of the proceedings before the board. The record (~~(made of the proceedings)~~) includes a verbatim account of the hearings together with the evidence, pleadings, and documents submitted (~~(to the board)~~) by the parties. In appeals from a decision of a board of equalization, the record includes the decision of that board together with the evidence submitted (~~(thereto)~~.

(~~(b)~~) Decisions entered in an informal appeal are not subject to judicial review as authorized under the Administrative Procedure Act, chapter 34.05 RCW.

(~~(c)~~) Aggrieved parties may have avenues of further appeal allowed by law which are not pertinent to the statutory authority granted to the board and are not discussed herein.

(~~(2)~~) The)) to it pursuant to WAC 458-14-170.

(3) An appeal may be converted from a formal to an informal proceeding (~~(as provided below)~~.

(~~(a)~~) The respondent, as a party to an appeal pursuant to RCW 84.08.130 (appeal from a decision by a board of equalization) may, within twenty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of intention that the hearing be a formal hearing.

~~(b) In appeals under RCW 82.03.190, the department of revenue may, within thirty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.~~

~~(c) In appeals under RCW 82.03.130 (1)(e), the department of revenue may, within ten calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.~~

~~(d) At any time up to thirty days prior to the date of the hearing, the parties may submit to the clerk of the board a notice signed by all parties of intention to convert the proceedings to either a formal or informal hearing)) at any time up to 30 calendar days before the date of the hearing as long as the parties submit a notice signed by all parties of the intent to convert the proceedings. Informal proceedings are explained in WAC 456-10.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-010, filed 6/21/05, effective 8/1/05; WSR 94-07-044, § 456-09-010, filed 3/10/94, effective 4/10/94; WSR 89-10-056 (Order 89-02), § 456-09-010, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-110 Definitions. ((As used)) (1) In this chapter, the ((following)) subsequent terms ((shall)) have the following meanings:

~~((1))~~ (a) "Appellant" means a person or entity who appeals any order or decision.

(b) "Board" means the board of tax appeals as described in chapter 82.03 RCW, and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers, tax referees, or agents of the board of tax appeals.

~~((2))~~ (c) "Decision" means a written judgment or ruling issued by the board, designated hearing officers, tax referees, or agents of the board of tax appeals.

(d) "File" means to present or deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, by fax, or by electronic transmission as provided in these rules. The terms "to file" and "to submit" are used interchangeably.

(e) "Order" means a written direction given by the board instructing that some act be done or that some act is prohibited. Orders are not appealable unless otherwise provided by law.

(f) "Party" means any person or entity who is an appellant, respondent, or intervenor.

(g) "Presiding officer" or "hearing officer" ((shall)) means any member of the board, tax referee, or any person who is assigned to conduct a conference or hearing by the board. The presiding officer ((shall have)) has the authority ((as provided by)) outlined in WAC 10-08-200 and chapter 34.05 RCW.

~~((3) "Appellant" means a person, natural or otherwise, who appeals any order or decision to the board of tax appeals.~~

~~(4))~~ (h) "Respondent" means a person ~~((, natural or otherwise,))~~ or entity who is ~~((named))~~ listed as a responding party in any appeal ~~((before the board of tax appeals.~~

~~(5) "Formal hearing" means a proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW and this chapter.~~

~~(6) "Informal hearing" means a proceeding governed by those rules specified in chapter 456-10 WAC.~~

~~(7) "Decision" means a written judgment or ruling, including orders, issued by the board of tax appeals or the designated hearing officers or agents of the board of tax appeals.~~

~~(8) "Party" means any person who in a proceeding before the board is an appellant, respondent, or an intervenor as allowed in WAC 456-09-340.~~

~~(9) "To submit") .~~

(i) "Submit" means to present or to deliver to the board. Submissions ~~((to the board))~~ may be delivered personally, by mail, by commercial delivery service, ~~((or))~~ by fax or by electronic transmission as provided in these rules. ~~((As used herein,))~~ The terms "to submit" and "to file" are used interchangeably.

~~((10) "To file" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to file" and "to submit" are used interchangeably.)~~ (j) "Transmit" means to deliver electronically.

(2) If a term has not been defined in this section, the board will interpret the term as having its ordinary meaning.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-110, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-110, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-110, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-110, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-210 Appearance and practice before the board. Practice before the board in formal proceedings ~~((shall be))~~ is limited to the following:

- (1) Taxpayers who are natural persons representing themselves;
- (2) Attorneys at law duly qualified and entitled to practice in the ~~((courts of the state of Washington))~~ highest court of any state;
- (3) An authorized officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears ~~((for))~~ with the permission of such firm, association, partnership, or corporation;
- (4) County assessors or their duly authorized representatives;
- (5) Certified public accountants currently licensed in ~~((Washington))~~ any state; and
- (6) Other persons permitted by law.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-210, filed 6/21/05, effective 8/1/05; WSR 91-07-038 (Order 91-01), § 456-09-210, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW

82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-210, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-210, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-220 Rules of professional conduct. (1) All persons appearing in proceedings before the board (~~(, whether on their own behalf or in a representative capacity, shall conform to)~~) are required to follow the rules of professional conduct (RPC) required of attorneys before the courts of Washington. If any such person does not follow these standards, the hearing officer may, in his/her discretion and depending on the circumstances, admonish or reprimand such person, exclude such person from further participation in the proceedings, adjourn the hearing, or report the matter to the board. Outside of the proceedings, all persons are required to treat all parties, representatives, and the board's staff courteously and fairly both inside and outside of the proceedings.

(2) The board in its discretion, either upon referral by a hearings officer or on its own motion, after information comes to light that establishes to the board a question regarding a person's ethical conduct and fitness to practice before the board, and after notice and hearing, may take appropriate disciplinary action including, but not limited to, refusal to permit such person to appear or appear in a representative capacity in any proceeding before the board.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-220, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-220, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 95-05-033, filed 2/8/95, effective 3/11/95)

WAC 456-09-230 Ex parte communication. (~~(1) No one shall~~) Neither the board nor any person may make or attempt to make any ex parte communications with a member of the board, presiding officer, or tax referee which is prohibited by the Administrative Procedure Act. (The board, in conducting a formal proceeding governed by the Administrative Procedure Act, may not make or attempt to make ex parte communications prohibited by such act.) Attempts by anyone to make such prohibited ex parte communications (~~shall~~) will be subject (~~such person~~) to the sanctions (~~of~~) in WAC 456-09-220 and 456-09-750. (~~(2) The requirements and procedures of RCW 34.05.455 apply to ex parte communications.~~)

[Statutory Authority: RCW 82.03.170. WSR 95-05-033 (Order 95-01), § 456-09-230, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-230, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-230, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-300 (~~(Commencing the)~~) Initiating an appeal. (1)

~~((Persons wishing to make))~~ Those who wish to initiate an appeal must ~~((submit to the board))~~ file an original notice of appeal and a copy of the order or determination that is being appealed. ~~((The board will transmit a copy of the notice of appeal and a copy of the order or determination that is being appealed to the respondent(s) within thirty days of its receipt by the board.))~~

(2) The board will acknowledge ~~((to the appellant in writing))~~ receipt of a notice of appeal in writing to all parties in excise tax appeals within 30 days of receipt. The board may acknowledge receipt of a notice of appeal in all other cases.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-300, filed 6/21/05, effective 8/1/05.]

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

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-310 Contents of notice of appeal. (1) ~~((For all appeals,))~~ An appellant must submit ~~((to the board))~~ a notice of appeal that substantially contains the following:

(a) The appellant's name, mailing address, telephone number, email address, and that of the representative, if any.

(b) The name of the respondent together with the respondent's mailing and email address, and phone number, if known.

~~((When the respondent is a government agency or agencies,))~~ The board may add additional respondents in order to ensure that all necessary ~~((persons))~~ entities are a party to the appeal.

(c) ~~((The date of the order or determination from which the appeal is taken together with))~~ A copy of the order, decision, or ~~((application))~~ determination appealed from.

(d) The ~~((nature))~~ type of ~~((the))~~ tax.

(i) In excise tax cases, the amount of the tax in controversy and the period ~~((covered thereby))~~ at issue;

(ii) In property tax cases, the parcel number of the property ~~((under appeal, the year for which the valuation has been determined, the full value as)),~~ the assessment-year at issue, the value determined by the local board of equalization, and ~~((a declaration of true and fair value as alleged by the appellant))~~ the appellant's contended value; and

(iii) In property tax exemption cases, the parcel number of the property ~~((under appeal)),~~ and the year(s) for which the exemption is at issue ~~((, the basis under which exempt status should be granted or denied, and the use of the property)).~~

(e) ~~((Specification of the issue to be decided by the board.~~

~~((f))~~ A clear, separate, and concise assignment of each error alleged and a short statement of facts upon which the appellant relies to sustain each contention.

~~((g))~~ A notice of ~~((intention))~~ intent that the hearing be formal and held pursuant to the Administrative Procedure Act.

~~((h))~~ (f) The relief sought.

~~((i))~~ (g) The signature ~~((of))~~ or acknowledgment, electronic or otherwise, by the appellant or the appellant's representative that all the information contained in the notice of appeal is true and correct to the best of his or her knowledge, and that he or she will comply with the rules of conduct in this chapter.

(2) The board may, upon motion of a party or upon its own motion, require ~~((a more complete statement of the claim or defense or))~~ additional information or explanation of any matter stated in ~~((any))~~ a notice of appeal.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-310, filed 6/21/05, effective 8/1/05; WSR 98-22-039, § 456-09-310, filed 10/29/98, effective 11/29/98. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-310, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-310, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-315 Deadlines for submitting ~~((the))~~ a notice of appeal. (1) The jurisdiction of the board ~~((to hear an appeal))~~ is limited to those appeals ~~((submitted within))~~ that comply with and are filed by the deadlines stated in this section~~((Any appeal to the board shall be submitted within the time required by the statute governing the respective agency or proceeding involved. All time periods set forth below are expressed in calendar days including, but not limited to the following:))~~ or the statute governing the respective agency or proceeding involved.

(a) ~~((Appeals))~~ For appeals of a denial of petition or notice of determination for a reduction or refund taken pursuant to RCW 82.03.190, ~~((thirty))~~ 30 days from the ~~((mailing of the determination))~~ date the determination was mailed or transmitted.

(b) For appeals from a county board of equalization pursuant to RCW 84.08.130, ~~((thirty))~~ 30 days from the ~~((mailing of the decision))~~ date the decision was mailed or transmitted.

(c) For appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, ~~((thirty))~~ 30 days from the ~~((mailing of the determination))~~ date the determination was mailed or transmitted.

(d) For appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and ~~((the))~~ its apportionment ~~((thereof to a county))~~ made pursuant to chapters 84.12 and 84.16 RCW, ~~((thirty))~~ 30 days from the ~~((mailing of the order))~~ date the order was mailed or transmitted.

(e) For appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075, ~~((fifteen))~~ 15 days ~~((after the mailing of the certification))~~ from the date the certification was mailed or transmitted.

(f) For appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources

pursuant to RCW 79.94.210, (~~(thirty)~~) 30 days from the (~~(mailing of the notification)~~) date the notification was mailed or transmitted.

(g) For appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060, (~~(thirty)~~) 30 days from the (~~(mailing of the ordinance)~~) date the ordinance was mailed or transmitted.

(h) For appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065, (~~(thirty)~~) 30 days after the (~~(publication of the)~~) rate was published.

(i) For appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091, on or before the (~~(sixtieth)~~) 60th day after the date of final adoption.

(j) For appeals from the denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850, (~~(thirty)~~) 30 days from the (~~(mailing of the determination)~~) date the determination was mailed or transmitted.

(2) All time periods set forth in this section are expressed in calendar days unless otherwise noted. If the last date for submitting the notice of appeal falls upon a Saturday, Sunday or legal holiday as defined in RCW 1.16.050(1), the submission (~~(shall)~~) will be considered timely if (~~(performed)~~) submitted on the next business day by 5:00 p.m. Pacific Time.

(3) Any party may (~~(, by motion,)~~) file a written motion to challenge the jurisdiction of the board ((in any appeal)). The board may, upon its own motion, raise (~~(such jurisdictional issues))~~) a question about jurisdiction.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-315, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-315, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-315, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-325 Date and manner of submitting ((the)) a notice of appeal. (1) (~~(The date of submitting)~~) A notice of appeal (~~(shall be)~~) is considered submitted on the date of (~~(actual)~~) receipt by the board at its Olympia office if the notice of appeal is hand delivered. The board's date stamp (~~(placed thereon shall)~~) will be evidence of the date of receipt. If the notice of appeal is mailed, the postmark will (~~(control and shall)~~) be evidence of the date of submission.

(2) (~~(All documents may be submitted with the board via fax machine or electronic mail transmission. However, the submission will not be deemed complete and the board will not acknowledge receipt of the notice of appeal as provided in WAC 456-09-300 unless the following procedures are strictly observed:~~

(a) ~~Documents received by fax machine or electronic mail will be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped "received" on the following business day. The date and time indicated by the board's~~

~~fax machine or computer shall be evidence of the date and time of receipt of transmission.~~

~~(b) The original notice of appeal must be mailed and postmarked or otherwise submitted to the board on or before the date of fax or electronic transmission.~~

~~(c) All fax or electronic transmissions are sent at the risk of the sender.) A notice of appeal may be submitted by fax, electronic mail, or uploaded through the board's website. A submission will not be considered timely unless received by 5:00 p.m. Pacific Time on the date due. The date and time indicated by the board's fax or computer will be evidence of the date and time of receipt.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-325, filed 6/21/05, effective 8/1/05; WSR 98-22-039, § 456-09-325, filed 10/29/98, effective 11/29/98; WSR 95-05-033 (Order 95-01), § 456-09-325, filed 2/8/95, effective 3/11/95; WSR 94-07-044, § 456-09-325, filed 3/10/94, effective 4/10/94; WSR 91-07-038 (Order 91-01), § 456-09-325, filed 3/15/91, effective 4/15/91. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-325, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-325, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-335 Response to a notice of appeal. (1) The respondent (may submit an original and three copies of a response to the notice of appeal with the board at least ten business days prior to hearing, unless otherwise ordered by the board, together with proof of service pursuant to WAC 456-09-345) must submit a response to the notice of appeal within 30 calendar days of the board acknowledging receipt of the notice of appeal, unless otherwise ordered, together with proof of service pursuant to WAC 456-09-345.

(2) The response must include:

(a) The respondent's name, mailing address, telephone number, email address, and that of the representative, if any;

(b) The type of tax.

(i) In property tax cases, the parcel number of the property, the assessment year at issue, and the respondent's contended value; and

(ii) In property tax exemption cases, the parcel number of the property, and the year(s) for which the exemption is at issue.

(c) A notice of intent that the hearing be formal and held pursuant to the Administrative Procedure Act;

(d) The relief sought; and

(e) A signature or acknowledgment, electronic or otherwise, by the respondent or the respondent's representative that all the information contained in the response is true and correct to the best of his or her knowledge, and that he or she will comply with the rules of conduct in this chapter.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-335, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-335, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-340 Intervention. (1) Any person or ~~((agency))~~ entity whose interest may be substantially affected by an appeal may petition the board to be granted status as an intervenor ~~((in the appeal))~~.

(2) In determining whether a petitioner qualifies as an intervenor, the presiding officer ~~((shall))~~ will apply the rules of the superior courts of this state.

(3) If the ~~((petitioner qualifies for))~~ presiding officer grants intervention, ~~((the presiding officer))~~ he or she may impose conditions upon the intervenor's participation ~~((in the proceedings))~~, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting ~~((the intervenor's))~~ participation to designated issues in which the intervenor has a particular ~~((interest as))~~ and demonstrated ~~((by the petition))~~ interest;

(b) Limiting the ~~((intervenor's))~~ use of discovery, cross-examination, and other procedures ~~((so as))~~ to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence ~~((and))~~, argument, cross-examination, discovery, and other participation in the proceedings.

~~((4) The presiding officer may timely grant or deny each petition and specify conditions, if any.)~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-340, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-340, filed 2/8/95, effective 3/11/95; WSR 89-10-056 (Order 89-02), § 456-09-340, filed 5/2/89.]

SERVICE OF ~~((PAPERS))~~ DOCUMENTS

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-345 Service ~~((of papers on parties))~~ and filing of documents and proof of service. (1) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers submitted to the board ~~((shall))~~ must be served ~~((upon))~~ on all counsel and representatives of record, and to unrepresented parties or ~~((upon))~~ on their designated agents ~~((designated by them or))~~, or to other persons or entities as required by law.

(a) Service ~~((shall))~~ must be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax ~~((and same-day mailing of copies));~~ ~~((or))~~ by commercial delivery company; or electronically.

(b) Service by mail ((shall be regarded as)) will be considered completed ((upon deposit in the United States mail,)) as evidenced by the postmark ((, properly stamped and addressed)). Service by fax ((shall be regarded as)) will be considered completed ((upon production by the fax machine of)) as evidenced by a confirmation of transmission ((and deposit on the same day in United States mail)). Service by commercial ((parcel)) delivery ((shall be regarded as)) will be considered completed ((upon)) on delivery to the ((parcel)) delivery company ((, properly addressed with charges prepaid)). Electronic service will be considered completed as evidenced by a sent receipt or the equivalent.

(c) Service must be completed by 5:00 p.m. Pacific Time on the date due.

(2) ~~((Where proof of service is required by statute or rule, receipt of the papers))~~ Receipt by the board, together with one of the following, ~~((shall constitute))~~ will serve as proof of service:

(a) ~~((An acknowledgment of service.~~

~~(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).~~

~~(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:~~

~~(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or~~

~~(ii) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or~~

~~(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial delivery company.)~~ A copy was mailed to each party or his or her attorney or representative;

(b) A copy was faxed, to each party to the proceeding or his or her attorney or representative;

(c) A copy was delivered to a commercial delivery company; or

(d) A copy was electronically transmitted to each party or his or her attorney or representative.

(3) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers are considered filed with the board:

(a) On the date of receipt by the board at its Olympia office if the document is hand delivered, commercially delivered, or mailed. The board's date stamp will be evidence of the date of receipt; or

(b) On the date and time indicated by the board's fax or computer, if the document is submitted by fax, electronic mail, or uploaded through the board's website as long as the document shows it was received by 5:00 p.m. Pacific Time on the date due.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-345, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-345, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-510 Limitations on discovery. (1) ~~((Insofar as))~~ If applicable and not in conflict with this chapter, the board will apply

the statutes and court rules regarding pretrial procedures and discovery used in civil cases in the state of Washington's superior courts (~~of the state of Washington shall be used. Such statutes and rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions~~)).

(2) The board may limit or prohibit discovery (~~(upon)~~) on its own motion or on a motion made by any party(~~(-~~

~~(3) The board may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 37 of the superior court civil rules~~). The board may also condition the use of discovery on a showing of necessity and the unavailability of other means. In exercising such discretion, the board will consider the criteria set forth in RCW 34.05.446.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-510, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-510, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-520 Subpoena. Subpoenas (~~(shall)~~) will be issued and enforced, and witness fees paid, as provided in RCW 34.05.446. Parties (~~(wishing)~~) who wish to issue a subpoena must comply with the (~~(rules)~~) requirements in WAC 10-08-120.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-520, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-520, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-520, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-530 Settlement conference. (1) At any time prior to a hearing, the board may, (~~(upon)~~) on its own motion or (~~(upon)~~) a written (~~(application by)~~) request of a party, order a settlement conference. The conference (~~(shall)~~) will be scheduled with (~~(not less than fourteen)~~) at least 14 calendar days' notice to each party, and occur at a time and place (~~(fixed)~~) determined by the board (~~(and conducted in a form and manner prescribed by the board with notice to the parties)~~)).

(2) In the event (~~(the appeal does not settle,)~~) a settlement conference is unsuccessful, a hearing (~~(on the matter shall)~~) will be set. The presiding officer of the hearing will not be the person who (~~(conducts)~~) conducted the settlement conference.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-530, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-530, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-530, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-540 Prehearing conference. (1) The board, ~~((upon))~~ on its own motion or ((upon)) a request of a party, may conduct a prehearing conference ~~((or conferences))~~ to consider:

- (a) Simplification of issues;
 - (b) The necessity or desirability of ~~((amendments to))~~ amending the pleadings or other documents;
 - (c) The possibility of obtaining stipulations ~~((r))~~ or admissions ((of fact and admissions of the genuineness of documents which will avoid unnecessary proof));
 - (d) Limitations on the number and consolidation of ~~((the))~~ witness examinations ((of witnesses));
 - (e) Procedural matters;
 - (f) ~~((Dates by which the parties must provide documentary evidence to the board and to other parties;))~~ Deadlines for completing discovery, disclosures of fact and expert witnesses, submissions of stipulations of facts and exhibit lists, and filing of briefs;
 - (g) The ~~((method for))~~ manner of identifying exhibits and ((other)) attachments to briefs, motions, and other pleadings;
 - (h) The number of copies ~~((of documentary evidence, briefs, motions and other pleadings))~~ to be submitted ~~((to the board))~~; and
 - (i) ~~((Such))~~ Other matters ((as may aid in the disposition or settlement of)) that may help to dispose of the case in whole or in part, or streamline the proceeding.
- (2) Prehearing conferences may be held by ~~((teleconference or at a time and place))~~ phone, video, or other electronic means, or in-person as specified by the presiding officer.
- (3) Following the prehearing conference, the board ~~((shall))~~ will issue an order ~~((reciting))~~ outlining the action taken at the prehearing conference, and ~~((the))~~ any agreements made by the parties ~~((concerning all of the matters considered))~~. The order ~~((shall))~~ will control the ~~((subsequent))~~ course of the proceeding unless modified for good cause by a subsequent order.
- (4) Documentary evidence that is not submitted ~~((in accordance with))~~ as outlined in the prehearing conference order ~~((may))~~ will not be ~~((received in))~~ allowed into evidence ~~((in the absence of))~~ absent a clear showing that the ~~((offering))~~ party offering the evidence had good cause for ~~((the failure))~~ failing to comply with the order.
- (5) Nothing in this rule ~~((shall))~~ will be construed to limit the right of the parties to ~~((attempt settlement))~~ settle the appeal at any time.
- (6) The board has authority to issue a prehearing order even if a prehearing conference has not been held.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-540, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-540, filed 2/8/95, effective 3/11/95; WSR 89-10-056 (Order 89-02), § 456-09-540, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-545 Summary judgment. A motion for summary judgment may be granted ~~((and an order issued))~~ if the written record shows that, viewing the evidence in a light most favorable to the nonmoving party, there is no genuine issue as to any material fact and that ~~((the moving))~~ a party is entitled to judgment as a matter of law. Motions for summary judgment must comply with WAC 456-09-555.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-545, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-550 Time ~~((in which))~~ for filing evidence, briefs, ~~((and))~~ replies ~~((must be submitted))~~, witness lists, stipulations, and documentary evidence. (1) In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board ~~((within the times stated below.~~

~~(1))~~ by the following deadlines:

(a) A list of fact or expert witnesses who will testify at the hearing must be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least 100 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(b) Any factual stipulations must be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least 55 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(c) Documentary evidence ~~((which is))~~ to be introduced at a hearing ~~((shall))~~ must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Documentary evidence must be introduced at least ~~((ten business))~~ 38 calendar days ~~((prior to))~~ before the hearing. Each page of documentary evidence ~~((shall))~~ must be numbered and indicate whether it is submitted by the appellant or respondent ~~((and shall be numbered)). ~~((Failure to comply may be grounds for exclusion of such evidence or dismissal in accordance with WAC 456-09-750.~~~~

~~(2) An original and three copies of briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least fifteen calendar days prior to hearing.~~

~~(3) An original and three copies of reply briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least ten calendar days prior to hearing.~~

~~(4) Documentary evidence submitted to a board of equalization and forwarded to this board is excepted from the requirements of this provision.)~~ A list of the documentary evidence submitted must be filed at the same time.

(d) Pretrial motions, if any, must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Pretrial motions must be submitted at least 38 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(e) Summary judgment motions, if any, must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Summary judgment motions must be submitted at least 38 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(f) Trial briefs are required and must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Trial briefs must be submitted at least 31 days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(g) Responses or Response Briefs are not required, but if submitted to the board, the responding party must include proof of service pursuant to WAC 456-09-345. Responses and Response Briefs must be submitted according to the timeline outlined in the Prehearing Order. Three copies are required if the proceeding occurs in front of the entire board.

(h) Replies to any motion or brief are only permitted with written permission. If allowed, replies must be submitted to the board together with proof of service pursuant to WAC 456-09-345. Replies must be submitted at least 17 calendar days before the hearing. Three copies are required if the proceeding occurs in front of the entire board.

(i) Posthearing briefing and proposed findings of fact and conclusions of law may be required by the board. If so, this document must be submitted together with proof of service pursuant to WAC 456-09-345. Proposed findings of fact and conclusions of law must be received by the board no later than the date specified by the board, or if no date is specified, no later than 21 calendar days after a hearing. Three copies are required if the proceeding occurs in front of the entire board.

(2) Failure to comply with these requirements may be grounds to exclude evidence, witnesses, replies, responses, or briefs, or to dismiss the appeal in accordance with WAC 456-09-750.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-550, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-550, filed 5/2/89.]

NEW SECTION

WAC 456-09-551 Limits on exhibits and evidence. (1) Each party must indicate the specific pages it intends to rely on, if any, from the body from which the party appeals. Failure to indicate specific page numbers will result in the presumption that the party does not intend to rely on the underlying record, and instead intends to submit and rely only on new evidence.

(2) Each party may submit evidence and/or exhibits in support of its appeal; however, submissions are limited to the page limitations below. These page limitations exclude the findings or determination of the body from which the decision or finding is appealed, audit documents, property tax assessments, and formal appraisals from a licensed appraiser:

(a) For residential property tax appeals, each party is limited to submitting a total of 175 pages per assessment-year appealed, including any evidence from the record of the county board of equaliza-

tion not excluded as outlined above which the party intends to rely on;

(b) For commercial property tax appeals, each party is limited to submitting a total of 275 pages per assessment-year appealed, including any evidence from the record of the county board of equalization not excluded as outlined above which the party intends to rely on;

(c) For property tax exemption appeals, each party is limited to submitting a total of 375 pages, including any evidence from the record of the department of revenue not excluded as outlined above which the party intends to rely on;

(d) For department of revenue excise tax appeals, each party is limited to submitting a total of 500 pages, including any evidence from the record of the department of revenue not excluded as outlined above which the party intends to rely on, if any;

(e) For all other appeals, including appeals to reconvene a county board of equalization, each party is limited to submitting a total of 175 pages, including any evidence from the record of the body from which a decision is appealed and not excluded as outlined above, and which the party intends to rely on.

(3) A party may file a motion with the board to submit evidence and/or exhibits up to 1,000 pages, which the board will grant for good cause. Requests for submissions beyond 1,000 pages are strongly discouraged, and will only be granted if justice so requires. Exceeding the page limits without the board's advance, written permission may result in the hearing being continued, or the exclusion of evidence beyond the page limits.

(4) For property tax appeals, the board strongly encourages each party to submit the following exhibits or evidence in the following instances:

(a) A table of comparable sales if the party intends to rely on such evidence. The table should include at least the age, size, sales price, date of sale, and location relative to the subject property of each comparable sale. A suggested table is available on the board's website or by contacting the board's staff.

(b) An income approach to valuation outline if the party intends to rely on such evidence. The outline should include at least the subject property's square footage, contended price per square foot, vacancy rate, operating expenses, income, and capitalization rate.

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AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-552 Amicus. (1) Any person or entity whose interest may be substantially affected by a proceeding before the board may ~~((by motion))~~ request status as an amicus ~~((in the case))~~. ~~The ((motion))~~ request must be made by written motion, and must comply with WAC 456-09-555 and 456-09-345.

(2) The motion requesting amicus status must include ~~((a statement of the following))~~:

(a) The applicant's interest, or the interest of the person or group represented by applicant, in the proceeding before the board;

(b) The applicant's familiarity with the issues ((involved)) in the proceeding before the board, and with the scope of the arguments presented or to be presented by the parties;

(c) The specific issues to which the ((amicus curiae)) brief will be directed; and

(d) The applicant's reason ((for believing that)) as to why additional argument is necessary on ((these specific)) the issues identified.

(3) The ((brief of)) deadline for filing an amicus ((curiae may be filed with the motion but must be filed no later than the time set)) brief is the same as the deadline for the filing of the brief for the party whose position the amicus supports.

(4) The board, on its own motion and with notice to the parties, may request a brief of amicus ((curiae)) from any person or entity deemed to be substantially affected by a proceeding ((before the board)).

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-552, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-555 Motions. (1) Any ((application)) request for an order or ruling or a request for relief ((from any provision of this chapter)) is considered a motion. Every motion, unless made during hearing, ((shall)) must be in writing and ((shall)) include ((the following)):

(a) A statement of the relief ((or order)) sought;

(b) The ((reason)) basis for the relief ((or order));

(c) A statement that the moving party ((has)) made a good faith effort to meet and confer with the other party or parties to resolve the subject ((matter)) of the motion;

(d) ((The amount of time needed for argument;

~~(e) Whether court reporting services are requested; and~~

~~(f) Shall include))~~ A request for oral argument, if any, and if so, how much time the party desires;

(e) Proof of service pursuant to WAC 456-09-345; and

(f) A proposed order.

(2) All motions ((shall)) must be properly captioned and signed by the party, their attorney, or their representative.

(3) At the discretion of the board, ((the)) a hearing on a motion may be ((by teleconference or in person)) held in person, by phone, by video, or by other electronic means.

(4) A response to ((the)) a motion ((shall)) must be submitted to the board and opposing parties within 14 calendar days of the date the motion was served on the responding party together with proof of service pursuant to WAC 456-09-345 ((within ten business days following the date of service of the motion)).

(5) Replies are not permitted absent prior permission of the board. The board will consider a request to file a reply within 24 hours of a response being filed. If granted, the reply must be filed within five calendar days of the board's receipt of the response. A reply is limited to addressing the facts and arguments presented in the response.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-555, filed 6/21/05, effective 8/1/05.]

NEW SECTION

WAC 456-09-557 Requirements for briefs, motions, responses, replies, memorandum, and other documentary evidence. (1) All briefs, motions, responses, replies, and memorandum must:

(a) Be legibly printed on letter-size paper (8-1/2 by 11 inches). All margins must be a minimum of one inch. This rule also applies to attachments unless the nature of the attachment makes compliance impractical.

(b) Be double spaced and in 12 point or larger type in one of the following fonts or their equivalent: Times New Roman, Courier, CG Times, or Arial. Footnotes may be single spaced in 10 point or larger type. This rule also applies to attachments unless the nature of the attachment makes compliance impractical.

(c) Include a signature block that the signer certifies the number of words in the brief, motion, or memorandum that substantially states: "I certify that this memorandum contains words, in compliance with the board's rules."

(d) Refrain from including, or partially redact where inclusion is necessary, the following personal data identifiers from all documents filed or used as exhibits, unless otherwise ordered by the board:

(i) Dates of birth - Redact to the year of birth, unless deceased;

(ii) Social Security numbers and taxpayer-identification numbers - Redact in their entirety;

(iii) Financial accounting information - Redact identification numbers to the last four digits; and

(iv) Driver license numbers - Redact in their entirety.

(2) In the absence of a prehearing order, the following word limits will apply:

(a) Trial briefs may not exceed 12,000 words (approximately 24 pages).

(b) Motions *in limine* and any brief in opposition may not exceed 9,000 words (approximately 18 pages).

(c) Dispositive motions, including motions for summary judgment and motions to dismiss, must not exceed 12,000 words (approximately 24 pages). Responses must not exceed 12,000 words, and replies 6,000 words (approximately 12 pages).

(d) Exceptions and motions for reconsideration and any responses must not exceed 3,000 words (approximately six pages).

(e) All other motions must not exceed 3,000 words (approximately six pages), and responses 1,500 words (approximately three pages).

(3) The board may refuse to consider any text, including footnotes, which is beyond the word limit. Captions, tables of contents, tables of authorities, signature blocks, and certificates of service need not be included within the word limit.

(4) Motions to file over-length motions or briefs are disfavored, but may be filed subject to the following:

(a) The motion must be no more than 1,000 words (approximately two pages) in length, and must request a specific number of additional words; and

(b) No opposition to the motion may be filed unless requested by the board.

If the board grants leave to file an over-length motion, the brief in opposition will automatically be allowed an equal number of additional words. In all cases, the reply brief cannot exceed one-half the total length of the brief filed in opposition.

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AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-560 Postponement, continuance, and extensions of time. (1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference (, if any, and the initially scheduled hearing date of an appeal will be freely granted provided such request is made within the time specified in the board's letter setting the prehearing conference, if any, and the initial hearing date) must be made in writing and comply with WAC 456-09-555 and 456-09-345. The board will freely grant a party's first request. For second and subsequent requests, the moving party must show good cause as to why a new date and time is needed.

(3) Requests to postpone, continue, extend the time, or reschedule the hearing date must be made in writing, comply with WAC 456-09-555 and 456-09-345, and be filed 30 calendar days before the scheduled hearing. The board will freely grant a party's first request. For second and subsequent requests, the moving party must show good cause as to why a new date and time is needed. The presiding officer will decide whether to hear argument and will rule on the request.

(4) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-09-555 and 456-09-345. ((The board shall promptly schedule a conference to hear argument and rule on the request. Requests for continuance will not be granted absent a showing of good cause)) The presiding officer will decide whether to hear argument and will rule on the request.

~~((4))~~ (5) This section ((shall)) does not extend any ((applicable time for appeal to this board)) deadline to file an initial appeal.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-560, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-560, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-565 Teleconference proceeding. ~~((1) At the discretion of the board, and where the rights of the parties will not be prejudiced thereby,)) All or part of ((the)) a hearing, prehearing, or settlement conference may be conducted by ((telephone, television)) phone, video, or other electronic means. Each party and participant in the proceeding ((must)) will have an opportunity to hear and effectively participate ((effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.~~

~~(2) The board may require documentary evidence to be submitted sufficiently in advance of)) in the proceeding.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-565, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-570 Requirements for a notice of hearing. (1) A notice of a hearing will be ((mailed)) sent or transmitted to all parties and to ((all persons having submitted written petitions to intervene not less than twenty)) those granted intervention or amicus status at least 20 calendar days before the hearing date unless a different period is required by law. The notice ((shall)) will include the information specified in RCW 34.05.434, and ((if)) whether the hearing ((is to)) will be conducted by ((teleconference call the notice shall so state)) phone, video or other electronic means.

(2) The notice ((shall)) will state that if a limited-English speaking or hearing-impaired party or witness needs an interpreter, a qualified interpreter will be appointed ((and that there will be)) at no cost ((to the party or witness)). The notice will include a form to indicate whether an interpreter is needed and in what language and dialect.

(3) The notice ((shall)) will also state that ((persons)) a party or witness with disabilities may request reasonable accommodations to allow ((their participation in the hearing)) for effective participation in the proceedings. The notice ((shall)) will include a form ((for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired, or)) to describe the reasonable accommodations requested.

~~((3) Defects in notice)) (4) Notice of the requirements listed in this section may be waived if the waiver is knowing and voluntary.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-570, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-570, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-575 (~~(Notice of)~~) Hearing (~~(to)~~) notices for limited-English speaking parties. (~~((1) When an agency))~~ If the board is notified or otherwise made aware that a limited-English-speaking person as defined in RCW 2.43.020 is a party, all notices (~~((concerning))~~) about the hearing, including (~~((notices of hearing,))~~) continuances (~~((,))~~) and dismissals (~~((, either))~~):

(~~((a) Shall))~~) (1) Must be written in the primary language of the party; or

(~~((b) Shall))~~) (2) Must include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to the notice.

(~~((2) For purposes of this chapter, the term "limited-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language. The term has the same meaning as "non-English-speaking person" as defined in RCW 2.43.020.))~~)

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-575, filed 6/21/05, effective 8/1/05.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-740 Testimony under oath. (1) (~~((All testimony to be considered by the board shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth, or according to the provisions of chapter 5.28 RCW.))~~) Every person testifying before the board must swear or affirm in any manner allowed in chapter 5.28 RCW that the person's testimony will be truthful.

(2) Every interpreter (~~((shall, before beginning to interpret,))~~) will take an oath affirming that the interpreter will make a true interpretation (~~((will be made))~~) to the person being examined (~~((of all the proceedings))~~) in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the board, in the English language, to the best of the interpreter's skill and judgment.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-740, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-740, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-740, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-742 Recording devices. (1) All hearings (~~(shall)~~) will be (~~(officially)~~) recorded by manual, electronic, or other (~~(type of)~~) recording device.

(2) Photographic and recording equipment of others (~~(shall)~~) will be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or law limits such use.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-742, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-742, filed 5/22/90, effective 6/22/90.]

NEW SECTION

WAC 456-09-743 Hearing procedure. (1) Unless otherwise ordered, hearings will be conducted in the following format:

- (a) Administration of an oath to all persons testifying;
 - (b) The appellant's opening statement;
 - (c) The respondent's opening statement;
 - (d) The appellant's case in chief:
 - (i) Direct examination of witness;
 - (ii) Cross-examination by the respondent;
 - (iii) Redirect examination by the appellant;
 - (iv) Recross examination;
 - (v) The above procedure is followed for each witness.
 - (e) The respondent's case in chief:
 - (i) Direct examination of witness;
 - (ii) Cross-examination by the appellant;
 - (iii) Redirect examination by the respondent;
 - (iv) Recross examination;
 - (v) The above procedure is followed for each witness.
 - (f) The appellant's rebuttal, following the procedure in subsection (d) for each witness;
 - (g) The appellant's closing argument;
 - (h) The respondent's closing argument;
 - (i) The appellant's closing rebuttal;
- (2) The board may pose questions to the parties, their representatives, and any witnesses at any time during the hearing.

[]

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

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-745 Failure to attend and hearing on the record. (1) When a party (~~(to these proceedings)~~) has (~~(, after notice,)~~) failed to attend a hearing after receiving timely notice, the board will consid-

er a motion for default or dismissal (~~((may be sought))~~) brought by any party to the proceedings or (~~((raised by the board upon))~~) on its own motion. (~~((Any such order shall))~~) An order for default or dismissal will include ((a statement of the grounds)) the reason for the order and (~~((shall))~~) will be served upon all parties (~~((to the proceeding))~~).

Within (~~((ten business))~~) 10 calendar days (~~((after))~~) of service of the default order or dismissal (~~((under this section))~~), the party against whom the order was entered may submit (~~((to the board together with proof of service pursuant to WAC 456-09-345))~~) a written objection requesting that the order be vacated (~~((and stating the specific grounds relied upon))~~). The objection must state the specific reasons why the order should be vacated together with proof of service pursuant to WAC 456-09-345. The board may (~~((, for good cause,))~~) set aside (~~((an entry of))~~) a dismissal (~~((,))~~) or default (~~((, or final order))~~) for good cause.

(2) (~~((Upon stipulation by both parties, an appeal may be submitted to the board))~~) If the parties agree in writing and the presiding officer approves, the board may hold an appeal on the record and the attendance of ((a party may be excused. However, the board in its discretion may require attendance for argument)) one or more parties will not be required.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-745, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-745, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-750 Dismissal, stipulation, and withdrawal of actions. (~~((Any action))~~) (1) An appeal may be dismissed ((by the board)) for any of the following reasons ((-

~~((1- When))~~ :

~~((a))~~ (a) All parties ((se)) stipulate to dismissal. Stipulations (~~((on))~~) of the value of real property (~~((shall contain))~~) must include the parcel number, assessment year(s), the agreed upon value(s) of the subject property, and a brief statement supporting the agreed upon value(s). The board may request additional information as to the reason or reasons for the stipulation.

~~((2))~~ As a matter of right when the appellant requests in writing to withdraw the appeal prior to the scheduled hearing.

~~((3))~~ Upon motion of the appellant at the hearing prior to the presentation of the respondent's case.

~~((4))~~ (b) The appellant makes a motion to dismiss or withdraw the appeal any time before the respondent presents his or her case.

(c) Upon motion by the respondent alleging that the appellant has failed to prosecute the case, failed to comply with this chapter, or failed to follow any order of the board.

~~((5))~~ (d) Upon the board's own motion for failure by the parties to comply with applicable rules or any order of the board.

(2) An appeal will be dismissed when the appellant requests in writing to withdraw the appeal before the scheduled hearing.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-750, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-750, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-755 Rules of evidence and admissibility criteria.

(1) All relevant evidence, including hearsay (~~(evidence)~~), is admissible if, in the opinion of the board, (~~(the offered evidence)~~) it is the kind of evidence (~~(on which)~~) that a reasonably prudent person (~~(s are)~~) is accustomed to (~~(rely in the conduct of their)~~) relying on his or her business affairs. The board may exclude evidence (~~(that is excludable on)~~) for constitutional or statutory (~~(grounds or on the basis of evidentiary)~~) reasons or for a privilege recognized in the courts of this state. The board may also exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used (~~(in evaluation of)~~) to evaluate evidence.

(3) If not inconsistent with subsection (1) of this section, the board may (~~(refer to)~~) rely on, but (~~(shall)~~) will not be bound by, the Washington rules of evidence.

(4) Copies or excerpts of documentary evidence may be submitted (~~(in the form of copies or excerpts, or by incorporation by reference)~~) instead of the original evidence.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-755, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-755, filed 5/2/89.]

NEW SECTION

WAC 456-09-763 Record evidence. (1) A board of equalization or other tribunal should submit their record in a numbered format specified by the board. If the record is not properly numbered, the board will number the record.

(2) Parties relying on evidence from a board of equalization or other tribunal must indicate which pages they intend to rely on. Failure to do so will be understood by the board to indicate that the party does not want the record understood and will instead submit other evidence.

(3) The board will not review the record of a county board of equalization or any other tribunal that is unduly large or disorganized.

[]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-765 Official notice. (1) The board may take official notice of the following:

- (a) Any judicially cognizable facts;
- (b) Any matter of public record;
- (c) Technical or scientific facts within the agency's specialized knowledge; and
- (d) Codes or standards that have been adopted by ~~((an agency of the United States, of this state or of another state,))~~ any state or federal agency or by a nationally recognized organization or association.

(2) ~~((If any decision is stated to rest in whole or in part upon official notice of a fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by petition for review if such notice is taken in an initial decision pursuant to WAC 456-09-930 or by a petition for reconsideration if notice of such fact is taken in a final decision pursuant to WAC 456-09-955. Such controversion shall))~~ Any party may controvert such a fact by filing a petition for review of an initial decision pursuant to WAC 456-09-930 or by a petition for reconsideration of a final decision pursuant to WAC 456-09-955. The petition must concisely and clearly set forth the sources, authority, and other data relied upon to show the existence or nonexistence of the fact assumed or denied in the decision.

(3) A party ~~((proposing that))~~ asking the board to take official notice ~~((be taken))~~ may be required to produce a copy of the material to be noticed.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-765, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-765, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-910 Assistance to the board. (1) The board may obtain assistance ~~((concerning the appeal of any case within the scope of))~~ from a county board of equalization as allowed by RCW 82.03.130 (1)(b) ~~((appeals from a county board of equalization))~~, or from the staff of the department of revenue as provided by RCW 82.03.160. If the board intends to seek assistance, the board will notify the parties ((of its intent to seek such assistance and the matters sought to be investigated before contacting the department of revenue.)) and indicate the reason or reasons for seeking such assistance. Once notified, the parties may recommend an alternative to the board to achieve the same objectives ((without contacting the department of revenue)).

(2) Any evidence from the department of revenue ~~((concerning assistance requested))~~ about requested assistance under this section ~~((shall))~~ will only be presented in an open hearing after notice to all parties.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-910, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-910, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-915 (~~(Presentation of)~~) Posthearing evidence. Unless requested (~~(by the board, no posthearing)~~), the board will not accept any evidence ((will be accepted)) after a hearing unless such evidence could not reasonably have been anticipated ((or discovered prior to hearing. The board may request that the parties submit posthearing briefing or proposed findings of fact and conclusions of law)) before the hearing.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-915, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-915, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-920 (~~(Initial or final)~~) Contents of a decision. Every decision, whether initial or final, (~~(shall)~~) will:

(1) Be (~~(correctly)~~) captioned (~~(as to the name of the board and)~~) to include the name of the proceeding;

(2) Designate all parties and representatives participating in the proceeding;

(3) Include a concise statement of the nature and background of the proceeding;

(4) Contain (~~(appropriate numbered)~~) findings of fact (~~(meeting the requirements)~~) in a manner outlined in RCW 34.05.461;

(5) Contain (~~(appropriate numbered)~~) conclusions of law, including citations (~~(of)~~) to statutes and rules relied upon in a manner outlined in RCW 34.05.461;

(6) (~~(Contain)~~) Indicate whether it is an initial or final decision ((disposing of all contested issues)), and whether all contested issues have been resolved; and

(7) Contain a (~~(statement describing the)~~) description of available posthearing remedies.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-920, filed 6/21/05, effective 8/1/05; WSR 89-10-056 (Order 89-02), § 456-09-920, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-925 Initial decision. (1) (~~(An initial decision shall be prepared)~~) The board will issue an initial decision when:

(a) An appeal has been heard by only one member of the board;
 (b) An appeal has been heard by only two members of the board
 (~~at a time~~) when there is no vacancy (~~on the board~~) and the two
 members cannot agree on (~~a conclusion~~) an outcome. In such instan-
ces, the third member of the board will review the decision; or

(c) An appeal has been heard by a hearing officer (~~or~~
~~the board shall otherwise elect to do so~~).

(2) (~~If a petition for review as provided in WAC 456-09-930 is
 not submitted to the board within twenty calendar days of the date of
 mailing of the initial decision, the initial decision shall be deemed
 the final decision of the board unless the decision specifies other-
 wise.~~) An initial decision will be considered a final decision 20
calendar days after transmission to or service on the parties unless a
petition for review is timely filed and served as provided in WAC
456-09-930.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-925,
 filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170,
 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-925, filed
 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR
 89-10-056 (Order 89-02), § 456-09-925, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective
 8/1/05)

**WAC 456-09-930 Petition for review of an initial decision, re-
 plies, and disposition.** (1) (~~Any party to an adjudicative proceeding
 may make a~~) A party may petition for review of an initial decision. A
petition for review of an initial decision is also referred to as an
exception.

(2) (~~The~~) A petition for review ((shall be made, by mail or
 otherwise, with)) must be sent or transmitted to the board within
((twenty)) 20 calendar days of the date ((of mailing of)) the initial
decision was transmitted unless ((the decision specifies)) specified
otherwise ((together with)). Proof of service must be filed with the
board pursuant to WAC 456-09-345.

(3) (~~The~~) A petition for review ((shall specify the)) must in-
dicat e which portions of the initial decision ((to which exception is
taken and shall refer to the evidence of record which is relied upon
to)) or what evidence in the record supports the petition.

(4) Any party may make a reply to a petition for review within 10
calendar days of the date the petition is served on the opposing party
or parties. The ((reply shall be made, by mail or otherwise, with the
board together with proof of service pursuant to WAC 456-09-345 within
ten business days of the date of the letter acknowledging receipt by
the board of the petition for review)) response, if any, must be sent
or transmitted to the board together with proof of service pursuant to
WAC 456-09-345.

(5) (~~The disposition may be in the form of a written order deny-~~
~~ing the petition and adopting the initial decision as the final deci-~~
~~sion, granting the petition and issuing a final decision, or granting~~
~~the petition and setting the matter for further hearing. The board may~~
~~require the parties to submit written briefs or statements of position~~
~~or to appear and present oral argument regarding the matters on which~~
~~review was sought, within such time and on such terms as may be pre-~~

scribed.)) The board will address a petition for review in a written order. The board may require the parties to submit briefs or to appear and present oral argument on the petition.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-930, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-930, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-930, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-930, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-955 Petition for reconsideration of a final decision.

(1) A petition for reconsideration of a final decision is not available where an initial decision was first issued, unless:

(a) The alleged error or errors could not have been previously addressed in an exception to the initial decision; or

(b) The alleged error or errors are of constitutional concern.

(2) After ((a final decision has been issued)) the board issues a final decision, any party may submit a petition for reconsideration ((with the board)) as provided ((by)) in RCW 34.05.470. ((Such)) The petition must be ((made, by mail or otherwise, within ten business days from the mailing of the final decision, and shall state the specific grounds upon which relief is requested. The petition for reconsideration shall be submitted to the board and served upon all parties and representatives of record in compliance with WAC 456-09-345. The board may require or a party may at its own option, within ten business days of the date of the letter acknowledging receipt by the board of the petition for reconsideration, submit to the board a response together with proof of service pursuant to WAC 456-09-345.

(2) The petition shall be deemed denied if, within twenty calendar days from the date the petition is received by the board, the board does not either dispose of the petition; or provide the parties with a written notice specifying the date by which it will act on the petition.

(3) The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final decision, or granting the petition and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument within such time and on such terms as may be prescribed.)) submitted to the board and served on all parties or their representatives within 14 calendar days from the date the final decision was sent or transmitted to the parties together with proof of service as outlined in WAC 456-09-345. The petition must also state the specific grounds for relief.

(3) The party opposing a petition for reconsideration must submit a response together with proof of service pursuant to WAC 456-09-345. The response must be filed within 10 calendar days of the date the petition for reconsideration was served on the responding party.

(4) The board must accept or deny a petition within 30 calendar days from the date a petition is served on the opposing party. If the

board does not act within this time period, the petition is deemed to be denied.

(5) Except as outlined in subsection (4) of this section, the board will address a petition by written order. The board may also require the parties to submit briefs or to appear and present oral argument on a petition.

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-955, filed 6/21/05, effective 8/1/05; WSR 95-05-033 (Order 95-01), § 456-09-955, filed 2/8/95, effective 3/11/95. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-955, filed 5/22/90, effective 6/22/90. Statutory Authority: RCW 82.03.170. WSR 89-10-056 (Order 89-02), § 456-09-955, filed 5/2/89.]

AMENDATORY SECTION (Amending WSR 05-13-141, filed 6/21/05, effective 8/1/05)

WAC 456-09-960 Record on appeal. ~~((1))~~ When an appeal is ~~((taken))~~ made to superior court ~~((from a decision of the board rendered in a formal proceeding, the appealing party is responsible for ordering and paying for the transcript of the testimony from the court reporter.~~

~~(2) If a petition for judicial review of a final order is made, by stipulation the parties may agree to shorten the record to be filed with the court. Either party unreasonably refusing to stipulate to such a limitation, including shortening or selecting only portions of a transcript, may be ordered to pay the additional costs involved as allowed in RCW 34.05.566), the appealing party is responsible for ordering and paying for a transcript of the board's hearing.~~

[Statutory Authority: RCW 82.03.170. WSR 05-13-141, § 456-09-960, filed 6/21/05, effective 8/1/05. Statutory Authority: RCW 82.03.170, 34.05.250, 82.03.140 and 82.03.160. WSR 90-11-105, § 456-09-960, filed 5/22/90, effective 6/22/90.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 456-09-120	Organization and office.
WAC 456-09-130	Quorum.
WAC 456-09-140	Meetings of the board.
WAC 456-09-215	Notice of appearance by representatives.
WAC 456-09-330	Amendments to notice of appeal.
WAC 456-09-762	Hearings—Interpreters.
WAC 456-09-970	Applicability of SEPA guidelines.

WSR 22-07-019
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 8, 2022, 12:05 p.m., effective April 24, 2022]

Effective Date of Rule: April 24, 2022.

Purpose: The department is adopting WAC 388-436-0065 What is the pandemic emergency assistance fund (PEAF)? Adoption of this rule supports issuance of cash benefits from the pandemic emergency assistance fund, a one-time payment to all families with children receiving temporary assistance for needy families, state family assistance, or basic food (state or federally funded) whose household income is at or below 75 percent of the federal poverty level. The rule provides definitions and eligibility requirements associated with these funds. PEAFFunds are part of the federal American Rescue Plan Act of 2021.

Citation of Rules Affected by this Order: New WAC 388-436-0065.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057.

Other Authority: P.L. 117-2, Title IX, Subtitle C, Sec. 9201; 2021-2023 operating budget (chapter 334, Laws of 2021).

Adopted under notice filed as WSR 22-01-141 on December 15, 2021.

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

Number of Sections Adopted at the Request of a 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: March 8, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4906.1

NEW SECTION

WAC 388-436-0065 What is the pandemic emergency assistance fund (PEAF)? (1) What is the pandemic emergency assistance fund (PEAF)?

The pandemic emergency assistance fund (PEAF) is administered by the department of social and health services and provides a one-time cash benefit to low income families with at least one qualifying child, to support them in meeting their basic needs as a result of the COVID-19 pandemic.

(2) The following definitions apply to PEAFF:

(a) "Household" as defined in WAC 388-408-0015 or WAC 388-408-0035.

(b) "Qualifying child" means a child as defined in WAC 388-404-0005.

(3) Who is eligible for the PEAFF?

Each child in your household may be eligible for PEAFF if your child meets all of the following:

(a) A qualifying child lives in your home and has not already received PEAFF;

(b) The household is active, eligible, and receiving TANF, SNAP, SFA, or FAP benefits in the month of issuance;

(c) The reported household income, as defined in chapter 388-450 WAC, at the time of issuance is at or below 75% of the federal poverty level;

(d) You reside in Washington state as required under WAC 388-468-0005.

(4) How do I apply for the pandemic emergency assistance fund?

(a) The department automatically reviews your eligibility for PEAFF during the month of issuance:

(b) When you apply for TANF, SFA, SNAP, or FAP; or

(c) You are an active household receiving TANF, SFA, SNAP, or FAP.

(5) What benefits will I receive if I am eligible for PEAFF?

(a) PEAFF is issued only once per qualifying child.

(b) The amount of the PEAFF benefit is the same for each qualifying child and is determined based on:

(i) The amount of available PEAFF funding; and

(ii) The number of qualifying children in the month of issuance.

[]

WSR 22-07-020
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 8, 2022, 2:15 p.m., effective April 8, 2022]

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

Purpose: The department is amending WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program?, and 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)?, to clarify that persons eligible for services through the developmental disabilities administration (for a medical condition expected to last 12 months or more or result in death) are eligible for ABD. Amendments also clarify good cause for not participating in medical treatment for one's disabling condition(s).

Citation of Rules Affected by this Order: Amending WAC 388-449-0001 and 388-449-0200.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, 74.09.035, 74.09.530, 74.62.030, 41.05.021.

Adopted under notice filed as WSR 21-21-031 on October 11, 2021.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, 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 0, Amended 2, Repealed 0.

Date Adopted: March 8, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4886.3

AMENDATORY SECTION (Amending WSR 15-03-031, filed 1/12/15, effective 2/12/15)

WAC 388-449-0001 What are the disability requirements for the aged, blind, or disabled (ABD) program? (1) For the purposes of this chapter, the following definitions apply:

(a) "We" and "us" refer to the department of social and health services.

(b) "You" means the applicant or recipient.

(c) "Disabled" means the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment(s) which has lasted or can be expected to last for a continuous period of not less than twelve months with available treatment or result in death.

(d) "Physical impairment" means a diagnosable physical illness.

(e) "Mental impairment" means a diagnosable mental disorder. We exclude any diagnosis of or related to ~~((alcohol or drug abuse or addiction))~~ a substance use disorder.

(2) We determine if you are likely to be disabled when:

(a) You apply for ABD cash benefits;

(b) You become employed;

(c) You obtain work skills by completing a training program; or

(d) We receive new information that indicates you may be employable.

(3) We determine you are likely to be disabled if:

(a) You are determined to meet SSA disability criteria by the Social Security Administration (SSA);

(b) You are determined to meet SSA disability criteria by disability determination services (DDDS) based on the most recent DDDS determination;

(c) The Social Security Administration (SSA) stops your supplemental security income (SSI) payments solely because you are not a citizen;

(d) You are eligible for services through the developmental disabilities administration (DDA) for a medical condition that is expected to last twelve months or more or result in death;

(e) You are eligible for long-term care services from the aging and long-term support administration for a medical condition that is expected to last twelve months or more or result in death; or

~~((e))~~ (f) You are approved through the sequential evaluation process (SEP) defined in WAC 388-449-0005 through 388-449-0100. The SEP is the sequence of five steps. Step 1 considers whether you are currently working. Steps 2 and 3 consider medical evidence and whether you are likely to meet or equal a listed impairment under Social Security's rules. Steps 4 and 5 consider your residual functional capacity and vocational factors such as age, education, and work experience in order to determine your ability to do your past work or other work.

(4) If you have a physical or mental impairment and you are impaired by ~~((alcohol or drug addiction))~~ a substance use disorder and do not meet the other disability criteria in subsection (2)(a) through (d) above, we decide if you are eligible for ABD cash by applying the sequential evaluation process described in WAC 388-449-0005 through 388-449-0100. You aren't eligible for ABD cash benefits if you are disabled primarily because of ~~((alcoholism or drug addiction))~~ a substance use disorder.

(5) In determining disability, we consider only your ability to perform basic work-related activities. "Basic work-related activities" are activities that anyone would be required to perform in a work setting. They consist of: Sitting, standing, walking, lifting, carrying, handling, and other physical functions (including manipulative or postural functions such as pushing, pulling, reaching, handling, stooping, or crouching), seeing, hearing, communicating, remembering, understanding and following instructions, responding appropriately to supervisors and coworkers, tolerating the pressures of a work setting,

maintaining appropriate behavior, and adapting to changes in a routine work setting.

(6) We determine you are not likely to meet SSI disability criteria if SSA denied your application for SSI or Social Security Disability Insurance (SSDI) based on disability in the last twelve months unless:

- (a) You file a timely appeal with SSA;
- (b) SSA decides you have good cause for a late appeal; or
- (c) You give us medical evidence of a potentially disabling condition that SSA did not consider or medical evidence confirming your condition has deteriorated.

[Statutory Authority: 2014 c 218, 2011 1st sp.s. c 15, RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, 41.05.021, 74.09.035, and 74.09.530. WSR 15-03-031, § 388-449-0001, filed 1/12/15, effective 2/12/15. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.62.030, and 2013 2nd sp.s. c 10. WSR 13-24-040, § 388-449-0001, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-449-0001, filed 4/27/12, effective 6/1/12.]

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0200 Am I eligible for cash assistance for aged, blind, or disabled (ABD) while waiting for supplemental security income (SSI)? (1) You may receive ABD benefits while you are waiting to receive supplemental security income (SSI) benefits only when you:

(a) Have filed your SSI application with the Social Security Administration (SSA), follow through with SSA directions and requirements to process your application including keeping all interview and consultative examination appointments, and do not withdraw your application;

(b) Agree to assign the initial or reinstated SSI payment to us provided under WAC 388-449-0210;

(c) Are otherwise eligible according to WAC 388-400-0060; and

(d) Meet disability criteria listed in WAC 388-449-0001.

(2) To demonstrate your impairments are disabling despite medical treatment, you must participate in medical treatment for the impairments that keep you from working, unless you (~~meet one of~~) have a good cause. Good cause includes, but is not limited to, the following (~~good cause~~) reasons:

(a) The treatment provider has identified a risk that the treatment may cause further limitations or loss of a function or an organ and you are not willing to take that risk;

(b) Treatment is not available because you can't obtain it without cost to you;

(c) You are so fearful of the treatment that your fear could interfere with the treatment or reduce its benefits; or

(d) You practice an organized religion that prohibits the treatment.

(3) If you refuse or fail to participate in medical treatment without good cause, your benefits (~~will~~) may end and you will remain ineligible until you reapply and provide proof you are pursuing treatment as recommended.

[Statutory Authority: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335, and 2011 1st sp.s. c 36. WSR 12-10-042, § 388-449-0200, filed 4/27/12, effective 6/1/12.]

WSR 22-07-023

PERMANENT RULES

TRANSPORTATION IMPROVEMENT BOARD

[Filed March 9, 2022, 11:37 a.m., effective April 9, 2022]

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

Purpose: The small city and urban sidewalk program WAC criteria has not been updated in nearly a decade. The objective of this rule making is to transition the small city and urban sidewalk program to active transportation.

Citation of Rules Affected by this Order: Amending portions of chapters 479-01, 479-05, 479-10, and 479-14 WAC.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Adopted under notice filed as WSR 21-18-126 on September 1, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 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 15, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 15, Repealed 0.

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

Date Adopted: November 19, 2021.

Ashley Probart
Executive Director

OTS-3279.1

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-01-040 Definitions and acronyms. The following definitions and acronyms apply:

(1) TIB - The transportation improvement board.

(2) Board - The transportation improvement board refers to the group of board members defined in RCW 47.26.121 and does not include the executive director or staff.

(3) Director - The executive director of the transportation improvement board.

(4) Staff - Refers to the employees of the transportation improvement board excluding the executive director.

(5) Agency - All cities, towns, counties, and transportation benefit districts eligible to receive board funding.

(6) Local agency official - Refers to a local agency elected official or staff who is authorized to sign contracts on the city, town, county, or transportation benefit district's behalf.

(7) Urban area - Refers to the portion of a county within the federal urban area boundary as designated by the Federal Highway Administration and/or Washington state's Growth Management Act.

(8) Six-year transportation plan - Refers to the city or county six-year transportation plan for coordinated transportation program expenditures per RCW 35.77.010 and 36.81.121.

(9) Small city - Refers to an incorporated city or town with a population of less than five thousand.

(10) (~~(Sidewalk)~~) Active transportation program - Refers to both the urban and small city (~~(sidewalk)~~) active transportation programs.

(11) Population - Is defined as office of financial management official published population at the time of application.

(12) Highway urban area population - As published by the office of financial management.

(13) Scope change - Refers to a change in the physical characteristics and/or dimensions of a project.

(14) CHAP - City Hardship Assistance Program.

(15) TIA - Transportation improvement account.

(16) Matching funds - All funds contributed to a project other than TIB funds.

(17) Construction ready - Is defined as a project that has design, plans specifications and estimates, right of way, permits, and all sources of match funding to enable advertisement for bids.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-01-040, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-01-040, filed 8/30/07, effective 9/30/07. Statutory Authority: Chapters 47.26 and 47.66 RCW. WSR 99-24-038, § 479-01-040, filed 11/23/99, effective 12/24/99. Statutory Authority: Chapter 47.26 RCW. WSR 95-04-072, § 479-01-040, filed 1/30/95, effective 3/2/95; WSR 90-11-035, § 479-01-040, filed 5/10/90, effective 6/10/90.]

OTS-3280.1

AMENDATORY SECTION (Amending WSR 15-22-052, filed 10/29/15, effective 11/29/15)

WAC 479-05-035 Qualifications for small city projects administered by another agency. A local agency that has a small city arterial program (~~(or)~~) project, small city preservation project, or active transportation project, may elect to have, or the executive director may require, the project to be administered by another city, a county, state department of transportation, or state transportation improvement board when:

(1) The local agency does not have certification acceptance from the state department of transportation per the Washington state department of transportation local agency guidelines manual, chapter 13; or

(2) The executive director determines that the local agency has insufficient capacity to directly administer transportation projects.

[Statutory Authority: Chapter 47.26 RCW. WSR 15-22-052, § 479-05-035, filed 10/29/15, effective 11/29/15; WSR 12-08-060, § 479-05-035, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-05-051 Project phases. Projects authorized by the board are divided into the following phases:

(1) Design phase - Documents that must be received prior to phase approval include:

(a) Signed funding status form confirming that the funding partners are fully committed;

(b) Page from the adopted six-year transportation plan which lists the project;

(c) Signed fuel tax agreement;

(d) Consultant agreement (small city arterial and small city (~~sidewalk~~) active transportation programs only).

(2) Bid advertisement phase - Documents that must be received prior to phase approval include:

(a) Signed bid authorization form that contains:

(i) Plans and specification package;

(ii) Written confirmation of funding partners; and

(iii) Confirmation that full funding is available for the project;

(b) Signed confirmation that right of way is acquired or possession and use agreement is in place;

(c) Engineer's estimate is in final format;

(d) Consultant agreement (small city arterial and small city (~~sidewalk~~) active transportation programs only);

(e) Certification that a cultural resource assessment was completed;

(f) Traffic signal warrants.

(3) Construction phase - Documents that must be received prior to phase approval include:

(a) Updated cost estimate form signed by a local agency official and the project engineer;

(b) Bid tabulations; and

(c) Description of cost changes.

(4) Project closeout phase - Documents that must be received prior to phase approval include:

(a) Updated cost estimate form signed by a local agency official and the project engineer;

(b) Final summary of quantities; and

(c) Accounting history signed by a local agency official or the financial manager.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-05-051, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-05-051, filed 8/30/07, effective 9/30/07.]

OTS-3281.2

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

WAC 479-10-120 Projects that are eligible for small city preservation program funds. Eligible roadway and sidewalk projects, including active transportation projects, are those that maintain, repair, and/or resurface the existing infrastructure that is municipally owned and appropriate under Article II Section 40, 18th Amendment of the Washington state Constitution.

[Statutory Authority: Chapter 47.26 RCW. WSR 08-21-005, § 479-10-120, filed 10/2/08, effective 11/2/08.]

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

WAC 479-10-160 City matching funds or services for small city preservation program. The board will consider a city's ability to provide matching funds or in-kind services when allocating funds under this program. Cash or in-kind match may be provided by the local agency in the form of:

- (1) Cash match based on ability to contribute:
 - (a) If the city assessed valuation is greater than (~~five hundred million~~) 500,000,000, a match of (~~ten~~) 10 percent will be contributed.
 - (b) If the city assessed valuation is from (~~one hundred million to five hundred million~~) 100,000,000 to 500,000,000, a five percent match will be contributed.
- (2) If the city assessed valuation is under (~~one hundred million~~) 100,000,000, no cash match is necessary.
- (3) Match is not expected or accepted if the construction services will be provided to the city by WSDOT or a county.
- (4) All in-kind contributions must relate directly to the project and are limited to time, material, or real property donated to the agency to fulfill project requirements. In-kind match may include:
 - (a) Community involvement including volunteer participation.
 - (b) City force labor, materials, and/or equipment (excluding costs incurred for qualification in WAC 479-10-122 or application for funds).
 - (c) Other street beautification.
 - (d) In-kind match must be documented with labor reports, equipment reports, receipts, and/or citizen volunteer time with hourly rate (~~(+)not to exceed (fifteen dollars per hour)~~) the greater of 200 percent of either the state or local minimum wage.
 - (e) Contributions of overhead, per diem, travel expenses, time spent at advisory groups or meetings, or time from individuals receiving compensation through the grant will not be accepted as in-kind match.

[Statutory Authority: Chapter 47.26 RCW. WSR 08-21-005, § 479-10-160, filed 10/2/08, effective 11/2/08.]

OTS-3282.2

AMENDATORY SECTION (Amending WSR 13-20-087, filed 9/30/13, effective 10/31/13)

WAC 479-14-011 Programs funded from the transportation improvement account. The transportation improvement account funds the following programs:

- (1) The urban program;
- (2) The small city arterial program:
 - (a) Grants; and
 - (b) Federal match funding.
- (3) The ~~((sidewalk))~~ active transportation programs:
 - (a) Urban ~~((sidewalk))~~ active transportation program; and
 - (b) Small city ~~((sidewalk))~~ active transportation program.
- (4) The arterial preservation program.

[Statutory Authority: Chapter 47.26 RCW. WSR 13-20-087, § 479-14-011, filed 9/30/13, effective 10/31/13; WSR 12-08-060, § 479-14-011, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-14-011, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-131 Award criteria for the urban program. The board establishes the following criteria for use in evaluating urban program grant applications:

- (1) Mobility improvements - Includes system connectivity, improves flow of vehicles and freight, and extends or completes corridor for network connections.
- (2) Physical condition - Includes pavement, structural, and geometric design features of the arterial.
- (3) Growth and development improvements - Provides or improves access to urban centers, economic development, supports annexation agreements, and increases residential density.
- (4) Safety improvements - Addresses ~~((accident))~~ crash reduction, elimination of roadway hazards, corrects roadway deficiencies, and eliminates railroad at-grade crossing.
- (5) Sustainability - Improves mode accessibility, reduces or eliminates water detention, and encourages energy reduction technology and use of recycled materials.
- (6) Constructability - Demonstrates a strong likelihood to achieve full funding, obtain permits, acquire right of way, and reach construction within the timelines established in WAC 479-05-211.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-131, filed 4/3/12, effective 5/4/12; WSR 07-18-050, § 479-14-131, filed 8/30/07, effective 9/30/07.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-402 ((Sidewalk)) Active transportation program sub-programs. In order to provide equity for project grant funding, the ((sidewalk)) active transportation program is divided into the urban ((sidewalk)) active transportation program and the small city ((side-walk)) active transportation program.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-402, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-411 Who is eligible to receive ((sidewalk)) active transportation program funding. Each of the subprograms has separate criteria for agency eligibility as follows:

(1) Urban ((sidewalk)) active transportation program agency eligibility:

(a) Incorporated cities with a population of five thousand and over.

(b) Incorporated cities with a population less than five thousand which are located within a federally designated urban area.

(c) Counties with a federally designated urban area.

(2) Small city ((sidewalk)) active transportation program agency eligibility: Incorporated cities with a population under five thousand.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-411, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 13-24-092, filed 12/3/13, effective 1/3/14)

WAC 479-14-421 What projects are eligible for ((sidewalk)) active transportation program funding. Minimum project requirements for each subprogram are as follows:

(1) Urban ((sidewalk)) active transportation program project eligibility:

(a) Must be on or related to a functionally classified route; and

(b) Primary purpose of the project is transportation and not recreation.

(2) Small city ((sidewalk)) active transportation program project eligibility:

(a) The project must be located on or related to a street within the TIB designated arterial system; and

(b) Primary purpose of the project is transportation and not recreation.

For both of the subprograms, TIB does not participate in the cost for right of way acquisitions.

[Statutory Authority: Chapter 47.26 RCW. WSR 13-24-092, § 479-14-421, filed 12/3/13, effective 1/3/14; WSR 12-08-060, § 479-14-421, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 18-08-068, filed 4/2/18, effective 5/3/18)

WAC 479-14-431 Award criteria for the ((sidewalk)) active transportation program. The board establishes the following criteria for use in evaluating sidewalk program grant applications for both urban and small city ((sidewalk)) active transportation projects:

- (1) Safety improvement - Projects that address hazard mitigation and ((accident)) crash reduction.
- (2) ((Pedestrian)) Mobility access - Projects that improve or provide access to facilities including, but not limited to:
 - (a) Schools;
 - (b) Public buildings;
 - (c) Central business districts;
 - (d) Medical facilities;
 - (e) Activity centers;
 - (f) High density housing (including senior housing);
 - (g) Transit facilities;
- (3) Completes or extends existing ((sidewalks)) active transportation facilities.
- (4) Completes or extends sidewalks to facilities listed in subsection (2) of this section that are identified in local agency late-comer agreements. The local agency must agree to collect the latecomer fee at the time of development and place the fee in its transportation improvement program.
- (5) Local support - Addresses local needs and is supported by the local community.
- (6) Constructability - Demonstrates a strong likelihood to reach construction within the timelines established in WAC 479-05-211.
- (7) Sustainability - Right sizing sidewalk or shared use path width and material type, provides hardscaping and native plantings, addresses low impact development or natural drainage practices.

[Statutory Authority: Chapter 47.26 RCW. WSR 18-08-068, § 479-14-431, filed 4/2/18, effective 5/3/18; WSR 12-08-060, § 479-14-431, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-441 Regions of the ((sidewalk)) active transportation program. The board allocates ((sidewalk)) active transportation program funding across three regions to ensure statewide distribution of funds. The three regions are as follows:

- (1) Puget Sound region includes eligible agencies within King, Pierce, and Snohomish counties.
- (2) East region includes eligible agencies within Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant,

Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima counties.

(3) West region includes eligible agencies within Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, Kitsap, Lewis, Mason, Pacific, San Juan, Skagit, Skamania, Thurston, Wahkiakum, and Whatcom counties.

[Statutory Authority: Chapter 47.26 RCW. WSR 12-08-060, § 479-14-441, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 15-22-052, filed 10/29/15, effective 11/29/15)

WAC 479-14-451 Distribution formula for the ((sidewalk)) active transportation program. For the purpose of allocating funds, the ((sidewalk)) active transportation program is divided into two subprograms, the urban ((sidewalk)) active transportation program and the small city ((sidewalk)) active transportation program. The distribution formulas are as follows:

(1) Urban ((sidewalk)) active transportation program - The average of the ratios of region urban area population (RUP) divided by statewide urban population (SUP) plus region functionally classified lane miles within the urban area (RFC) divided by statewide functionally classified lane miles within urban areas (SFC).

The equation is as follows:

$$\frac{(RUP/SUP) + (RFC/SFC)}{2}$$

(2) Small city ((sidewalk)) active transportation program - Region small city population divided by statewide small city population. For either program, the board may adjust regional allocations by plus or minus five percent of the total annual allocation to fully fund the approved list of regional projects. When requested by the board, staff will update the regional allocations to ensure equitable distribution of funds.

[Statutory Authority: Chapter 47.26 RCW. WSR 15-22-052, § 479-14-451, filed 10/29/15, effective 11/29/15; WSR 12-08-060, § 479-14-451, filed 4/3/12, effective 5/4/12.]

AMENDATORY SECTION (Amending WSR 18-08-068, filed 4/2/18, effective 5/3/18)

WAC 479-14-461 Matching requirement for the ((sidewalk)) active transportation program. The ((sidewalk)) active transportation program provides funding which will be matched by other funds as follows:

(1) The urban ((sidewalk)) active transportation program provides funding which will be matched by other funds as follows:

(a) For cities:

(i) If the city valuation is under one billion dollars, the matching rate is ten percent of total project costs.

(ii) If the city valuation is one billion dollars to two and one-half billion dollars, the rate is fifteen percent of total project costs.

(iii) If the city valuation is over two and one-half billion dollars, the rate is twenty percent of total project costs.

(b) For counties:

(i) If the road levy valuation is under three billion dollars, the rate is ten percent of total project costs.

(ii) If the road levy valuation is between three billion dollars to ten billion dollars, the rate is fifteen percent of total project costs.

(iii) If the road levy valuation is over ten billion dollars, the rate is twenty percent of total project costs.

(c) For transportation benefit districts, the match is based on the valuation of the city or county in which the project is located. If the project lies within more than one city or county, the match is determined by the city or county that has the greatest valuation.

(2) The small city (~~sidewalk~~) active transportation program provides funding which will be matched by other funds as follows:

(a) If the city assessed valuation is under one hundred million dollars, no cash match is necessary.

(b) If the city assessed valuation is from one hundred million dollars to five hundred million dollars, a five percent match will be contributed.

(c) If the city assessed valuation is greater than five hundred million dollars, a match of ten percent will be contributed.

The board uses the current published valuation from the department of revenue.

[Statutory Authority: Chapter 47.26 RCW. WSR 18-08-068, § 479-14-461, filed 4/2/18, effective 5/3/18; WSR 12-08-060, § 479-14-461, filed 4/3/12, effective 5/4/12.]

WSR 22-07-025

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 9, 2022, 3:27 p.m., effective April 9, 2022]

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

Purpose: Title 246 WAC, the department of health (department) adopted amendments to multiple rule chapters to update Title 70 RCW references to the new Title 70A RCW, Environmental health and safety per SHB 2246, chapter 20, Laws of 2020 Regular Session and made non-substantive changes to clarify rule language.

Citation of Rules Affected by this Order: Amending WAC 246-203-121, 246-205-010, 246-205-111, 246-290-990, 246-291-001, 246-291-030, 246-291-050, 246-291-090, 246-291-120, 246-03-030, 246-10-107, 246-10-502, 246-220-001, 246-220-010, 246-220-070, 246-224-001, 246-225A-001, 246-225A-010, 246-226-001, 246-229-001, 246-236-015, 246-252-030, 246-254-130, 246-272B-01000, 246-272B-07100, 246-272B-08100, 246-272B-08200, 246-273-001, 246-273-020, 246-273-060, 246-273-080, 246-274-005, 246-274-011, 246-292-010, 246-292-100, 246-292-110, 246-293-001, 246-293-401, 246-293-601, 246-294-001, 246-294-010, 246-294-070, 246-294-090, 246-295-001, 246-295-030, 246-295-100, 246-296-020, and 246-296-040.

Statutory Authority for Adoption: RCW 43.70.040.

Other Authority: SHB 2246, chapter 20, Laws of 2020.

Adopted under notice filed as WSR 22-03-021 on January 10, 2022.

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 48, 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 48, 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 48, Repealed 0.

Date Adopted: March 9, 2022.

Lauren Jenks
Assistant Secretary

OTS-3430.2

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

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

(a) Scope of major action.

(i) Regulations relating to radioactive material shall include the adoption or amendment by the department of any regulations incorporating general standards for issuance of licenses authorizing the

possession, use and transfer of radioactive material pursuant to RCW ((70.98.080, and 70.121.030)) 70A.388.050 and 70A.310.030.

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

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

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

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

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

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

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

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

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

(v) When the responsible official makes a determination of significance, the preparation of an environmental report shall be completed in a manner consistent with the requirements for a draft EIS and shall be the responsibility of the private applicant. If the applicant desires, he may contract with an outside consultant for the preparation of the environmental report. The department may also contract

with an outside consultant for the preparation of a draft or final EIS. The department or the department's contracted consultant will independently evaluate the environmental report and be responsible for the reliability of any information used in the draft or final EIS. Unless the scope or complexity of the proposal indicates otherwise, the final EIS shall be issued as described in WAC 197-11-460(6).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Certificates of need.

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

(b) Timing and procedures for hospital certificates of need.

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

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

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

(b) Timing and procedures for water general plans. Every water general plan submitted by a county to the department for review and approval shall be accompanied by either a determination of nonsignificance or a final EIS.

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

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

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

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

(b) Timing and procedures.

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

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

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

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

(v) The responsible official shall mail to the department of ecology headquarters office in Olympia for listing in the "SEPA register" a copy of any determination of nonsignificance, a copy of the

draft EIS, and a copy of the final EIS. Copies of the draft EIS shall also be mailed to those agencies identified in WAC 197-11-455, and of the final EIS to those agencies identified in WAC 197-11-460. The responsible official shall also give public notice in the form and manner specified in RCW 43.21C.080 of the determination of nonsignificance or final EIS.

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

(a) Scope of major action. The approval of final plans for construction of a private psychiatric hospital pursuant to WAC 246-322-020, or construction of an alcoholism treatment center pursuant to WAC 246-326-020 shall be subject to SEPA requirements: Provided, That such construction shall not be subject to SEPA requirements when it consists of additions which provide less than (~~twelve thousand~~) 12,000 square feet of floor area and with associated parking facilities designed for (~~forty~~) 40 automobiles or less.

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

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

OTS-3431.1

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

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

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

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

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

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

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

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

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

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

(5) With respect to the department's final threshold determination that an environmental impact statement (EIS) is or is not necessary and with respect to the adequacy of a final EIS, any person may request an adjudicative proceeding who:

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

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

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

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

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

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

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

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

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

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

(2) Preliminary record.

(a) The preliminary record with respect to decisions made under WAC 246-290-100, 246-290-110, 246-290-120, 246-290-130, 246-290-140,

246-291-120, 246-291-125, 246-291-280, and 246-291-140 must consist of the decision document, all documents constituting the applicant's submittal and such other documents as the applicant or the department may wish to include in the preliminary record.

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

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

(ii) If hearings are not required or have not been conducted by local agencies under the applicable coordinated water system plan or if the external boundaries of the coordination act area have been approved but a coordinated water system plan has not been adopted, then the preliminary record shall consist of such documents as the presiding officer may solicit from the affected parties.

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

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

(i) The permit, if any;

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

(iii) The decision document.

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

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

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

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

(i) The preliminary record with respect to the issuance of a written citation and assessment of a fine under RCW 18.130.230 shall consist of the citation, as described in RCW 18.130.230(2), the request by the disciplining authority to produce documents, records, or

other items within the licensee's control, the licensee's request for extension of time and the disciplining authority's response if a request for extension of time was made, and such other documents as the licensee or disciplining authority may wish to include in the preliminary record with respect to whether or not the licensee timely provided the items requested.

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

(k) The preliminary record with respect to a decision to deny a request for a list of applicants for professional licenses or of professional licensees for commercial purposes shall consist of the written request for the list, any other documents relied on by the program in proposing to deny the request, all correspondence regarding the request between the person making the request and the department, and such other documents as the person making the request and the department may wish to include in the preliminary record.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: RCW 43.70.040, 34.05.413, 34.05.410, 18.130.050, and 2019 c 148, 2020 c 20. WSR 20-24-047, § 246-10-502, filed 11/23/20, effective 1/1/21. Statutory Authority: RCW 43.70.040, 34.05.220, 34.05.410, 18.130.050, and 34.05.413 through 34.05.476. WSR 18-18-049, § 246-10-502, filed 8/29/18, effective 9/29/18. Statutory Authority: RCW 18.130.050 and 43.70.040. WSR 96-21-027, § 246-10-502, filed 10/7/96, effective 11/7/96. Statutory Authority: RCW 43.70.040. WSR 94-04-079, § 246-10-502, filed 1/31/94, effective 3/3/94; WSR 93-13-005 (Order 369), § 246-10-502, filed 6/3/93, effective 7/4/93.]

OTS-3432.2

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

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

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

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

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

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

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

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

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

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

(2) **Disposal methods.**

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

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

(c) The person responsible for disposal of a dead animal must dispose of it by burial, landfilling, incineration, composting, rendering, or another method approved by the local health officer (such as natural decomposition) that is not otherwise prohibited by federal, state, or local law or regulation.

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

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

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

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

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

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

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

OTS-3433.1

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

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

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

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

- (2) "Basic course" means a training course which has been sponsored or approved by the department for workers and supervisors who perform or supervise decontamination on illegal drug manufacturing or storage sites.
- (3) "Certificate" means a department issued written approval under this chapter.
- (4) "Certified" means a person who has department issued written approval under this chapter.
- (5) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated, but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."
- (6) "Decontamination" means the process of reducing levels of known contaminants to the lowest practical level using currently available methods and processes.
- (7) "Department" means the Washington state department of health.
- (8) "Disposal of contaminated property" means the disposition of contaminated property under the provisions of chapter ((70.105)) 70A.300 RCW.
- (9) "Hazardous chemicals" means the following substances used in the manufacture of illegal drugs:
- Hazardous substances as defined in RCW ((70.105D.020)) 70A.305.020; and
 - Precursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the pharmacy quality assurance commission, has determined present an immediate or long-term health hazard to humans.
- (10) "Illegal drug manufacturing or storage site" means any property where a person illegally manufactures or stores a controlled substance or a law enforcement agency or the property owner believes a person illegally manufactured or stored a controlled substance.
- (11) "Initial site assessment" means the first evaluation of a property to determine the nature and extent of observable damage and contamination.
- (12) "List of contaminated properties" means a list of properties contaminated by illegal drug manufacturing or the storage of hazardous chemicals.
- (13) "Local department" means the jurisdictional local health department or district.
- (14) "Local health officer" means a health officer or authorized representative as defined under chapters 70.05, 70.08, and 70.46 RCW.
- (15) "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or other entity.
- (16) "Posting" means attaching a written or printed announcement conspicuously on property which may be, or is determined to be, contaminated by illegal drug manufacturing or the storage of a hazardous chemical.
- (17) "Property" means any site, lot, parcel of land, structure, or part of a structure involved in the illegal manufacture of a drug or storage of a hazardous chemical including, but not limited to:
- Single-family residences;
 - Units or multiplexes;
 - Condominiums;
 - Apartment buildings;

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

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

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

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

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

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

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

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

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

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

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

- (1) Perform all decontamination work only with department certified workers and supervisors;
- (2) File a work plan with and obtain approval from the local health department;
- (3) Perform work in accordance with the approved work plan;
- (4) Station on site a contractor-employed certified supervisor to oversee the activities performed;

- (5) Perform work meeting applicable requirements of state and local building codes;
- (6) Comply with applicable Federal Occupational Safety and Health Act, Public Law 91-596, 84 stat. 1590; and Washington Industrial Safety and Health Act regulations and requirements, chapter 49.17 RCW;
- (7) Comply with applicable requirements of chapter (~~(70.105)~~) 70A.300 RCW, Hazardous waste management; and chapter 173-303 WAC, Dangerous waste regulations;
- (8) Comply with applicable requirements of department of ecology and Environmental Protection Agency regulations;
- (9) Comply with applicable contractor regulations;
- (10) Notify the state and local jurisdictional health department of all work performed within (~~(ten)~~) 10 days after completion of the project;
- (11) Comply with all other applicable laws and regulations; and
- (12) Comply with this chapter.

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

OTS-3434.1

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

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

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

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

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

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

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

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

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

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

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

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

(8) **"Airborne radioactivity area"** means a room, enclosure, or operating area in which airborne radioactive material exists in concentrations (a) in excess of the derived air concentration (DAC) specified in WAC 246-221-290, Appendix A, or (b) to the degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or twelve DAC-hours.

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

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

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

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

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

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

(15) **"Background radiation"** means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nu-

clear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the department.

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

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

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

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

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

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

(ii) Any material that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Excavation;

(f) Erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mix-

ing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

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

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

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

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

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

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

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

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

(35) **"Department"** means the Washington state department of health, which has been designated as the state radiation control agency under chapter (~~70-98~~) 70A.388 RCW.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(60) **"Healing arts"** means the disciplines of medicine, dentistry, osteopathy, chiropractic, podiatry, and veterinary medicine.

(61) **"Helmet"** means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

(62) **"High radiation area"** means any area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in one hour at 30 centimeters from any source of radiation or 30 centimeters from any surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic X-ray systems are used for healing arts purposes are not considered high radiation areas.

(63) **"Hood"** means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(64) **"Human use"** means the intentional internal or external administration of radiation or radioactive material to human beings.

(65) **"Immediate"** or **"immediately"** means as soon as possible but no later than four hours after the initiating condition.

(66) **"IND"** means investigatory new drug for which an exemption has been claimed under the United States Food, Drug and Cosmetic Act (Title 21 C.F.R.).

(67) **"Individual"** means any human being.

(68) **"Individual monitoring"** means the assessment of:

(a) Dose equivalent (i) by the use of individual monitoring devices or (ii) by the use of survey data; or

(b) Committed effective dose equivalent (i) by bioassay or (ii) by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

(69) **"Individual monitoring devices"** (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose equivalent e.g., as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(70) **"Inspection"** means an official examination or observation by the department including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions of the department.

(71) **"Interlock"** means a device arranged or connected so that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(72) **"Internal dose"** means that portion of the dose equivalent received from radioactive material taken into the body.

(73) "**Irretrievable source**" means any sealed source containing licensed material which is pulled off or not connected to the wireline downhole and for which all reasonable effort at recovery, as determined by the department, has been expended.

(74) "**LDE (lens dose equivalent)**" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeters (300 mg/cm²).

(75) "**License**" means a license issued by the department.

(76) "**Licensed material**" means radioactive material received, possessed, used, transferred, or disposed under a general or specific license issued by the department.

(77) "**Licensee**" means any person who is licensed by the department under chapter ((70.98)) 70A.388 RCW.

(78) "**Loose-fitting facepiece**" means a respiratory inlet covering that is designed to form a partial seal with the face.

(79) "**Lost or missing licensed material**" means licensed material whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

(80) "**Member of the public**" means an individual except when the individual is receiving an occupational dose.

(81) "**Minor**" means an individual less than ((eighteen)) 18 years of age.

(82) "**Monitoring**" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

(83) "**NARM**" means any naturally occurring or accelerator-produced radioactive material. It does not include by-product, source, or special nuclear material.

(84) "**Nationally tracked source**" means a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in WAC 246-221-236. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, sub-assembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 2 threshold but less than the Category 1 threshold.

(85) "**Natural radioactivity**" means radioactivity of naturally occurring nuclides.

(86) "**NDA**" means a new drug application which has been submitted to the United States Food and Drug Administration.

(87) "**Negative pressure respirator**" (tight-fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(88) "**Nonstochastic effect**" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonsto-

chastic effect. For purposes of these rules, a "deterministic effect" is an equivalent term.

(89) "**NRC**" means the U.S. Nuclear Regulatory Commission.

(90) "**Occupational dose**" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose does not include dose received: From background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under chapter 246-240 WAC, from voluntary participation in medical research programs, or as a member of the public.

(91) "**Ore refineries**" means all processors of a radioactive material ore.

(92) "**Particle accelerator**" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this definition, "accelerator" is an equivalent term.

(93) "**Permittee**" means a person who has applied for, and received, a valid site use permit for use of the low-level waste disposal facility at Hanford, Washington.

(94) "**Person**" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, and any legal successor, representative, agent or agency of the foregoing.

(95) "**Personal supervision**" means supervision where the supervisor is physically present at the facility and in sufficient proximity that contact can be maintained and immediate assistance given as required.

(96) "**Personnel monitoring equipment.**" See individual monitoring devices.

(97) "**PET**" means positron emission tomography.

(98) "**Pharmacist**" means an individual licensed by this state to compound and dispense drugs, and poisons.

(99) "**Physician**" means a medical doctor or doctor of osteopathy licensed by this state to prescribe and dispense drugs in the practice of medicine.

(100) "**Planned special exposure**" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(101) "**Positive pressure respirator**" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(102) "**PAPR (powered air-purifying respirator)**" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(103) "**Practitioner**" means an individual licensed by the state for the practice of a healing art (i.e., physician, dentist, podiatrist, chiropractor, etc.).

(104) "**Pressure demand respirator**" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(105) "**Public dose**" means the dose received by a member of the public from exposure to sources of radiation under the licensee's or

registrant's control or to radiation or radioactive material released by the licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under chapter 246-240 WAC, or from voluntary participation in medical research programs.

(106) "**Qualified expert**" means an individual who has demonstrated to the satisfaction of the department the knowledge, training, and experience to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs. The department reserves the right to recognize the qualifications of an individual in specific areas of radiation protection.

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

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

TABLE I
QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

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

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

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

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

Neutron Energy (MeV)	Quality Factor ^a (Q)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² Sv ⁻¹)
(thermal) 2.5 x 10 ⁻⁸	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻⁷	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻⁶	2	810 x 10 ⁶	810 x 10 ⁸
1 x 10 ⁻⁵	2	810 x 10 ⁶	810 x 10 ⁸
1 x 10 ⁻⁴	2	840 x 10 ⁶	840 x 10 ⁸
1 x 10 ⁻³	2	980 x 10 ⁶	980 x 10 ⁸

Neutron Energy (MeV)	Quality Factor ^a (Q)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² Sv ⁻¹)
1 x 10 ⁻²	2.5	1010 x 10 ⁶	1010 x 10 ⁸
1 x 10 ⁻¹	7.5	170 x 10 ⁶	170 x 10 ⁸
5 x 10 ⁻¹	11	39 x 10 ⁶	39 x 10 ⁸
1	11	27 x 10 ⁶	27 x 10 ⁸
2.5	9	29 x 10 ⁶	29 x 10 ⁸
5	8	23 x 10 ⁶	23 x 10 ⁸
7	7	24 x 10 ⁶	24 x 10 ⁸
10	6.5	24 x 10 ⁶	24 x 10 ⁸
14	7.5	17 x 10 ⁶	17 x 10 ⁸
20	8	16 x 10 ⁶	16 x 10 ⁸
40	7	14 x 10 ⁶	14 x 10 ⁸
60	5.5	16 x 10 ⁶	16 x 10 ⁸
1 x 10 ²	4	20 x 10 ⁶	20 x 10 ⁸
2 x 10 ²	3.5	19 x 10 ⁶	19 x 10 ⁸
3 x 10 ²	3.5	16 x 10 ⁶	16 x 10 ⁸
4 x 10 ²	3.5	14 x 10 ⁶	14 x 10 ⁸

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

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

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

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

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

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

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

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

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

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

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

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

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

(120) "**Reference man**" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(136) "**Sievert**" means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor ($1 \text{ Sv} = 100 \text{ rem}$).

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

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

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

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

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

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

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

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

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

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

$$\frac{175 \text{ (grams contained U-235)}}{350} +$$

50 (grams U-233)	+
200	
50 (grams Pu)	<1
200	

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

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

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

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

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

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

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

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

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

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

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

(156) "**User seal check**" (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated

to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

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

(158) **"Waste"** means those low-level radioactive wastes containing source, special nuclear or by-product material that are acceptable for disposal in a land disposal facility. For purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in subsection (17)(b), (c), and (d) of the definition of by-product material in this section.

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

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

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

ORGAN DOSE WEIGHTING FACTORS

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

^a 0.30 results from 0.06 for each of 5 "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.
^b For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T=1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

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

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

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

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

(166) "**Year**" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

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

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

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

[Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-220-070, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-12-140,

filed 12/11/86; Order 1095, § 402-12-140, filed 2/6/76; Order 1, § 402-12-140, filed 1/8/69; Rules (part), filed 10/26/66.]

OTS-3435.1

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

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

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

OTS-3436.1

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

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

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

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

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

- (1) "Artifact" means an undesirable optical density or blemish on a radiographic image that detracts from the diagnostic information.
- (2) "Barrier" (see "protective barrier").
- (3) "Beam" (see "X-ray").
- (4) "Beam-limiting device," sometimes called a collimator or cone, means a device that controls the size of the X-ray field.

- (5) "Cephalometric" means X-ray imaging specific to the human head and jaw.
- (6) "Control panel" means the part of the X-ray system where the switches, knobs, pushbuttons, and other hardware necessary to operate the X-ray system are located.
- (7) "CR (computed radiography)" means creating an X-ray image using plates consisting of a special phosphor that when exposed to radiation and then processed by a scanner, provides the information to a computer for display and manipulation.
- (8) "CT (computed tomography)" means creating a cross-sectional X-ray image generated by an X-ray source and detector moving around the patient's body.
- (9) "Dead-man button" means an X-ray exposure button designed so that it can only be operated by continuous pressure on the button by the operator, and when released before the preset exposure time will stop the exposure.
- (10) "Department" means the department of health, which is the state radiation control agency under chapter ((70.98)) 70A.388 RCW.
- (11) "Detector" means a device capable of receiving and recording an X-ray image.
- (12) "Diagnostic source assembly" means the combination of the tube housing assembly and the collimator.
- (13) "Direct scattered radiation" means radiation discharged in a straight line from the object being radiographed.
- (14) "DR (direct digital radiography)" means creating an X-ray image by sending signals directly from a solid state detector to a computer for display and manipulation.
- (15) "Exposure," as the context implies, means:
- (a) The number of electrons, measured in coulombs per kilogram of air, released through the ionization of air molecules by electromagnetic radiation; or
- (b) An occupational worker or patient being subjected to radiation either directly or indirectly.
- (16) "Extra-oral radiography" means creating a film or digital X-ray image on an image receptor placed outside the mouth. Examples include panoramic and cephalometric X-rays.
- (17) "Filter" means material, such as copper or aluminum, placed in the useful beam of the X-ray to block selected energies, and in a safelight to block light that could fog the X-ray film.
- (18) "Floor plan" means a drawing of the X-ray room, along with its dimensions, identification of adjacent areas and occupiable space above and below.
- (19) "Focal spot" means the area on the anode end of the X-ray tube bombarded by the electrons accelerated from the cathode and from which the useful X-ray beam begins.
- (20) "Grid" means a device placed between the patient and the image receptor in extra-oral radiography that reduces scattered radiation that would decrease the quality of the image being created.
- (21) "Hand-held" (see "X-ray system").
- (22) "Healing arts screening" means using X-ray equipment without an order by a licensed practitioner on an individual who does not have a known or diagnosed disease or symptom to learn if the individual may have an indication of ill health.
- (23) "HVL (half-value layer)" means the thickness of material that reduces the intensity of radiation to one-half of its original value.

- (24) "Image receptor" means a device that captures an X-ray beam for image processing.
- (25) "Intra-oral radiography" means creating a film or digital X-ray image on an image receptor placed inside the mouth.
- (26) "kV (kilovolt)" means the unit used to measure electrical energy.
- (27) "kVp (kilovolts peak)" means the highest possible voltage across the X-ray tube during an exposure (see also "peak tube potential").
- (28) "Leakage radiation" means radiation coming from the X-ray tube, other than the useful X-ray beam.
- (29) "Leakage technique factors" means the technique factors associated with the tube housing assembly that are used to measure leakage radiation. They are defined as the maximum rated peak tube potential and the maximum rated continuous tube current at the maximum peak tube potential.
- (30) "Licensed practitioner" means an individual licensed to practice dentistry under chapter 18.32 RCW.
- (31) "mA (milliamperere)" means the unit used to measure electrical current in an X-ray tube.
- (32) "mAs (milliamperere second)" means the product of the electrical current in the X-ray tube in mA and the time of exposure in seconds.
- (33) "Mobile" (see "X-ray system").
- (34) "Operator" means a person working under the direction of a licensed practitioner to operate X-ray equipment and who has been properly trained according to WAC 246-225A-020.
- (35) "Operatory" means a room in which dental health care procedures are performed.
- (36) "Peak tube potential" means the maximum voltage in the X-ray tube during an exposure.
- (37) "Portable" (see "X-ray system").
- (38) "Position-indicating device" means a device on X-ray equipment that shows where the X-ray beam will be directed and establishes the distance from the X-ray tube to the patient's body. The device may or may not incorporate or serve as a beam-limiting device.
- (39) "Primary beam" (see "useful beam").
- (40) "Primary protective barrier" means the material placed in the useful beam, beyond the patient and image receptor, to reduce remnant primary beam exposure.
- (41) "Protected area" means a space for X-ray equipment operators that is shielded so that X-ray exposures are reduced enough to meet the exposure limits of WAC 246-221-010 (Occupational dose limits for adults) and WAC 246-220-007 (Statement of philosophy). In addition, the space must have no exposure to direct scattered radiation.
- (42) "Protective apron" means a garment made of radiation absorbing materials used to reduce a person's radiation exposure.
- (43) "Protective barrier" means a structure made of radiation absorbing material used to reduce radiation exposure.
- (44) "Quality assurance" means a program designed to produce high quality X-ray images at minimal cost and with minimal patient exposure to radiation.
- (45) "Quick developer" means small-volume chemistry designed to process dental intra-oral film in less than a minute.
- (46) "Radiation safety" means ways to protect patients and staff from unnecessary radiation exposure. Safety measures may include patient exposure reduction, image quality improvement, diagnostic imag-

ing system quality assurance, radiation measurements, dose evaluations, compliance with state and federal regulations, and related issues.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTS-3437.1

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

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

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

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

OTS-3438.1

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

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

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

OTS-3442.1

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

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

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

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

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

OTS-3443.1

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

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

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

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

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

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

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

In the selection of disposal sites, primary emphasis shall be given to isolation of tailings or wastes, a matter having long-term impacts, as opposed to consideration only of short-term convenience or benefits, such as minimization of transportation or land acquisition costs. While isolation of tailings will be a function of both site characteristics and engineering design, overriding consideration shall be given to siting features given the long-term nature of the tailings hazards.

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

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

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

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

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

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

(b) Topographic features shall provide good wind protection.

(c) Embankment and cover slopes shall be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long-term stability. The broad objective should be to contour final slopes to grades which are as close as possible to those which would be provided if tailings were disposed of below grade; this could, for example, lead to slopes of about (~~ten~~) 10 horizontal to one vertical (10h:1v) or less steep. In

general, slopes should not be steeper than about 5h:1v. Where steeper slopes are proposed, reasons why a slope less steep than 5h:1v would be impracticable should be provided, and compensating factors and conditions which make such slopes acceptable should be identified.

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

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

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

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

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

(iii) Steepness of underlying slopes.

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

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

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

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

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

(5) Criterion 5 - Criteria 5(a) through 5(g) and new Criterion 13 incorporate the basic groundwater protection standards imposed by the United States Environmental Protection Agency in 40 C.F.R. Part 192, Subparts D and E (48 FR 45926; October 7, 1983) which apply during operations and prior to the end of closure. Groundwater monitoring to comply with these standards is required by Criterion 7.

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

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

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

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

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

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

(i) The nature and quantity of the wastes;

(ii) The proposed alternate design and operation;

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

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

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

(e) When dikes are used to form the surface impoundment, the dikes must be designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the impoundment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The patterns of rainfall in the region;

(E) The proximity of the licensed site to surface waters;

(F) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(G) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

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

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

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

(i) In making any determinations under (h) and (k) of this subsection about the use of groundwater in the area around the facility, the department will consider any identification of underground sources of drinking water and exempted aquifers made by the United States Environmental Protection Agency.

(j) At the point of compliance, the concentration of a hazardous constituent must not exceed:

(i) The department approved background concentration of that constituent in the groundwater;

(ii) The respective value given in the table in subsection (5)(1) of this section if the constituent is listed in the table and if the background level of the constituent is below the value listed; or

(iii) An alternate concentration limit established by the department.

(k) Conceptually, background concentrations pose no incremental hazards and the drinking water limits in (j)(i) of this subsection state acceptable hazards but these two options may not be practically achievable at a specific site. Alternate concentration limits that present no significant hazard may be proposed by licensees for department consideration. Licensees must provide the basis for any proposed limits including consideration of practicable corrective actions, that limits are as low as reasonably achievable, and information on the factors the department must consider.

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

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

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

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

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

Constituent or Property	Maximum Concentration
	Milligrams per liter
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01
	Picocuries per liter
Combined radium - 226 and radium - 228	5
Gross alpha - particle activity (excluding radon and uranium when producing uranium by-product material or thorium when producing thorium by-product material)	15

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

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

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

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

(iii) Dewatering of tailings by process devices or in-situ drainage systems (at new sites, tailings must be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head of seepage, unless tests show

tailings are not amenable to such a system. Where in-situ dewatering is to be conducted, the impoundment bottom must be graded to assure that the drains are at a low point. The drains must be protected by suitable filter materials to assure that drains remain free running. The drainage system must also be adequately sized to assure good drainage).

(iv) Neutralization to promote immobilization of hazardous constituents.

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

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

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

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

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

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

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

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

(ii) Limit releases of Radon-222 from uranium by-product materials, and Radon-220 from thorium by-product materials, to the atmosphere so as not to exceed an average² release rate of 20 picocuries per square meter per second (pCi/m²s) to the extent practicable

throughout the effective design life determined pursuant to (a)(i) of this subsection (this criterion). In computing required tailings cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances may not be considered. Direct gamma exposure from the tailings or wastes should be reduced to background levels. The effects of any thin synthetic layer may not be taken into account in determining the calculated radon exhalation level. If nonsoil materials are proposed as cover materials, it must be demonstrated that these materials will not crack or degrade by differential settlement, weathering, or other mechanism, over long-term intervals.

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

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

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

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

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

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

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

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

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

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

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

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

(b) The department may approve a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the department finds that the licensee has adequately demonstrated in the manner required in subsection (6)(b) of this section (Criterion 6) that releases of Radon-222 do not exceed an average of 20 pCi/m²s. If the delay is approved on the basis that the radon releases

do not exceed 20 pCi/m²s, a verification of radon levels, as required by subsection (6)(b) of this section (Criterion 6), must be made annually during the period of delay. In addition, once the department has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the department may extend that date based on cost if, after providing an opportunity for public participation, the department finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definitions of available technology, and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

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

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

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

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

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

The licensee shall establish a detection monitoring program needed for the department to set the site-specific groundwater protection standards in Criterion 5 of this section. For all monitoring under this paragraph, the licensee or applicant will propose for department approval as license conditions, which constituents are to be monitored on a site-specific basis. A detection monitoring program has two purposes. The initial purpose of the program is to detect leakage of haz-

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

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

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

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

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

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

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

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

toring program is to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

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

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

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

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

(b) Each cost estimate must contain:

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

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

(B) An adequate contingency factor.

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

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

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

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

(d) To avoid unnecessary duplication and expense, the department may accept financial sureties that have been consolidated with financial or surety arrangements established to meet requirements of other federal or state agencies or local governing bodies for decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the surety which covers the

decommissioning and reclamation of the mill, mill tailings site and associated areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities.

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

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

(i) Inflation;

(ii) Changes in engineering plans;

(iii) Activities performed;

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

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

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

(vii) Facility modifications;

(viii) Changes in authorized possession limits;

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

(x) On-site disposal; and

(xi) Any other conditions affecting costs.

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

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

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

(i) Trust funds;

(ii) Surety bonds;

(iii) Irrevocable letters of credit; and

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

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

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

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

Title to the by-product material licensed pursuant to WAC 246-252-030 and land, including any interests therein (other than land owned by the United States or by the state of Washington) which is used for the disposal of any such by-product material, or is essential to ensure the long-term stability of such disposal site, shall be transferred to the United States or the state of Washington. In view of the fact that physical isolation must be the primary means of long-term control, and government land ownership is a desirable supplementary measure, ownership of certain severable subsurface interests (for example, mineral rights) may be determined to be unnecessary to protect the public health and safety and the environment. In any case, the applicant/operator must demonstrate a serious effort to obtain such subsurface rights, and must, in the event that certain rights cannot be obtained, provide notification in local public land records of the fact that the land is being used for the disposal of radioactive material and is subject to either a NRC general or specific license prohibiting the disruption and disturbance of the tailings. In

some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses issued before November 8, 1981, NRC may take into account the status of the ownership of such land, and interests therein, and the ability of a licensee to transfer title and custody thereof to the United States or the state. If NRC, subsequent to title transfer, determines that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a state will not endanger the public health, safety, welfare or environment, NRC may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions provided in these criteria. If NRC permits such use of such land, it will provide the person who transferred such land with the right of first refusal with respect to such use of such land.

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

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

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

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

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

effective 4/24/00; WSR 97-13-055, § 246-252-030, filed 6/16/97, effective 7/17/97; WSR 94-01-073, § 246-252-030, filed 12/9/93, effective 1/9/94. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 91-16-109 (Order 187), § 246-252-030, filed 8/7/91, effective 9/7/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-252-030, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-52-100, filed 12/11/86. Statutory Authority: Chapter 70.121 RCW. WSR 81-16-031 (Order 1683), § 402-52-100, filed 7/28/81.]

OTS-3444.1

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

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

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

OTS-3445.2

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

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

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

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

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

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

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

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

(2) The department may inspect:

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

(b) All data submitted;

(c) All permits; and

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

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

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

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

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

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

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

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

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

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

(2) When any person is out of compliance with a law or rule regulating LOSS and administered by the department, the department may take appropriate enforcement actions, regardless of any prior approvals issued.

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

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

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

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

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

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

- (a) The permit was obtained by fraud;
- (b) An owner violates or fails to comply with any term or condition of the permit;
- (c) A LOSS failure or the need for a repair or replacement of a LOSS component has resulted from neglect or poor management practices;
- (d) A person fails, refuses, or is unable to comply with chapter ((70.118B)) 70A.115 RCW((~~, Large on-site sewage disposal systems~~)) or this chapter;

(e) There is a change in any condition that requires the LOSS to temporarily or permanently limit or stop operating; or

(f) It is necessary to comply with applicable water quality provisions in chapter 90.48 RCW, Water Pollution Control Act.

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

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

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

WAC 246-272B-08200 Notice of decision, appeals, and adjudicative proceedings. (1) The department's notice of a denial, suspension, modification, or revocation of a permit; approval; or determination to proceed must be consistent with RCW 43.70.115. An applicant or permit holder has the right to an adjudicative proceeding to contest the decision.

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

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

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

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

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

OTS-3446.2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTS-3447.1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) The diversion valve must be visibly labeled.

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

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

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

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

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

OTS-3454.1

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

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

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

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

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

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

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

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

(i) Prevent or remove pollution;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Transfer of ownership; or

(c) Receivership.

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

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

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

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

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

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

(42) "**SWSMP (small water system management program)**" means a document for a small nonexpanding Group A public water system developed and approved under WAC 246-290-105.

(43) "**System capacity**" means a public water system's operational, technical, managerial, and financial capability to achieve and maintain ongoing compliance with all relevant local, state, and federal plans and regulations.

(44) "**Transfer of ownership**" means to change legal ownership of a public water system from one person to another.

(45) "**Water right**" means a legal authorization, such as a permit, claim, or other authorization, on record with or accepted by the department of ecology, authorizing the beneficial use of water in accordance with all applicable state laws.

(46) "**WFI (water facilities inventory)**" means a department form summarizing a public water system's characteristics.

(47) "**WSP (water system plan)**" means a document that a Group A community public water system submits to the department as required under WAC 246-290-100. The plan addresses a public water system's capacity to comply with relevant local, state, and federal plans and regulations, describes the public water system's present and future needs, and establishes eligibility for funding under this chapter.

[Statutory Authority: RCW 70.119A.170 as amended by 2016 c 111. WSR 16-14-086, § 246-296-020, filed 7/5/16, effective 8/5/16. Statutory Authority: RCW 70.119A.170. WSR 16-06-100, § 246-296-020, filed 3/1/16, effective 4/1/16. Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-020, filed 12/19/11, effective 2/1/12. Statutory Authority:

RCW 70.119A.170. WSR 01-21-137, § 246-296-020, filed 10/24/01, effective 11/24/01.]

AMENDATORY SECTION (Amending WSR 18-21-021, filed 10/4/18, effective 11/4/18)

WAC 246-296-040 Use of funds by the state. (1) The department may use the following funds to carry out the purposes of the DWSRF:

(a) Capitalization grants provided by the federal government;

(b) State matching funds appropriated under RCW ((70.119A.170) 70A.125.160;

(c) Principal and interest payments;

(d) DWSRF loan fees; and

(e) Any other funds earned and deposited.

(2) The department may use these funds to:

(a) Finance DWSRF loans for planning, design, and construction of public water system infrastructure projects that will address or prevent violations of applicable federal, state, and local drinking water requirements;

(b) Finance reasonable costs for the department to administer the DWSRF program; and

(c) Fund set-aside activities as authorized in 40 C.F.R. Section 35.3535 including, but not limited to:

(i) DWSRF program administration;

(ii) Technical assistance specific to small public water systems;

(iii) State drinking water program management; and

(iv) Local assistance and other state programs.

[Statutory Authority: RCW 70.119A.170, 40 C.F.R. 35.352 and 35.3535. WSR 18-21-021, § 246-296-040, filed 10/4/18, effective 11/4/18. Statutory Authority: RCW 70.119A.170 as amended by 2016 c 111. WSR 16-14-086, § 246-296-040, filed 7/5/16, effective 8/5/16. Statutory Authority: RCW 70.119A.170 and Federal Safe Drinking Water Act, H.R. 1452. WSR 12-01-077, § 246-296-040, filed 12/19/11, effective 2/1/12. Statutory Authority: RCW 70.119A.170. WSR 01-21-137, § 246-296-040, filed 10/24/01, effective 11/24/01.]

OTS-3455.1

AMENDATORY SECTION (Amending WSR 12-05-079, filed 2/16/12, effective 3/18/12)

WAC 246-290-990 Water system evaluation and project review and approval fees. (1) The fees for the review and approval of water system plans, project reports, construction documents, existing systems, and related evaluations required under chapters 246-290, 246-291, 246-293, 246-294, and 246-295 WAC are:

(a) Water system plans required under WAC 246-290-100, 246-290-105, 246-291-140, 246-293-220, and 246-293-230.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Water system plan (New and Updated)	\$138	\$491	\$1,206	\$2,280	\$3,705	\$5,484
Minor water system plan alteration	\$31	\$115	\$293	\$565	\$919	\$1,349

(b) Satellite management agency (SMA) plans for Group A and Group B water systems required under WAC 246-295-040.

Project Type	Total Active or Approved Services				
	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
SMA plan for ownership (New and Updated)	\$491	\$1,206	\$2,280	\$3,705	\$5,484
SMA approval amendment	\$102 per hour or appropriate fee from category above, whichever is less				
SMA plan for operation only (New and Updated)	\$1,206	\$1,206	\$1,206	\$1,206	\$1,206

Note: SMAs owning water systems and submitting planning documents to the department for review shall be charged only the SMA fee.

(c) New plan elements required under WAC 246-290-100, 246-290-105, 246-290-125, 246-290-132, 246-290-135, 246-290-691, and 246-291-140 including:

(i) Water use efficiency; and

(ii) Wellhead protection, shall be reviewed separately by the department and the fee assessed shall reflect the time spent for this review and shall be calculated based on (~~one hundred two dollars~~) \$102 per hour. After the initial submittal, updated information shall be reviewed as part of the updated water system plan and the review fee shall be included in the applicable updated plan review fee listed under (a) or (b) of this subsection.

(d) Project reports required under WAC 246-290-110 and design reports required under WAC 246-291-120.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	\$348	\$710	\$1,103	\$1,598	\$2,204	\$2,922
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	\$102	\$205	\$348	\$525	\$743	\$994
Complete water system (an additional fee shall be assessed for review of treatment facility, if any)	\$205	\$491	\$778	\$1,137	\$1,564	\$2,061
System modifications requiring a detailed evaluation to determine whether the system, as modified, will comply with regulations (an additional fee shall be assessed for review of treatment facility, if any)	\$138	\$348	\$565	\$851	\$1,206	\$1,626

Note: In accordance with WAC 246-290-125, project reports are not required for minor projects that are described in sufficient detail in an approved water system plan, and have been reviewed as part of the process for approving the water system plan.

(e) Special reports or plans required under WAC 246-290-230, 246-290-235, 246-290-250, 246-290-470, 246-290-636, 246-290-640, 246-290-654, 246-290-676, 246-291-230 including:

(i) Corrosion control recommendation report;

(ii) Corrosion control study;

(iii) Plan to cover uncovered reservoirs;

(iv) Predesign study;

(v) Uncovered reservoir plan of operation;

(vi) Tracer study plan;

(vii) Surface water or GWI treatment facility operations plan;

(viii) Filtration pilot study; or

(ix) GWI determination reports, shall be reviewed by the department and the fee assessed shall reflect the time spent for this review

and shall be calculated based on ((one hundred two dollars)) \$102 per hour.

(f) Construction documents required under WAC 246-290-120 and design reports required under WAC 246-291-120.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
All types of filtration or other complex treatment processes	\$348	\$710	\$1,103	\$1,598	\$2,204	\$2,922
Chemical addition only, such as ion exchange, hypochlorination, or fluoridation	\$102	\$205	\$348	\$525	\$743	\$994
Complete new water system except treatment (an additional fee shall be assessed for review of treatment facility, if any)	\$281	\$633	\$919	\$1,279	\$1,709	\$2,204
New source only (an additional fee shall be assessed for review of treatment facility, if any)	\$205	\$382	\$525	\$710	\$919	\$1,172
One or more of the following submitted as a package and not requiring a detailed evaluation as determined by the department: Water line installation, booster pump station, modifications to source pumping, piping-valving, controls or storage reservoir (an additional fee shall be assessed for review of treatment facility, if any)	\$138	\$241	\$382	\$565	\$778	\$1,027
Documents submitted for projects such as water line installation, booster pump stations, modifications to source pumping, piping/valving, controls or storage reservoirs as determined by the department where such projects: Comply with design standards established by the department; Are prepared by a professional engineer in accordance with WAC 246-290-040; and Do not require a detailed evaluation by the department.	\$64	\$118	\$198	\$281	\$389	\$512

(g) Existing system approval required under WAC 246-290-140 and 246-291-130. For the purpose of this subsection the department shall determine whether a system is expanding or nonexpanding.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
NONEXPANDING system not requiring a detailed evaluation by the department	\$268	\$539	\$811	\$1,083	\$1,355	\$1,626
NONEXPANDING system requiring a detailed evaluation as determined by the department	\$404	\$811	\$1,229	\$1,626	\$2,034	\$2,441
EXPANDING system not requiring a detailed evaluation by the department	\$539	\$1,083	\$1,626	\$2,169	\$2,714	\$3,256
EXPANDING system requiring a detailed evaluation as determined by the department	\$676	\$1,355	\$2,034	\$2,714	\$3,391	\$4,072

(h) Other evaluations and approvals. As applicable, these fees will be charged in addition to the basic fees assessed under (a) through (h) of this subsection.

Project Type	Group A					
	Group B	<100 Services	100 to 500 Services	501 to 999 Services	1,000 to 9,999 Services	10,000 or more Services
Well-site evaluation and approval including the site inspection and hydrogeologic information review.	\$205	\$309	\$363	\$451	\$565	\$710
Regulatory monitoring plan ¹	No plan required	\$198	\$268	\$337	\$404	\$471
Unfiltered system annual comprehensive report	Not applicable	\$404	\$676	\$947	\$1,218	\$1,489
¹ A comprehensive document containing coliform, inorganic chemical and organic chemical monitoring plans in accordance with WAC 246-290-300.						
Water system compliance report	\$115	\$115	\$115	\$115	\$115	\$115

(2) To determine the appropriate fee for a noncommunity system, calculate the service equivalent by taking the average population served each day of operation and dividing by ~~((twenty-five))~~ 25 for a transient noncommunity (TNC) system and two and one-half for nontransient noncommunity (NTNC) system. Use the number of service equivalents to find out what Group A size category to look under and submit the appropriate fee. (All noncommunity systems are Group A systems as described in WAC 246-290-020.)

(3) Additional review and approval fees may be assessed as follows:

(a) The basic fee covers an evaluation, or the review of an initial submittal and one resubmittal if required. If additional resubmittals are required, an additional ~~((twenty-five))~~ 25 percent of the original fee will be assessed for each additional resubmittal. For water system plan and SMA plan preparation the basic fee also covers a preplanning conference;

(b) Fees for department project approval based on local technical review will be determined on a case-by-case basis as outlined in the applicable memorandum of understanding between the department and the respective local agency;

(c) Fees may be assessed for services which the department determines are not described under subsection (1) of this section. If assessed, the fees will be calculated based on a rate of ~~((one hundred two dollars))~~ \$102 per hour.

Examples of these services include, but are not limited to:

- (i) Collection of water quality samples requested by purveyor;
- (ii) Review of alternate technologies requested by purveyor, manufacturer or authorized representative;
- (iii) Sanitary surveys, including the time spent as part of the annual on-site inspections for systems under WAC 246-290-690(3) that is in addition to the time necessary to assess watershed control and disinfection treatment;
- (iv) Well field designations; or
- (v) Transfers of ownership under WAC 246-290-035 or 246-294-060.

(d) Additional fees assessed by the department shall be billed to the purveyor using an itemized invoice.

(4) If the legislature revises the water system operating permit fee under RCW ~~((70.119A.110))~~ 70A.125.100 to incorporate into it one or more fees for service currently assessed separately under this section, and the purveyor has paid that consolidated fee, the department shall not assess or collect a separate fee under this section for any such service.

(5) All fees required under this section except as noted in subsection (3) of this section, shall be submitted prior to the department's approval. Payment of fees shall be in the form of a check or

money order made payable to: The Department of Health, P.O. Box 1099, Olympia, Washington 98507-1099. Payment of a fee shall not guarantee approval of the submitted document or evaluation request.

(6) Purveyors unable to determine the appropriate fee payment to submit should contact the department.

[Statutory Authority: RCW 70.119A.110. WSR 12-05-079, § 246-290-990, filed 2/16/12, effective 3/18/12. Statutory Authority: RCW 43.70.110, 43.70.250, 43.20B.020, and 2010 c 37. WSR 10-16-108, § 246-290-990, filed 8/2/10, effective 9/2/10. Statutory Authority: RCW 43.70.250 and 43.20B.020. WSR 07-14-128, § 246-290-990, filed 7/3/07, effective 8/3/07. Statutory Authority: RCW 70.119A.180. WSR 07-02-025B, § 246-290-990, filed 12/22/06, effective 1/22/07. Statutory Authority: RCW 43.70.250 and 70.119.160. WSR 04-12-123, § 246-290-990, filed 6/2/04, effective 7/3/04. Statutory Authority: RCW 43.70.250, 43.20B.020, and 70.119.160. WSR 03-13-028, § 246-290-990, filed 6/10/03, effective 7/11/03. Statutory Authority: RCW 43.70.250 and 70.119.160. WSR 02-01-065, § 246-290-990, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 43.70.250. WSR 00-02-015, § 246-290-990, filed 12/27/99, effective 1/27/00; WSR 99-12-022, § 246-290-990, filed 5/24/99, effective 6/24/99. Statutory Authority: RCW 43.20B.020. WSR 98-11-068, § 246-290-990, filed 5/19/98, effective 6/19/98; WSR 97-12-032, § 246-290-990, filed 5/30/97, effective 6/30/97; WSR 95-20-079, § 246-290-990, filed 10/4/95, effective 11/4/95; WSR 93-01-006 (Order 315), § 246-290-990, filed 12/3/92, effective 1/3/93. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-290-990, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 43.20A.055. WSR 87-14-066 (Order 2493), § 440-44-048, filed 7/1/87; WSR 83-14-038 (Order 1980), § 440-44-048, filed 6/30/83.]

OTS-3456.1

AMENDATORY SECTION (Amending WSR 12-24-070, filed 12/4/12, effective 1/1/14)

WAC 246-291-001 Purpose and scope. (1) The purpose of this chapter is to protect the health of consumers by establishing minimum design, construction, and other standards for Group B public drinking water systems.

(2) This chapter is adopted under chapter 43.20 RCW. A purveyor of a Group B public water system shall comply with this chapter and rules adopted by a local board of health under RCW 70.05.060 or 70.46.060 as applicable.

(3) Other statutes relating to this chapter are:

(a) RCW 43.20B.020, Fees for services—Department of health and department of social and health services;

(b) Chapter 43.70 RCW, Department of health;

(c) Chapter ((70.116)) 70A.100 RCW, Public Water System Coordination Act of 1977; and

(d) Chapter ((70.119A)) 70A.125 RCW, Public water systems—Penalties and compliance.

[Statutory Authority: RCW 43.20.050 and chapter 70.119A RCW. WSR 12-24-070, § 246-291-001, filed 12/4/12, effective 1/1/14. Statutory Authority: RCW 43.20.050. WSR 94-14-002, § 246-291-001, filed 6/22/94, effective 7/23/94.]

AMENDATORY SECTION (Amending WSR 12-24-070, filed 12/4/12, effective 1/1/14)

WAC 246-291-030 General administration. (1) The department administers this chapter unless:

(a) A local board of health adopts rules under RCW 70.05.060 or 70.46.060 to implement this chapter that are at least as stringent as this chapter; or

(b) The local health jurisdiction has accepted primary responsibility for administering this chapter in a JPR.

(2) Existing local rules shall remain in effect, except requirements of this chapter that are more stringent than the local board of health rules.

(3) In addition to the requirements of this chapter for Group B systems, local board of health rules may include, but are not limited to:

(a) System operations and maintenance;

(b) Ongoing water quality and water use monitoring;

(c) Reporting of water quality and water use monitoring data to the local health jurisdiction;

(d) System inspections or sanitary surveys;

(e) Public notification;

(f) Additional requirements for existing systems to be considered in compliance; and

(g) Regulation of systems with one or two service connections.

(4) A local board of health may adopt rules that require a purveyor of a Group B system to obtain an annual operating permit as authorized under RCW ((70.119A.130)) 70A.125.130.

[Statutory Authority: RCW 43.20.050 and chapter 70.119A RCW. WSR 12-24-070, § 246-291-030, filed 12/4/12, effective 1/1/14. Statutory Authority: RCW 43.20.050. WSR 95-20-078, § 246-291-030, filed 10/4/95, effective 11/4/95; WSR 94-14-002, § 246-291-030, filed 6/22/94, effective 7/23/94.]

AMENDATORY SECTION (Amending WSR 12-24-070, filed 12/4/12, effective 1/1/14)

WAC 246-291-050 Enforcement. (1) When a Group B system is out of compliance with this chapter, the department may initiate enforcement actions under RCW ((70.119A.030 and 70.119A.040)) 70A.125.030 and 70A.125.040.

(2) A health officer may initiate enforcement actions as authorized under RCW 70.46.060 and ((70.119A.050)) 70A.125.050, and as authorized under local board of health rules.

[Statutory Authority: RCW 43.20.050 and chapter 70.119A RCW. WSR 12-24-070, § 246-291-050, filed 12/4/12, effective 1/1/14. Statutory Authority: RCW 43.20.050. WSR 94-14-002, § 246-291-050, filed 6/22/94, effective 7/23/94.]

AMENDATORY SECTION (Amending WSR 12-24-070, filed 12/4/12, effective 1/1/14)

WAC 246-291-090 Public Water System Coordination Act and satellite management. (1) A purveyor of a new or expanding Group B system shall comply with the applicable coordinated water system plan created under chapter 246-293 WAC and (~~(70.116)~~) 70A.100 RCW if located within the boundaries of a critical water supply service area.

(2) The department or health officer shall approve a new or expanding Group B system consistent with requirements under WAC 246-293-190 and RCW (~~(70.116.060(3))~~) 70A.100.060(3).

(3) A new Group B system must comply with SMA requirements under RCW (~~(70.119A.060)~~) 70A.125.060.

[Statutory Authority: RCW 43.20.050 and chapter 70.119A RCW. WSR 12-24-070, § 246-291-090, filed 12/4/12, effective 1/1/14.]

AMENDATORY SECTION (Amending WSR 12-24-070, filed 12/4/12, effective 1/1/14)

WAC 246-291-120 Design report approval. (1) A purveyor shall receive written department or health officer approval of a design report prior to:

(a) Installing a new Group B system; or

(b) Providing service to more than the current approved number of service connections.

(2) To obtain design report approval for a Group B system, a purveyor shall provide a copy of the following, at a minimum, to the department or health officer:

(a) Documentation that creating a new system or expanding an existing system does not conflict with any applicable coordinated water system plan adopted under chapter 246-293 WAC;

(b) Documentation that creating a new system complies with the SMA requirements under RCW (~~(70.119A.060(2))~~) 70A.125.060(2);

(c) Source approval under WAC 246-291-125 or 246-291-135;

(d) Documentation that all requirements under WAC 246-291-140 are met;

(e) A system design that complies with the requirements under WAC 246-291-200 including, but not limited to:

(i) Drawings of each project component, including:

(A) Location;

(B) Orientation;

(C) Size; and

(D) Easements for:

(I) Future access and maintenance of distribution system pipelines located on private property, or franchise agreements necessary

for distribution system pipelines located within public right of way; and

(II) Other system components, including access and maintenance of reservoirs, wells, and pumping stations.

(ii) Material specifications for each project component;

(iii) Construction specifications and assembly techniques;

(iv) Testing criteria and procedures; and

(v) A description of disinfection procedures as required under WAC 246-291-220.

(3) The design report shall be prepared, sealed, and signed in accordance with chapter 196-23 WAC by a professional engineer who:

(a) Is licensed in the state of Washington under chapter 18.43 RCW; and

(b) Has specific expertise regarding design, operation, and maintenance of public water systems.

(4) A local health jurisdiction that has accepted primary responsibility in a JPR under WAC 246-291-030 may adopt by rule, an exception to the professional engineer requirement for Group B systems that:

(a) Do not use a variable speed pump;

(b) Do not provide fire flow;

(c) Do not have special hydraulic considerations;

(d) Do not have atmospheric storage in which the bottom elevation of the storage reservoir is below the ground surface; and

(e) Serve fewer than (~~ten~~) 10 service connections.

(5) A purveyor shall submit a "Construction Completion Report for Public Water System Projects" to the department or health officer on a form approved by the department or health officer within (~~sixty~~) 60 days of construction completion, and before use of any approved Group B system. The form must:

(a) Be signed by a professional engineer, unless the health officer approves the project as meeting the requirements under subsection (4) of this section;

(b) Include a statement that the project is constructed and completed according to the design report requirements under this chapter; and

(c) Include a statement that the installation, testing, and disinfection of the Group B system is completed in accordance with this chapter.

(6) All design changes, except for minor field revisions, must be submitted in writing to, and approved by, the department or health officer.

[Statutory Authority: RCW 43.20.050 and chapter 70.119A RCW. WSR 12-24-070, § 246-291-120, filed 12/4/12, effective 1/1/14. Statutory Authority: RCW 43.20.050. WSR 94-14-002, § 246-291-120, filed 6/22/94, effective 7/23/94.]

OTS-3457.1

AMENDATORY SECTION (Amending WSR 14-01-003, filed 12/4/13, effective 1/4/14)

WAC 246-292-010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) **"Air gap"** means a physical separation measured vertically between the lowest point of a free-flowing discharge end of a potable water supply pipeline and the overflow rim of an open or nonpressurized receiving vessel.

(2) **"Approved air gap"** is defined in chapter 246-290 WAC.

(3) **"Approved AVB (approved atmospheric vacuum breaker)"** is defined in chapter 246-290 WAC.

(4) **"Approved backflow preventer"** is defined in chapter 246-290 WAC.

(5) **"Approved backflow prevention assembly"** is defined in chapter 246-290 WAC.

(6) **"Authority having jurisdiction"** means the local official, board, department, or agency authorized to administer and enforce the Uniform Plumbing Code adopted in chapter 19.27 RCW.

(7) **"AVB (atmospheric vacuum breaker)"** means a device that contains an air inlet, vent, air inlet valve, and check seat and is used to prevent backsiphonage backflow.

(8) **"BAT (backflow assembly tester)"** means an individual meeting the requirements of this chapter and certified under chapter ((70.119)) 70A.120 RCW to inspect, field test, maintain, and repair backflow prevention assemblies, devices, and air gaps that protect the public water system.

(9) **"Backflow"** means the reversal of flow of water or other substances through a cross-connection into the public water system or consumer's water system.

(10) **"Backflow preventer"** means a backflow prevention assembly, air gap, or AVB.

(11) **"Backflow preventer inspection and field test"** means the set of procedures and measurements performed by a BAT to evaluate a backflow preventer's approval status, installation, and performance to determine compliance with the requirements in WAC 246-290-490.

(12) **"Backflow prevention assembly"** means a mechanical backflow preventer designed for in-line testing and repair including, but not limited to:

(a) Reduced pressure backflow assembly;

(b) Reduced pressure detector assembly;

(c) Double check valve assembly;

(d) Double check detector assembly;

(e) Pressure vacuum breaker assembly; or

(f) Spill-resistant vacuum breaker assembly.

(13) **"BTO (basic treatment operator)"** means an individual meeting the requirements of this chapter and certified under chapter ((70.119)) 70A.120 RCW to perform routine on-site duties in a water treatment plant. BTO duties affect water treatment plant performance, public water system performance, water quality, water quantity, or public health protection.

(14) **"CCS (cross-connection control specialist)"** means an individual meeting the requirements of this chapter and certified under chapter ((70.119)) 70A.120 RCW to develop and implement a cross-connection control program.

(15) "**Certificate**" means a document issued annually by the department stating that the operator has met the requirements for a specific certified operator classification in WAC 246-292-060.

(16) "**Certified operator**" means an individual meeting the requirements of this chapter, certified under chapter (~~(70.119)~~) 70A.120 RCW, and who has a valid certificate for one or more of the following classifications:

- (a) BAT;
- (b) BTO;
- (c) CCS;
- (d) WDS;
- (e) WDM; or
- (f) WTPO.

(17) "**CEU (continuing education unit)**" means the nationally recognized measurement, similar to college credit, developed by IACET, in which one CEU is awarded for every (~~(ten)~~) 10 contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction, and qualified instruction.

(18) "**College credit**" means a measurement that documents completion of educational courses earned toward a college degree from an accredited college or university.

(19) "**Community water system**" means any Group A public water system providing service to (~~(fifteen)~~) 15 or more service connections used by year-round residents for (~~(one hundred eighty)~~) 180 or more days within a calendar year, regardless of the number of people, or regularly serving at least (~~(twenty-five)~~) 25 year-round (i.e., more than (~~(one hundred eighty)~~) 180 days per year) residents.

(20) "**Consumer**" means any person receiving water from a public water system from either the meter or the point where the service line connects with the distribution system if no meter is present. For purposes of cross-connection control, "consumer" means the owner or operator of a water system connected to a public water system through a service connection.

(21) "**Consumer's premises**" means a consumer's real property, any easement held by a consumer for the purpose of delivering the water to the consumer's real property, and all buildings and fixtures on the consumer's real property.

(22) "**Consumer's water system**" means any potable or industrial water system that begins at the point of delivery from the public water system and is located on the consumer's premises. The consumer's water system includes all auxiliary sources of supply, storage, treatment, and distribution facilities, piping, plumbing, and fixtures under the control of the consumer.

(23) "**Contract operator**" means a certified operator who is approved by the department to operate three or more Group A public water systems.

(24) "**Cross-connection control program**" means the administrative and technical procedures the purveyor implements to protect the public water system from contamination via cross-connections as required in WAC 246-290-490.

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

(26) "**Distribution system**" means all piping components of a public water system that serve to convey water from transmission mains linked to source, storage and treatment facilities to the consumer excluding individual services.

(27) "**GED**" means the general educational development test of the American Council on Education.

(28) "**Grandparented certification**" means an operator certification granted before January 1, 2001, under which the department granted an exemption for the existing operator in responsible charge from meeting the initial education, experience and examination requirements for the public water system's assigned certification classification.

(29) "**Gross negligence**" means an act or omission performed or not performed in reckless disregard of a legal duty, or without even slight care.

(30) "**GWI (groundwater under the direct influence of surface water)**" means any water beneath the surface of the ground that the department determines has the following characteristics:

(a) Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or *Cryptosporidium*; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water conditions where natural conditions cannot prevent the introduction of surface water pathogens into the source at the system's point of withdrawal.

(31) "**IACET**" means the International Association for Continuing Education and Training.

(32) "**Major segment**" means a distinct portion of a public water system based on system size and complexity that a purveyor assigns to one or more certified operators in responsible charge.

(33) "**Nationally recognized association of certification authorities**" means an organization that:

(a) Serves as an information center for certification activities;

(b) Recommends minimum standards and guidelines for classification of potable water treatment plants, distribution systems, and certification of operators;

(c) Facilitates reciprocity between a state or provincial program; and

(d) Assists authorities in establishing new certification programs and updating existing programs.

(34) "**Noncommunity water system**" means a Group A public water system that is not a community water system. Noncommunity water systems are further defined as nontransient noncommunity and transient noncommunity.

(35) "**Nontransient noncommunity water system**" means a Group A public water system that provides service opportunities to (~~twenty-five~~) 25 or more of the same nonresidential people for (~~one hundred eighty~~) 180 or more days within a calendar year.

(36) "**OIT (operator in training)**" means an individual with less than the required amount of operating experience meeting the requirements of this chapter and certified under chapter (~~70.119~~) 70A.120 RCW to perform routine on-site duties in a water treatment plant or distribution system.

(37) "**Operating experience**" means the routine performance or management of duties:

(a) In a water treatment plant or distribution system; and

(b) That affect water treatment plant performance, distribution system performance, water quality, water quantity, or public health protection.

(38) "**Operating shift**" means a designated period of time in which a certified operator makes decisions and takes actions that directly

impact drinking water quality, water quantity, or public health protection.

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

(40) **"Premises isolation"** is defined in chapter 246-290 WAC.

(41) **"Professional growth reporting period"** means a designated period of time not less than three years, in which a certified operator completes the professional growth requirement in WAC 246-292-095.

(42) **"Public water system (Group A public water system)"** means:

(a) A system with (~~(fifteen)~~) 15 or more service connections, regardless of the number of people; or

(b) A system serving an average of (~~(twenty-five)~~) 25 or more people per day for (~~(sixty)~~) 60 or more days within a calendar year, regardless of the number of service connections; and

(c) In addition, a Group A public water system is further defined in WAC 246-290-020.

(43) **"Purveyor"** means an agency, subdivision of the state, municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or other entity owning or operating a public water system. Purveyor also means the authorized agents of these entities.

(44) **"Relevant excess education"** means science, applied science, or technology CEUs or college credits that exceed the minimum education required for certification in a specific certified operator classification. Example fields of study include, but are not limited to:

(a) Biology;

(b) Chemistry;

(c) Engineering;

(d) Geology; and

(e) Physics.

(45) **"Relevant water system training"** means training that directly relates to information and procedures that influence water quality, water quantity, or public health protection, including:

(a) The operation or maintenance activities of a public water system; or

(b) Managing the operation or maintenance activities of a public water system.

(46) **"Responsible charge"** means the authority a purveyor grants to a certified operator to make decisions:

(a) That will directly impact water quality, water quantity, or public health protection of a public water system; and

(b) Regarding the daily operational activities, process control, or system integrity of a water treatment plant or distribution system.

(47) **"SMA (satellite system management agency)"** means a person that is approved by the department under chapter 246-295 WAC to own or operate more than one public water system on a regional or county-wide basis without the necessity for a physical connection between the systems.

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

(49) **"Transient noncommunity water system"** means a Group A public water system that serves:

(a) Twenty-five or more different people each day for (~~(sixty)~~) 60 or more days within a calendar year; or

(b) Twenty-five or more of the same people each day for ~~((sixty))~~ 60 or more days, but less than ~~((one hundred eighty))~~ 180 days within the calendar year.

(50) "**USC**" means the University of Southern California.

(51) "**Validated examination**" means an examination that is independently reviewed by subject matter experts, to verify that the examination is based on a job analysis and, where applicable, is related to the classification of a water treatment plant and distribution system.

(52) "**Water-related experience**" means experience:

(a) Operating a water treatment plant or distribution system;

(b) Working in water quality, water resources, or water infrastructure in a federal, state, county, local, or other governmental agency;

(c) Working in industrial water;

(d) Working in wastewater treatment; or

(e) Working as a consulting engineer or operations consultant in water quality, water resources, or water infrastructure.

(53) "**Water treatment plant**" means that portion of a public water system that treats or improves the physical, chemical, or microbial quality of the system's water to comply with water quality requirements in chapter 246-290 WAC.

(54) "**WDM (water distribution manager)**" means an individual meeting the requirements of this chapter and certified under chapter ~~((70.119))~~ 70A.120 RCW to perform or manage routine on-site duties in the distribution system of a public water system that serves more than ~~((two hundred fifty))~~ 250 people. WDM duties affect the public water system performance, water quality, water quantity, or public health protection.

(55) "**WDS (water distribution specialist)**" means an individual meeting the requirements of this chapter and certified under chapter ~~((70.119))~~ 70A.120 RCW to perform or manage on-site duties in a distribution system of a public water system that serves ~~((two hundred fifty))~~ 250 people or less. WDS duties affect public water system performance, water quality, water quantity, or public health protection.

(56) "**WFI (water facilities inventory)**" means the department form required in WAC 246-290-480(2) that summarizes a public water system's characteristics.

(57) "**WTPO (water treatment plant operator)**" means an individual meeting the requirements of this chapter and certified under chapter ~~((70.119))~~ 70A.120 RCW to perform or manage on-site duties in a water treatment plant. WTPO duties affect plant performance, public water system performance, water quality, water quantity, or public health protection.

[Statutory Authority: RCW 70.119.050 and chapter 70.119 RCW. WSR 14-01-003, § 246-292-010, filed 12/4/13, effective 1/4/14. Statutory Authority: Chapter 70.119 RCW. WSR 05-06-122, § 246-292-010, filed 3/2/05, effective 4/2/05. Statutory Authority: Chapter 70.119 RCW and Safe Drinking Water Act, Public Law 104-182; 64 F.R. 5916 - 5921. WSR 01-02-070, § 246-292-010, filed 12/29/00, effective 1/29/01. Statutory Authority: Chapter 70.119 RCW. WSR 94-04-004, § 246-292-010, filed 1/20/94, effective 2/20/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-292-010, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.119.050. WSR 78-10-053 (Order 1343), § 248-55-020, filed 9/22/78.]

AMENDATORY SECTION (Amending WSR 14-01-003, filed 12/4/13, effective 1/4/14)

- WAC 246-292-100 Revocation and suspension.** (1) The department may suspend an operator's certificate for up to one year or revoke an operator's certificate for up to five years if the operator:
- (a) Obtains a certificate by fraud or deceit;
 - (b) Performs an act of fraud, deceit, or gross negligence when:
 - (i) Operating or maintaining a public water system;
 - (ii) Inspecting, testing, maintaining, or repairing backflow assemblies, devices, or air gaps intended to protect a public water system from contamination; or
 - (iii) Developing or implementing a cross-connection control program.
 - (c) Intentionally violates the requirements of this chapter or department statutes, rules, or orders as authorized in chapter 246-290 WAC, RCW ((~~70.119.110, or 70.119A.040~~)) 70A.120.110, or 70A.125.040.
- (2) When considering if an act or omission constitutes gross negligence, the department shall consider all pertinent factors including, but not limited to:
- (a) The standard of care commonly exercised by a certified operator;
 - (b) If the legal duty was known or should have been known to the alleged violator; and
 - (c) The degree to which the alleged gross negligence endangered public health.
- (3) An operator whose certificate is suspended shall continue to meet all renewal and professional growth requirements in WAC 246-292-090 and 246-292-095, in order to maintain certification after the suspension period has ended.
- (4) An operator whose certificate is revoked may apply for certification after the period of revocation has ended, and shall meet all requirements in WAC 246-292-060 and 246-292-070.

[Statutory Authority: RCW 70.119.050 and chapter 70.119 RCW. WSR 14-01-003, § 246-292-100, filed 12/4/13, effective 1/4/14. Statutory Authority: Chapter 70.119 RCW. WSR 05-06-122, § 246-292-100, filed 3/2/05, effective 4/2/05. Statutory Authority: Chapter 70.119 RCW and Safe Drinking Water Act, Public Law 104-182; 64 F.R. 5916 - 5921. WSR 01-02-070, § 246-292-100, filed 12/29/00, effective 1/29/01. Statutory Authority: Chapter 70.119 RCW. WSR 94-04-004, § 246-292-100, filed 1/20/94, effective 2/20/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-292-100, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.119.050. WSR 78-10-053 (Order 1343), § 248-55-120, filed 9/22/78.]

AMENDATORY SECTION (Amending WSR 14-01-003, filed 12/4/13, effective 1/4/14)

- WAC 246-292-110 Enforcement.** (1) When a public water system or operator fails to comply with the requirements of this chapter, the department may initiate appropriate enforcement actions as authorized in chapters ((~~70.119 and 70.119A~~)) 70A.120 and 70A.125 RCW.
- (2) The department's enforcement actions against a public water system or operator may include one or more of the following:

- (a) Issuing an informal letter directing appropriate corrective measures;
- (b) Issuing a notice of violation requiring appropriate corrective measures;
- (c) Issuing a compliance schedule of specific actions needed to achieve compliance;
- (d) Issuing an order requiring specific actions or ceasing unacceptable activities within a designated time period;
- (e) Imposing civil penalties for up to:
 - (i) Five thousand dollars per day per violation; or
 - (ii) Ten thousand dollars per day per violation in the case of a violation that the department has determined to be a public health emergency;
- (f) Revoking or suspending a certification in accordance with WAC 246-292-100; and
- (g) Other legal action by the attorney general or local prosecutor.

[Statutory Authority: RCW 70.119.050 and chapter 70.119 RCW. WSR 14-01-003, § 246-292-110, filed 12/4/13, effective 1/4/14. Statutory Authority: Chapter 70.119 RCW and Safe Drinking Water Act, Public Law 104-182; 64 F.R. 5916 - 5921. WSR 01-02-070, § 246-292-110, filed 12/29/00, effective 1/29/01. Statutory Authority: Chapter 70.119 RCW. WSR 94-04-004, § 246-292-110, filed 1/20/94, effective 2/20/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-292-110, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.119.050. WSR 78-10-053 (Order 1343), § 248-55-130, filed 9/22/78.]

OTS-3458.1

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

WAC 246-293-001 Purpose. This chapter is promulgated pursuant to the authority granted in the Public Water System Coordination Act of 1977, chapter (~~70.116~~) 70A.100 RCW, for the purpose of implementing a program relating to public water system coordination within the state of Washington, for evaluation and determination of critical water supply service areas, and assistance for orderly and efficient public water system planning.

[Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-293-001, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.116 RCW. WSR 78-07-048 (Order 1309), § 248-56-100, filed 6/28/78.]

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

WAC 246-293-401 Purpose. The purpose of this chapter is to provide a process for resolving service area conflicts which arise from implementation of the Public Water System Coordination Act, chapter ((70.116)) 70A.100 RCW, and its procedural regulations, chapter 248-56 WAC.

[Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), redefined as § 246-293-401, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 74.116.070 [70.116.070]. WSR 83-01-015 (Order 1919), § 248-59-005, filed 12/6/82.]

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

WAC 246-293-601 Purpose. This chapter is promulgated pursuant to the authority granted in the Public Water System Coordination Act of 1977, chapter ((70.116)) 70A.100 RCW, for the purpose of establishing minimum performance standards related to fire protection, including provisions for their application and enforcement, and incorporating them into the design and construction of new and expanding public water systems.

[Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), redefined as § 246-293-601, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.116.080. WSR 79-04-007 (Order 1378), § 248-57-010, filed 3/12/79.]

OTS-3459.1

AMENDATORY SECTION (Amending WSR 04-06-047, filed 3/1/04, effective 4/1/04)

WAC 246-294-001 Purpose. This chapter implements chapter ((70.119A)) 70A.125 RCW and sets operating permit requirements to help assure Group A water systems provide safe and reliable drinking water to the public consistent with chapter 246-290 WAC, state board of health drinking water regulations and chapter 246-292 WAC, water works operator certification regulations.

[Statutory Authority: Chapter 70.119A RCW. WSR 04-06-047, § 246-294-001, filed 3/1/04, effective 4/1/04; WSR 93-03-047 (Order 325), § 246-294-001, filed 1/14/93, effective 2/14/93.]

AMENDATORY SECTION (Amending WSR 12-05-079, filed 2/16/12, effective 3/18/12)

WAC 246-294-010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout this chapter unless the context clearly indicates otherwise.

- (1) **"Adequacy"** means an assessment, based upon evaluation of the department's records, of a water system's current ability to provide safe and reliable drinking water in accordance with applicable drinking water statutes and regulations.
- (2) **"Community water system"** means any Group A water system:
 - (a) With (~~(fifteen)~~) 15 or more services used by residents for (~~(one hundred eighty)~~) 180 or more days within a calendar year, regardless of the number of people; or
 - (b) Regularly serving (~~(twenty-five)~~) 25 or more residents for (~~(one hundred eighty)~~) 180 or more days within the calendar year, regardless of the number of services.
- (3) **"Department"** means the Washington state department of health.
- (4) **"Drinking water regulations"** means the provisions of chapter (~~(70.119A)~~) 70A.125 RCW, chapter 246-290 WAC, state board of health drinking water regulations and chapter 246-292 WAC, water works operator certification regulations, that help assure Group A public water systems provide safe and reliable drinking water.
- (5) **"Dwelling unit"** means a structure, or unit within a structure, with independent living facilities for one or more persons that include permanent provisions for living, sleeping, eating, cooking, and sanitation. A dwelling unit includes, but is not limited to:
 - (a) A single family residence; or
 - (b) Each unit of an apartment building or multifamily building.
- (6) **"EPA"** means the Environmental Protection Agency.
- (7) **"ERU (equivalent residential unit)"** means a system-specific unit of measure used to express the amount of water consumed by a typical full-time single family residence.
- (8) **"Group A water systems"** are defined as community and noncommunity water systems.
 - (a) Community water system means any Group A water system providing service to (~~(fifteen)~~) 15 or more service connections used by year-round residents for (~~(one hundred eighty)~~) 180 or more days within a calendar year, regardless of the number of people, or regularly serving at least (~~(twenty-five)~~) 25 year-round (i.e., more than (~~(one hundred eighty)~~) 180 days per year) residents.
 - (b) Noncommunity water system means a Group A water system that is not a community water system. Noncommunity water systems are further defined as:
 - (i) **Nontransient** (NTNC) water systems that provide service opportunity to (~~(twenty-five)~~) 25 or more of the same nonresidential people for (~~(one hundred eighty)~~) 180 or more days within a calendar year.
 - (ii) **Transient** (TNC) water systems that serve:
 - (A) Twenty-five or more different people each day for (~~(sixty)~~) 60 or more days within a calendar year;
 - (B) Twenty-five or more of the same people each day for (~~(sixty)~~) 60 or more days, but less than (~~(one hundred eighty)~~) 180 days in a calendar year; or
 - (C) One thousand or more people for two or more consecutive days within a calendar year.

(9) "**MCL (maximum contaminant level)**" means the maximum permissible level of a contaminant in water the purveyor delivers to any public water system user, measured at the locations identified under WAC 246-290-300, Table 3.

(10) "**Nonresident**" means a person having access to drinking water from a public water system who lives elsewhere. Examples include travelers, transients, employees, students, etc.

(11) "**Nonresidential service connection**" means a connection to a public water system that provides potable water including, but not limited to a:

- (a) Commercial property;
- (b) Industrial property;
- (c) Civic property;
- (d) Municipal property;
- (e) Institutional property;
- (f) School; or

(g) Other authorized use that provides potable water to a nonresidential population.

(12) "**NTNC**" means nontransient noncommunity.

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

(14) "**Public water system**" means any system, providing water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm. The term includes:

(a) Collection, treatment, storage, and/or distribution facilities under control of the purveyor and used primarily in connection with the system.

(b) Collection or pretreatment storage facilities not under control of the purveyor, but primarily used in connection with the system.

(15) "**Recreational service connection**" means a connection to a public water system that provides potable water to each:

- (a) Campsite; or
- (b) Recreational vehicle site.

(16) "**Resident**" means an individual living in a dwelling unit served by a public water system.

(17) "**Residential service connection**" means a connection to a public water system that provides potable water to a dwelling unit. When the service connection provides water to a residential population without clearly defined dwelling units, the following formulas are used to determine the number of residential service connections to be included on the WFI form:

(a) Divide the average population served each day by two and one-half; or

(b) Using actual water use data, calculate the total ERUs represented by the service connection in accordance with department design guidance.

(c) The calculated number of services is not less than one.

(18) "**SMA (satellite management agency)**" means an individual, purveyor, or entity that is approved by the department in accordance with chapter 246-295 WAC to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems.

(19) "**Service connection**" means a residential, nonresidential, or recreational service connection as defined in this section.

(20) "**SSNC (state significant noncomplier)**" means a system that is violating or has violated department rules, and violations may create, or have created an imminent or a significant risk to human health. Such violations include, but are not limited to, repeat violations of monitoring requirements, failure to address exceedance of permissible levels of regulated contaminants, failure to comply with treatment technique standards or requirements, failure to comply with water works operator certification requirements, or failure to submit to a sanitary survey.

(21) "**TNC**" means transient noncommunity.

(22) "**WFI (water facilities inventory)**" means the department form summarizing each public water system's characteristics.

[Statutory Authority: RCW 70.119A.110. WSR 12-05-079, § 246-294-010, filed 2/16/12, effective 3/18/12. Statutory Authority: Chapter 70.119A RCW. WSR 04-06-047, § 246-294-010, filed 3/1/04, effective 4/1/04; WSR 93-03-047 (Order 325), § 246-294-010, filed 1/14/93, effective 2/14/93.]

AMENDATORY SECTION (Amending WSR 12-05-079, filed 2/16/12, effective 3/18/12)

WAC 246-294-070 Fees. (1) The fees for Group A water system operating permits are authorized under RCW (~~(70.119A.110)~~) 70A.125.100 and are listed in Table 2.

**TABLE 2
OPERATING PERMIT FEES**

Classification	2012	2013	2014 and following years
Base fee for all water systems	\$100.00	\$100.00	\$100.00
Per connection fee:			
14 or fewer services	\$0.65	\$0.98	\$1.30
15 - 99 services	\$0.63	\$0.94	\$1.25
100 - 499 services	\$0.60	\$0.90	\$1.20
500 - 999 services	\$0.58	\$0.86	\$1.15
1,000 - 9,999 services	\$0.55	\$0.83	\$1.10
10,000 - 95,000 services	\$0.53	\$0.79	\$1.05
95,001 or more services	\$50,000.00 per year	\$75,000.00 per year	\$100,000.00 per year
SMA	Use the per connection fee amount above to calculate the fee based on total number of all service connections owned plus a \$100 base fee	Use the per connection fee amount above to calculate the fee based on total number of all service connections owned plus a \$100 base fee	Use the per connection fee amount above to calculate the fee based on total number of all service connections owned plus a \$100 base fee
Late fee (late fee is charged seventy days after the department mails the renewal application)	Add 10% to applicable fee or \$25.00, whichever is greater	Add 10% to applicable fee or \$25.00, whichever is greater	Add 10% to applicable fee or \$25.00, whichever is greater

(2) For purposes of determining the operating permit fee, service connections shall be counted as follows:

(a) For community water systems, the operating permit fee is based on the total number of residential service connections and non-residential service connections.

(b) Nonresidential service connections are counted as one service connection for each property as defined in WAC 246-294-010(11) regardless of how many buildings are on the property.

(3) For NTNC and TNC systems, owners shall pay the fee in Table 2 based on equivalent number of service connections. Population information used in calculating equivalent number of service connections shall come from the WFI. The department shall use the following formulas to determine equivalent number of service connections:

(a) For NTNC populations, divide the average population served each day by two and one-half; and

(b) For TNC populations, which include recreational service connections, divide the average population served each day by (~~twenty-five~~) 25.

[Statutory Authority: RCW 70.119A.110. WSR 12-05-079, § 246-294-070, filed 2/16/12, effective 3/18/12. Statutory Authority: Chapter 70.119A RCW. WSR 04-06-047, § 246-294-070, filed 3/1/04, effective 4/1/04; WSR 93-03-047 (Order 325), § 246-294-070, filed 1/14/93, effective 2/14/93.]

AMENDATORY SECTION (Amending WSR 04-06-047, filed 3/1/04, effective 4/1/04)

WAC 246-294-090 Enforcement. The department may initiate appropriate enforcement actions if an owner is out of compliance with these rules or any applicable drinking water regulations. These actions may include any one or combination of the following:

(1) Issuance of informal letters instructing or requiring appropriate corrective measures; or

(2) Issuance of a compliance agreement or schedule; or

(3) Issuance of departmental orders requiring any person to apply for an operating permit as required by these rules and RCW (~~70.119A.110~~) 70A.125.100 or to comply with applicable drinking water regulations imposed as part of an operating permit; or

(4) Issuance of civil penalties for up to (~~five thousand dollars~~) \$5,000 per day per violation for failure to comply with departmental orders issued in accordance with subsection (3) of this section; or

(5) Legal action by the attorney general or local prosecutor.

[Statutory Authority: Chapter 70.119A RCW. WSR 04-06-047, § 246-294-090, filed 3/1/04, effective 4/1/04; WSR 93-03-047 (Order 325), § 246-294-090, filed 1/14/93, effective 2/14/93.]

OTS-3460.1

AMENDATORY SECTION (Amending WSR 94-18-108, filed 9/6/94, effective 10/7/94)

WAC 246-295-001 Purpose. (1) The purpose of these rules is to:

- (a) Establish criteria for approving satellite system management agencies hereafter referred to as satellite management agencies (SMAs) pursuant to RCW ((70.116.134)) 70A.100.130;
 - (b) Delineate the process organizations and/or individuals must follow to be considered an approved SMA; and
 - (c) Outline procedures for coordination between water users, purveyors, SMAs, local government and the department.
- (2) This chapter is specifically designed to ensure:
- (a) The enhancement of public health through the use of SMAs;
 - (b) SMAs are capable of providing high quality drinking water in a reliable manner and in a quantity suitable for intended use;
 - (c) SMAs are capable of meeting the requirements of the federal Safe Drinking Water Act, P.L. 93-523 and P.L. 99-339; and
 - (d) Uniformity in the SMAs determination and compliance processes.
- (3) Other statutes relating to this chapter are:
- (a) Chapter 43.20 RCW, State board of health;
 - (b) RCW 43.20B.020 Fees for services—Department of health and department of social and health services;
 - (c) Chapter 43.70 RCW, Department of health;
 - (d) Chapter ((70.116)) 70A.100 RCW, Public Water System Coordination Act of 1977;
 - (e) Chapter ((70.119)) 70A.120 RCW, Public water supply systems—Certification and regulation of operators; and
 - (f) Chapter ((70.119A)) 70A.125, Public water systems—Penalties and compliance.

[Statutory Authority: RCW 70.116.134. WSR 94-18-108, § 246-295-001, filed 9/6/94, effective 10/7/94.]

AMENDATORY SECTION (Amending WSR 94-18-108, filed 9/6/94, effective 10/7/94)

WAC 246-295-030 Potential satellite management agencies (SMAs).

- (1) Pursuant to RCW ((70.116.134(2))) 70A.100.130(2), each county shall identify and submit a list of potential SMAs to the department by January 1, 1995, for areas within the county:
- (a) Which are not within a designated future service area of any utility pursuant to the Water System Coordination Act; or
 - (b) Where an existing purveyor has agreed or where a legal determination has been made that an existing purveyor is unable or unwilling to provide service.
- (2) After January 1, 1995, counties may submit names of additional potential SMAs to the department on an ongoing basis.

[Statutory Authority: RCW 70.116.134. WSR 94-18-108, § 246-295-030, filed 9/6/94, effective 10/7/94.]

AMENDATORY SECTION (Amending WSR 94-18-108, filed 9/6/94, effective 10/7/94)

WAC 246-295-100 SMA compliance. (1) A SMA:

(a) Shall comply with all statutes and regulations governing public water systems including but not limited to chapters (~~70.116, 70.119 and 70.119A~~) 70A.100, 70A.120, and 70A.125 RCW and chapters 246-290, 246-291, 246-292, 246-293 and 246-294 WAC and the requirements of this chapter; and

(b) Shall adhere to its SMA plan.

(2) The department may revoke, suspend, modify or deny the certification or application of any SMA or applicant which:

(a) Fails to timely submit required information;

(b) Has been subject to departmental enforcement action for violation of statutes or regulations governing public water systems;

(c) Violates or has violated statutes or regulations governing public water systems;

(d) Fails to comply with its SMA plan;

(e) Fails to have or maintain required staff;

(f) Fails to comply with all applicable local ordinances, regulations, plans and policies;

(g) Fails to demonstrate financial viability whether at the time of application or subsequently;

(h) Fails to bring a noncomplying system into regulatory compliance within the time frame established under WAC 246-295-110; or

(i) Operates in a manner that threatens public health.

(3) Any SMA or applicant aggrieved by the department's decision to revoke, suspend, modify or deny their approval or application may appeal such decision in accordance with chapter 246-10 WAC and chapter 34.05 RCW.

(4) An approved SMA that files a timely appeal of a decision to revoke, suspend or modify its approval under chapter 246-10 WAC and/or chapter 34.05 RCW may continue to operate until a final departmental decision is issued, unless protection of the public health, safety and welfare requires summary action.

(5) If a SMA is removed from the approved list and desires reinstatement, the SMA must submit a new notice of intent to become an approved SMA and follow the process outlined in WAC 246-295-040, provided that the reapplication shall be subject to any limitations imposed by final departmental order or if applicable, order on judicial review.

[Statutory Authority: RCW 70.116.134. WSR 94-18-108, § 246-295-100, filed 9/6/94, effective 10/7/94.]

WSR 22-07-043

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed March 14, 2022, 1:29 p.m., effective April 14, 2022]

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

Purpose: The university is modifying, clarifying, and updating the university's standards of conduct for students, specifically the rules regarding evidence in student conduct proceedings.

The proposed amendment removes the requirement for written or verbal evidence to be subject to cross examination in order to be considered by the university conduct board.

On August 24, 2021, the United States Department of Education's Office of Civil Rights (OCR) announced that it would not enforce the part of 34 C.F.R. § 106.45 (b)(6)(i) regarding the prohibition against statements not subject to cross-examination and that postsecondary institutions are no longer subject to this part of the provision. OCR's announcement came as a result of a July 28, 2021, decision by the federal district court in Massachusetts. The court vacated the part of 34 C.F.R. § 106.45 (b)(6)(i) that prohibits a decision-maker from relying on statements that are not subject to cross-examination during the hearing and imposed a nationwide injunction.

Citation of Rules Affected by this Order: Amending WAC 504-26-045.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 22-02-066 on January 5, 2022.

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 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: March 11, 2022.

Deborah L. Bartlett
Director, Procedures, Records, and Forms
and University Rules Coordinator

OTS-3529.1

AMENDATORY SECTION (Amending WSR 21-07-057, filed 3/15/21, effective 4/15/21)

WAC 504-26-045 Evidence. (1) (~~Except as provided in subsection (2) of this section,~~) Evidence, including hearsay evidence, is admissible in student conduct proceedings if, in the judgment of the conduct officer or presiding officer, it is the kind of evidence that

reasonably prudent persons are accustomed to rely on in the conduct of their affairs. The conduct officer or presiding officer determines the admissibility and relevance of all information and evidence.

~~(2) ((In conduct board hearings to resolve allegations that, if proven, would constitute Title IX sexual harassment within the university's Title IX jurisdiction, witnesses, including parties, must submit to cross-examination for their written or verbal statements to be considered by the university conduct board.~~

~~(3))~~ The sexual history of a complainant is not relevant and not admissible in a student conduct proceeding unless such evidence about the complainant's sexual predisposition or prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

~~((4))~~ (3) Students may choose to remain silent during conduct proceedings, recognizing that they give up the opportunity to explain their version of events and that the decision is made based on the information presented at the hearing. No student must be compelled to give self-incriminating evidence, and no negative inference will be drawn from a student's refusal to participate in any stage of the conduct proceeding. If either party does not attend or participate in a hearing, the conduct officer or conduct board may resolve the matter based on the information available at the time of the hearing.

[Statutory Authority: RCW 28B.30.150. WSR 21-07-057, § 504-26-045, filed 3/15/21, effective 4/15/21; WSR 18-23-083, § 504-26-045, filed 11/19/18, effective 12/20/18.]

WSR 22-07-047

PERMANENT RULES

GAMBLING COMMISSION

[Filed March 14, 2022, 4:23 p.m., effective April 14, 2022]

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

Purpose: On March 25, 2020, Governor Jay Inslee signed HB [ESHB] 2638 authorizing sports wagering for Class III tribal facilities under terms negotiated in tribal-state compacts, and adding or amending several sections of the gambling act giving the gambling commission authority to adopt and/or amend rules needed for the state's regulation of sports wagering. This change allows the gambling commission to take action if an applicant or licensee fails to comply with all applicable tribal laws or provisions of the applicable tribal-state compact and its appendices related to sports wagering.

Citation of Rules Affected by this Order: Amending WAC 230-03-085 Denying, suspending, or revoking an application, license or permit.

Statutory Authority for Adoption: RCW 9.46.070.

Other Authority: RCW 9.46.070.

Adopted under notice filed as WSR 22-03-099 on January 19, 2022.

Changes Other than Editing from Proposed to Adopted Version: The removal of a comma following "applicable tribal laws" to clarify intent with CR-101 filed on July 22, 2020 (WSR 20-15-154).

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 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: March 10, 2022.

Ashlie Laydon
Rules Coordinator

OTS-3568.2

AMENDATORY SECTION (Amending WSR 20-08-095, filed 3/30/20, effective 4/30/20)

WAC 230-03-085 Denying, suspending, or revoking an application, license or permit. We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075; or

(2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person; or

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level; or

(4) Has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned us to take action; or

(5) Has failed to pay a quarterly license fee or submit a quarterly license report or has failed to pay a late fee assessed as a result of failure to pay a quarterly license fee or submit a quarterly license report; or

(6) Is serving a period of probation or community supervision imposed as a sentence for any juvenile, misdemeanor, or felony criminal offense, whether or not the offense is covered under RCW 9.46.075(4); or

(7) Is the subject of an outstanding gross misdemeanor or felony arrest warrant; or

(8) Fails to provide us with any information required under commission rules within the time required, or, if the rule establishes no time limit, within (~~thirty~~) 30 days after receiving a written request from us; or

(9) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by:

(a) Prior activities; or

(b) Criminal record; or

(c) Reputation; or

(d) Habits; or

(e) Associations; or

(10) Knowingly provides or provided goods or services to an entity that illegally operates gambling activities; or

(11) Has failed to comply with all applicable tribal laws or the provisions of the applicable tribal-state compact and its appendices related to sports wagering, that are in effect at the time of the violation, and as posted on the National Indian Gaming Commission's website at www.nigc.gov (for tribal laws) or our agency website at www.wsgc.wa.gov (for compacts and appendices).

[Statutory Authority: RCW 9.46.070. WSR 20-08-095, § 230-03-085, filed 3/30/20, effective 4/30/20; WSR 18-05-029, § 230-03-085, filed 2/9/18, effective 7/1/18; WSR 07-21-116 (Order 617), § 230-03-085, filed 10/22/07, effective 1/1/08; WSR 06-07-157 (Order 457), § 230-03-085, filed 3/22/06, effective 1/1/08.]

WSR 22-07-048

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed March 14, 2022, 6:05 p.m., effective April 14, 2022]

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

Purpose: The purpose of this emergency rule making on chapter 180-90 WAC is to clarify policy and establish administrative procedures regarding loss of private school approval.

The rule making clarifies that private schools must comply with state law, including all applicable health and safety requirements, and that noncompliance may result in suspension or rescission of approval.

The private school emergency rules provide for:

- Additional definitions.
- Clarification of the reasons for possible loss of private school approval.
- A brief adjudicative hearing process before a hearing officer on whether the private school should lose its approval.
- An initial decision with a written statement of the reasons for the decision issued by the hearing officer.
- An administrative review process for the initial decision.
- An emergency summary suspension of private school approval if there is a reasonable basis to believe there is immediate danger to the health, safety, or welfare of the private school students, staff or others.
- Right of a private school to request a hearing on the summary suspension to determine whether the suspension should continue or be less restrictive in scope.
- Modification of annual certification of compliance process to align with current practice and for consistency with loss of approval standards.

Citation of Rules Affected by this Order: New WAC 180-90-142, 180-90-143 and 180-90-144; and amending WAC 180-90-112, 180-90-130, 180-90-141, and 180-90-160.

Statutory Authority for Adoption: RCW 28A.195.040, 28A.195.010, 28A.150.220.

Adopted under notice filed as WSR 22-03-098 on January 19, 2022.

Changes Other than Editing from Proposed to Adopted Version: (1) WAC 180-90-112 (2)(a), added "set by federal, state, or local health authorities" in response to public comment, to clarify that health requirements are not set by the state board of education (SBE), but by other agencies with health authorities.

(2) WAC 180-90-112(10), added a definition of SBE representative, "'SBE representative' means the person designated by the executive director to administer the state board of education's private school program or another SBE staff person, and may be represented by an assistant attorney general.", to be an SBE staff person, who may be represented by an assistant attorney general.

(3) WAC 180-90-112(11), added "In consultation with the SBE executive committee," to the definition of "hearing officer." This is responsive to public comment concerns about the qualifications of the hearing officer and the hearing officer being chosen solely by the executive director.

(4) WAC 180-90-112(11), added "or a summary suspension hearing" to the definition of "hearing officer." This amendment allows a hearing officer to make a final decision on a summary suspension.

(5) WAC 180-90-112(16) (as renumbered), Removed the word "standards" from the definition of "threat to health or safety." This is responsive to comments that "standards" was confusing.

(6) WAC 180-90-112(16) (as renumbered), 180-90-141(4), 180-90-160(1), removed the words "but not limited to," from multiple locations within the rule. This was responsive to public comments that "but not limited to" creates an impression of overly broad criteria.

(7) WAC 180-90-112(18), added a definition for "Review committee." This is responsive to member concerns that there was no board oversight of, or member participation in, procedures.

(8) WAC 180-90-141(3), removed "personnel, and practices" from a reason for suspending or rescinding approval of a private school. This language was removed by board action out of concern that this provision should be limited to the physical facilities of the school.

(9) WAC 180-90-141(4), removed "Standards" from reasons for suspending or rescinding approval of a private school. This is responsive to public comments that suggested there was confusion that "standard" was being interpreted as learning standard. The term was removed to avoid confusion.

(10) WAC 180-90-142, replaced "private school officer" with "private school representative" to allow the executive director to designate any SBE staff person to serve as the SBE representative in the proceedings.

(11) WAC 180-90-143, replaced "executive director or designee" with "review committee" throughout the section. This was responsive to board member concern that the board be involved in the procedure at the review level.

(12) WAC 180-90-144, Replaced "private school officer" with "executive director" throughout the section. This was responsive to board member concern that the board play a greater oversight role in the summary suspension. The executive director reports directly to the board.

(13) WAC 180-90-144, replaced "private school officer" with "hearing officer" throughout the section, and provides that the hearing officer may not participate in any case where they are involved as a complainant or witness, or in which the hearing officer has a direct or personal interest, prejudice, or bias.

(14) WAC 180-90-160 (1)(f), removed "personnel and practices" and "personnel" from the added language. This language was removed by board action to focus the provision on the physical facilities of schools.

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 3, Amended 4, 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 4, 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: March 10, 2022.

Randy Spaulding
Executive Director

OTS-3324.5

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-90-112 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "~~(Approved)~~ Private school" means a nonpublic school or nonpublic school district (~~(conducting a program consisting of kindergarten and at least grade one, or a program consisting of any or all of grades one through twelve which has been)~~) approved by the state board of education pursuant to RCW 28A.305.130, and chapter 28A.195 RCW and in accordance with the minimum standards for approval as prescribed in this chapter.

(2) (a) "Reasonable health requirements" means those standards contained in chapter 246-366 WAC as adopted by the state board of health, and other applicable health requirements for private schools set by federal, state, or local health authorities.

(b) "Reasonable fire safety requirements" means those standards adopted by the state fire marshal pursuant to chapter 43.44 RCW.

(3) (a) "Minor deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel, and which does not impact the ability of the school to provide an educational program which is in substantial compliance with the minimum standards set forth in WAC 180-90-160, and which, therefore, does not preclude the granting of full approval.

(b) "Major deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel but may impact the ability of the school to provide an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160, but is not so serious as to constitute an unacceptable deviation.

(c) "Unacceptable deviation" means a variance from the standards established by these regulations which either:

(i) Constitutes a threat to the health or safety of students or school personnel; or

(ii) Demonstrates that the school is not capable of providing an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160.

(4) "Total instructional hour offering" means those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school staff, as directed by the administration and board of directors, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the approved private school for the

purpose of discussing students' educational needs for progress, and exclusive of time actually spent for meals.

(5) (a) "Non-Washington state certificated teacher" means a person who does not have a Washington state certification consistent with WAC 181-79A-030(2), but who has:

(i) A K-12 teaching certificate from a nationally accredited preparation program, other than Washington state, recognized by the U.S. Department of Education; or

(ii) A minimum of a baccalaureate degree in the subject matter to be taught or in a field closely related to the subject matter to be taught; or

(iii) A minimum of one calendar year of experience in a specialized field. For purposes of this subsection the term "specialized field" means a specialized area of the curriculum where skill or talent is applied and where entry into an occupation in such field generally does not require a baccalaureate degree including, but not limited to, the fields of art, drama, dance, music, physical education, and career and technical or occupational education.

(b) "Exceptional case" means that a circumstance exists within a private school in which:

(i) The educational program offered by the private school will be significantly improved with the employment of a non-Washington state certificated teacher. Each teacher not holding a valid Washington state certificate shall have experience or academic preparation appropriate to K-12 instruction and consistent with the school's mission. Such experience or academic preparation shall be consistent with the provisions of (c) of this subsection; and

(ii) The school employs at least one Washington state certified teacher, administrator, or superintendent who provides general supervision to any non-Washington state certificated teacher. The school will annually report to the state board of education the academic preparations and experience of each non-Washington state certificated teacher providing k-12 instruction in an addendum to the certificate of compliance as provided in WAC 180-90-160; and

(iii) The non-Washington state certificated teacher of the private school, employed pursuant to this section, has been verified by the private school, as meeting the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), and has not had his or her teacher's certificate revoked by any state or foreign country consistent with WAC 181-79A-155 (5) (a).

(c) "Unusual competence": As applied to an exceptional case wherein the educational program as specified in RCW 28A.195.010 and WAC 180-90-160(7) will be significantly improved with the employment of a non-Washington state certificated teacher as defined in (a) of this subsection.

(d) "General supervision" means that a Washington state certificated teacher, administrator, or superintendent shall be generally available at the school site to observe and advise the teacher employed under provision of (c) of this subsection and shall evaluate pursuant to policies of the private school.

(6) "Business day" means a weekday, excluding weekends, state holidays, and state closures unless otherwise specified.

(7) "Filing" means the process by which a document is officially delivered to a state board of education staff member. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified state board of education staff member;

(b) By sending the document by email and first class mail to the specified state board of education email address and state board of education's office address on its website; or

(c) By submitting an initial or annual application and certification of compliance as required in WAC 180-90-130 or 180-90-160.

Documents required to be filed shall be deemed filed upon actual receipt during office hours at the office of the state board of education.

(8) "Executive director" means the executive director of the state board of education.

(9) "SBE private school officer" means the person designated by the executive director to administer the state board of education's private school program.

(10) "SBE representative" means the person designated by the executive director to administer the state board of education's private school program or another SBE staff person, and may be represented by an assistant attorney general.

(11) "Hearing officer" means the person designated by the executive director, in consultation with the SBE executive committee, to conduct a brief administrative proceeding or a summary suspension hearing on the loss of private school approval.

(12) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by both email, and by either certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed and deposited in the mail.

(13) "Loss of approval" means either a suspension or rescission of a private school's approval by the state board of education. Suspension is for a set period of time or until specified conditions are met and rescission is permanent until a new application for approval is granted.

(14) "School" means and includes each building, facility, and location, including online program components, where any portions of a kindergarten and grades one through 12 program of education and related activities are conducted for two or more children by or in behalf of any private school or private institution subject to approval by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and this chapter.

(15) "Summary suspension" means the immediate, temporary suspension of a private school's approval in an administrative procedure.

(16) "Threat to health or safety" means the physical facilities, personnel, or practices of the school do not meet reasonable health requirements or reasonable fire safety requirements; or failure to meet the requirements or legal obligations that private schools are subject to, including those enumerated in this chapter or in chapter 28A.195 RCW.

(17) "School or district administrator" means administrative or executive authority of private schools or private school districts. The terms "head of school," "principal," or "superintendent" may also be used in rule or application materials to refer to the administrative or executive authority of the private school or private school district.

(18) "Review committee" means a committee of three to five SBE members identified by the SBE chair who will conduct reviews of ini-

tial decisions of brief adjudicative proceedings pursuant to WAC 180-90-143.

[Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-112, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-112, filed 12/1/15, effective 1/1/16. Statutory Authority: Chapter 28A.305 RCW, RCW 28A.150.220, 28A.230.090, 28A.310.020, 28A.210.160, and 28A.195.040. WSR 10-23-104, § 180-90-112, filed 11/16/10, effective 12/17/10. Statutory Authority: RCW 28A.195.040. WSR 03-04-053, § 180-90-112, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-112, filed 12/2/85.]

AMENDATORY SECTION (Amending WSR 18-24-090, filed 12/3/18, effective 1/3/19)

WAC 180-90-130 Approval—Annual certification—Adverse findings.

(1) All private organizations carrying out a program for any or all of the grades kindergarten through 12, with the exception of kindergarten only, are subject to annual approval by the state board of education pursuant to RCW 28A.305.130, chapter 28A.195 RCW, and this chapter.

~~(2)~~ At least ~~((ninety))~~ 90 days prior to the commencement of the annual school term or period, the ~~((chief administrator of each private))~~ school or district administrator shall file with the state board of education a certificate of compliance ~~((in the form and substance))~~ as set forth in WAC 180-90-160.

~~((2))~~ (3) The state board of education shall review each certificate. The review shall be completed within ~~((thirty))~~ 30 days after receipt of a completed application. The state board of education may request additional information as it deems necessary.

~~((3))~~ (4) If the state board of education finds deviation, the private school shall be notified through written or electronic communication of any minor, major, or unacceptable deviations which must be corrected.

~~((4))~~ (5) If the state board of education finds major or unacceptable deviations, the private school shall submit a narrative report indicating agreement or not with the findings of the state board of education and any proposed remedial action to address the reported deviations. Minor deviations will be resolved with the state board of education prior to approval. In the case of major deviations, the private school may request that the state board of education grant provisional status for up to one year so the private school may take action to meet the requirements.

(6) In reviewing a private school's application for annual approval, the state board of education may consider pending or completed proceedings for loss of approval of a private school, including any conditions or sanctions agreed to or placed upon a private school and any information obtained by the state board of education regarding potential loss of approval of a private school.

[Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-130, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-130, filed 12/1/15, effective 1/1/16; WSR 03-04-053, § 180-90-130, filed 1/29/03,

effective 3/1/03. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-130, filed 12/2/85. Statutory Authority: RCW 28A.04.120(4). WSR 82-04-004 (Order 3-82), § 180-90-130, filed 1/21/82; Order 2-77, § 180-90-130, filed 3/24/77; Order 1-75, § 180-90-130, filed 2/4/75.]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-90-141 Loss of private school approval. The state board of education may suspend or rescind approval of a private school for one or more of the following reasons:

(1) Failure to have students enrolled for any six consecutive calendar months in the school's physical facilities or failure to provide evidence of student enrollment upon request of the state board of education for the said period of time.

(a) For the 2020-21 school year, schools that implement an online education program consistent with the provisions of RCW 28A.195.090 will not be subject to rescission based on a failure to have students enrolled in the school's physical facilities; and

(b) The school maintains a physical address in Washington and plans to resume classroom instruction when the governing body of the school determines it is safe to do so and resumption is allowable under state and local emergency status.

(2) Failure to provide verification that the approved private school teaching staff have a valid Washington state teaching certificate or meet the provisions of WAC 180-90-112(5).

(3) Failure to provide verification that the physical facilities of the school meet ~~((the))~~ all reasonable health requirements and all reasonable fire safety ~~((standards))~~ requirements.

(4) Failure to meet any of the requirements or legal obligations that private schools are subject to, including those enumerated in this chapter or in chapter 28A.195 RCW.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-90-141, filed 12/10/20, effective 1/10/21. Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-141, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-141, filed 12/1/15, effective 1/1/16; WSR 03-04-053, § 180-90-141, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.02.204 [28A.02.240]. WSR 87-09-039 (Order 7-87), § 180-90-141, filed 4/14/87.]

NEW SECTION

WAC 180-90-142 Brief adjudicative proceedings—Initial hearing.

(1) A brief adjudicative proceeding is the process for rescission or suspension, other than summary suspension, of a private school's approval. Brief adjudicative proceedings shall be conducted by a hearing officer. The hearing officer may not participate in any case in which the hearing officer is involved as a complainant or witness, or in

which the hearing officer has a direct or personal interest, prejudice, or bias.

(2) The parties to a brief adjudicative proceeding are the private school representative and the SBE representative. Before taking action, the hearing officer will conduct an informal hearing and provide each party an opportunity to explain its view of the matter.

(3) The hearing officer will serve an initial decision upon both the private school representative and the SBE representative within 10 business days of the completion of the informal hearing. The initial decision must include:

(a) A brief written statement of the reasons for the decision, including a description of the acts or failures to act giving rise to any sanctions and reference to the provisions of the Washington Administrative Code or the law violated;

(b) Any sanctions against the private school, including suspension or rescission of approval, and any time period or conditions which must be met for a suspension; and

(c) Information about how to seek administrative review of the initial decision.

If no request for review is filed within 21 days of service of the initial decision, the initial decision is deemed the final decision. The hearing officer must include in the decision that the private school must provide a copy of the final decision to the families of all its students and all of its staff members.

[]

NEW SECTION

WAC 180-90-143 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the review committee, provided a party makes an oral or a written request for review with the executive director within 21 days of service of the initial decision.

(2) Members of the review committee may not participate in any case in which the member is involved as a party or witness, or in which the member has a direct or personal interest, prejudice, or bias.

(3) During the review, the review committee must give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions or conditions should be continued, modified, or removed.

(4) The decision on review must be in writing, and include a brief statement of the reason for the decision and the changes or modifications, if any, to the initial decision, and a notice that judicial review may be available pursuant to WAC 180-90-150. The decision on review must include in the decision that the private school must provide a copy of the final decision to the families of all its students and all of its staff members.

(5) The decision on review must be served on the parties within 20 days of the initial decision or the request for review whichever is later. The decision on review is the final decision.

[]

NEW SECTION

WAC 180-90-144 Emergency adjudicative proceeding—Summary suspension. (1) An emergency adjudicative proceeding is the process to enter an emergency order for summary suspension of a private school's approval and other such action as is necessary to prevent or avoid the immediate danger to the public health, safety, or welfare while an investigation and/or administrative procedure is pending.

(2) The SBE executive director may issue an emergency order summarily suspending a private school's approval if there is reasonable basis to believe that a private school:

(a) Has violated any provision of WAC 180-90-141; and

(b) Presents an immediate danger to the health, safety, or welfare of the private school's students, staff, volunteers, or visitors that justifies use of emergency adjudication.

(3) The emergency order must include a brief statement of findings of fact, conclusions of law, and policy reasons for the decision if it is an exercise of the agency's discretion, to justify the determination of an immediate danger and the SBE private school officer's decision to take the specific action. The summary suspension can be a full or partial suspension of approval.

(4) Notice. The SBE executive director must provide notice to a private school that its approval as a private school has been summarily suspended under an emergency order. The private school must be served with oral or written notice of the summary suspension. If oral notice is given, a written notification must be served on the private school within two business days of the oral notice.

The written notification will include:

(a) The reasons for imposing the summary suspension, including a description of the acts or failures to act giving rise to the summary suspension and reference to the provisions of the Washington Administrative Code, state or federal law, or other applicable requirements, standards, or authority allegedly violated;

(b) The conditions, if any, under which the private school may continue to operate during the summary suspension; and

(c) Information on how to request a hearing on the summary suspension.

(5) The private school has the right to request a hearing on the summary suspension. The hearing request must be in writing and filed with the SBE executive director.

(6) A hearing officer will conduct a hearing on the summary suspension as soon as practicable after receipt of the private school's request for a hearing on the summary suspension. The hearing officer may not participate in any case in which the hearing officer is involved as a complainant or witness, or in which the hearing officer has a direct or personal interest, prejudice, or bias.

(a) During the summary suspension hearing, the issue before the hearing officer is whether there is probable cause to believe that summary suspension should be continued pending further administrative proceedings and/or whether the summary suspension should be less restrictive in scope.

(b) The hearing officer must provide the private school with an opportunity to explain why summary suspension should not be continued while administrative proceedings are pending or why the summary suspension should be less restrictive in scope.

(c) If the private school fails to appear at the designated hearing time, the hearing officer may order that the summary suspension remain in place pending the conclusion of the administrative proceedings.

(d) As soon as practicable following the hearing, the hearing officer will issue a written decision which must include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(e) The hearing officer shall provide a copy of the decision to the private school. The SBE private school officer must include in the decision that the private school must provide a copy of the decision to the families of all its students and all of its staff members.

[]

AMENDATORY SECTION (Amending WSR 21-01-077, filed 12/10/20, effective 1/10/21)

WAC 180-90-160 Minimum standards and certificate form. (1) The annual certificate of compliance required by WAC 180-90-130 shall be ~~((in substantial compliance with the form and substance of the following))~~ submitted to the state board of education and signed by the school or district administrator certifying compliance by the school or district. The certificate of compliance form and the submittal process will be determined by the state board of education. Information about annual private school approval and the submittal process will be posted on the state board of education website. The certificate of compliance affirms the school meets the requirements, standards, or legal obligations that private schools are subject to, including those enumerated in this chapter or in chapter 28A.195 RCW and the following standards with the exception only of such deviations or proposed deviations, if any, as are set forth in an attachment to the certificate of compliance:

~~((CERTIFICATE OF COMPLIANCE
WITH STATE STANDARDS~~

~~ESD/County/Public
School District
Private School/
District Address~~

~~I,, do hereby certify that I am the principal or chief administrator of the above named school; that said school is located at the address listed above, and conducts grades through with a projected enrollment of; and that said school is scheduled to meet throughout the school year, the following standards with the exception only of such deviations, if any, as are set forth in an attachment to this certificate of compliance~~

~~or~~

I, ~~.....~~, do hereby certify that I am the superintendent of the above named private school district; and that the private schools under my jurisdiction are scheduled to meet throughout the school year, the following standards with the exception only of such deviations as are set forth in an attachment to this certificate of compliance; and that a list of such schools, including the grades conducted and the projected enrollment for each school, accompanies this certificate:))

(a) Except as provided in chapter 180-111 WAC (~~for the 2019-20 school year~~), the minimum school year for instructional purposes consists of no less than (~~one hundred eighty~~) 180 school days or the equivalent in annual minimum instructional hour offerings as prescribed in RCW 28A.195.010.

(b) On each school day, pupils enrolled and in attendance at the school are engaged in educational activity planned by and under the direction of the school; and that pupils are provided an annual total instructional hour offering, as prescribed in RCW 28A.195.010, of at least:

(i) (~~450~~) Four hundred fifty hours for students in kindergarten.

(ii) (~~1000~~) One thousand hours for students in grades one through (~~twelve~~) 12.

(c) All classroom teachers hold appropriate Washington State certification except for:

(i) Teachers for religious courses or courses for which no counterpart exists in the public schools: Provided, That a religious course is a course of study separate from the courses of study defined in RCW 28A.195.010 including occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of the appreciation of art and music all in sufficient units for meeting state board of education graduation requirements, except as provided in chapter 180-111 WAC; and/or

(ii) A person of unusual competence who is not certified but who will teach students in an exceptional case under the general supervision of a Washington state certificated teacher, administrator, or superintendent pursuant to WAC 180-90-112. The non-Washington state certificated teacher, the Washington state certificated person who will supervise, and the exceptional circumstances are listed on the addendum to this certificate.

(d) If the school operates an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody, the extension program meets the following requirements:

(i) The parent, guardian, or custodian is supervised by a person certified under chapter 28A.410 RCW and who is employed by the school;

(ii) The planning by the certified person and the parent, guardian, or person having legal custody includes objectives consistent with (a), (b), (e) through (g) of this subsection;

(iii) The certified person spends a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the extension program;

(iv) Each student's progress is evaluated by the certified person; and

(v) The certified person does not supervise more than (~~thirty~~) 30 students enrolled in the approved private school's extension program.

(e) Measures have been taken to safeguard all permanent records against loss or damage through either the storage of such records in fire-resistant containers or facilities, or the retention of duplicates in a separate and distinct area;

(f) The physical facilities of the school are adequate to meet the program offered, and all school facilities and practices are in ~~((substantial))~~ compliance with all reasonable health requirements and all reasonable fire safety ~~((standards))~~ requirements, as defined in WAC 180-90-112, and substantiated as required by current inspection reports of appropriate health and fire safety officials which are on file in the ~~((chief))~~ school or district administrator's office;

(g) The school's curriculum includes instruction in the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music in sufficient units for meeting state board of education graduation requirements, as set forth in chapter 180-51 WAC. A school may substitute courses specific to the mission or focus of the school to satisfy the career and technical education requirement of chapter 180-51 WAC and may waive requirements as provided in chapter 180-111 WAC;

(h) The school or its organized district maintains up-to-date policy statements related to the administration and operation of the school or district;

(i) The school does not engage in a policy of racial segregation or discrimination;

(j) The governing authority of this private school or private school district has been apprised of the requirements of chapter 180-90 WAC relating to the minimum requirements for approval of private schools and such governing authority has further been apprised of all deviations or proposed deviations from the rules and regulations of the state board of education and the standards contained in chapter 180-90 WAC. ~~((I have reported all such deviations herewith.~~

Dated this day of, 20...

.....
(signed)
.....
(title)
.....
(phone-number)))

(2) Approval by the state board of education is contingent upon on-going compliance with the requirements, standards, and legal obligations that private schools are subject to, including those enumerated in this chapter or in chapter 28A.195 RCW and the standards ~~((certified))~~ herein. The school shall notify the state board of education of any deviation from these requirements, standards ~~((which)),~~ or legal obligations that occurs after the approval action taken by the state board of education. Such notification shall be filed within ~~((thirty))~~ 30 days of occurrence of the deviation.

(3) Failure to comply with the requirements of this chapter may result in the ~~((revocation))~~ rescission or suspension of the approval of the private school and shall be considered in subsequent application for approval as a private school.

~~((4) ((Following initial approval as a private school by the state board of education, evidence of current accreditation by a state board of education approved accrediting body may be submitted annually in~~

~~lieu of approval documents described in subsection (1)(a) through (j) of this section.)~~ The board may provide a shortened approval form or expedited approval process for private schools accredited by a state board of education-approved accrediting body.

[Statutory Authority: 2020 c 7 § 10-12 and RCW 28A.195.010, 28A.230.090, 28A.150.220(7). WSR 21-01-077, § 180-90-160, filed 12/10/20, effective 1/10/21. Statutory Authority: RCW 28A.195.010, 28A.195.030, and 28A.195.040. WSR 18-24-090, § 180-90-160, filed 12/3/18, effective 1/3/19. Statutory Authority: RCW 28A.195.040. WSR 15-24-108, § 180-90-160, filed 12/1/15, effective 1/1/16. Statutory Authority: 2014 c 217 and RCW 28A.230.090. WSR 14-19-032, § 180-90-160, filed 9/8/14, effective 10/9/14. Statutory Authority: RCW 28A.195.040. WSR 03-04-053, § 180-90-160, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.305.130(6), 28A.195.040 and 1996 c 83. WSR 96-15-099, § 180-90-160, filed 7/22/96, effective 8/22/96. Statutory Authority: 1990 c 33. WSR 90-17-009, § 180-90-160, filed 8/6/90, effective 9/6/90. Statutory Authority: RCW 28A.02.240. WSR 89-01-038 (Order 23-88), § 180-90-160, filed 12/14/88; WSR 87-09-039 (Order 7-87), § 180-90-160, filed 4/14/87. Statutory Authority: RCW 28A.02.240. WSR 85-24-056 (Order 23-85), § 180-90-160, filed 12/2/85. Statutory Authority: RCW 28A.04.120(4). WSR 82-04-004 (Order 3-82), § 180-90-160, filed 1/21/82. Statutory Authority: RCW 28A.02.201 et seq. and 28A.04.120(4). WSR 78-06-064 (Order 9-78), § 180-90-160, filed 5/25/78; Order 2-77, § 180-90-160, filed 3/24/77; Order 1-76, § 180-90-160, filed 2/3/76; Order 1-75, § 180-90-160, filed 2/4/75.]

WSR 22-07-055
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed March 15, 2022, 3:14 p.m., effective April 15, 2022]

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

Purpose: This proposed rule updates the WAC citation to refer to the correct language. These nonsubstantive changes ensure reference to the correct WAC.

Citation of Rules Affected by this Order: Amending WAC 181-82-120.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

Adopted under notice filed as WSR 21-23-061 on January 18, 2022 [November 11, 2021].

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: January 18, 2022.

Sophia Keskey
Rules Coordinator

OTS-3474.1

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-82-120 Assignment of principals and assistant principals within districts. No person shall be assigned within the basic program of education to serve as principal or assistant principal unless such person holds a certificate or permit (~~((pursuant to))~~) under WAC 181-79A-140 (~~((+3))~~) (4)(a).

[Statutory Authority: RCW 28A.410.210. WSR 06-14-010, § 181-82-120, filed 6/22/06, effective 7/23/06. WSR 06-02-051, recodified as § 181-82-120, filed 12/29/05, effective 1/1/06. Statutory Authority: RCW 28A.305.130 and 28A.410.010. WSR 02-18-037, § 180-82-120, filed 8/26/02, effective 9/26/02. Statutory Authority: RCW 28A.305.130 (1) and (2), 28A.410.010 and 28A.150.220(4). WSR 99-04-008, § 180-82-120, filed 1/21/99, effective 2/21/99.]

WSR 22-07-060

PERMANENT RULES

STUDENT ACHIEVEMENT COUNCIL

[Filed March 16, 2022, 12:25 p.m., effective July 1, 2022]

Effective Date of Rule: July 1, 2022.

Purpose: The agency proposes to repeal existing chapter 250-83 WAC. The proposed rules create a new chapter 250-100 WAC, Passport to careers program (chapter 28B.117 RCW). This proposal is necessary to implement changes made in the 2018 legislative session. This new chapter does the following:

- Changes the "passport to college promise program" to the "passport to careers program."
- Expanded to include unaccompanied homeless youth.
- Expanded to include federal foster youth, tribal foster youth, unaccompanied refugee minors, and foster youth impacted by the interstate compact for the placement of children updates.
- Expanded the age in care eligibility definition to mirror the federal student aid definition which begins at the age of 13 (phased in over a three-year period)
- Expanded to include eligible apprenticeship programs or recognized preapprenticeship programs.

Citation of Rules Affected by this Order: New chapter 250-100 WAC; and repealing chapter 250-83 WAC.

Statutory Authority for Adoption: RCW 28B.76.120, 28B.77.050.

Adopted under notice filed as WSR 22-03-085 on January 18, 2022.

Changes Other than Editing from Proposed to Adopted Version:

Clarifying language was added to proposed WAC 250-100-015 to recognize that "Preapprenticeship" is also known as apprenticeship preparation.

The primary reason for adopting this change from the proposed rule is to ensure that the terms are recognized equally and are interchangeable based on input provided by one of our stakeholders.

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 15, Amended 0, Repealed 9.

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 0, Repealed 0.

Date Adopted: March 9, 2022.

Michael P. Meotti
Executive Director

OTS-3500.3

Chapter 250-100 WAC

PASSPORT TO CAREERS PROGRAMNEW SECTION

WAC 250-100-010 Purpose. Recognizing the low college-going rates of youth in and alumni of foster care and unaccompanied youth experiencing homelessness in Washington state, the legislature created the passport to careers program. The program's purpose is:

(1) To encourage current and former youth in foster care and unaccompanied youth experiencing homelessness to prepare for, attend, and successfully complete higher education, a registered apprenticeship and/or preapprenticeship program;

(2) To improve the high school graduation outcomes of youth in foster care and unaccompanied youth experiencing homelessness through coordinated P-20 and child welfare outreach, intervention, and planning; and

(3) To improve postsecondary outcomes by providing current and former youth in foster care and unaccompanied youth experiencing homelessness with the educational planning, information, institutional support, and direct financial resources necessary for them to succeed in either higher education or a registered apprenticeship or preapprenticeship program.

[]

NEW SECTION

WAC 250-100-015 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Academic year" is that period of time typically between July 1st and the following June 30th, and may include summer terms, during which a full-time student would normally be expected to complete the equivalent of two semesters or three quarters or 900 clock hours of instruction.

(2) "Agency" refers to the Washington student achievement council (WSAC).

(3) "Apprentice" as defined in WAC 296-05-003 means a person enrolled in a state approved, federally registered, or reciprocally recognized apprenticeship program as defined in WAC 296-05-011.

(4) "Apprenticeship" means an apprenticeship training program approved or recognized by the state apprenticeship council or similar federal entity as defined in WAC 296-05-011.

(5) "Cost of attendance" means the cost associated with attending a particular institution of higher education as determined by the office including, but not limited to, tuition, fees, room, board, books, personal expenses, and transportation, plus the cost of reasonable additional expenses incurred by an eligible student and approved by a financial aid administrator at the student's school of attendance.

(6) "Council" means the 10-member council of the Washington student achievement council.

(7) "Federal foster care system" means the foster care program under the federal unaccompanied refugee minor program, Title 8 U.S.C. Sec. 1522 of the Immigration and Nationality Act.

(8) "Financial need" shall be determined as defined in WAC 250-21-010(4) in accordance with industry standards and provisions as recognized and modified by the office.

(9) "Homeless" or "homelessness" means without a fixed, regular, and adequate nighttime residence as set forth in the federal McKinney-Vento Homeless Assistance Act, 42 U.S.C. Sec. 11301 et seq., or as amended.

(10) "Institution of higher education" means any institution eligible for and participating in the Washington college grant program.

(11) "Occupational-specific costs" means the costs associated with entering an apprenticeship or preapprenticeship including, but not limited to, fees, tuition for classes, work clothes, rain gear, boots, occupation-specific tools, as defined by the office.

(12) "Office" means the WSAC office of student financial assistance.

(13) "Preapprenticeship" (also known as apprenticeship preparation program) means an apprenticeship preparation program recognized by the state apprenticeship council and as defined in RCW 28C.18.162.

(14) "Program" means the passport to careers program created in chapter 28B.117 RCW.

(15) "Satisfactory academic progress" shall be defined in accordance with WAC 250-21-010(16) and is the student's successful completion of a minimum number of credit or clock hours for each term in which the grant was received.

(16) "State foster care system" means out-of-home care pursuant to a dependency and includes the placement of dependents from other states who are placed in Washington pursuant to orders issued under the interstate compact on the placement of children, chapter 26.34 RCW.

(17) "Student budgets" are determined by institutions of higher education and subject to approval by the office. The student budget consists of that amount required to support an individual as a student for nine months and may take into consideration cost factors for maintaining the student's dependents. Additional adjustment may be needed for varying enrollment periods.

(18) "Tribal court" has the same meaning as defined in RCW 13.38.040.

(19) "Tribal foster care system" means an out-of-home placement under a dependency order from a tribal court.

(20) "Unaccompanied youth experiencing homelessness" means a person that meets age requirements of the passport program, is not in the physical custody of a parent or guardian, and lacks a fixed, regular, and adequate nighttime residence.

(21) "Verification" means that a student's eligibility for passport has been documented by the department of children, youth, and families (DCYF), department of social and health services (DSHS), office of superintendent of public instruction (OSPI), tribal authorities, the office and/or established through the institution's financial aid office based on appropriate documentation.

[]

NEW SECTION

WAC 250-100-020 Institutional eligibility. An eligible institution is one that:

(1) Meets the requirements for Washington college grant eligibility defined in RCW 28B.92.030 and WAC 250-21-021;

(2) Agrees to abide by all program rules adopted by the office;

(3) Completes an agreement to participate in state aid programs;

(4) Provides the eligible student all available need-based and merit-based grant and scholarship aid for which the student qualifies; and

(5) If participating in the incentive grant program referred to as the student support fund, completes a program addendum to the agreement to participate and has developed a viable student support plan authorized in WAC 250-100-060.

[]

NEW SECTION

WAC 250-100-030 Identification of eligible foster youth. The program requires early and accurate identification of current and former youth in foster care so they can be linked to the financial assistance and other services that will help them succeed in college. The sharing of information to identify eligible youth who experienced foster care is facilitated by chapter 28B.117 RCW.

(1) The office will seek verification from the department of children, youth, and families (DCYF), department of social and health services (DSHS), office of the superintendent of public instruction (OSPI), tribal authorities and/or as established through the institutions' financial aid offices awarding the passport funds based on appropriate documentation that applicants meet the passport student eligibility definition when:

(a) The office may enter into data share agreements with the DCYF, OSPI, DSHS and/or tribal authorities for the purpose of identifying and providing services to passport eligible students. In the event the office must initiate eligibility confirmation, the office will secure appropriate consent from the student.

(b) The student has completed the free application for federal student aid or the alternate approved application for state aid as provided by the office, giving the office and the institutions permission to verify information supplied on that application.

(2) The office will confirm the eligibility of foster youth to eligible institutions of higher education.

(3) The office will protect personally identifiable information in accordance with the Family Educational Rights and Privacy Act (34 C.F.R. Part 99) and other applicable privacy standards.

(4) The office will maintain the consent and verification information for the period of the youth's passport eligibility. Thereafter, records will be maintained according to the record retention schedule in RCW 40.14.060.

[]

NEW SECTION**WAC 250-100-040 Student eligibility for passport scholarship.**

(1) To the extent that sufficient funds have been appropriated for this purpose, a student is eligible for the passport to college promise program, if the student:

(a) Meets one of the following:

(i) Were in the care of the state foster care system, tribal foster care system, or federal foster care system in Washington state at any time before age 21 subsequent to age 13 as of July 1, 2020; or

(ii) Beginning July 1, 2019, was verified on or after July 1st of the prior academic year as an unaccompanied youth experiencing homelessness, before age 21.

(b) Is a Washington state resident student as defined in RCW 28B.15.012(2), or if unable to establish residency because of homelessness or placement in out-of-state foster care under the interstate compact for the placement of children, has residency determined through verification by the office;

(c) Is enrolled or will enroll on at least a half-time basis with an institution of higher education or enroll in a registered apprenticeship or recognized preapprenticeship in Washington state before the age of 22;

(d) Demonstrates financial need as defined by the office and according to industry standards;

(e) Has not earned a bachelor's or professional degree;

(f) Is not pursuing a degree in theology;

(g) Is making satisfactory progress toward the completion of a degree, certificate program or registered apprenticeship or recognized preapprenticeship;

(h) Has not received a passport scholarship for more than 10 semesters, or 15 full-time quarters, or an equivalent combination of the two;

(i) May receive a passport to college promise scholarship for a combined maximum of five years of full time equivalent eligibility after the student first enrolls with an institution of higher education or until the student turns age 26, whichever occurs first. If a student turns age 26 during an academic year, and would otherwise be eligible for a scholarship, the student shall continue to be eligible for a scholarship for the remainder of the academic year; and

(j) Does not owe a refund or repayment on other state aid programs and is not in default on a state loan program.

(2) Recipients may utilize passport to college promise or passport to apprenticeship opportunities at different times, but not concurrently; and

(3) The total award an individual may receive in any combination of the programs shall not exceed the equivalent amount that would have been awarded for the individual to attend a public university for five years with the highest annual tuition and state-mandated fees in the state.

[]

NEW SECTION

WAC 250-100-050 Determining the amount of the passport to college promise scholarship. (1) Eligible students may receive the passport scholarship.

(2) The scholarship shall not exceed the student's financial need.

(3) The office sets the scholarship award on an annual basis not to exceed resident undergraduate tuition and fees at the highest-priced public institution of higher education in the state.

(4) In calculating need, initially based on an established cost of attendance, the institution of higher education and any contracted nongovernmental organization administering passport to careers apprenticeship is encouraged to further examine the student's costs on a case-by-case basis to identify any extenuating circumstances, so actual costs borne by the individual are recognized.

[]

NEW SECTION

WAC 250-100-060 Passport student support fund to provide student support services. Passport student support funds are grant payments to institutions based on recruitment, retention, and support of passport eligible students. The payment is available only to institutions agreeing to provide specified student support services.

Institutional participation in the passport student support fund is voluntary. An otherwise eligible student can receive a passport scholarship to attend an eligible college even if the institution does not participate in the passport student support fund option.

To the extent that funds are allotted for this purpose, the amount of passport student support fund payments to institutions will be reviewed and determined annually by the office based on projected enrollments, appropriations, and other relevant factors.

Participating institutions shall meet the following criteria:

(1) Include on their applications for admission or on their registration materials a question asking whether the applicant has been in foster care in state, tribal or federal foster care in Washington state or is an unaccompanied youth experiencing homelessness under the parameters in RCW 26B.117.040 (1) and (2). All other institutions of higher education, whether participating in the student support fund or not, are strongly encouraged to include this question on their admission application.

(2) Have a viable student support plan. The scope of a viable student support plan is one that generally:

(a) Identifies those students eligible for assistance under this program;

(b) Tracks and enhances academic progress of eligible students;

(c) Addresses their unique needs for assistance during school vacation and academic interims; and

(d) Links eligible students to appropriate sources of assistance in their transition to adulthood.

At a minimum, each institution's viable plan shall:

(i) Designate campus support staff;

(ii) Provide a comprehensive financial aid package taking into account available federal, state, institutional and private funding that, to the extent possible, meets the student's financial need;

(iii) Build a lasting institutional commitment to serve current and former foster youth and unaccompanied youth experiencing homelessness; and

(iv) As appropriate, communicate with social services and independent living providers.

(3) Institutions choosing to participate will sign an addendum. The addendum to the state student financial aid participation agreement specifies the services that are to be provided through the institution's viable plan.

[]

NEW SECTION

WAC 250-100-070 Payment of passport to college promise student scholarship and student support funds. The office will provide participating colleges with an allocation that aligns with the program purpose and intent to establish an equitable opportunity for eligible students across the state. This method will be reviewed periodically.

[]

NEW SECTION

WAC 250-100-075 Passport to apprenticeship program. The passport to apprenticeship opportunities pathway was added in 2019.

(1) (a) The office will provide financial assistance through a nongovernmental entity or entities in RCW 28B.117.055 for registered apprenticeship and recognized preapprenticeship entrance requirements and occupational-specific costs that does not exceed the individual's financial need; and

(b) Extend financial assistance to any eligible applicant for a maximum of six years after first enrolling with a registered apprenticeship or recognized preapprenticeship, or until the applicant turns 26, whichever occurs first. If a registered apprentice turns age 26 during an award year, and would otherwise be eligible for an apprenticeship award, the registered apprentice shall continue to be eligible for the award for the remainder of the award year.

(2) Recipients may utilize passport to college promise or passport to apprenticeship opportunities at different times, but not concurrently.

(3) The total award an individual may receive in any combination of the programs shall not exceed the equivalent amount that would have been awarded for the individual to attend a public university for five years with the highest annual tuition and state-mandated fees in the state.

[]

NEW SECTION

WAC 250-100-080 Institutional fund management requirements. Institutions must adhere to all fund management requirements as outlined in WAC 250-21-051 for Washington college grant purposes. These requirements include the identification of eligible students, award calculation, student directive requirements for private institutions, frequency of reporting, detailed student reconciliation and records retention, and repayment requirements.

[]

NEW SECTION

WAC 250-100-090 Program administration and audits. (1) The staff of the office under the direction of the executive director will manage the administrative functions relative to the passport to careers programs.

(2) The office will review institutional administrative compliance as outlined in WAC 250-21-061. Any student who has obtained passport to careers funding through means of willfully false statement or failure to reveal any material fact affecting eligibility will be subject to applicable civil or criminal penalties and repayment similar to processes and procedures outlined in WAC 250-21-051.

[]

NEW SECTION

WAC 250-100-100 Request for review and student complaints. Should a student question their passport to college scholarship eligibility or award, the student should direct questions and complaints to the financial aid officer at the institution they attend prior to contacting the office for assistance if necessary. Should an apprentice question their passport to careers apprenticeship eligibility, the student should direct questions and complaints to the nongovernmental entity providing the program prior to contacting the office for assistance if necessary.

[]

NEW SECTION

WAC 250-100-110 Suspension or termination of institutional or nongovernmental entity participation. Institutions and nongovernmental entities may be suspended or terminated from participation in state financial aid programs. Refer to WAC 250-21-081 for Washington college grant for complete information.

[]

NEW SECTION

WAC 250-100-120 Appeal process. An institution or nongovernmental entity may appeal their termination to participate in state financial aid programs. Refer to WAC 250-21-091 for Washington college grant for the complete process.

[]

NEW SECTION

WAC 250-100-130 The agency's responsibilities. (1) Administering agency. The Washington student achievement council shall administer the passport to careers program. This program has two programmatic pathways: The passport to college promise program and the passport to apprenticeship opportunities.

(2) The office will ensure colleges are packaging all available need-based and merit-based grant and scholarship aid for which the passport to college promise student qualifies. The office may request or collect additional information from the institution to verify students received such aid.

(3) The office will ensure nongovernmental agencies awarding passport to apprenticeship funds will utilize and award moneys as outlined in the contract.

[]

OTS-3501.1REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 250-83-010	Purpose.
WAC 250-83-020	Institutional eligibility.
WAC 250-83-030	Identification of eligible foster youth.
WAC 250-83-040	Student eligibility for passport scholarship.
WAC 250-83-050	Determining the amount of the passport student scholarship.
WAC 250-83-060	Institutional incentive grant to provide student support services.
WAC 250-83-070	Reserve of funds and payment of student scholarship and institutional incentive grant.
WAC 250-83-080	Board's responsibilities.

WAC 250-83-090

Definitions.

WSR 22-07-070

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed March 18, 2022, 9:27 a.m., effective April 18, 2022]

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

Purpose: The department is amending WAC 458-61A-214 to resolve existing conflict within the rule, specifically by replacing the example in WAC 458-61A-214 (5)(b) with a new one, to clarify requirements for exclusion from real estate excise tax. Presently, the example in subsection (5)(b) of the rule conflicts with the nominee exclusion requirements described in subsection (3) of the rule. The department is also amending several other parts of the rule in order to improve the rule's clarity and usefulness and in response to comments received by external stakeholders at the October 19, 2021, public meeting, and shortly thereafter.

Citation of Rules Affected by this Order: Amending WAC 458-61A-214 Nominee.

Statutory Authority for Adoption: RCW 82.04.060(2) and 82.45.150.

Adopted under notice filed as WSR 22-01-220 on December 22, 2021.

Changes Other than Editing from Proposed to Adopted Version: Minor grammatical changes.

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 0, Repealed 0.

Date Adopted: March 18, 2022.

Atif Aziz
Rules Coordinator

OTS-3252.4

AMENDATORY SECTION (Amending WSR 05-23-093, filed 11/16/05, effective 12/17/05)

WAC 458-61A-214 Nominee. (1) **Introduction.** This rule describes the application of the real estate excise tax in transfers involving a nominee. A "nominee" is a person who acts as an agent on behalf of another person in the purchase of real property.

(a) This rule includes examples that identify a set of facts and then state a conclusion. These examples are only a general guide. The department of revenue (department) will evaluate each case on its particular facts and circumstances.

(b) In addition to this rule, readers may want to refer to WAC 458-61A-213 IRS "tax deferred" exchange.

(2) **Initial acquisition.** The initial acquisition of property by a nominee on behalf of a third-party purchaser (third party) is subject to the real estate excise tax.

(3) **Subsequent transfer.** The ~~((later))~~ subsequent transfer of the property by the nominee to the third-party purchaser is subject to real estate excise tax, unless ~~((each))~~ all of the following requirements ~~((is))~~ are met indicating the transaction is not a sale as defined in RCW 82.45.010 (nominee exclusion):

(a) The proper tax was paid on the initial purchase of the property by the nominee;

(b) The funds used by the nominee to acquire the property were provided by the third party;

(c) The agreement between the nominee and the third party ((legally)) existed at the time of the initial ((transaction)) acquisition of the real property by the nominee;

(d) In cases where the third party is a corporation, partnership, association, trust or other entity, the third party legally existed at the time of the initial acquisition of the real property by the nominee; and

~~((d))~~ (e)(i) The subsequent transfer from the nominee to the third party is not for a greater consideration than that of the initial acquisition and the nominee does not receive any consideration in exchange for acting as an agent of the third party; or

(ii) In the case where the nominee is a licensed contractor and the subsequent transfer to the third party ~~((customer))~~ reflects the completed construction contract, the retail sales tax is collected on the construction contract and remitted to the department. See also WAC 458-61A-104 Assignments.

~~((For example, Sara finds a home to buy. However, she is in the military and has learned she is going to be called to duty out of the country. She gives her money for the home purchase to Tom, who finalizes the purchase and obtains the mortgage in his name. Sara pays the down payment, closing costs, and makes all the payments on the mortgage. When Sara returns from duty, Tom will transfer the home back to her, and she will refinance the mortgage into her own name. Tom's transfer to Sara is exempt from real estate excise tax, as Tom was acting as her nominee in the purchase of the home and all funds associated with the purchase of the home have come from Sara.))~~

(4) **Proof of payment.** If the nominee is a licensed contractor transferring to the ~~((third-party principal))~~ third party at the completion of a construction contract, proof of the payment to the department of retail sales tax on the construction contract must be attached to the affidavit.

~~((For example,))~~ **Example 1.** Bill contracted with ~~((Phil's))~~ ABC Construction (ABC) to build a home for him on ~~((a lot Phil))~~ an unimproved parcel of real property ABC will acquire. ~~((Phil buys a lot))~~ ABC purchases the parcel of real property from Kevin, an unrelated individual, using funds provided entirely by Bill. Real estate excise tax is paid on the sale from Kevin to ~~((Phil. Phil's Construction))~~ ABC. ABC builds the home and collects retail sales tax from Bill on the total construction contract, which is then remitted to the department ~~((of revenue. Phil's Construction)).~~ ABC files a real estate excise tax affidavit with the county, together with proof that retail sales tax has been paid. Bill pays the full price for the new home and the parcel of land it was built upon. The transfer of ~~((the lot and~~

~~completed home from Phil's Construction))~~ real property, including the home and the parcel of land it was built upon, from ABC to Bill is exempt from real estate excise tax, as ABC acted as a nominee on behalf of Bill.

(5) **Documentation.** ~~((The))~~ Parties to a nominee arrangement must provide documentation that they have met all the requirements necessary to claim ~~((this exemption))~~ the nominee exclusion. Acceptable documentation includes a notarized statement, dated on or before the date of the initial purchase, that the nominee acquired the property on behalf of the third party, or other documentation clearly demonstrating the requirements of subsection (3) of this section have been satisfied. Such documentation may include, but is not limited to, financial documentation evidencing the nominee/third-party relationship existed from the time of the original transfer, and confirming the source of the funds used to purchase the property.

~~((Examples-~~

~~(a) Tom is on title to property. Tom wants to transfer the property to Angie and claim the nominee exemption, but they do not have a notarized statement. In lieu of that statement, Angie presents documentation that she provided the funds for the down payment and all closing costs for the initial purchase of the property. Angie also presents documentation that she provided the funds on the first year's payments on the debt after the initial purchase and provided funds for the last year's payments on the debt. This is acceptable documentation that the requirements of subsection (3) of this section have been satisfied.~~

~~(b) Dan wants to buy a house and executes an earnest money agreement, contingent on financing. When he applies for a mortgage he is turned down because of insufficient credit. Dan's Uncle Bob agrees to purchase the house in his name and loans Dan the down payment of \$10,000. Dan signs a promissory note agreeing to repay Uncle Bob. Dan makes all the mortgage payments on the property. After two years, Dan has sufficient credit to refinance the debt in his own name. Uncle Bob quitclaims title to Dan.)~~ **Example 2.** Diana finds a home to buy in Tacoma. However, Diana, a member of the military, is called to active duty outside of the country. Before deploying, Diana provides the funds necessary to purchase the home, including the down payment, earnest money, and closing costs, to a friend, Brent, who agrees to act as a nominee on behalf of Diana. Brent finalizes the purchase of the home and takes title in his name. REET is paid on this initial acquisition of the real property. When Diana returns from overseas, Brent transfers the home to Diana. Diana does not provide Brent any consideration for the services provided. This transfer meets the nominee ((exemption)) exclusion requirements because:

~~((i))~~ Real estate excise tax was paid on the initial transaction (acquisition of the real property by Brent, the nominee);

~~((ii))~~ The signed earnest money agreement shows Dan's initial intent to purchase the property in his name;

~~(iii)~~ Dan has made all the payments on the debt; and

~~(iv)~~ The signed promissory note is sufficient evidence Uncle Bob did not intend to have a financial interest in the property.) The funds used by Brent, as the nominee, to acquire the real property were provided entirely by Diana, the third party;

The agreement between Brent, as the nominee, and Diana, the third party, existed at the time of the initial acquisition of the real property by Brent; and

• The subsequent transfer of the real property from Brent to Diana was not for a greater consideration than that of the initial acquisition.

(6) **Prior affidavit.** The real estate excise tax affidavit reflecting the claim ((for tax exemption)) that the transfer is excluded from the definition of a sale of real property must show the prior real estate excise tax affidavit ((and number)) for the nominee's initial acquisition, including the real estate excise tax affidavit receipt and date of the tax payment.

[Statutory Authority: RCW 82.32.300, 82.01.060(2), and 82.45.150. WSR 05-23-093, § 458-61A-214, filed 11/16/05, effective 12/17/05.]

WSR 22-07-078

PERMANENT RULES

TRANSPORTATION COMMISSION

[Filed March 22, 2022, 9:24 a.m., effective April 22, 2022]

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

Purpose: This is a clarifying amendment to WAC 468-270-073 and 468-270-071, adding new toll rates tables for the SR 99 tunnel per the planned 3 percent toll rate increase that will take effect on July 1, 2022, as established in WAC 468-270-073 and 468-270-040. This also includes clarifying amendments in WAC 468-270-071 for toll rates currently in effect for the SR 520 Bridge, which were previously established via rule making by the Washington state transportation commission, effective July 1, 2017.

Citation of Rules Affected by this Order: Amending WAC 468-270-071 and 468-270-073.

Statutory Authority for Adoption: RCW 47.56.030, 47.56.850, 47.56.862.

Adopted under notice filed as WSR 22-03-100 on January 19, 2022.

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 2, Repealed 0.

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

Date Adopted: March 22, 2022.

Reema Griffith
Executive Director

OTS-3572.1

AMENDATORY SECTION (Amending WSR 21-18-068, filed 8/26/21, effective 9/26/21)

WAC 468-270-071 What are the toll rates on the SR 520 Bridge?

Tables 2 through 6 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

TABLE 2a, Effective July 1, 2017

SR 520 BRIDGE

TWO-AXLE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$1.25</u>	<u>\$3.25</u>	<u>\$1.50</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$2.00</u>	<u>\$4.00</u>	<u>\$2.25</u>

<u>Mondays through Fridays</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$3.40</u>	<u>\$5.40</u>	<u>\$3.65</u>
<u>7 a.m. to 9 a.m.</u>	<u>\$4.30</u>	<u>\$6.30</u>	<u>\$4.55</u>
<u>9 a.m. to 10 a.m.</u>	<u>\$3.40</u>	<u>\$5.40</u>	<u>\$3.65</u>
<u>10 a.m. to 2 p.m.</u>	<u>\$2.70</u>	<u>\$4.70</u>	<u>\$2.95</u>
<u>2 p.m. to 3 p.m.</u>	<u>\$3.40</u>	<u>\$5.40</u>	<u>\$3.65</u>
<u>3 p.m. to 6 p.m.</u>	<u>\$4.30</u>	<u>\$6.30</u>	<u>\$4.55</u>
<u>6 p.m. to 7 p.m.</u>	<u>\$3.40</u>	<u>\$5.40</u>	<u>\$3.65</u>
<u>7 p.m. to 9 p.m.</u>	<u>\$2.70</u>	<u>\$4.70</u>	<u>\$2.95</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$2.00</u>	<u>\$4.00</u>	<u>\$2.25</u>
<u>11 p.m. to 11:59 p.m.</u>	<u>\$1.25</u>	<u>\$3.25</u>	<u>\$1.50</u>

<u>Saturdays and Sundays³</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$1.25</u>	<u>\$3.25</u>	<u>\$1.50</u>
<u>5 a.m. to 8 a.m.</u>	<u>\$1.40</u>	<u>\$3.40</u>	<u>\$1.65</u>
<u>8 a.m. to 11 a.m.</u>	<u>\$2.05</u>	<u>\$4.05</u>	<u>\$2.30</u>
<u>11 a.m. to 6 p.m.</u>	<u>\$2.65</u>	<u>\$4.65</u>	<u>\$2.90</u>
<u>6 p.m. to 9 p.m.</u>	<u>\$2.05</u>	<u>\$4.05</u>	<u>\$2.30</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$1.40</u>	<u>\$3.40</u>	<u>\$1.65</u>
<u>11 p.m. to 11:59 p.m.</u>	<u>\$1.25</u>	<u>\$3.25</u>	<u>\$1.50</u>

Notes:

¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.

²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 2b, Effective July 1, 2023

SR 520 BRIDGE

TWO-AXLE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$1.25</u>	<u>\$3.25</u>	<u>\$1.50</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$2.50</u>	<u>\$4.50</u>	<u>\$2.75</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$3.80</u>	<u>\$5.80</u>	<u>\$4.05</u>
<u>7 a.m. to 10 a.m.</u>	<u>\$4.50</u>	<u>\$6.50</u>	<u>\$4.75</u>
<u>10 a.m. to 11 a.m.</u>	<u>\$3.80</u>	<u>\$5.80</u>	<u>\$4.05</u>
<u>11 a.m. to 2 p.m.</u>	<u>\$3.25</u>	<u>\$5.25</u>	<u>\$3.50</u>
<u>2 p.m. to 3 p.m.</u>	<u>\$3.80</u>	<u>\$5.80</u>	<u>\$4.05</u>
<u>3 p.m. to 7 p.m.</u>	<u>\$4.50</u>	<u>\$6.50</u>	<u>\$4.75</u>
<u>7 p.m. to 8 p.m.</u>	<u>\$3.80</u>	<u>\$5.80</u>	<u>\$4.05</u>
<u>8 p.m. to 9 p.m.</u>	<u>\$3.25</u>	<u>\$5.25</u>	<u>\$3.50</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$2.50</u>	<u>\$4.50</u>	<u>\$2.75</u>
<u>11 p.m. to 11:59 p.m.</u>	<u>\$1.25</u>	<u>\$3.25</u>	<u>\$1.50</u>

<u>Saturdays and Sundays³</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$1.25</u>	<u>\$3.25</u>	<u>\$1.50</u>
<u>5 a.m. to 8 a.m.</u>	<u>\$1.60</u>	<u>\$3.60</u>	<u>\$1.85</u>
<u>8 a.m. to 11 a.m.</u>	<u>\$2.35</u>	<u>\$4.35</u>	<u>\$2.60</u>

Saturdays and Sundays ³	Good To Go! TM Pass ¹	Pay By Mail ¹	Good To Go! TM Pay By Plate ²
11 a.m. to 6 p.m.	\$3.05	\$5.05	\$3.30
6 p.m. to 9 p.m.	\$2.35	\$4.35	\$2.60
9 p.m. to 11 p.m.	\$1.60	\$3.60	\$1.85
11 p.m. to 11:59 p.m.	\$1.25	\$3.25	\$1.50

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 3a, Effective July 1, 2017

SR 520 BRIDGE

THREE-AXLE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$1.90</u>	<u>\$4.90</u>	<u>\$2.15</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$3.00</u>	<u>\$6.00</u>	<u>\$3.25</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$5.10</u>	<u>\$8.10</u>	<u>\$5.35</u>
<u>7 a.m. to 9 a.m.</u>	<u>\$6.45</u>	<u>\$9.45</u>	<u>\$6.70</u>
<u>9 a.m. to 10 a.m.</u>	<u>\$5.10</u>	<u>\$8.10</u>	<u>\$5.35</u>
<u>10 a.m. to 2 p.m.</u>	<u>\$4.05</u>	<u>\$7.05</u>	<u>\$4.30</u>
<u>2 p.m. to 3 p.m.</u>	<u>\$5.10</u>	<u>\$8.10</u>	<u>\$5.35</u>
<u>3 p.m. to 6 p.m.</u>	<u>\$6.45</u>	<u>\$9.45</u>	<u>\$6.70</u>
<u>6 p.m. to 7 p.m.</u>	<u>\$5.10</u>	<u>\$8.10</u>	<u>\$5.35</u>
<u>7 p.m. to 9 p.m.</u>	<u>\$4.05</u>	<u>\$7.05</u>	<u>\$4.30</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$3.00</u>	<u>\$6.00</u>	<u>\$3.25</u>
<u>11 p.m. to 11:59 p.m.</u>	<u>\$1.90</u>	<u>\$4.90</u>	<u>\$2.15</u>

<u>Saturdays and Sundays³</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$1.90</u>	<u>\$4.90</u>	<u>\$2.15</u>
<u>5 a.m. to 8 a.m.</u>	<u>\$2.10</u>	<u>\$5.10</u>	<u>\$2.35</u>
<u>8 a.m. to 11 a.m.</u>	<u>\$3.10</u>	<u>\$6.10</u>	<u>\$3.35</u>
<u>11 a.m. to 6 p.m.</u>	<u>\$4.00</u>	<u>\$7.00</u>	<u>\$4.25</u>
<u>6 p.m. to 9 p.m.</u>	<u>\$3.10</u>	<u>\$6.10</u>	<u>\$3.35</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$2.10</u>	<u>\$5.10</u>	<u>\$2.35</u>
<u>11 p.m. to 11:59 p.m.</u>	<u>\$1.90</u>	<u>\$4.90</u>	<u>\$2.15</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 3b, Effective July 1, 2023

SR 520 BRIDGE

THREE-AXLE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$1.90</u>	<u>\$4.90</u>	<u>\$2.15</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$3.75</u>	<u>\$6.75</u>	<u>\$4.00</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$5.70</u>	<u>\$8.70</u>	<u>\$5.95</u>

Mondays through Fridays	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
7 a.m. to 10 a.m.	\$6.75	\$9.75	\$7.00
10 a.m. to 11 a.m.	\$5.70	\$8.70	\$5.95
11 a.m. to 2 p.m.	\$4.90	\$7.90	\$5.15
2 p.m. to 3 p.m.	\$5.70	\$8.70	\$5.95
3 p.m. to 7 p.m.	\$6.75	\$9.75	\$7.00
7 p.m. to 8 p.m.	\$5.70	\$8.70	\$5.95
8 p.m. to 9 p.m.	\$4.90	\$7.90	\$5.15
9 p.m. to 11 p.m.	\$3.75	\$6.75	\$4.00
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15

Saturdays and Sundays³	Good To Go!™ Pass¹	Pay By Mail¹	Good To Go!™ Pay By Plate²
Midnight to 5 a.m.	\$1.90	\$4.90	\$2.15
5 a.m. to 8 a.m.	\$2.40	\$5.40	\$2.65
8 a.m. to 11 a.m.	\$3.55	\$6.55	\$3.80
11 a.m. to 6 p.m.	\$4.60	\$7.60	\$4.85
6 p.m. to 9 p.m.	\$3.55	\$6.55	\$3.80
9 p.m. to 11 p.m.	\$2.40	\$5.40	\$2.65
11 p.m. to 11:59 p.m.	\$1.90	\$4.90	\$2.15

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 4a, Effective July 1, 2017
SR 520 BRIDGE
FOUR-AXLE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$2.50</u>	<u>\$6.50</u>	<u>\$2.75</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$4.00</u>	<u>\$8.00</u>	<u>\$4.25</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$6.80</u>	<u>\$10.80</u>	<u>\$7.05</u>
<u>7 a.m. to 9 a.m.</u>	<u>\$8.60</u>	<u>\$12.60</u>	<u>\$8.85</u>
<u>9 a.m. to 10 a.m.</u>	<u>\$6.80</u>	<u>\$10.80</u>	<u>\$7.05</u>
<u>10 a.m. to 2 p.m.</u>	<u>\$5.40</u>	<u>\$9.40</u>	<u>\$5.65</u>
<u>2 p.m. to 3 p.m.</u>	<u>\$6.80</u>	<u>\$10.80</u>	<u>\$7.05</u>
<u>3 p.m. to 6 p.m.</u>	<u>\$8.60</u>	<u>\$12.60</u>	<u>\$8.85</u>
<u>6 p.m. to 7 p.m.</u>	<u>\$6.80</u>	<u>\$10.80</u>	<u>\$7.05</u>
<u>7 p.m. to 9 p.m.</u>	<u>\$5.40</u>	<u>\$9.40</u>	<u>\$5.65</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$4.00</u>	<u>\$8.00</u>	<u>\$4.25</u>
<u>11 p.m. to 11:59 p.m.</u>	<u>\$2.50</u>	<u>\$6.50</u>	<u>\$2.75</u>

<u>Saturdays and Sundays³</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$2.50</u>	<u>\$6.50</u>	<u>\$2.75</u>
<u>5 a.m. to 8 a.m.</u>	<u>\$2.80</u>	<u>\$6.80</u>	<u>\$3.05</u>
<u>8 a.m. to 11 a.m.</u>	<u>\$4.10</u>	<u>\$8.10</u>	<u>\$4.35</u>
<u>11 a.m. to 6 p.m.</u>	<u>\$5.30</u>	<u>\$9.30</u>	<u>\$5.55</u>

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
6 p.m. to 9 p.m.	\$4.10	\$8.10	\$4.35
9 p.m. to 11 p.m.	\$2.80	\$6.80	\$3.05
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75

Notes:

¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.

²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 4b, Effective July 1, 2023

SR 520 BRIDGE

FOUR-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75
5 a.m. to 6 a.m.	\$5.00	\$9.00	\$5.25
6 a.m. to 7 a.m.	\$7.60	\$11.60	\$7.85
7 a.m. to 10 a.m.	\$9.00	\$13.00	\$9.25
10 a.m. to 11 a.m.	\$7.60	\$11.60	\$7.85
11 a.m. to 2 p.m.	\$6.50	\$10.50	\$6.75
2 p.m. to 3 p.m.	\$7.60	\$11.60	\$7.85
3 p.m. to 7 p.m.	\$9.00	\$13.00	\$9.25
7 p.m. to 8 p.m.	\$7.60	\$11.60	\$7.85
8 p.m. to 9 p.m.	\$6.50	\$10.50	\$6.75
9 p.m. to 11 p.m.	\$5.00	\$9.00	\$5.25
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$2.50	\$6.50	\$2.75
5 a.m. to 8 a.m.	\$3.20	\$7.20	\$3.45
8 a.m. to 11 a.m.	\$4.70	\$8.70	\$4.95
11 a.m. to 6 p.m.	\$6.10	\$10.10	\$6.35
6 p.m. to 9 p.m.	\$4.70	\$8.70	\$4.95
9 p.m. to 11 p.m.	\$3.20	\$7.20	\$3.45
11 p.m. to 11:59 p.m.	\$2.50	\$6.50	\$2.75

Notes:

¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.

²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 5a, Effective July 1, 2017

SR 520 BRIDGE

FIVE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 5 a.m.	\$3.15	\$8.15	\$3.40
5 a.m. to 6 a.m.	\$5.00	\$10.00	\$5.25
6 a.m. to 7 a.m.	\$8.50	\$13.50	\$8.75
7 a.m. to 9 a.m.	\$10.75	\$15.75	\$11.00

<u>Mondays through Fridays</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>9 a.m. to 10 a.m.</u>	<u>\$8.50</u>	<u>\$13.50</u>	<u>\$8.75</u>
<u>10 a.m. to 2 p.m.</u>	<u>\$6.75</u>	<u>\$11.75</u>	<u>\$7.00</u>
<u>2 p.m. to 3 p.m.</u>	<u>\$8.50</u>	<u>\$13.50</u>	<u>\$8.75</u>
<u>3 p.m. to 6 p.m.</u>	<u>\$10.75</u>	<u>\$15.75</u>	<u>\$11.00</u>
<u>6 p.m. to 7 p.m.</u>	<u>\$8.50</u>	<u>\$13.50</u>	<u>\$8.75</u>
<u>7 p.m. to 9 p.m.</u>	<u>\$6.75</u>	<u>\$11.75</u>	<u>\$7.00</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$5.00</u>	<u>\$10.00</u>	<u>\$5.25</u>
<u>11 p.m. to 11:59 p.m.</u>	<u>\$3.15</u>	<u>\$8.15</u>	<u>\$3.40</u>
<u>Saturdays and Sundays³</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$3.15</u>	<u>\$8.15</u>	<u>\$3.40</u>
<u>5 a.m. to 8 a.m.</u>	<u>\$3.50</u>	<u>\$8.50</u>	<u>\$3.75</u>
<u>8 a.m. to 11 a.m.</u>	<u>\$5.15</u>	<u>\$10.15</u>	<u>\$5.40</u>
<u>11 a.m. to 6 p.m.</u>	<u>\$6.65</u>	<u>\$11.65</u>	<u>\$6.90</u>
<u>6 p.m. to 9 p.m.</u>	<u>\$5.15</u>	<u>\$10.15</u>	<u>\$5.40</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$3.50</u>	<u>\$8.50</u>	<u>\$3.75</u>
<u>11 p.m. to 11:59 p.m.</u>	<u>\$3.15</u>	<u>\$8.15</u>	<u>\$3.40</u>

Notes:

¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.

²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 5b, Effective July 1, 2023

SR 520 BRIDGE

FIVE-AXLE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$3.15</u>	<u>\$8.15</u>	<u>\$3.40</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$6.25</u>	<u>\$11.25</u>	<u>\$6.50</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$9.50</u>	<u>\$14.50</u>	<u>\$9.75</u>
<u>7 a.m. to 10 a.m.</u>	<u>\$11.25</u>	<u>\$16.25</u>	<u>\$11.50</u>
<u>10 a.m. to 11 a.m.</u>	<u>\$9.50</u>	<u>\$14.50</u>	<u>\$9.75</u>
<u>11 a.m. to 2 p.m.</u>	<u>\$8.15</u>	<u>\$13.15</u>	<u>\$8.40</u>
<u>2 p.m. to 3 p.m.</u>	<u>\$9.50</u>	<u>\$14.50</u>	<u>\$9.75</u>
<u>3 p.m. to 7 p.m.</u>	<u>\$11.25</u>	<u>\$16.25</u>	<u>\$11.50</u>
<u>7 p.m. to 8 p.m.</u>	<u>\$9.50</u>	<u>\$14.50</u>	<u>\$9.75</u>
<u>8 p.m. to 9 p.m.</u>	<u>\$8.15</u>	<u>\$13.15</u>	<u>\$8.40</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$6.25</u>	<u>\$11.25</u>	<u>\$6.50</u>
<u>11 p.m. to 11:59 p.m.</u>	<u>\$3.15</u>	<u>\$8.15</u>	<u>\$3.40</u>
<u>Saturdays and Sundays³</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$3.15</u>	<u>\$8.15</u>	<u>\$3.40</u>
<u>5 a.m. to 8 a.m.</u>	<u>\$4.00</u>	<u>\$9.00</u>	<u>\$4.25</u>
<u>8 a.m. to 11 a.m.</u>	<u>\$5.90</u>	<u>\$10.90</u>	<u>\$6.15</u>
<u>11 a.m. to 6 p.m.</u>	<u>\$7.65</u>	<u>\$12.65</u>	<u>\$7.90</u>
<u>6 p.m. to 9 p.m.</u>	<u>\$5.90</u>	<u>\$10.90</u>	<u>\$6.15</u>

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
9 p.m. to 11 p.m.	\$4.00	\$9.00	\$4.25
11 p.m. to 11:59 p.m.	\$3.15	\$8.15	\$3.40

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day₁ and Christmas Day.

TABLE 6a, Effective July 1, 2017
SR 520 BRIDGE
SIX-AXLE OR MORE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$3.75</u>	<u>\$9.75</u>	<u>\$4.00</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$6.00</u>	<u>\$12.00</u>	<u>\$6.25</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$10.20</u>	<u>\$16.20</u>	<u>\$10.45</u>
<u>7 a.m. to 9 a.m.</u>	<u>\$12.90</u>	<u>\$18.90</u>	<u>\$13.15</u>
<u>9 a.m. to 10 a.m.</u>	<u>\$10.20</u>	<u>\$16.20</u>	<u>\$10.45</u>
<u>10 a.m. to 2 p.m.</u>	<u>\$8.10</u>	<u>\$14.10</u>	<u>\$8.35</u>
<u>2 p.m. to 3 p.m.</u>	<u>\$10.20</u>	<u>\$16.20</u>	<u>\$10.45</u>
<u>3 p.m. to 6 p.m.</u>	<u>\$12.90</u>	<u>\$18.90</u>	<u>\$13.15</u>
<u>6 p.m. to 7 p.m.</u>	<u>\$10.20</u>	<u>\$16.20</u>	<u>\$10.45</u>
<u>7 p.m. to 9 p.m.</u>	<u>\$8.10</u>	<u>\$14.10</u>	<u>\$8.35</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$6.00</u>	<u>\$12.00</u>	<u>\$6.25</u>
<u>11 p.m. to 11:59 p.m.</u>	<u>\$3.75</u>	<u>\$9.75</u>	<u>\$4.00</u>

<u>Saturdays and Sundays³</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$3.75</u>	<u>\$9.75</u>	<u>\$4.00</u>
<u>5 a.m. to 8 a.m.</u>	<u>\$4.20</u>	<u>\$10.20</u>	<u>\$4.45</u>
<u>8 a.m. to 11 a.m.</u>	<u>\$6.15</u>	<u>\$12.15</u>	<u>\$6.40</u>
<u>11 a.m. to 6 p.m.</u>	<u>\$7.95</u>	<u>\$13.95</u>	<u>\$8.20</u>
<u>6 p.m. to 9 p.m.</u>	<u>\$6.15</u>	<u>\$12.15</u>	<u>\$6.40</u>
<u>9 p.m. to 11 p.m.</u>	<u>\$4.20</u>	<u>\$10.20</u>	<u>\$4.45</u>
<u>11 p.m. to 11:59 p.m.</u>	<u>\$3.75</u>	<u>\$9.75</u>	<u>\$4.00</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 6b, Effective July 1, 2023
SR 520 BRIDGE
SIX-AXLE OR MORE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
<u>Midnight to 5 a.m.</u>	<u>\$3.75</u>	<u>\$9.75</u>	<u>\$4.00</u>
<u>5 a.m. to 6 a.m.</u>	<u>\$7.50</u>	<u>\$13.50</u>	<u>\$7.75</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$11.40</u>	<u>\$17.40</u>	<u>\$11.65</u>
<u>7 a.m. to 10 a.m.</u>	<u>\$13.50</u>	<u>\$19.50</u>	<u>\$13.75</u>
<u>10 a.m. to 11 a.m.</u>	<u>\$11.40</u>	<u>\$17.40</u>	<u>\$11.65</u>

Mondays through Fridays	Good To Go!™ Pass ¹	Pay By Mail ¹	Good To Go!™ Pay By Plate ²
11 a.m. to 2 p.m.	\$9.75	\$15.75	\$10.00
2 p.m. to 3 p.m.	\$11.40	\$17.40	\$11.65
3 p.m. to 7 p.m.	\$13.50	\$19.50	\$13.75
7 p.m. to 8 p.m.	\$11.40	\$17.40	\$11.65
8 p.m. to 9 p.m.	\$9.75	\$15.75	\$10.00
9 p.m. to 11 p.m.	\$7.50	\$13.50	\$7.75
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00

Saturdays and Sundays ³	Good To Go!™ Pass ¹	Pay By Mail ¹	Good To Go!™ Pay By Plate ²
Midnight to 5 a.m.	\$3.75	\$9.75	\$4.00
5 a.m. to 8 a.m.	\$4.80	\$10.80	\$5.05
8 a.m. to 11 a.m.	\$7.05	\$13.05	\$7.30
11 a.m. to 6 p.m.	\$9.15	\$15.15	\$9.40
6 p.m. to 9 p.m.	\$7.05	\$13.05	\$7.30
9 p.m. to 11 p.m.	\$4.80	\$10.80	\$5.05
11 p.m. to 11:59 p.m.	\$3.75	\$9.75	\$4.00

Notes:

¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

[Statutory Authority: RCW 47.56.030, 47.56.795, 47.56.850, and 47.56.862. WSR 21-18-068, § 468-270-071, filed 8/26/21, effective 9/26/21. Statutory Authority: RCW 47.46.100, 47.56.030, 47.46.105, 47.56.795, and 47.56.850. WSR 18-17-163, 19-01-066 and 19-10-006, § 468-270-071, filed 8/21/18, 12/14/18 and 4/18/19, effective 8/1/19. Statutory Authority: Chapter 47.56 RCW. WSR 16-11-091, § 468-270-071, filed 5/18/16, effective 7/1/16. Statutory Authority: RCW 47.56.785, 47.56.795, 47.56.830, 47.56.850, and 47.56.870. WSR 15-12-010, § 468-270-071, filed 5/21/15, effective 7/1/15; WSR 14-14-095, § 468-270-071, filed 6/30/14, effective 7/1/14; WSR 13-12-005, § 468-270-071, filed 5/23/13, effective 7/1/13; WSR 12-14-110, § 468-270-071, filed 7/3/12, effective 8/3/12; WSR 11-04-007, § 468-270-071, filed 1/20/11, effective 12/3/11 at 12:00 a.m. per WSR 11-24-042.]

AMENDATORY SECTION (Amending WSR 21-18-071, filed 8/26/21, effective 9/26/21)

WAC 468-270-073 What are the toll rates on the SR 99 Tunnel?

(1) Tables 7 through 11 show the applicable toll rates by vehicle axles, day and time of travel, and method of payment.

(2) Effective July 1, 2022, and every three years thereafter, subject to review and potential adjustment by the commission, toll rates shall be increased as described in WAC 468-270-040 (3)(b).

TABLE 7a, Effective September 26, 2021
SR 99 TUNNEL
TWO-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 6 a.m.	\$1.15	\$3.15	\$1.40
6 a.m. to 7 a.m.	\$1.45	\$3.45	\$1.70
7 a.m. to 9 a.m.	\$1.75	\$3.75	\$2.00
9 a.m. to 3 p.m.	\$1.45	\$3.45	\$1.70
3 p.m. to 6 p.m.	\$2.60	\$4.60	\$2.85
6 p.m. to 11 p.m.	\$1.45	\$3.45	\$1.70
11 p.m. to midnight	\$1.15	\$3.15	\$1.40
Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to Midnight	\$1.15	\$3.15	\$1.40

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 7b, Effective July 1, 2022
SR 99 TUNNEL
TWO-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
<u>Midnight to 6 a.m.</u>	<u>\$1.20</u>	<u>\$3.20</u>	<u>\$1.45</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$1.50</u>	<u>\$3.50</u>	<u>\$1.75</u>
<u>7 a.m. to 9 a.m.</u>	<u>\$1.80</u>	<u>\$3.80</u>	<u>\$2.05</u>
<u>9 a.m. to 3 p.m.</u>	<u>\$1.50</u>	<u>\$3.50</u>	<u>\$1.75</u>
<u>3 p.m. to 6 p.m.</u>	<u>\$2.70</u>	<u>\$4.70</u>	<u>\$2.95</u>
<u>6 p.m. to 11 p.m.</u>	<u>\$1.50</u>	<u>\$3.50</u>	<u>\$1.75</u>
<u>11 p.m. to midnight</u>	<u>\$1.20</u>	<u>\$3.20</u>	<u>\$1.45</u>
Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
<u>Midnight to Midnight</u>	<u>\$1.20</u>	<u>\$3.20</u>	<u>\$1.45</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 8a, Effective September 26, 2021
SR 99 TUNNEL
THREE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 6 a.m.	\$1.75	\$4.75	\$2.00
6 a.m. to 7 a.m.	\$2.20	\$5.20	\$2.45
7 a.m. to 9 a.m.	\$2.65	\$5.65	\$2.90
9 a.m. to 3 p.m.	\$2.20	\$5.20	\$2.45
3 p.m. to 6 p.m.	\$3.90	\$6.90	\$4.15
6 p.m. to 11 p.m.	\$2.20	\$5.20	\$2.45
11 p.m. to midnight	\$1.75	\$4.75	\$2.00

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to Midnight	\$1.75	\$4.75	\$2.00

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 8b, Effective July 1, 2022
SR 99 TUNNEL
THREE-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
<u>Midnight to 6 a.m.</u>	<u>\$1.80</u>	<u>\$4.80</u>	<u>\$2.05</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$2.25</u>	<u>\$5.25</u>	<u>\$2.50</u>
<u>7 a.m. to 9 a.m.</u>	<u>\$2.70</u>	<u>\$5.70</u>	<u>\$2.95</u>
<u>9 a.m. to 3 p.m.</u>	<u>\$2.25</u>	<u>\$5.25</u>	<u>\$2.50</u>
<u>3 p.m. to 6 p.m.</u>	<u>\$4.05</u>	<u>\$7.05</u>	<u>\$4.30</u>
<u>6 p.m. to 11 p.m.</u>	<u>\$2.25</u>	<u>\$5.25</u>	<u>\$2.50</u>
<u>11 p.m. to midnight</u>	<u>\$1.80</u>	<u>\$4.80</u>	<u>\$2.05</u>

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
<u>Midnight to Midnight</u>	<u>\$1.80</u>	<u>\$4.80</u>	<u>\$2.05</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 9a, Effective September 26, 2021
SR 99 TUNNEL
FOUR-AXLE VEHICLE TOLL RATES

Mondays through Fridays	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to 6 a.m.	\$2.30	\$6.30	\$2.55
6 a.m. to 7 a.m.	\$2.90	\$6.90	\$3.15
7 a.m. to 9 a.m.	\$3.50	\$7.50	\$3.75
9 a.m. to 3 p.m.	\$2.90	\$6.90	\$3.15
3 p.m. to 6 p.m.	\$5.20	\$9.20	\$5.45
6 p.m. to 11 p.m.	\$2.90	\$6.90	\$3.15
11 p.m. to midnight	\$2.30	\$6.30	\$2.55

Saturdays and Sundays³	Good To Go!TM Pass¹	Pay By Mail¹	Good To Go!TM Pay By Plate²
Midnight to Midnight	\$2.30	\$6.30	\$2.55

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 9b, Effective July 1, 2022
SR 99 TUNNEL
FOUR-AXLE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 6 a.m.</u>	<u>\$2.40</u>	<u>\$6.40</u>	<u>\$2.65</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$3.00</u>	<u>\$7.00</u>	<u>\$3.25</u>
<u>7 a.m. to 9 a.m.</u>	<u>\$3.60</u>	<u>\$7.60</u>	<u>\$3.85</u>
<u>9 a.m. to 3 p.m.</u>	<u>\$3.00</u>	<u>\$7.00</u>	<u>\$3.25</u>
<u>3 p.m. to 6 p.m.</u>	<u>\$5.40</u>	<u>\$9.40</u>	<u>\$5.65</u>
<u>6 p.m. to 11 p.m.</u>	<u>\$3.00</u>	<u>\$7.00</u>	<u>\$3.25</u>
<u>11 p.m. to midnight</u>	<u>\$2.40</u>	<u>\$6.40</u>	<u>\$2.65</u>
<u>Saturdays and Sundays³</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to Midnight</u>	<u>\$2.40</u>	<u>\$6.40</u>	<u>\$2.65</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 10a, Effective September 26, 2021
SR 99 TUNNEL
FIVE-AXLE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 6 a.m.</u>	<u>\$2.90</u>	<u>\$7.90</u>	<u>\$3.15</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$3.65</u>	<u>\$8.65</u>	<u>\$3.90</u>
<u>7 a.m. to 9 a.m.</u>	<u>\$4.40</u>	<u>\$9.40</u>	<u>\$4.65</u>
<u>9 a.m. to 3 p.m.</u>	<u>\$3.65</u>	<u>\$8.65</u>	<u>\$3.90</u>
<u>3 p.m. to 6 p.m.</u>	<u>\$6.50</u>	<u>\$11.50</u>	<u>\$6.75</u>
<u>6 p.m. to 11 p.m.</u>	<u>\$3.65</u>	<u>\$8.65</u>	<u>\$3.90</u>
<u>11 p.m. to midnight</u>	<u>\$2.90</u>	<u>\$7.90</u>	<u>\$3.15</u>
<u>Saturdays and Sundays³</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to Midnight</u>	<u>\$2.90</u>	<u>\$7.90</u>	<u>\$3.15</u>

Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 10b, Effective July 1, 2022
SR 99 TUNNEL
FIVE-AXLE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!™ Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!™ Pay By Plate²</u>
<u>Midnight to 6 a.m.</u>	<u>\$3.00</u>	<u>\$8.00</u>	<u>\$3.25</u>
<u>6 a.m. to 7 a.m.</u>	<u>\$3.75</u>	<u>\$8.75</u>	<u>\$4.00</u>
<u>7 a.m. to 9 a.m.</u>	<u>\$4.50</u>	<u>\$9.50</u>	<u>\$4.75</u>
<u>9 a.m. to 3 p.m.</u>	<u>\$3.75</u>	<u>\$8.75</u>	<u>\$4.00</u>
<u>3 p.m. to 6 p.m.</u>	<u>\$6.75</u>	<u>\$11.75</u>	<u>\$7.00</u>
<u>6 p.m. to 11 p.m.</u>	<u>\$3.75</u>	<u>\$8.75</u>	<u>\$4.00</u>
<u>11 p.m. to midnight</u>	<u>\$3.00</u>	<u>\$8.00</u>	<u>\$3.25</u>

<u>Saturdays and Sundays³</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
Midnight to Midnight	\$3.00	\$8.00	\$3.25

- Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 11a, Effective September 26, 2021
SR 99 TUNNEL
SIX-AXLE OR MORE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
Midnight to 6 a.m.	\$3.45	\$9.45	\$3.70
6 a.m. to 7 a.m.	\$4.35	\$10.35	\$4.60
7 a.m. to 9 a.m.	\$5.25	\$11.25	\$5.50
9 a.m. to 3 p.m.	\$4.35	\$10.35	\$4.60
3 p.m. to 6 p.m.	\$7.80	\$13.80	\$8.05
6 p.m. to 11 p.m.	\$4.35	\$10.35	\$4.60
11 p.m. to midnight	\$3.45	\$9.45	\$3.70

<u>Saturdays and Sundays³</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
Midnight to Midnight	\$3.45	\$9.45	\$3.70

- Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

TABLE 11b, Effective July 1, 2022
SR 99 TUNNEL
SIX-AXLE OR MORE VEHICLE TOLL RATES

<u>Mondays through Fridays</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
Midnight to 6 a.m.	\$3.60	\$9.60	\$3.85
6 a.m. to 7 a.m.	\$4.50	\$10.50	\$4.75
7 a.m. to 9 a.m.	\$5.40	\$11.40	\$5.65
9 a.m. to 3 p.m.	\$4.50	\$10.50	\$4.75
3 p.m. to 6 p.m.	\$8.10	\$14.10	\$8.35
6 p.m. to 11 p.m.	\$4.50	\$10.50	\$4.75
11 p.m. to midnight	\$3.60	\$9.60	\$3.85

<u>Saturdays and Sundays³</u>	<u>Good To Go!TM Pass¹</u>	<u>Pay By Mail¹</u>	<u>Good To Go!TM Pay By Plate²</u>
Midnight to Midnight	\$3.60	\$9.60	\$3.85

- Notes: ¹The rate for electronic tolls has been rounded to the nearest five cents, as needed.
²For this type of payment method, the customer is charged the Good to Go!TM Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.
³The weekend rates will be assessed on the days on which holidays are observed: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

[Statutory Authority: RCW 47.56.030, 47.56.795, 47.56.850, and 47.56.862. WSR 21-18-071, § 468-270-073, filed 8/26/21, effective

9/26/21; WSR 19-06-037, § 468-270-073, filed 3/1/19, effective
4/1/19.]

WSR 22-07-087
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 22, 2022, 8:21 a.m., effective April 22, 2022]

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

Purpose: The purpose of this rule making is to adopt a 5.79 percent fee increase for labor and industries' (L&I) contractor registration program. This is the office of financial management's maximum allowable fiscal growth factor rate for fiscal year 2022. A fee increase is needed to ensure the program remains consistent with fee increases as required by statute and to help improve the program's fund balance. The last fiscal growth factor fee increase was in 2019.

The contractor registration program registers contractors to ensure that all general and specialty contractors operating in Washington state have appropriate bonding and insurance. RCW 18.27.075 requires L&I to charge a fee for issuing or renewing a certificate of registration and to revise the fee at least once every two years for the purposes of recognizing economic changes as reflected by the fiscal growth factor under chapter 43.135 RCW.

Citation of Rules Affected by this Order: Amending WAC 296-200A-900.

Statutory Authority for Adoption: Chapter 18.27 RCW.

Adopted under notice filed as WSR 22-01-194 on December 21, 2021.

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

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 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: March 22, 2022.

Joel Sacks
Director

OTS-2920.1

AMENDATORY SECTION (Amending WSR 18-24-102, filed 12/4/18, effective 1/4/19)

WAC 296-200A-900 What fees does the department charge contractors for issuance, renewal, reregistration, and reinstatement of certificates of registration? The department charges the following fees:

(1) (~~(\$117.90)~~) \$124.70 for each issuance, renewal or reregistration of a certificate of registration for contractors. This registra-

tion is valid for two years from date of issuance, renewal or reregistration or until it is suspended or revoked.

(2) (~~(\$55.70)~~) \$58.90 for the reinstatement of a certificate of registration.

(3) (~~(\$13.10)~~) \$13.80 for providing a duplicate certificate of registration.

(4) (~~(\$26.60)~~) \$28.10 for each requested certified letter prepared by the department.

(5) (~~(\$168.40)~~) \$178.10 for the construction and electrical contractor listing publication on CD ROM per year, prorated according to the number of issues left in the subscription year, which runs from November 1 through October 31. Each issue costs (~~(\$14.00)~~) \$14.80.

(6) (~~(\$2.00)~~) \$2.10 per copy for documents copied from a contractor's file. The maximum copy charge for copies from one contractor's file will be (~~(\$29.20)~~) \$30.80.

(7) (~~(\$52.00)~~) \$55.00 is required to cover the costs for the service of process in an action against a contractor, the contractor's bond, or the deposit under RCW 18.27.040.

(8) (~~(\$26.00)~~) \$27.50 is required to cover the costs for the service of processing refunds.

[Statutory Authority: Chapters 18.27, 70.87, 43.22, and 43.22A RCW. WSR 18-24-102, § 296-200A-900, filed 12/4/18, effective 1/4/19. Statutory Authority: Chapter 18.27 RCW and c 2007 c 436. WSR 08-16-091, § 296-200A-900, filed 8/4/08, effective 9/4/08. Statutory Authority: Chapters 18.27, 18.106, 43.22, and 70.87 RCW. WSR 07-11-128, § 296-200A-900, filed 5/22/07, effective 6/30/07. Statutory Authority: Chapters 18.27, 43.22, and 70.87 RCW. WSR 05-12-032, § 296-200A-900, filed 5/24/05, effective 6/30/05. Statutory Authority: Chapters 18.27 and 43.22 RCW. WSR 04-12-048, § 296-200A-900, filed 5/28/04, effective 6/30/04. Statutory Authority: RCW 18.27.040, 18.27.070, 18.27.075, 18.27.125 and 2001 c 159, and chapter 18.27 RCW. WSR 03-20-097, § 296-200A-900, filed 9/30/03, effective 11/17/03. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.040, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 7, 2002 c 249, and chapters 19.28, 43.22, 18.27, and 70.87 RCW. WSR 02-12-022, § 296-200A-900, filed 5/28/02, effective 6/28/02. Statutory Authority: RCW 43.22.350, 43.22.434, 43.22.480, 43.22.500, 18.27.070, 18.27.075, 70.87.030, 19.28.041, 19.28.051, 19.28.101, 19.28.121, 19.28.161, 19.28.201, 19.28.211, 19.28.341, 2001 c 159, and chapters 43.22, 19.28, 18.27, and 70.87 RCW. WSR 01-12-035, § 296-200A-900, filed 5/29/01, effective 6/29/01. Statutory Authority: Chapters 43.22, 18.27, 70.87 and 19.28 RCW. WSR 99-12-080, § 296-200A-900, filed 5/28/99, effective 6/28/99. Statutory Authority: Chapters 18.106, 18.27 and 43.22 RCW. WSR 98-12-041, § 296-200A-900, filed 5/29/98, effective 6/30/98. Statutory Authority: Chapter 18.27 RCW. WSR 97-24-071, § 296-200A-900, filed 12/2/97, effective 1/5/98.]

WSR 22-07-095

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 19-05—Filed March 22, 2022, 11:57 a.m., effective April 22, 2022]

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

Purpose: The Washington state department of ecology revised chapter 173-201A WAC, Water quality standards for surface waters of the state of Washington. We made the following revisions in this rule making:

- Added definitions to WAC 173-201A-020.
- Amended WAC 173-201A-200 (1)(d), aquatic life dissolved oxygen (D.O.) criteria for fresh water for aquatic life use classes that protect salmon spawning.
- Added a subsection WAC 173-201A-200 (1)(h) Aquatic life fine sediment criteria.
- Minor, nonsubstantive edits to rule language in WAC 173-201A-200 to correct typographical and formatting errors as recommended by the Washington office of the code reviser.

We revised aquatic life criteria to provide additional water quality and habitat protection for early life stages of salmonids, including salmon, steelhead, and trout, and their spawning gravels. These changes include:

- Revising the existing D.O. criteria to better protect early life stages of salmonids in gravel beds.
- Adding a D.O. requirement in freshwater gravel beds to provide a more direct measure of D.O. levels where early life stages live.
- Adding a percent saturation criteria to account for environmental factors that cause low D.O. levels such as high water temperature and elevation.
- Adding a narrative fine sediment criterion to provide additional protection for incubating salmonid eggs and larvae.

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

Statutory Authority for Adoption: RCW 90.48.035 provides clear and direct authority to ecology to revise the surface water quality standards.

Other Authority: 40 C.F.R. 131.20 requires states and tribes (with primacy for clean water actions) to periodically review and update the water quality standards.

Adopted under notice filed as WSR 21-21-080 on October 18, 2021.

Changes Other than Editing from Proposed to Adopted Version:

There are some differences between the text of the proposed rule filed on October 18, 2021, and the text of the adopted rule filed on March 22, 2022. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

Below, we have described the changes between the proposed and adopted rule language, and ecology's reasons for making them. For full details on the changes, including a comparison of proposed rule language and final rule language, see the concise explanatory statement [contact agency for link].

Change to WAC 173-201A-020: Added language to the proposed definition for "intragravel dissolved oxygen" to clarify that the definition pertains to D.O. and not atmospheric oxygen.

Change to WAC 173-201A-020: Deleted language from the proposed definition of "spatial median" in order to generalize the definition, making it more applicable to all water quality standards in the future.

Changes to WAC 173-201A-200 (1) (d): Language was edited to clarify that compliance may be demonstrated through either the water column or intragravel D.O. criteria.

Changes to the format of WAC 173-201A-200, Table 200 (1) (d): Changes were made to the format of the proposed table, which included an additional column for intragravel D.O. criteria that would apply to those use categories that are associated with salmonid spawning. We received feedback that the proposed table was confusing and difficult to follow. To simplify the table, formatting changes were made to remove the final column containing the intragravel D.O. criteria, placing the information in the note to the table. Changes to the table also included identifying where the intragravel [D.O.] criteria apply by placing an asterisk beside each of the applicable aquatic life use categories associated with salmonid spawning habitat protection.

Changes to the note in WAC 173-201A-200, Table 200 (1) (d): In order to increase readability, the intragravel D.O. one-day minimum criteria in the column of proposed Table 200 (1) (d) was moved down to the note below the table. In addition to moving intragravel D.O. criteria into the note, we added an associated minimum water column concentration of 9 mg/L (as a one-day minimum) that must be met when intragravel D.O. is measured for compliance purposes. This change was based on comments received, in order to ensure full protection for water column dwelling salmonids at other life stages. The note was further edited by moving language that was proposed to be added to WAC 173-201A-200 (1) (d) (iv) (C) to the last sentence in the note, to provide more clarity on sampling needed for intragravel D.O. measurements and to make the information easier to find.

Changes to WAC 173-201A-200, Table 200 (1) (d): Changes were made to the water column percent saturation component that apply to the different use categories found in Table 200 (1) (d). These changes were made based on comments received and to correct what uses the percent saturation component of the water column criteria apply. Changes to percent saturation:

1. The percent saturation component for the core summer salmonid habitat use was changed from 90 percent to 95 percent. We received comments questioning whether the 90 percent saturation component for the core summer salmonid habitat use category in the proposed Table 200 (1) (d) was protective of early life stages during the summer months. After review of the scientific literature and discussion with staff scientists, we agreed that the core summer salmonid habitat use should be changed to 95 percent because early life stages are present during the summer months for water bodies assigned this use. The 90 percent saturation coupled with the maximum temperature criteria for the core summer salmonid habitat use (16°C or 13°C) would not provide full protection for spawning or early life stages. The 95 percent saturation criterion provides equivalent protection compared with the protective concentration-based D.O. criterion of 10 mg/L.

2. Changes were made from the proposed rule language to remove the percent saturation component from the salmonid rearing and migration only and indigenous warm water species use categories. The pro-

posed rule inadvertently included a percent saturation for these uses. However, the focus of this rule making is on protection of early life stages of salmonids. These two uses do not include the protection of early life stages of salmonids as it relates to spawning and emergence; thus, the percent saturation component was removed in the final language.

Changes to WAC 173-201A-200 (1) (d) (iv): Language proposed to be added to this subsection was moved to the last sentence in the note of Table 200 (1) (d) to provide better clarity on sampling needed for in-tragavel D.O. measurements and to make the information easier to find.

Changes to WAC 173-201A-200 (1) (h): Language for the proposed narrative fine sediment criteria was changed as a result of comments received and to provide clarification on the intent of the narrative criteria. The narrative criteria was divided into two subsections for easier reading. We received comments questioning whether there is available science to determine relationships between fine sediment and adverse effects on aquatic life. We added "excess" to the text to clarify that current methods to determine impairments focus on statistically or biologically significant changes in fine sediment-based metrics. This change was needed to clarify that small undetectable changes in fine sediment may not be identified in a fine sediment assessment due to natural fluctuations in environmental conditions of a water body. We deleted language associated with "anthropogenic sources at levels that cause adverse effects on aquatic life" because relationships between fine sediment-based parameters and adverse effects on aquatic life have not been established by the available science. We have revised the text to link excess fine sediment to impaired designated uses. We revised the text to better align with the intent of the rule making. Language in the proposed rule describing the use of reference sites to demonstrate compliance with the narrative fine sediment criteria was edited to provide clarity on the intent of how reference site values should be used. We revised the language to be more inclusive of the multiple methods that may be used to assess a fine sediment impairment and to provide clarity on what similarities should be considered for reference locations.

A final cost-benefit analysis is available by contacting Susan Braley, Department of Ecology, Water Quality Program, P.O. Box 47600, Olympia, WA 98504, phone 360-407-6600, people with speech disability may call TTY at 877-833-6341, people with impaired hearing may call Washington relay service at 711, email swqs@ecy.wa.gov, website <https://apps.ecology.wa.gov/publications/SummaryPages/2210006.html>.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

Date Adopted: March 22, 2022.

Laura J. Watson
Director

OTS-3276.5

AMENDATORY SECTION (Amending WSR 21-19-097, filed 9/17/21, effective 10/18/21)

WAC 173-201A-020 Definitions. The following definitions are intended to facilitate the use of chapter 173-201A WAC:

"1-DMax" or "1-day maximum temperature" is the highest water temperature reached on any given day. This measure can be obtained using calibrated maximum/minimum thermometers or continuous monitoring probes having sampling intervals of ((~~thirty~~) 30) minutes or less.

"7-DADMax" or "7-day average of the daily maximum temperatures" is the arithmetic average of seven consecutive measures of daily maximum temperatures. The 7-DADMax for any individual day is calculated by averaging that day's daily maximum temperature with the daily maximum temperatures of the three days prior and the three days after that date.

"Action value" means a total phosphorus (TP) value established at the upper limit of the trophic states in each ecoregion (see Table 230(1)). Exceedance of an action value indicates that a problem is suspected. A lake-specific study may be needed to confirm if a nutrient problem exists.

"Actions" refers broadly to any human projects or activities.

"Acute conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of short-term exposure to the substance or detrimental environmental condition.

"AKART" is an acronym for "all known, available, and reasonable methods of prevention, control, and treatment." AKART shall represent the most current methodology that can be reasonably required for preventing, controlling, or abating the pollutants associated with a discharge. The concept of AKART applies to both point and nonpoint sources of pollution. The term "best management practices," typically applied to nonpoint source pollution controls is considered a subset of the AKART requirement.

"Ambient water quality" refers to the conditions and properties of a surface water of the state as determined by the results of water samples, measurements, or observations.

"Background" means the biological, chemical, and physical conditions of a water body, outside the area of influence of the discharge under consideration. Background sampling locations in an enforcement action would be up-gradient or outside the area of influence of the discharge. If several discharges to any water body exist, and enforcement action is being taken for possible violations to the standards, background sampling would be undertaken immediately up-gradient from each discharge.

"Best management practices (BMP)" means physical, structural, and/or managerial practices approved by the department that, when used singularly or in combination, prevent or reduce pollutant discharges.

"Biological assessment" is an evaluation of the biological condition of a water body using surveys of aquatic community structure and function and other direct measurements of resident biota in surface waters.

"Bog" means those wetlands that are acidic, peat forming, and whose primary water source is precipitation, with little, if any, outflow.

"Carcinogen" means any substance or agent that produces or tends to produce cancer in humans. For implementation of this chapter, the term carcinogen will apply to substances on the United States Environmental Protection Agency lists of A (known human) and B (probable human) carcinogens, and any substance which causes a significant increased incidence of benign or malignant tumors in a single, well conducted animal bioassay, consistent with the weight of evidence approach specified in the United States Environmental Protection Agency's Guidelines for Carcinogenic Risk Assessment as set forth in 51 FR 33992 et seq. as presently published or as subsequently amended or republished.

"Chronic conditions" are changes in the physical, chemical, or biologic environment which are expected or demonstrated to result in injury or death to an organism as a result of repeated or constant exposure over an extended period of time to a substance or detrimental environmental condition.

"Combined sewer overflow (CSO) treatment plant" is a facility that provides at-site treatment as provided for in chapter 173-245 WAC. A CSO treatment plant is a specific facility identified in a department-approved CSO reduction plan (long-term control plan) that is designed, operated and controlled by a municipal utility to capture and treat excess combined sanitary sewage and stormwater from a combined sewer system.

"Compliance schedule" or **"schedule of compliance"** is a schedule of remedial measures included in a permit or an order, including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with an effluent limit, other prohibition, or standard.

"Created wetlands" means those wetlands intentionally created from nonwetland sites to produce or replace natural wetland habitat.

"Critical condition" is when the physical, chemical, and biological characteristics of the receiving water environment interact with the effluent to produce the greatest potential adverse impact on aquatic biota and existing or designated water uses. For steady-state discharges to riverine systems the critical condition may be assumed to be equal to the 7Q10 flow event unless determined otherwise by the department.

"Damage to the ecosystem" means any demonstrated or predicted stress to aquatic or terrestrial organisms or communities of organisms which the department reasonably concludes may interfere in the health or survival success or natural structure of such populations. This stress may be due to, but is not limited to, alteration in habitat or changes in water temperature, chemistry, or turbidity, and shall consider the potential build up of discharge constituents or temporal increases in habitat alteration which may create such stress in the long term.

"Department" means the state of Washington department of ecology.

"Designated uses" are those uses specified in this chapter for each water body or segment, regardless of whether or not the uses are currently attained.

"Director" means the director of the state of Washington department of ecology.

"Drainage ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting surplus water; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"Ecoregions" are defined using EPAs *Ecoregions of the Pacific Northwest* Document No. 600/3-86/033 July 1986 by Omernik and Gallant.

"Enterococci" refers to a subgroup of fecal streptococci that includes *S. faecalis*, *S. faecium*, *S. gallinarum*, and *S. avium*. The enterococci are differentiated from other streptococci by their ability to grow in 6.5% sodium chloride, at pH 9.6, and at 10°C and 45°C.

"E. coli" is a bacterium in the family Enterobacteriaceae named *Escherichia coli* and is a common inhabitant of the intestinal tract of warm-blooded animals, and its presence in water samples is an indication of fecal pollution and the possible presence of enteric pathogens.

"Existing uses" means those uses actually attained in fresh or marine waters on or after November 28, 1975, whether or not they are designated uses. Introduced species that are not native to Washington, and put-and-take fisheries comprised of nonself-replicating introduced native species, do not need to receive full support as an existing use.

"Fecal coliform" means that portion of the coliform group which is present in the intestinal tracts and feces of warm-blooded animals as detected by the product of acid or gas from lactose in a suitable culture medium within (~~twenty-four~~) 24 hours at 44.5 plus or minus 0.2 degrees Celsius.

"Geometric mean" means either the nth root of a product of n factors, or the antilogarithm of the arithmetic mean of the logarithms of the individual sample values.

"Ground water exchange" means the discharge and recharge of ground water to a surface water. Discharge is inflow from an aquifer, seeps or springs that increases the available supply of surface water. Recharge is outflow downgradient to an aquifer or downstream to surface water for base flow maintenance. Exchange may include ground water discharge in one season followed by recharge later in the year.

"Hardness" means a measure of the calcium and magnesium salts present in water. For purposes of this chapter, hardness is measured in milligrams per liter and expressed as calcium carbonate (CaCO₃).

"Intake credit" is a procedure for establishing effluent limits that takes into account the amount of a pollutant that is present in waters of the state, at the time water is removed from the same body of water by the discharger or other facility supplying the discharger with intake water.

"Intragravel dissolved oxygen" means the concentration of dissolved oxygen in the spaces between sediment particles in a streambed.

"Irrigation ditch" means that portion of a designed and constructed conveyance system that serves the purpose of transporting irrigation water from its supply source to its place of use; this may include natural water courses or channels incorporated in the system design, but does not include the area adjacent to the water course or channel.

"**Lakes**" shall be distinguished from riverine systems as being water bodies, including reservoirs, with a mean detention time of greater than (~~(fifteen)~~) 15 days.

"**Lake-specific study**" means a study intended to quantify existing nutrient concentrations, determine existing characteristic uses for lake class waters, and potential lake uses. The study determines how to protect these uses and if any uses are lost or impaired because of nutrients, algae, or aquatic plants. An appropriate study must recommend a criterion for total phosphorus (TP), total nitrogen (TN) in µg/l, or other nutrient that impairs characteristic uses by causing excessive algae blooms or aquatic plant growth.

"**Mean detention time**" means the time obtained by dividing a reservoir's mean annual minimum total storage by the (~~(thirty-day ten-year)~~) 30-day 10-year low-flow from the reservoir.

"**Migration**" or "**translocation**" means any natural movement of an organism or community of organisms from one locality to another locality.

"**Migration for naturally limited waters**" is a subcategory of the aquatic life use of salmonid rearing and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

"**Mixing zone**" means that portion of a water body adjacent to an effluent outfall where mixing results in the dilution of the effluent with the receiving water. Water quality criteria may be exceeded in a mixing zone as conditioned and provided for in WAC 173-201A-400.

"**Natural conditions**" or "**natural background levels**" means surface water quality that was present before any human-caused pollution. When estimating natural conditions in the headwaters of a disturbed watershed it may be necessary to use the less disturbed conditions of a neighboring or similar watershed as a reference condition. (See also WAC 173-201A-260(1).)

"**New or expanded actions**" mean human actions that occur or are regulated for the first time, or human actions expanded such that they result in an increase in pollution, after July 1, 2003, for the purpose of applying this chapter only.

"**Nonpoint source**" means pollution that enters any waters of the state from any dispersed land-based or water-based activities including, but not limited to, atmospheric deposition; surface water runoff from agricultural lands, urban areas, or forest lands; subsurface or underground sources; or discharges from boats or marine vessels not otherwise regulated under the National Pollutant Discharge Elimination System program.

"**Permit**" means a document issued pursuant to chapter 90.48 RCW specifying the waste treatment and control requirements and waste discharge conditions.

"**pH**" means the negative logarithm of the hydrogen ion concentration.

"**Pollution**" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

"Primary contact recreation" means activities where a person would have direct contact with water to the point of complete submergence including, but not limited to, skin diving, swimming, and water skiing.

"Salmonid spawning, rearing, and migration for naturally limited waters" is a subcategory of the aquatic life use of salmonid spawning, rearing, and migration that is limited by the natural physical, chemical, or biological characteristics of the water body.

"Shoreline stabilization" means the anchoring of soil at the water's edge, or in shallow water, by fibrous plant root complexes; this may include long-term accretion of sediment or peat, along with shoreline progradation in such areas.

"Spatial median" is the middle value of multiple ranked measurements taken within the sampling area.

"Stormwater" means that portion of precipitation that does not naturally percolate into the ground or evaporate, but flows via overland flow, interflow, pipes, and other features of a stormwater drainage system into a defined surface water body, or a constructed infiltration facility.

"Stormwater attenuation" means the process by which peak flows from precipitation are reduced and runoff velocities are slowed as a result of passing through a surface water body.

"Surface waters of the state" includes lakes, rivers, ponds, streams, inland waters, saltwaters, wetlands and all other surface waters and water courses within the jurisdiction of the state of Washington.

"Temperature" means water temperature expressed in degrees Celsius (°C).

"Treatment wetlands" means those wetlands intentionally constructed on nonwetland sites and managed for the primary purpose of wastewater or stormwater treatment. Treatment wetlands are considered part of a collection and treatment system, and generally are not subject to the criteria of this chapter.

"Trophic state" means a classification of the productivity of a lake ecosystem. Lake productivity depends on the amount of biologically available nutrients in water and sediments and may be based on total phosphorus (TP). Secchi depth and chlorophyll-a measurements may be used to improve the trophic state classification of a lake. Trophic states used in this rule include, from least to most nutrient rich, ultra-oligotrophic, oligotrophic, lower mesotrophic, upper mesotrophic, and eutrophic.

"Turbidity" means the clarity of water expressed as nephelometric turbidity units (NTU) and measured with a calibrated turbidimeter.

"Upwelling" means the natural process along Washington's Pacific Coast where the summer prevailing northerly winds produce a seaward transport of surface water. Cold, deeper more saline waters rich in nutrients and low in dissolved oxygen, rise to replace the surface water. The cold oxygen deficient water enters Puget Sound and other coastal estuaries at depth where it displaces the existing deep water and eventually rises to replace the surface water. Such surface water replacement results in an overall increase in salinity and nutrients accompanied by a depression in dissolved oxygen. Localized upwelling of the deeper water of Puget Sound can occur year-round under influence of tidal currents, winds, and geomorphic features.

"USEPA" means the United States Environmental Protection Agency.

"Variance" is a time-limited designated use and criterion as defined in 40 C.F.R. 131.3, and must be adopted by rule.

"Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands. (Water bodies not included in the definition of wetlands as well as those mentioned in the definition are still waters of the state.)

"Wildlife habitat" means waters of the state used by, or that directly or indirectly provide food support to, fish, other aquatic life, and wildlife for any life history stage or activity.

[Statutory Authority: RCW 90.48.035 and 40 C.F.R. 131.20. WSR 21-19-097 (Order 20-01), § 173-201A-020, filed 9/17/21, effective 10/18/21; WSR 19-04-007 (Order 16-07), § 173-201A-020, filed 1/23/19, effective 2/23/19. Statutory Authority: RCW 90.48.035, 90.48.605 and section 303(c) of the Federal Water Pollution Control Act (Clean Water Act), C.F.R. 40, C.F.R. 131. WSR 16-16-095 (Order 12-03), § 173-201A-020, filed 8/1/16, effective 9/1/16. Statutory Authority: RCW 90.48.035. WSR 11-09-090 (Order 10-10), § 173-201A-020, filed 4/20/11, effective 5/21/11. Statutory Authority: Chapters 90.48 and 90.54 RCW. WSR 03-14-129 (Order 02-14), § 173-201A-020, filed 7/1/03, effective 8/1/03. Statutory Authority: Chapter 90.48 RCW and 40 C.F.R. 131. WSR 97-23-064 (Order 94-19), § 173-201A-020, filed 11/18/97, effective 12/19/97. Statutory Authority: Chapter 90.48 RCW. WSR 92-24-037 (Order 92-29), § 173-201A-020, filed 11/25/92, effective 12/26/92.]

AMENDATORY SECTION (Amending WSR 20-02-091, filed 12/30/19, effective 1/30/20)

WAC 173-201A-200 Fresh water designated uses and criteria. The following uses are designated for protection in fresh surface waters of the state. Use designations for water bodies are listed in WAC 173-201A-600 and 173-201A-602.

(1) **Aquatic life uses.** Aquatic life uses are designated based on the presence of, or the intent to provide protection for, the key uses identified in (a) of this subsection. It is required that all indigenous fish and nonfish aquatic species be protected in waters of the state in addition to the key species described below.

(a) The categories for aquatic life uses are:

(i) **Char spawning and rearing.** The key identifying characteristics of this use are spawning or early juvenile rearing by native char (bull trout and Dolly Varden), or use by other aquatic species similarly dependent on such cold water. Other common characteristic aquatic life uses for waters in this category include summer foraging and migration of native char; and spawning, rearing, and migration by other salmonid species.

(ii) **Core summer salmonid habitat.** The key identifying characteristics of this use are summer (June 15 - September 15) salmonid spawning or emergence, or adult holding; use as important summer rearing habitat by one or more salmonids; or foraging by adult and subadult native char. Other common characteristic aquatic life uses for waters in this category include spawning outside of the summer season, rearing, and migration by salmonids.

(iii) **Salmonid spawning, rearing, and migration.** The key identifying characteristic of this use is salmon or trout spawning and emergence that only occurs outside of the summer season (September 16 - June 14). Other common characteristic aquatic life uses for waters in this category include rearing and migration by salmonids.

(iv) **Salmonid rearing and migration only.** The key identifying characteristic of this use is use only for rearing or migration by salmonids (not used for spawning).

(v) **~~(Non-anadromous)~~ Nonanadromous interior redband trout.** For the protection of waters where the only trout species is a ~~((non-anadromous))~~ nonanadromous form of self-reproducing interior redband trout (*O. ~~((mykiss))~~ mykiss*), and other associated aquatic life.

(vi) **Indigenous warm water species.** For the protection of waters where the dominant species under natural conditions would be temperature tolerant indigenous nonsalmonid species. Examples include dace, redband shiner, chiselmouth, sucker, and northern pikeminnow.

(b) **General criteria.** General criteria that apply to all aquatic life fresh water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (i) Toxic, radioactive, and deleterious materials; and
- (ii) Aesthetic values.

(c) **Aquatic life temperature criteria.** Except where noted, water temperature is measured by the 7-day average of the daily maximum temperatures (7-DADMax). Table 200 (1)(c) lists the temperature criteria for each of the aquatic life use categories.

**Table 200 (1)(c)
Aquatic Life Temperature Criteria in Fresh Water**

Category	Highest 7-DADMax
Char Spawning and Rearing*	12°C (53.6°F)
Core Summer Salmonid Habitat*	16°C (60.8°F)
Salmonid Spawning, Rearing, and Migration*	17.5°C (63.5°F)
Salmonid Rearing and Migration Only	17.5°C (63.5°F)
((Non-anadromous)) <u>Nonanadromous</u> Interior Redband Trout	18°C (64.4°F)
Indigenous Warm Water Species	20°C (68°F)

*Note: Some streams have a more stringent temperature criterion that is applied seasonally to further protect salmonid spawning and egg incubation. See ~~((e)(B)(iv)))~~ (c)(iv) of this subsection.

(i) When a water body's temperature is warmer than the criteria in Table 200 (1)(c) (or within 0.3°C (0.54°F) of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the 7-DADMax temperature of that water body to increase more than 0.3°C (0.54°F).

(ii) When the background condition of the water is cooler than the criteria in Table 200 (1)(c), incremental temperature increases resulting from individual point source activities must not exceed the numeric criteria and must not, at any time, exceed $28/(T+7)$ as measured at the edge of a mixing zone boundary (where "T" represents the background temperature as measured at a point or points unaffected by the discharge and representative of the highest ambient water temperature in the vicinity of the discharge).

(iii) Temperatures are not to exceed the criteria at a probability frequency of more than once every (~~ten~~) 10 years on average.

(iv) Spawning and incubation protection. The department has identified waterbodies, or portions thereof, which require special protection for spawning and incubation in ecology publication 06-10-038 (also available on ecology's website at www.ecology.wa.gov). This publication indicates where and when the following criteria are to be applied to protect the reproduction of native char, salmon, and trout:

- Maximum 7-DADMax temperatures of 9°C (48.2°F) at the initiation of spawning and at fry emergence for char; and

- Maximum 7-DADMax temperatures of 13°C (55.4°F) at the initiation of spawning for salmon and at fry emergence for salmon and trout.

The two criteria above are protective of incubation as long as human actions do not significantly disrupt the normal patterns of fall cooling and spring warming that provide significantly colder temperatures over the majority of the incubation period.

(v) For lakes, human actions considered cumulatively may not increase the 7-DADMax temperature more than 0.3°C (0.54°F) above natural conditions.

(vi) Temperature measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

- (A) Be taken from well mixed portions of rivers and streams; and

- (B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(vii) The department will incorporate the following guidelines on preventing acute lethality and barriers to migration of salmonids into determinations of compliance with the narrative requirements for use protection established in this chapter (e.g., WAC 173-201A-310(1), 173-201A-400(4), and 173-201A-410 (1)(c)). The following site-level considerations do not, however, override the temperature criteria established for waters in subsection (1)(c) of this section or WAC 173-201A-600 through 173-201A-602:

- (A) Moderately acclimated ($16-20^{\circ}\text{C}$, or $60.8-68^{\circ}\text{F}$) adult and juvenile salmonids will generally be protected from acute lethality by discrete human actions maintaining the 7-DADMax temperature at or below 22°C (71.6°F) and the 1-day maximum (1-DMax) temperature at or below 23°C (73.4°F).

- (B) Lethality to developing fish embryos can be expected to occur at a 1-DMax temperature greater than 17.5°C (63.5°F).

- (C) To protect aquatic organisms, discharge plume temperatures must be maintained such that fish could not be entrained (based on plume time of travel) for more than two seconds at temperatures above 33°C (91.4°F) to avoid creating areas that will cause near instantaneous lethality.

- (D) Barriers to adult salmonid migration are assumed to exist any time the 1-DMax temperature is greater than 22°C (71.6°F) and the adjacent downstream water temperatures are 3°C (5.4°F) or more cooler.

(viii) Nothing in this chapter shall be interpreted to prohibit the establishment of effluent limitations for the control of the thermal component of any discharge in accordance with 33 U.S.C. 1326 (commonly known as section 316 of the Clean Water Act).

(d) **Aquatic life dissolved oxygen (D.O.) criteria.** The D.O. criteria are measured in milligrams per liter (mg/L) or percent oxygen saturation. Table 200 (1) (d) lists the ~~((1-day minimum))~~ D.O. criteria for each of the aquatic life use categories. Compliance may be demonstrated through either the water column or intragravel criteria in Table 200 (1) (d).

**Table 200 (1) (d)
Aquatic Life Dissolved Oxygen Criteria in
Fresh Water**

((Category	Lowest 1-Day Minimum
Char Spawning and Rearing	9.5 mg/L
Core Summer Salmonid Habitat	9.5 mg/L
Salmonid Spawning, Rearing, and Migration	8.0 mg/L
Salmonid Rearing and Migration Only	6.5 mg/L
Non-anadromous Interior Redband Trout	8.0 mg/L
Indigenous Warm Water Species	6.5 mg/L))

Category	Water Column (1-Day Minimum)
Char Spawning and Rearing*	10 mg/L or 90% saturation
Core Summer Salmonid Habitat*	10 mg/L or 95% saturation
Salmonid Spawning, Rearing, and Migration*	10 mg/L or 90% saturation
Salmonid Rearing and Migration Only	6.5 mg/L
<u>Nonanadromous</u> Interior Redband Trout*	10 mg/L or 90% saturation
Indigenous Warm Water Species	6.5 mg/L

* Intragravel D.O. criteria for these aquatic life use categories may be used for compliance purposes. When intragravel D.O. is used for compliance, the intragravel D.O. (1-day minimum) concentration must be 8.0 mg/L or greater, and the D.O. water column (1-day minimum) concentration must be 9.0 mg/L or greater. Intragravel D.O. must be measured as a spatial median within the same habitat area.

(i) When a water body's D.O. is lower than the criteria in Table 200 (1) (d) (or within 0.2 mg/L of the criteria) and that condition is due to natural conditions, then human actions considered cumulatively may not cause the D.O. of that water body to decrease more than 0.2 mg/L.

(ii) For lakes, human actions considered cumulatively may not decrease the dissolved oxygen concentration more than 0.2 mg/L below natural conditions.

(iii) Concentrations of D.O. are not to fall below the criteria in the table at a probability frequency of more than once every ~~((ten))~~ 10 years on average.

(iv) D.O. measurements should be taken to represent the dominant aquatic habitat of the monitoring site. This typically means samples should:

- (A) Be taken from well mixed portions of rivers and streams; and
- (B) Not be taken from shallow stagnant backwater areas, within isolated thermal refuges, at the surface, or at the water's edge.

(e) **Aquatic life turbidity criteria.** Turbidity is measured in "nephelometric turbidity units" or "NTUs." Table 200 (1)(e) lists the maximum turbidity criteria for each of the aquatic life use categories.

**Table 200 (1)(e)
Aquatic Life Turbidity Criteria in Fresh Water**

Category	NTUs
Char Spawning and Rearing	Turbidity shall not exceed: <ul style="list-style-type: none"> • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration Salmonid Rearing and Migration Only	Same as above. Turbidity shall not exceed: <ul style="list-style-type: none"> • 10 NTU over background when the background is 50 NTU or less; or • A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.
(Non-anadromous) <u>Nonanadromous</u> Interior Redband Trout	Turbidity shall not exceed: <ul style="list-style-type: none"> • 5 NTU over background when the background is 50 NTU or less; or • A 10 percent increase in turbidity when the background turbidity is more than 50 NTU.
Indigenous Warm Water Species	Turbidity shall not exceed: <ul style="list-style-type: none"> • 10 NTU over background when the background is 50 NTU or less; or • A 20 percent increase in turbidity when the background turbidity is more than 50 NTU.

~~((+i))~~ The turbidity criteria established under WAC 173-201A-200 (1)(e) shall be modified, without specific written authorization from the department, to allow a temporary area of mixing during and immediately after necessary in-water construction activities that result in

the disturbance of in-place sediments. This temporary area of mixing is subject to the constraints of WAC 173-201A-400 (4) and (6) and can occur only after the activity has received all other necessary local and state permits and approvals, and after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria. A temporary area of mixing shall be as follows:

~~((A))~~ (i) For waters up to 10 cfs flow at the time of construction, the point of compliance shall be ~~((one hundred))~~ 100 feet downstream from the activity causing the turbidity exceedance.

~~((B))~~ (ii) For waters above 10 cfs up to 100 cfs flow at the time of construction, the point of compliance shall be ~~((two hundred))~~ 200 feet downstream of the activity causing the turbidity exceedance.

~~((C))~~ (iii) For waters above 100 cfs flow at the time of construction, the point of compliance shall be ~~((three hundred))~~ 300 feet downstream of the activity causing the turbidity exceedance.

~~((D))~~ (iv) For projects working within or along lakes, ponds, wetlands, or other nonflowing waters, the point of compliance shall be at a radius of ~~((one hundred fifty))~~ 150 feet from the activity causing the turbidity exceedance.

(f) **Aquatic life total dissolved gas (TDG) criteria.** TDG is measured in percent saturation. Table 200 (1) (f) lists the maximum TDG criteria for each of the aquatic life use categories.

**Table 200 (1) (f)
Aquatic Life Total Dissolved Gas Criteria
in Fresh Water**

Category	Percent Saturation
Char Spawning and Rearing	Total dissolved gas shall not exceed 110 percent of saturation at any point of sample collection.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	Same as above.
Salmonid Rearing and Migration Only	Same as above.
((Non-anadromous)) <u>Nonanadromous</u> Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(i) The water quality criteria established in this chapter for TDG shall not apply when the stream flow exceeds the seven-day, ~~((ten-year))~~ 10-year frequency flood.

(ii) The TDG criteria may be adjusted to aid fish passage over hydroelectric dams that spill for anadromous juvenile fish as of the 2020 spill season. The elevated TDG levels are intended to allow increased fish passage without causing more harm to fish populations than caused by turbine fish passage. The following special fish passage exemptions for the Snake and Columbia rivers apply when spilling water at dams is necessary to aid fish passage:

(A) TDG must not exceed:

- An average of ~~((one hundred fifteen))~~ 115 percent as measured in the forebays of the next downstream dams and must not exceed an average of ~~((one hundred twenty))~~ 120 percent as measured in the tail-

rates of each dam (these averages are calculated as an average of the (~~twelve~~) 12 highest hourly readings in a calendar day, relative to atmospheric pressure); and

- A maximum TDG saturation level of (~~one hundred twenty five~~) 125 percent calculated as an average of the two highest hourly TDG measures in a calendar day during spillage for fish passage.

(B) To further aid fish passage during the spring spill season (generally from April through June), spill may be increased up to the following levels as measured at the tailrace fixed site monitoring location:

- A maximum TDG saturation level of (~~one hundred twenty five~~) 125 percent calculated as an average of the (~~twelve~~) 12 highest hourly TDG measures in a calendar day; and

- A maximum TDG saturation level of (~~one hundred twenty six~~) 126 percent calculated as an average of any two consecutive hourly TDG measures.

These TDG criteria may be applied in place of (f)(ii)(A) of this subsection during spring spill operations when applied in accordance with the following conditions:

(I) In addition to complying with the requirements of this chapter, the tailrace maximum TDG criteria at hydropower dams shall be applied in accordance with Endangered Species Act consultation documents associated with spill operations on the Snake and Columbia rivers, including operations for fish passage. The Endangered Species Act consultation documents are those by which dams may legally operate during the time that the adjusted criteria in (f)(ii)(B) of this subsection are in use.

(II) Application of the tailrace maximum TDG criteria must be accompanied by a department approved biological monitoring plan designed to measure impacts of fish exposed to increased TDG conditions throughout the spring spill season. Beginning in the year 2021, plans must include monitoring for nonsalmonid fish species and must continue for a minimum of five years, and thereafter as determined by the department.

(III) TDG must be reduced to allowances specified in (f)(ii)(A) of this subsection if the calculated incidence of gas bubble trauma in salmonids (with a minimum sample size of (~~fifty~~) 50 fish required weekly) or nonsalmonids (with a minimum sample size of (~~fifty~~) 50 fish required weekly) exceeds:

- Gas bubble trauma in nonpaired fins of (~~fifteen~~) 15 percent;

or

- Gas bubble trauma in nonpaired fins of five percent and gas bubbles occlude more than (~~twenty five~~) 25 percent of the surface area of the fin.

If gas bubble trauma exceeds these biological thresholds, additional monitoring must demonstrate the incidence of gas bubble trauma below biological thresholds before TDG can be adjusted to allowances specified in this subsection. Gas bubble trauma monitoring data shall be excluded from comparison to biological thresholds when higher than normal river flow contributes to excess spill above the ability to meet (f)(ii)(B) of this subsection. This monitoring data exclusion shall apply for one full calendar day after reduced river flow allows attainment of (f)(ii)(B) of this subsection.

(g) **Aquatic life pH criteria.** Measurement of pH is expressed as the negative logarithm of the hydrogen ion concentration. Table 200 (1)(g) lists the pH levels for each of the aquatic life use categories.

**Table 200 (1) (g)
Aquatic Life pH Criteria in Fresh Water**

Use Category	pH Units
Char Spawning and Rearing	pH shall be within the range of 6.5 to 8.5, with a human-caused variation within the above range of less than 0.2 units.
Core Summer Salmonid Habitat	Same as above.
Salmonid Spawning, Rearing, and Migration	pH shall be within the range of 6.5 to 8.5 with a human-caused variation within the above range of less than 0.5 units.
Salmonid Rearing and Migration Only	Same as above.
(Non-anadromous) Nonanadromous Interior Redband Trout	Same as above.
Indigenous Warm Water Species	Same as above.

(h) **Aquatic life fine sediment criteria.** The following narrative criteria apply to all existing and designated uses for fresh water:

(i) Water bodies shall not contain excess fine sediment (<2 mm) from human-caused sources that impair designated uses.

(ii) When reference values are used to demonstrate compliance with the fine sediment criteria, measured conditions shall be compared to those from reference sites or regional data that represent least disturbed site conditions of a comparable water body or ecoregion. Reference locations should be comparable in hydrography, geology, ecology, and habitat to that of the water body evaluated.

(2) **Recreational uses.** The recreational use is primary contact recreation.

(a) **General criteria.** General criteria that apply to fresh water recreational uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

(i) Toxic, radioactive, and deleterious materials; and

(ii) Aesthetic values.

(b) **Water contact recreation bacteria criteria.** Table 200 (2) (b) lists the bacteria criteria to protect water contact recreation in fresh waters. These criteria are based on *Escherichia coli* (*E. coli*) and fecal coliform organism levels, and expressed as colony forming units (CFU) or most probable number (MPN). The use of fecal coliform organism levels to determine compliance will expire December 31, 2020.

**Table 200 (2) (b)
Primary Contact Recreation Bacteria Criteria in Fresh Water**

Bacterial Indicator	Criteria
<i>E. coli</i>	<i>E. coli</i> organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ((ten)) 10 sample points exist) obtained within the averaging period exceeding 320 CFU or MPN per 100 mL.
Fecal coliform (expires 12/31/2020)	Fecal coliform organism levels within an averaging period must not exceed a geometric mean value of 100 CFU or MPN per 100 mL, with not more than 10 percent of all samples (or any single sample when less than ((ten)) 10 sample points exist) obtained within an averaging period exceeding 200 CFU or MPN per 100 mL.

(i) A minimum of three samples is required to calculate a geometric mean for comparison to the geometric mean criteria. Sample collection dates shall be well distributed throughout the averaging period so as not to mask noncompliance periods.

(A) Effluent bacteria samples: When averaging effluent bacteria sample values for comparison to the geometric mean criteria, or for determining permit compliance, the averaging period shall be (~~((thirty))~~) 30 days or less.

(B) Ambient water quality samples: When averaging bacteria sample values for comparison to the geometric mean criteria, it is preferable to average by season. The averaging period of bacteria sample data shall be (~~((ninety))~~) 90 days or less.

(ii) When determining compliance with the bacteria criteria in or around small sensitive areas, such as swimming beaches, it is recommended that multiple samples are taken throughout the area during each visit. Such multiple samples should be arithmetically averaged together (to reduce concerns with low bias when the data is later used in calculating a geometric mean) to reduce sample variability and to create a single representative data point.

(iii) As determined necessary by the department, more stringent bacteria criteria may be established for rivers and streams that cause, or significantly contribute to, the decertification or conditional certification of commercial or recreational shellfish harvest areas, even when the preassigned bacteria criteria for the river or stream are being met.

(iv) Where information suggests that sample results are due primarily to sources other than warm-blooded animals (e.g., wood waste), alternative indicator criteria may be established on a site-specific basis as described in WAC 173-201A-430.

(3) **Water supply uses.** The water supply uses are domestic, agricultural, industrial, and stock watering.

General criteria. General criteria that apply to the water supply uses are described in WAC 173-201A-260 (2) (a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

(4) **Miscellaneous uses.** The miscellaneous fresh water uses are wildlife habitat, harvesting, commerce and navigation, boating, and aesthetics.

General criteria. General criteria that apply to miscellaneous fresh water uses are described in WAC 173-201A-260 (2)(a) and (b), and are for:

- (a) Toxic, radioactive, and deleterious materials; and
- (b) Aesthetic values.

[Statutory Authority: RCW 90.48.035 and 40 C.F.R. 131.20. WSR 20-02-091 (Order 19-02), § 173-201A-200, filed 12/30/19, effective 1/30/20; WSR 19-04-007 (Order 16-07), § 173-201A-200, filed 1/23/19, effective 2/23/19. Statutory Authority: RCW 90.48.035. WSR 11-09-090 (Order 10-10), § 173-201A-200, filed 4/20/11, effective 5/21/11; WSR 06-23-117 (Order 06-04), § 173-201A-200, filed 11/20/06, effective 12/21/06. Statutory Authority: Chapters 90.48 and 90.54 RCW. WSR 03-14-129 (Order 02-14), § 173-201A-200, filed 7/1/03, effective 8/1/03.]

WSR 22-07-102

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed March 22, 2022, 3:56 p.m., effective April 22, 2022]

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

Purpose: WAC 246-260-010 Definitions, abbreviations, and acronyms for water recreation facilities, and 246-262-010 Definitions abbreviations, and acronyms, for recreational water contact facilities. The adopted rules incorporate 2017 suction outlet fitting assemblies standards into the existing rules for use in swimming pools, wading pools, spas, and hot tubs. Chapters 246-260 and 246-262 WAC outline requirements necessary to protect the health, safety, and welfare of users of water recreation facilities and recreational water contact facilities, respectively. These two chapters stipulate the use of the American National Standards Institute/Association of Pool and Spa Professionals standards for suction fittings for use in swimming pools, wading pools, spas, and hot tubs.

Citation of Rules Affected by this Order: Amending WAC 246-260-010 and 246-262-010.

Statutory Authority for Adoption: RCW 70.90.120, 43.20.050.

Adopted under notice filed as WSR 22-01-010 on December 2, 2021.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: March 10, 2022.

Lauren Jenks
Assistant Secretary

OTS-3412.1

AMENDATORY SECTION (Amending WSR 14-08-046, filed 3/27/14, effective 4/27/14)

WAC 246-260-010 Definitions, abbreviations, and acronyms. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) "ALTI" means Advanced Lifeguard Training International.

(2) "ANSI" means American National Standards Institute.

(3) "APHA" means American Public Health association.

(4) "Approved" means the department or local health officer has stated in writing that the design plans and specifications are in accordance with this chapter.

- (5) "APSP" means Association of Pool and Spa Professionals.
- (6) "ARC" means American Red Cross.
- (7) "Architect" means a registered architect currently licensed under chapter 18.08 RCW in Washington state.
- (8) "ASA" means American Standards Association.
- (9) "ASHRAE" means American Society of Heating, Refrigeration and Air Conditioning Engineers.
- (10) "ASTM" means American Society for Testing and Materials.
- (11) "Attendant" means a person appointed by the owner or manager meeting the training requirements of this chapter who monitors activities and conditions for the purpose of ensuring bather safety.
- (12) "AWWA" means American Waterworks Association.
- (13) "Bathing beach" means a bathing place, together with buildings and appurtenances, on a natural pond, lake, stream, or other body of fresh or salt water that is open to the public for bathing by express permission of the owner, operated for a fee, or openly advertised as a place for bathing by the public.
- (14) "Board" means the state board of health.
- (15) "Branch line" means suction piping between a junction fitting and a suction outlet.
- (16) "Commercial strength ammonia" means ammonia having a strength of (~~twenty-six~~) 26 degrees Baume.
- (17) "Communication system" means any combination of devices permitting the passage of messages between personnel and/or personnel and bathers. Systems can include but are not limited to two-way radios, hard wired intercoms, horns, whistles, hand signals, direct voice, signs, or equivalent.
- (18) "Contaminant" means any physical, chemical, or biological substance present in the WRF water which may adversely affect the health or safety of the bather or the quality of the water.
- (19) "CPR" means cardiopulmonary resuscitation.
- (20) "CPSC" means U.S. Consumer Product Safety Commission.
- (21) "Cross-connection" means any physical arrangement connecting:
- (a) Potable water system directly or indirectly, with anything other than another potable water system; or
 - (b) WRF pool to any water source capable of contaminating either the WRF pool, its components, or potable water source as a result of backflow.
- (22) "DE" means diatomaceous earth.
- (23) "Department" means the Washington state department of health.
- (24) "Deep water" means water greater than five feet in depth.
- (25) "Diving envelope" means the minimum dimensions of an area within the pool necessary to provide entry from a diving board, platform, or pool decking intended for users to dive.
- (26) "E&A" means Ellis and Associates.
- (27) "Engineer" means a registered professional engineer currently licensed under chapter 18.43 RCW.
- (28) "EPA" means U.S. Environmental Protection Agency.
- (29) "Equalizer line outlet" means a suction outlet located on the pool wall below the waterline and connected by pipe to the body of a skimmer to prevent air from being drawn into the pump if the water level drops below the skimmer weir.
- (30) "F" means Fahrenheit.
- (31) "Fall zones" mean the areas under and around play toys where a person playing on them could fall. These areas should be free of ob-

stacles or other equipment so that there's plenty of room. Basic guidelines include the following:

(a) Fall zones should extend a minimum of six feet in all directions from the perimeter of the play toy equipment.

(b) If the height of an adjacent play toy is (~~thirty~~) 30 inches or more, the minimum distance between pieces of play equipment should be at least nine feet.

(32) "FINA" means Federation Internationale de Natation Amateur.

(33) "fps" means feet per second.

(34) "General use pool" means any swimming, spa, wading, or spray pool regulated by this chapter not meeting the definition of a "limited use pool."

(35) "gpm" means gallons per minute.

(36) "Handhold" means a structure not over twelve inches above the water line around the perimeter of the pool wall, affording physical means for the bather to grasp the pool sides.

(37) "IAPMO" means International Association of Plumbing and Mechanical Officials.

(38) "Illness or injury report" means the written record of all facts regarding an injury or illness associated with the WRF.

(39) "Innovative design feature" means a design feature, equipment, device, or operative procedure not specifically covered by these rules or chapter 246-262 WAC.

(40) "Junction fitting" means a pipe fitting in the shape of a "T" or a "Y" used to connect suction outlets to a pump or a balancing tank, and provides two branch line connections and one trunk line connection.

(41) "Licensed medical practitioner" includes medical doctor, osteopath, chiropractor, naturopath, and medical therapist currently licensed in Washington state.

(42) "Lifeguard" means a person meeting the training requirements of these rules appointed by the owner or manager to maintain surveillance over the bathers on the deck or in the pool and to supervise bather safety.

(43) "Lifeguard station" means designated work station of a lifeguard.

(44) "Lifesaving equipment" means emergency equipment and barrier protection.

(45) "Lifesaving Society" means the organization in Canada that establishes training requirements and standards for lifeguard training.

(46) "Limited use pool" means:

(a) Any swimming, spa, wading, or spray pool regulated by this chapter at an apartment, assisted living facility, condominium, fraternity, home owners association, hotel, mobile home park, motel, recreational vehicle park, sorority or rental housing unit for the use of the persons living or residing at the facility and their resident's invited guests.

(b) When organized programs are provided at the facility (including, but not limited to, formal swimming or diving lessons, swim meets, or exercise classes), for users besides those specified under the limited use category, the pool facility shall be considered to be a general use pool during periods of such activity.

(47) "Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

- (48) "Main drain" means a submerged suction outlet for transferring water from a swimming pool, spa pool, or wading pool.
- (49) "mg/l" means milligrams per liter. When requirements in this regulation specify limits for liquid volume measurements using mg/l or ppm, either may be used depending on the type of testing equipment available.
- (50) "NAUI" means National Association of Underwater Instructors.
- (51) "NSF" means National Sanitation Foundation.
- (52) "NSPI" means National Spa and Pool Institute.
- (53) "Outlet drain" means a drain for transferring water from a spray pool.
- (54) "Owner" means a person owning and responsible for a WRF or their authorized agent.
- (55) "PADI" means Professional Association of Diving Instructors.
- (56) "Person" means an individual, firm, partnership, copartnership, corporation, company, association, club, government entity, or organization of any kind.
- (57) "Physical plant" refers to pool shell, piping, lighting, ventilation, locker rooms, chemical storage rooms, mechanical rooms, or other structural facility components that are not readily modified. It does not include pumps, filters or disinfection systems.
- (58) "Play toy" is a water feature added to a pool for use by bathers that provides activity or action that enhances the overall use of the water environment. Such feature may include, but not be limited to, fixed stationary features, inflatable or floatable equipment, or other equipment with the intent to invite bathers to play on or around the feature.
- (59) "Pool" means swimming pool, wading pool, spray pool, or spa pool or the like.
- (60) "ppm" means parts per million. See notation under mg/l for use.
- (61) "Private club" means a group or organization requiring membership enrollment.
- (62) "Radius of curvature" means the radius arc denoting the curved surface from the point of departure from the springline (vertical sidewall) of the pool to the pool bottom.
- (63) "Response time" means time between bather distress and initiation of rescue assistance contact by a lifeguard in facilities providing lifeguards.
- (64) "Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to water slides, wave pools, and water lagoons. These facilities are regulated by chapter 246-262 WAC.
- (65) "Secretary" means the secretary of the department.
- (66) "Serious injury" means any injury:
- (a) Requiring emergency service response where a person requires medical treatment as determined by the emergency medical response personnel; or
 - (b) Resulting in a person seeking medical attention at a medical facility, hospital emergency room or admittance to a hospital.
- (67) "Shallow water" means water equal to or less than five feet in depth.

(68) "Shallow water lifeguard" means a person appointed by the owner or manager to supervise bather safety in water depths not exceeding five feet who meets the training requirements of this chapter.

(69) "Spa pool" means a pool designed for relaxation or recreational use where the user is usually sitting, reclining, or at rest and the pool is not drained, cleaned, and refilled for each user. The spa pool may include, but not be limited to, hydrojet circulation, hot water, cold water, mineral baths, air induction bubbles in any combination.

(70) "Spray pool" means a pool or artificially constructed depression for use by bathers in which water is sprayed, but is not allowed to pond in the bottom of the pool.

(71) "Springline" means the point where the pool wall breaks from vertical and begins its arc in the radius of curvature (for cove construction) to the bottom of the pool.

(72) "Suction fitting standard" means the ANSI/APSP-16 2011, Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs or the ANSI/APSP/ICC-16 2017, American National Standard for Suction Outlet Fitting Assemblies (SOFA) for Use in Pools, Spas and Hot Tubs.

(73) "Suction outlet" means a fitting, fitting assembly and related components including the sump or bulkhead fitting, cover and hardware, that provides a localized low pressure area for the transfer of water from a water recreation facility. Types of suction outlets include main drains, equalizer line outlets, and submerged outlet drains.

(74) "Swimming pool" means any structure, basin, chamber, or tank containing an artificial body of water for swimming, diving, relaxation, or recreational bathing and having a depth of two feet or more at any point and including all associated facilities.

(75) "Swim spa" means a type of spa pool used primarily for stationary swimming.

(76) "Trunk line" means suction piping between a junction fitting and a pump or a balancing tank.

(77) "TU" means turbidity unit as measured by the nephelometric method.

(78) "Turnover time" means the minimum time necessary to circulate the entire volume of the pool facility through the treatment system.

(79) "UBC" means Uniform Building Code.

(80) "UL" means Underwriters' Laboratories.

(81) "Wading pool" means any artificial pool of water equal to or less than two feet deep and intended for wading purposes.

(82) "Walking surface" means any surface used as a direct access surface for a pool area and the walking surface's change room facilities where the user is barefoot.

(83) "Water treatment operator" means the appointed person operating the physical and mechanical equipment and performing related water quality monitoring and associated record keeping for proper operation of the physical facility.

(84) "Water recreation facility" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

(a) Conventional swimming pools, wading pools, and spray pools;

- (b) Recreational water contact facilities as defined under RCW 70.90.110 and regulated under chapter 246-262 WAC;
- (c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and
- (d) Any area designated for swimming in natural waters with artificial boundaries within the waters.
- (85) "WRF" means water recreation facility.
- (86) "WRPA" means Washington Recreation and Parks Association.
- (87) "WSDA" means Washington state department of agriculture.
- (88) "YMCA" means Young Men's Christian Association.

[Statutory Authority: RCW 70.90.120 and 2012 c 10. WSR 14-08-046, § 246-260-010, filed 3/27/14, effective 4/27/14. Statutory Authority: RCW 70.90.120. WSR 12-17-102, § 246-260-010, filed 8/17/12, effective 9/17/12; WSR 10-20-131, § 246-260-010, filed 10/5/10, effective 11/5/10. Statutory Authority: Chapters 70.90 and 43.20 RCW. WSR 04-18-096, § 246-260-010, filed 9/1/04, effective 10/31/04. Statutory Authority: RCW 70.90.120. WSR 92-02-020 (Order 226B), § 246-260-010, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-260-010, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.90.120. WSR 90-07-010 (Order 042), § 248-98-001, filed 3/12/90, effective 4/12/90; Regulation .98.001, effective 3/11/60.]

OTS-3413.1

AMENDATORY SECTION (Amending WSR 12-17-102, filed 8/17/12, effective 9/17/12)

WAC 246-262-010 Definitions, abbreviations, and acronyms. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

- (1) "Advanced first aid" means a course of instruction recognized by the American Red Cross, department of labor and industries, the U.S. Bureau of Mines, or fire services training program.
- (2) "ANSI" means American National Standard Institute.
- (3) "Approved" means the department or local health officer has stated in writing that the design plans and specifications are in accordance with chapter 246-262 WAC.
- (4) "ARC" means American Red Cross.
- (5) "Architect" means a registered architect currently licensed under chapter 18.08 RCW in Washington state.
- (6) "APSP" means Association of Pool and Spa Professionals.
- (7) "ASTM" means American Society for Testing Material.
- (8) "Attendant" means a person trained to operate an attraction and control the users in a safe orderly manner.
- (9) "Attraction or ride" means any of the specific types of recreational facilities involving partial or total immersion or intentional contact with the water designated for public recreational use.
- (10) "Biomechanics" means the study of the human body as a system operating under the laws of Newtonian mechanics and the biological laws of life.
- (11) "Board" means the state board of health.

- (12) "Boogie or mini-surf board" means any semirigid device used in a wave pool for flotation or as a riding device.
- (13) "Branch line" means suction piping between a junction fitting and a suction outlet.
- (14) "Centerline" means the path defined by geometric midpoints of a component or structure, generally used in consideration of the slide path in flume rides.
- (15) "CNCA" means Council for National Cooperation in Aquatics.
- (16) "Communication system" means any combination of devices permitting the passage of or exchange of messages between park operating personnel and between operating personnel and users. Systems can include, but are not limited to, two-way radios, hardwired intercoms, horns, whistles, hand signals, direct voice, signs, or equivalent.
- (17) "Contaminant" means any physical, chemical or biological substance present in the RWCF water which may adversely affect the health or safety of the user and/or the quality of the water.
- (18) "Cross-connection" means any physical arrangement connecting:
- (a) A potable water system directly or indirectly, with anything other than another potable water system; or
 - (b) A RWCF to any potable or nonpotable water source capable of contaminating either the RWCF or potable water source as a result of backflow.
- (19) "Department" means the Washington state department of health.
- (20) "Discharge section" means the component or components making up the exit of the water slide, water tube, inner tube ride, speed slide, ramp slide, drop slide or drop tube, or kiddie flume. These components are the elements controlling the final direction and speed of the user.
- (21) "Diving envelope" means the minimum dimensions of an area within the pool necessary to provide entry from a diving board, platform, or attraction segment where users enter above pool water level.
- (22) "Drop slide or drop tube ride" means a sloped trough, chute, or tube exiting the user above the pool operating water level.
- (23) "Engineer" means a registered professional engineer currently licensed under chapter 18.43 RCW in Washington state.
- (24) "Entry access points" means the areas where users enter an attraction.
- (25) "Entry rate" means the frequency at which users are permitted access to the attraction.
- (26) "Equalizer line outlet" means a suction outlet located on the pool wall below the waterline and connected by pipe to the body of a skimmer to prevent air from being drawn into the pump if the water level drops below the skimmer weir.
- (27) "Ergonomics" means a multidisciplinary activity dealing with the interactions between humans and their environment plus the traditional environmental elements atmosphere, heat, light, and sound, as well as objects with which the user comes in contact.
- (28) "FINA" means Federation Internationale de Natation Amateur.
- (29) "Flume or tube entry" means the area at which users enter a water slide, water tube, inner tube ride, speed slide, drop slide, drop tube, or kiddie flume.
- (30) "fps" means feet per second.
- (31) "gpm" means gallons per minute.
- (32) "IAAPA" means International Association of Amusement Parks and Attractions.

- (33) "Injury or illness report" means the written record of all facts regarding an injury or illness associated with the RWCF.
- (34) "Inner tube ride" means an attraction where users ride inner tube-like devices through a series of chutes, channels, flumes, and pools.
- (35) "Innovative recreational water contact facility" means any type of RWCF currently unregulated.
- (36) "Intermediate pool" means any pool between the entry and exit pools in attraction using a series of pools.
- (37) "Junction fitting" means a pipe fitting in the shape of a "T" or a "Y" used to connect suction outlets to a pump or a balancing tank, and provides two branch line connections and one trunk line connection.
- (38) "Kiddie flume or tube attraction" means a flume, chute, or tube designated for and restricted to use by small children.
- (39) "Lifeguard" means an individual currently certified by red cross in advance lifesaving or lifeguard training, or YMCA senior lifesaver, or equivalent certification through the royal Canadian lifeguard services.
- (40) "Lifeguard station" means the designated work station of the lifeguard.
- (41) "Local health officer" means the health office of the city, county, or city-county department or district or a representative authorized by the local health officer.
- (42) "Main drain" means a submerged suction outlet for transferring water from a recreational water contact facility.
- (43) "mg/l" means milligrams per liter.
- (44) "Multiactivity pool" means a pool with more than one type of attraction (i.e., an adult activity pool with a series of tubes, chutes, cable rides, etc., intended for use by individuals with specific swimming abilities).
- (45) "NSF" means National Sanitation Foundation.
- (46) "NSPI" means National Spa and Pool Institute.
- (47) "Operating levels" means water levels maintained within attractions during use for proper operation of facility and for controlling safety and sanitation.
- (48) "Operations" means all aspects of a RWCF, which must be controlled to make the facility safe, healthy, and usable for the purpose intended.
- (49) "Owner" means a person owning and responsible for a RWCF or authorized agent.
- (50) "Person" means an individual, firm, partnership, co-partnership, corporation, company, association, club, government entity, or organization of any kind.
- (51) "Ponding" means a condition where water fails to drain from walking surfaces.
- (52) "ppm" means parts per million.
- (53) "Primary zone of visual coverage" means the area assigned to a lifeguard or attendant for primary visual surveillance of user activity.
- (54) "Radius of curvature" means the radius arc which denotes the curved surface from the point of departure from the vertical sidewall (springline) of the pool to the pool bottom.
- (55) "Ramp slide" means a slide allowing one or more users to slide in unison down a straight incline to a runout or a receiving pool.

(56) "Recirculation filter water" means water which is recirculated by the RWCF for treatment purposes, i.e., filtration and disinfection.

(57) "Response time" means elapsed time between bather distress and initiation of rescue assistance by a lifeguard (or attendant where applicable).

(58) "RWCF" means recreational water contact facility which is an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water and includes, but is not limited to, water slides, wave pools, and water lagoons.

(59) "Secretary" means the secretary of the department.

(60) "Serious injury" means any injury requiring admission to a hospital.

(61) "Speed slide or speed tube" means a sloped trough, flume, tube, or roller track having long straight and/or steep drops where users sustain speeds of (~~twenty~~) 20 miles per hour or more.

(62) "Springline" means the point from which the pool wall breaks from vertical and begins its arc in the radius of curvature (for coved construction) to the bottom of the pool.

(63) "Suction fitting standard" means the ANSI/APSP-16 2011, Suction Fittings for Use in Swimming Pools, Wading Pools, Spas, and Hot Tubs or the ANSI/APSP/ICC-16 2017, American National Standard for Suction Outlet Fitting Assemblies (SOFA) for Use in Pools, Spas and Hot Tubs.

(64) "Suction outlet" means a fitting; fitting assembly and related components, including the sump or bulkhead fitting, cover, and hardware that provides a localized low pressure area for the transfer of water from a recreational water contact facility. Types of suction outlets include main drains and equalizer line outlets.

(65) "Surfboard" means a rigid device used in a wave pool for riding.

(66) "Tail coverage" means providing insurance coverage for a given period of time for discovery of claims made after the policy term for "claims made" type of insurance.

(67) "Total turnover" means the time it takes for the pool attraction water volume to be recirculated as a sum of the flows from treatment turnover and attraction recirculation systems turnover.

(68) "Treatment turnover" means the minimum time necessary to circulate the entire attraction water volume through the recirculation filter system.

(69) "Trunk line" means suction piping between a junction fitting and a pump or a balancing tank.

(70) "T.U." means turbidity unit as measured by the nephelometric method.

(71) "Wading activity pool" means a pool or area less than (~~twenty-four~~) 24 inches in total water depth with activities intended for younger children.

(72) "Walking surface" means any direct access surface to the attractions or change rooms where the user will be in bare feet. Areas set aside for picnicking, sunbathing, and lounging are excluded.

(73) "Water slide or water tube" means a sloped trough-like flume or tube structure of varying slope and direction using water as a lubricant and/or method of regulating the rider speed.

(74) "Water treatment operator" means the person appointed to operate the mechanical equipment and perform related water quality monitoring for proper operation of the physical facility.

(75) "Wave pool" means a recreational pool producing waves which usually begin at the deep end and proceed toward and dissipate at the shallow end.

(76) "WWA" means World Waterpark Association.

[Statutory Authority: RCW 70.90.120. WSR 12-17-102, § 246-262-010, filed 8/17/12, effective 9/17/12; WSR 10-20-131, § 246-262-010, filed 10/5/10, effective 11/5/10; WSR 92-02-020 (Order 226B), § 246-262-010, filed 12/23/91, effective 1/23/92. Statutory Authority: RCW 43.20.050. WSR 91-02-051 (Order 124B), recodified as § 246-262-010, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.90.120. WSR 88-13-125 (Order 311), § 248-97-020, filed 6/22/88.]

WSR 22-07-105

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed March 23, 2022, 8:51 a.m., effective April 23, 2022]

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

Purpose: The agency is amending these rules to replace outdated medical terms with their updated equivalents.

Citation of Rules Affected by this Order: Amending WAC 182-500-0050, 182-501-0070, 182-502-0002, and 182-531-0150.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 22-03-036 on January 11, 2022.

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 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: March 23, 2022.

Wendy Barcus
Rules Coordinator

OTS-3563.1

AMENDATORY SECTION (Amending WSR 21-19-141, filed 9/22/21, effective 10/23/21)

WAC 182-500-0050 Washington apple health definitions—I. "Ineligible spouse" see "spouse" in WAC 182-500-0100.

"Institution" means an entity that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more people unrelated to the proprietor. Eligibility for a Washington apple health program may vary depending upon the type of institution in which an individual resides. For the purposes of apple health programs, "institution" includes all the following:

(1) **"Institution for mental diseases (IMD)"** - A hospital, nursing facility, or other institution of more than (~~sixteen~~) 16 beds that is primarily engaged in providing diagnosis, treatment or care of people with mental diseases, including medical attention, nursing care and related services. An IMD may include inpatient substance use disorder (SUD) facilities of more than (~~sixteen~~) 16 beds which provide residential treatment for SUD.

(2) **"Intermediate care facility for (~~the mentally retarded (ICF/MR)~~) individuals with intellectual disabilities (ICF/IID)"** - An institution or distinct part of an institution that is:

(a) Defined in 42 C.F.R. 440.150;

(b) Certified to provide (~~(ICF/MR)~~) ICF/IID services under 42 C.F.R. 483, Subpart I; and

(c) Primarily for the diagnosis, treatment, or rehabilitation for people with (~~(mental-retardation)~~) intellectual disabilities or a related condition.

(3) **"Medical institution"** - An entity that is organized to provide medical care, including nursing and convalescent care. The terms "medical facility" and "medical institution" are sometimes used interchangeably throughout Title 182 WAC.

(a) To meet the definition of medical institution, the entity must:

(i) Be licensed as a medical institution under state law;

(ii) Provide medical care, with the necessary professional personnel, equipment, and facilities to manage the health needs of the patient on a continuing basis under acceptable standards; and

(iii) Include adequate physician and nursing care.

(b) Medical institutions include:

(i) "Hospice care center" - An entity licensed by the department of health (DOH) to provide hospice services. Hospice care centers must be medicare-certified, and approved by the agency or the agency's designee to be considered a medical institution.

(ii) "Hospital" - Defined in WAC 182-500-0045.

(iii) "Nursing facility (NF)" - An entity certified to provide skilled nursing care and long-term care services to medicaid recipients under Social Security Act Sec. 1919(a), 42 U.S.C. Sec. 1396r. Nursing facilities that may become certified include nursing homes licensed under chapter 18.51 RCW, and nursing facility units within hospitals licensed by DOH under chapter 70.41 RCW. This includes the nursing facility section of a state veteran's facility.

(iv) "Psychiatric hospital" - An institution, or a psychiatric unit located in a hospital, licensed as a hospital under applicable Washington state laws and rules, that is primarily engaged to provide psychiatric services for the diagnosis and treatment of mentally ill people under the supervision of a physician.

(v) "Psychiatric residential treatment facility (PRTF)" - A non-hospital residential treatment center licensed by DOH, and certified by the agency or the agency's designee to provide psychiatric inpatient services to medicaid-eligible people age (~~(twenty-one)~~) 21 and younger. A PRTF must be accredited by the Joint Commission on Accreditation of Health care Organizations (JCAHO) or any other accrediting organization with comparable standards recognized by Washington state. A PRTF must meet the requirements in 42 C.F.R. 483, Subpart G, regarding the use of restraint and seclusion.

(vi) "Residential habilitation center (RHC)" - A residence operated by the state under chapter 71A.20 RCW that serves people who have exceptional care and treatment needs due to their developmental disabilities by providing residential care designed to develop individual capacities to their optimum. RHCs provide residential care and may be certified to provide ICF/MR services and nursing facility services.

(c) Medical institutions do not include entities licensed by the agency or the agency's designee as adult family homes (AFHs) and boarding homes. AFHs and boarding homes include assisted living facilities, adult residential centers, enhanced adult residential centers, and developmental disability group homes.

(4) **"Public institution"** means an entity that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.

(a) Public institutions include:

(i) Correctional facility - An entity such as a state prison, or city, county, or tribal jail, or juvenile rehabilitation or juvenile detention facility.

(ii) Eastern and Western State mental hospitals. (Medicaid coverage for these institutions is limited to people age (~~twenty-one~~) 21 and younger, and people age (~~sixty-five~~) 65 and older.)

(iii) Certain facilities administered by Washington state's department of veteran's affairs (see (b) of this subsection for facilities that are not considered public institutions).

(b) Public institutions do not include intermediate care facilities, entities that meet the definition of medical institution (such as Harborview Medical Center and University of Washington Medical Center), or facilities in Retsil, Orting, and Spokane that are administered by the department of veteran's affairs and licensed as nursing facilities.

"Institution for mental diseases (IMD)" see "institution" in this section.

"Institutional review board" - A board or committee responsible for reviewing research protocols and determining whether:

(1) Risks to subjects are minimized;

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result;

(3) Selection of subjects is equitable;

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative;

(5) Informed consent will be appropriately documented;

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects;

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data; and

(8) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant people, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

"Institutionalized spouse" see "spouse" in WAC 182-500-0100.

"Intermediate care facility for (~~the mentally retarded (ICF/MR-)) individuals with intellectual disabilities (ICF/IID)"~~ see "institution" in this section.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 21-19-141, § 182-500-0050, filed 9/22/21, effective 10/23/21; WSR 17-12-017, § 182-500-0050, filed 5/30/17, effective 6/30/17; WSR 15-17-013, § 182-500-0050, filed 8/7/15, effective 9/7/15. WSR 11-14-075, recodified as § 182-500-0050, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 2011 1st sp.s. c 15. WSR 11-14-053, § 388-500-0050, filed 6/29/11, effective 7/30/11.]

OTS-3564.1

AMENDATORY SECTION (Amending WSR 16-22-024, filed 10/24/16, effective 11/24/16)

WAC 182-501-0070 Health care coverage—Noncovered services. (1)

The medicaid agency or its designee does not pay for any health care service not listed or referred to as a covered health care service under the medical programs described in WAC 182-501-0060, regardless of medical necessity. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. Circumstances in which clients are responsible for payment of health care services are described in WAC 182-502-0160.

(2) This section does not apply to health care services provided as a result of the early and periodic screening, diagnosis, and treatment (EPSDT) program as described in chapter 182-534 WAC.

(3) The agency or its designee does not pay for any ancillary health care service(s) provided in association with a noncovered health care service.

(4) The following list of noncovered health care services is not intended to be exhaustive. Noncovered health care services include, but are not limited to:

(a) Any health care service specifically excluded by federal or state law;

(b) Acupuncture, Christian Science practice, faith healing, herbal therapy, homeopathy, massage, massage therapy, naturopathy, and sanopractice;

(c) Chiropractic care for adults;

(d) Cosmetic, reconstructive, or plastic surgery, and any related health care services, not specifically allowed under WAC 182-531-0100(4) or 182-531-1675;

(e) Discography;

(f) Ear or other body piercing;

(g) Face lifts or other facial cosmetic enhancements;

(h) Fertility, infertility or sexual dysfunction testing, and related care, drugs, and/or treatment including but not limited to:

(i) Artificial insemination;

(ii) Donor ovum, donor sperm, or (~~surrogate womb~~) gestational carrier;

(iii) In vitro fertilization;

(iv) Penile implants;

(v) Reversal of sterilization; and

(vi) Sex therapy.

(i) Hair transplants;

(j) Epilation (hair removal) and electrolysis not specifically allowed under WAC 182-531-1675;

(k) Marital counseling;

(l) Motion analysis, athletic training evaluation, work hardening condition, high altitude simulation test, and health and behavior assessment;

(m) Nonmedical equipment;

(n) Penile implants;

(o) Prosthetic testicles not specifically allowed under WAC 182-531-1675;

(p) Psychiatric sleep therapy;

(q) Subcutaneous injection filling;

(r) Tattoo removal;

(s) Transport of Involuntary Treatment Act (ITA) clients to or from out-of-state treatment facilities, including those in bordering cities;

(t) Upright magnetic resonance imaging (MRI); and

(u) Vehicle purchase - New or used vehicle.

(5) For a specific list of noncovered health care services in the following service categories, refer to the WAC citation:

(a) Ambulance transportation and nonemergent transportation as described in chapter 182-546 WAC;

(b) Dental services as described in chapter 182-535 WAC;

(c) Durable medical equipment as described in chapter 182-543 WAC;

(d) Hearing care services as described in chapter 182-547 WAC;

(e) Home health services as described in WAC 182-551-2130;

(f) Hospital services as described in WAC 182-550-1600;

(g) Health care professional services as described in WAC 182-531-0150;

(h) Prescription drugs as described in chapter 182-530 WAC;

(i) Vision care hardware for clients (~~(twenty)~~) 20 years of age and younger as described in chapter 182-544 WAC; and

(j) Vision care exams as described in WAC 182-531-1000.

(6) A client has a right to request an administrative hearing, if one is available under state and federal law. When the agency or its designee denies all or part of a request for a noncovered health care service(s), the agency or its designee sends the client and the provider written notice, within (~~(ten)~~) 10 business days of the date the decision is made, that includes:

(a) A statement of the action the agency or its designee intends to take;

(b) Reference to the specific WAC provision upon which the denial is based;

(c) Sufficient detail to enable the recipient to:

(i) Learn why the agency's or its designee's action was taken; and

(ii) Prepare a response to the agency's or its designee's decision to classify the requested health care service as noncovered.

(d) The specific factual basis for the intended action; and

(e) The following information:

(i) Administrative hearing rights;

(ii) Instructions on how to request the hearing;

(iii) Acknowledgment that a client may be represented at the hearing by legal counsel or other representative;

(iv) Instructions on how to request an exception to rule (ETR);

(v) Information regarding agency-covered health care services, if any, as an alternative to the requested noncovered health care service; and

(vi) Upon the client's request, the name and address of the nearest legal services office.

(7) A client can request an exception to rule (ETR) as described in WAC 182-501-0160.

[Statutory Authority: RCW 41.05.021, 41.05.160. WSR 16-22-024, § 182-501-0070, filed 10/24/16, effective 11/24/16; WSR 15-16-084, § 182-501-0070, filed 7/31/15, effective 8/31/15. Statutory Authority: RCW 41.05.021. WSR 13-15-044, § 182-501-0070, filed 7/11/13, effective 8/11/13. Statutory Authority: RCW 41.05.021 and section 1927 of the Social Security Act. WSR 12-18-062, § 182-501-0070, filed 8/31/12, ef-

fective 10/1/12. WSR 11-14-075, recodified as § 182-501-0070, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700. WSR 09-23-112, § 388-501-0070, filed 11/18/09, effective 12/19/09; WSR 07-04-036, § 388-501-0070, filed 1/29/07, effective 3/1/07.]

OTS-3565.1

AMENDATORY SECTION (Amending WSR 19-20-046, filed 9/25/19, effective 10/26/19)

WAC 182-502-0002 Eligible provider types. The following health care professionals, health care entities, suppliers or contractors of service may request enrollment with the Washington state health care authority (medicaid agency) to provide covered health care services to eligible clients. For the purposes of this chapter, health care services include treatment, equipment, related supplies, and drugs.

- (1) Professionals:
 - (a) Advanced registered nurse practitioners;
 - (b) Anesthesiologists;
 - (c) Applied behavior analysis (ABA) professionals, as provided in WAC 182-531-1410 through 182-531-1436:
 - (i) Certified agency-affiliated counselors;
 - (ii) Certified counselors; and
 - (iii) Certified counselor advisors.
 - (d) Audiologists;
 - (e) Chemical dependency professionals:
 - (i) Mental health care providers; and
 - (ii) Peer counselors.
 - (f) Chiropractors;
 - (g) Dentists;
 - (h) Dental health aide therapists, as provided in chapter 70.350 RCW;
 - (i) Dental hygienists;
 - (j) Denturists;
 - (k) Dietitians or nutritionists;
 - (l) Hearing aid fitters/dispensers;
 - (m) Marriage and family therapists;
 - (n) Mental health counselors;
 - (o) Mental health care providers;
 - (p) Midwives;
 - (q) Naturopathic physicians;
 - (r) Nurse anesthetist;
 - (s) Occularists;
 - (t) Occupational therapists;
 - (u) Ophthalmologists;
 - (v) Opticians;
 - (w) Optometrists;
 - (x) Orthodontists;
 - (y) Orthotist;
 - (z) Osteopathic physicians;
 - (aa) Osteopathic physician assistants;
 - (bb) Peer counselors;

- (cc) Podiatric physicians;
- (dd) Pharmacists;
- (ee) Physicians;
- (ff) Physician assistants;
- (gg) Physical therapists;
- (hh) Prosthetist;
- (ii) Psychiatrists;
- (jj) Psychologists;
- (kk) Radiologists;
- (ll) Registered nurse delegators;
- (mm) Registered nurse first assistants;
- (nn) Respiratory therapists;
- (oo) Social workers; and
- (pp) Speech/language pathologists.
- (2) Agencies, centers and facilities:
 - (a) Adult day health centers;
 - (b) Ambulance services (ground and air);
 - (c) Ambulatory surgery centers (medicare-certified);
 - (d) Birthing centers (licensed by the department of health);
 - (e) Cardiac diagnostic centers;
 - (f) Case management agencies;
 - (g) Chemical dependency treatment facilities certified by the department of social and health services (DSHS) division of behavioral health and recovery (DBHR), and contracted through either:
 - (i) A county under chapter 388-810 WAC; or
 - (ii) DBHR to provide chemical dependency treatment services.
 - (h) Centers for the detoxification of acute alcohol or other drug intoxication conditions (certified by DBHR);
 - (i) Community AIDS services alternative agencies;
 - (j) Community mental health centers;
 - (k) Diagnostic centers;
 - (l) Early and periodic screening, diagnosis, and treatment (EPSDT) clinics;
 - (m) Family planning clinics;
 - (n) Federally qualified health centers (designated by the federal department of health and human services);
 - (o) Genetic counseling agencies;
 - (p) Health departments;
 - (q) Health maintenance organization (HMO)/managed care organization (MCO);
 - (r) HIV/AIDS case management;
 - (s) Home health agencies;
 - (t) Hospice agencies;
 - (u) Hospitals;
 - (v) Indian health service facilities/tribal 638 facilities;
 - (w) Tribal or urban Indian clinics;
 - (x) Inpatient psychiatric facilities;
 - (y) Intermediate care facilities for ~~((the mentally retarded~~ individuals with intellectual disabilities (ICF-IID); ~~(ICF-MR))~~;
 - (z) Kidney centers;
 - (aa) Laboratories (CLIA certified);
 - (bb) Maternity support services agencies; maternity case managers; infant case management, first steps providers;
 - (cc) Neuromuscular and neurodevelopmental centers;
 - (dd) Nurse services/delegation;
 - (ee) Nursing facilities (approved by the DSHS aging and long-term support administration);

(ff) Pathology laboratories;
 (gg) Pharmacies;
 (hh) Private duty nursing agencies;
 (ii) Radiology - Stand-alone clinics;
 (jj) Rural health clinics (medicare-certified);
 (kk) School districts and educational service districts;
 (ll) Sleep study centers; and
 (mm) Washington state school districts and educational service districts.

- (3) Suppliers of:
 (a) Blood, blood products, and related services;
 (b) Durable and nondurable medical equipment and supplies;
 (c) Complex rehabilitation technologies;
 (d) Infusion therapy equipment and supplies;
 (e) Prosthetics/orthotics;
 (f) Hearing aids; and
 (g) Respiratory care, equipment, and supplies.
 (4) Contractors:
 (a) Transportation brokers;
 (b) Spoken language interpreter services agencies;
 (c) Independent sign language interpreters; and
 (d) Eyeglass and contact lens providers.

[Statutory Authority: RCW 41.05.021, 41.05.160 and 2019 c 415 § 211(49). WSR 19-20-046, § 182-502-0002, filed 9/25/19, effective 10/26/19. Statutory Authority: RCW 41.05.021, 2013 c 178, and 2013 2nd sp.s. c 4. WSR 14-06-054, § 182-502-0002, filed 2/27/14, effective 3/30/14. WSR 11-14-075, recodified as § 182-502-0002, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.080, and 74.09.290. WSR 11-11-017, § 388-502-0002, filed 5/9/11, effective 6/9/11.]

OTS-3566.1

AMENDATORY SECTION (Amending WSR 15-24-021, filed 11/19/15, effective 1/1/16)

WAC 182-531-0150 Noncovered physician-related and health care professional services—General and administrative. (1) The medicaid agency evaluates a request for noncovered services in this chapter under WAC 182-501-0160. In addition to noncovered services found in WAC 182-501-0070, except as provided in subsection (2) of this section, the agency does not cover:

- (a) Acupuncture, massage, or massage therapy;
 (b) Any service specifically excluded by statute;
 (c) Care, testing, or treatment of infertility (~~(, frigidity, or impotency)~~) or sexual dysfunction. This includes procedures for donor ovum, donor sperm, (~~womb~~) gestational carrier, and reversal of vasectomy or tubal ligation;
 (d) Hysterectomy performed solely for the purpose of sterilization;

(e) Cosmetic treatment or surgery, except as provided in WAC 182-531-0100 (4) (x);

(f) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 182-501-0165;

(g) Hair transplantation;

(h) Marital counseling or sex therapy;

(i) More costly services when the medicaid agency determines that less costly, equally effective services are available;

(j) Vision-related services as follows:

(i) Services for cosmetic purposes only;

(ii) Group vision screening for eyeglasses; and

(iii) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens correction. This refractive surgery does not include intraocular lens implantation following cataract surgery.

(k) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 182-531-1750;

(l) Physician-supplied medication, except those drugs which the client cannot self-administer and therefore are administered by the physician in the physician's office;

(m) Physical examinations or routine checkups, except as provided in WAC 182-531-0100;

(n) Foot care, unless the client meets criteria and conditions outlined in WAC 182-531-1300, as follows:

(i) Routine foot care including, but not limited to:

(A) Treatment of tinea pedis;

(B) Cutting or removing warts, corns and calluses; and

(C) Trimming, cutting, clipping, or debriding of nails.

(ii) Nonroutine foot care including, but not limited to, treatment of:

(A) Flat feet;

(B) High arches (cavus foot);

(C) Onychomycosis;

(D) Bunions and tailor's bunion (hallux valgus);

(E) Hallux malleus;

(F) Equinus deformity of foot, acquired;

(G) Cavovarus deformity, acquired;

(H) Adult acquired flatfoot (metatarsus adductus or pes planus);

(I) Hallux limitus.

(iii) Any other service performed in the absence of localized illness, injury, or symptoms involving the foot;

(o) Except as provided in WAC 182-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services;

(p) Nonmedical equipment;

(q) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas;

(r) Vaccines recommended or required for the sole purpose of international travel. This does not include routine vaccines administered according to current centers for disease control (CDC) advisory committee on immunization practices (ACIP) immunization schedule for adults and children in the United States; and

(s) Early elective deliveries as defined in WAC 182-500-0030.

(2) The medicaid agency covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:

- (a) The EPSDT program;
- (b) A Washington apple health program for qualified **medicare** beneficiaries (QMBs); or
- (c) A waiver program.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-24-021, § 182-531-0150, filed 11/19/15, effective 1/1/16; WSR 15-03-041, § 182-531-0150, filed 1/12/15, effective 2/12/15. Statutory Authority: RCW 41.05.021, 74.09.520, 74.09.657, 74.09.659, and 74.09.800. WSR 13-16-008, § 182-531-0150, filed 7/25/13, effective 9/1/13. WSR 11-14-075, recodified as § 182-531-0150, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 11-14-055, § 388-531-0150, filed 6/29/11, effective 7/30/11; WSR 10-19-057, § 388-531-0150, filed 9/14/10, effective 10/15/10. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-12-022, § 388-531-0150, filed 5/20/05, effective 6/20/05; WSR 01-01-012, § 388-531-0150, filed 12/6/00, effective 1/6/01.]

WSR 22-07-107

PERMANENT RULES

HEALTH CARE AUTHORITY

[Filed March 23, 2022, 9:49 a.m., effective April 23, 2022]

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

Purpose: The agency is amending these rules to permit children with special health care needs to request an exemption from, or an end to enrollment in, managed care. The agency is making this amendment to align the rule with the medicaid state plan and federal regulation (42 C.F.R. 438.50 (d)(3)).

Citation of Rules Affected by this Order: Amending WAC 182-538-050 and 182-538-130.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: 42 C.F.R. 438.50.

Adopted under notice filed as WSR 22-05-055 on February 10, 2022.

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 2, Repealed 0.

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

Date Adopted: March 23, 2022.

Wendy Barcus
Rules Coordinator

OTS-3554.1

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

WAC 182-538-050 Definitions. The following definitions and abbreviations and those found in chapter 182-500 WAC apply to this chapter. If conflict exists, this chapter takes precedence.

"Administrative hearing" means an evidentiary adjudicative proceeding before an administrative law judge or presiding officer that is available to an enrollee under chapter 182-526 WAC according to RCW 74.09.741.

"Adverse benefit determination" means one or more of the following:

(a) The denial or limited authorization of a requested service, including determinations based on the type or level of service, requirements for medical necessity, appropriateness, setting, or effectiveness of a covered benefit;

(b) The reduction, suspension, or termination of a previously authorized service;

- (c) The denial, in whole or in part, of payment for a service;
- (d) The failure to provide services in a timely manner, as defined by the state;
- (e) The failure of a managed care organization (MCO) to act within the time frames provided in 42 C.F.R. Sec. 438.408 (a), (b) (1) and (2) for standard resolution of grievances and appeals; or
- (f) For a resident of a rural area with only one MCO, the denial of an enrollee's request to exercise the enrollee's right to obtain services outside the network under 42 C.F.R. Sec. 438.52 (b) (2) (ii).

"Agency" - See WAC 182-500-0010.

"Appeal" means a review by an MCO of an adverse benefit determination.

"Apple health foster care (AHFC)" means the managed care program developed by the agency and the department of social and health services to serve children and youth in foster care and adoption support and young adult alumni of the foster care program.

"Assign" or **"assignment"** means the agency selects an MCO to serve a client who has not selected an MCO.

"Auto enrollment" means the agency has automatically enrolled a client into an MCO in the client's area of residence.

"Behavioral health" - See WAC 182-538D-0200.

"Behavioral health administrative service organization (BH-ASO)" means an entity selected by the medicaid agency to administer behavioral health services and programs, including crisis services for all people in an integrated managed care regional service area. The BH-ASO administers crisis services for all people in its defined regional service area, regardless of a person's ability to pay.

"Behavioral health services only (BHSO)" means the program in which enrollees only receive behavioral health benefits through a managed care delivery system.

"Child or youth with special health care needs" means a client under age 19 who is:

- (a) Eligible for supplemental security income under Title XVI of the Social Security Act;
- (b) Eligible for medicaid under section 1902 (e) (3) of the Social Security Act;
- (c) In foster care or other out-of-home placement;
- (d) Receiving foster care or adoption assistance; or
- (e) Receiving services through a family-centered, community-based, coordinated care system that receives grant funds under section 501 (a) (1) (D) of Title V of the Social Security Act.

"Client" - See WAC 182-500-0020.

"Disenrollment" - See "end enrollment."

"Emergency medical condition" means a condition meeting the definition in 42 C.F.R. Sec. 438.114(a).

"Emergency services" means services defined in 42 C.F.R. Sec. 438.114(a).

"End enrollment" means ending the enrollment of an enrollee for one of the reasons outlined in WAC 182-538-130.

"Enrollee" means a person eligible for any Washington apple health program enrolled in managed care with an MCO or PCCM provider that has a contract with the state.

"Enrollee's representative" means a person with a legal right or written authorization from the enrollee to act on behalf of the enrollee in making decisions.

"Enrollees with special health care needs" means enrollees having chronic and disabling conditions and the conditions:

- (a) Have a biologic, psychologic, or cognitive basis;
- (b) Have lasted or are virtually certain to last for at least one year; and
- (c) Produce one or more of the following conditions stemming from a disease:
 - (i) Significant limitation in areas of physical, cognitive, or emotional function;
 - (ii) Dependency on medical or assistive devices to minimize limitation of function or activities; or
 - (iii) In addition, for children, any of the following:
 - (A) Significant limitation in social growth or developmental function;
 - (B) Need for psychological, educational, medical, or related services over and above the usual for the child's age; or
 - (C) Special ongoing treatments, such as medications, special diet, interventions, or accommodations at home or school.

"Exemption" means agency approval of a client's preenrollment request to remain in the fee-for-service delivery system for one of the reasons outlined in WAC 182-538-130.

"Fully integrated managed care (FIMC)" - See integrated managed care.

"Grievance" means an expression of dissatisfaction about any matter other than an adverse benefit determination.

"Grievance and appeal system" means the processes the MCO implements to handle appeals of adverse benefit determinations and grievances, as well as the processes to collect and track information about them.

"Health care service" or **"service"** means a service or item provided for the prevention, cure, or treatment of an illness, injury, disease, or condition.

"Integrated managed care (IMC)" means the program under which a managed care organization provides:

- (a) Physical health services funded by medicaid; and
- (b) Behavioral health services funded by medicaid, and other available resources provided for in chapters 182-538B, 182-538C, and 182-538D WAC.

"Managed care" means a comprehensive health care delivery system that includes preventive, primary, specialty, and ancillary services. These services are provided through either an MCO or PCCM provider.

"Managed care contract" means the agreement between the agency and an MCO to provide prepaid contracted services to enrollees.

"Managed care organization" or **"MCO"** means an organization having a certificate of authority or certificate of registration from the office of insurance commissioner that contracts with the agency under a comprehensive risk contract to provide prepaid health care services to enrollees under the agency's managed care programs.

"Mandatory enrollment" means the agency's requirement that a client enroll in managed care.

"Mandatory service area" means a service area in which eligible clients are required to enroll in an MCO.

"Nonparticipating provider" means a person, health care provider, practitioner, facility, or entity acting within their scope of practice and licensure that:

- (a) Provides health care services to enrollees; and
- (b) Does not have a written agreement with the managed care organization (MCO) to participate in the MCO's provider network.

"Participating provider" means a person, health care provider, practitioner, or entity acting within their scope of practice and licensure with a written agreement with the MCO to provide services to enrollees.

"Patient days of care" means all voluntary patients and involuntarily committed patients under chapter 71.05 RCW, regardless of where in the state hospital the patients reside. Patients who are committed to the state hospital under chapter 10.77 RCW are not included in the patient days of care. Patients who are committed under RCW 10.77.088 by municipal or district courts after failed competency restoration and dismissal of misdemeanor charges are not counted in the patient days of care until a petition for ((~~ninety~~)) 90 days of civil commitment under chapter 71.05 RCW has been filed in court. Patients who are committed under RCW 10.77.086 by a superior court after failed competency restoration and dismissal of felony charges are not counted in the patient days of care until the patient is civilly committed under chapter 71.05 RCW.

"Primary care case management" or "PCCM" means the health care management activities of a provider that contracts with the agency to provide primary health care services and to arrange and coordinate other preventive, specialty, and ancillary health services.

"Primary care provider" or "PCP" means a person licensed or certified under Title 18 RCW including, but not limited to, a physician, an advanced registered nurse practitioner (ARNP), naturopath, or a physician assistant who supervises, coordinates, and provides health services to a client or an enrollee, initiates referrals for specialist and ancillary care, and maintains the client's or enrollee's continuity of care.

"Regional service area (RSA)" means a single county or multi-county grouping formed for the purpose of health care purchasing and designated by the agency and the department of social and health services.

"Timely" concerning the provision of services, means an enrollee has the right to receive medically necessary health care as expeditiously as the enrollee's health condition requires. Concerning authorization of services and grievances and appeals, "timely" means according to the agency's managed care program contracts and the time frames stated in this chapter.

"Wraparound with intensive services (WISE)" is a program that provides comprehensive behavioral health services and support to:

- (a) Medicaid-eligible people age ((~~twenty~~)) 20 or younger with complex behavioral health needs; and
- (b) Their families.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538-050, filed 11/27/19, effective 1/1/20. Statutory Authority: RCW 41.05.021, 41.05.160 and 42 C.F.R. Parts 431, 433, 438, 440, 457, and 495. WSR 17-23-199, § 182-538-050, filed 11/22/17, effective 12/23/17. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-24-098, § 182-538-050, filed 12/1/15, effective 1/1/16. Statutory Authority: RCW 41.05.021, 42 C.F.R. 438. WSR 13-02-010, § 182-538-050, filed 12/19/12, effective 2/1/13. WSR 11-14-075, recodified as § 182-538-050, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.522. WSR 08-15-110, § 388-538-050, filed 7/18/08, effective 8/18/08; WSR 06-03-081, § 388-538-050, filed 1/12/06, effective 2/12/06. Statutory Authority: RCW 74.08.090, 74.09.522, 2003 E1 c 25 § 201(4), 2004 c 276

§ 201(4), 42 U.S.C. 1396N (section 1915 (b) and (c) of the Social Security Act of 1924). WSR 05-01-066, § 388-538-050, filed 12/8/04, effective 1/8/05. Statutory Authority: RCW 74.08.090, 74.09.522. WSR 03-18-109, § 388-538-050, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. WSR 02-01-075, § 388-538-050, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2. WSR 00-04-080, § 388-538-050, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. WSR 95-18-046 (Order 3886), § 388-538-050, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. WSR 93-17-039 (Order 3621), § 388-538-050, filed 8/11/93, effective 9/11/93.]

OTS-3555.1

AMENDATORY SECTION (Amending WSR 19-24-063, filed 11/27/19, effective 1/1/20)

WAC 182-538-130 Exemptions and ending enrollment in managed care. The medicaid agency enrolls clients into integrated managed care (IMC) based on the rules in WAC 182-538-060. IMC is mandatory in all regional service areas.

(1) **Authority to request.** The following people may request that the agency approve an exemption or end enrollment in managed care:

- (a) A client or enrollee;
- (b) A client or enrollee's authorized representative under WAC 182-503-0130; or
- (c) A client or enrollee's representative as defined in RCW 7.70.065.

(2) **Standards to exempt or end enrollment.**

(a) The agency exempts or ends enrollment from mandatory managed care when any of the following apply:

- (i) The client or enrollee is eligible for medicare;
- (ii) The client or enrollee is not eligible for managed care enrollment, for Washington apple health programs, or both.
- (b) The agency grants a request to exempt or to end enrollment in managed care, with the change effective the earliest possible date given the requirements of the agency's enrollment system, when the client or enrollee:
 - (i) Is American Indian or Alaska native or is a descendant of an AI/AN client and requests not to be in managed care;
 - (ii) Lives in an area or is enrolled in a Washington apple health program in which participation in managed care is voluntary; ((~~or~~))
 - (iii) Requires care that meets the criteria in subsection (3) of this section for case-by-case clinical exemptions or to end enrollment; or

(iv) Is a child or youth with special health care needs as defined in WAC 182-538-050.

(3) **Case-by-case clinical criteria.** Clinical criteria for an enrollee or client to be exempted or end enrollment in IMC.

(a) The agency may approve a request for exemption or to end enrollment when the following criteria are met:

- (i) The care must be medically necessary;
- (ii) The medically necessary care at issue is covered under the agency's managed care contracts and is not a benefit under the behavioral health services only (BHSO) program;
- (iii) The client is receiving the medically necessary care at issue from an established provider or providers who are not available through any contracted MCO; and
- (iv) It is medically necessary to continue that care from the established provider or providers.

(b) If a client requests exemption prior to enrollment, the client is not enrolled until the agency approves or denies the request.

(c) If an enrollee request to end enrollment is received after the enrollment effective date, the enrollee remains enrolled pending the agency's decision.

(4) **Approved request.**

(a) When the agency approves a request for exemption or to end enrollment, the agency will notify the client or enrollee of its decision by telephone or in writing.

(b) For clients who are not AI/AN, the following rules apply:

(i) If the agency approves the request for a limited time, the client or enrollee is notified of the time limitation and the process for renewing the exemption.

(ii) The agency limits the period of time based on the circumstances or how long the conditions described are expected to exist.

(iii) The agency may periodically review those circumstances or conditions to determine if they continue to exist.

(iv) Any authorized exemption will continue only until the client can be enrolled in managed care.

(5) **BHSO.**

(a) When a client is exempt from mandatory IMC or their enrollment in the mandatory IMC program ends, the exemption is for the physical health benefit only. The client remains enrolled in behavioral health services only (BHSO) for the behavioral health benefit.

(b) AI/AN clients are an exception in that they can choose to receive their behavioral health benefit on a fee-for-service basis.

(6) **Denied request.** When the agency denies a request for exemption or to end enrollment:

(a) The agency will notify the client or enrollee of its decision by telephone or in writing and confirms a telephone notification in writing.

(b) When a client or enrollee is limited-English proficient, the written notice must be available in the client's or enrollee's primary language under 42 C.F.R. 438.10.

(c) The written notice must contain all the following information:

- (i) The agency's decision;
- (ii) The reason for the decision;
- (iii) The specific rule or regulation supporting the decision;

and

(iv) The right to request an agency administrative hearing.

(7) **Administrative hearing request.** If a client or enrollee does not agree with the agency's decision regarding a request for exemption or to end enrollment, the client or enrollee may file a request for an agency administrative hearing based on RCW 74.09.741, the rules in this chapter, and the agency hearing rules in chapter 182-526 WAC.

(8) **MCO request.** The agency will grant a request from an MCO to end enrollment of an enrollee when the request is submitted to the agency in writing and includes sufficient documentation for the agency to determine that the criteria to end enrollment in this subsection is met.

(a) All of the following criteria must be met to end enrollment:

(i) The enrollee puts the safety or property of the contractor or the contractor's staff, providers, patients, or visitors at risk and the enrollee's conduct presents the threat of imminent harm to others, except for enrollees described in (c) of this subsection;

(ii) A clinically appropriate evaluation was conducted to determine whether there was a treatable problem contributing to the enrollee's behavior and there was not a treatable problem or the enrollee refused to participate;

(iii) The enrollee's health care needs have been coordinated as contractually required and the safety concerns cannot be addressed; and

(iv) The enrollee has received written notice from the MCO of its intent to request to end enrollment of the enrollee, unless the requirement for notification has been waived by the agency because the enrollee's conduct presents the threat of imminent harm to others. The MCO's notice to the enrollee includes the enrollee's right to use the MCO's grievance process to review the request to end enrollment.

(b) The agency will not approve a request to end enrollment when the request is solely due to any of the following:

(i) An adverse change in the enrollee's health status;

(ii) The cost of meeting the enrollee's health care needs or because of the enrollee's utilization of services;

(iii) The enrollee's diminished mental capacity; or

(iv) Uncooperative or disruptive behavior resulting from the enrollee's special needs or behavioral health condition, except when continued enrollment in the MCO or PCCM seriously impairs the entity's ability to furnish services to either this particular enrollee or other enrollees.

(c) The agency will not approve a request to end enrollment of an enrollee's behavioral health services. The agency may determine to transition the enrollee to behavioral health services only (BHSO).

(d) When the agency receives a request from an MCO to end enrollment of an enrollee, the agency reviews each request on a case-by-case basis. The agency will respond to the MCO in writing with the decision. If the agency grants the request to end enrollment:

(i) The MCO will notify the enrollee in writing of the decision. The notice must include:

(A) The enrollee's right to use the MCO's grievance system as described in WAC 182-538-110; and

(B) The enrollee's right to use the agency's hearing process (see WAC 182-526-0200 for the hearing process for enrollees).

(ii) The agency will send a written notice to the enrollee at least ~~(ten)~~ 10 calendar days in advance of the effective date that enrollment will end. The notice to the enrollee includes the information in subsection (3)(c) of this section.

(e) The MCO will continue to provide services to the enrollee until the date the person is no longer enrolled.

(f) The agency may exempt the client for the period of time the circumstances are expected to exist. The agency may periodically review those circumstances to determine if they continue to exist. Any

authorized exemption will continue only until the client can be enrolled in IMC.

[Statutory Authority: RCW 41.05.021, 41.05.160, 2019 c 325, 2014 c 225, and 2018 c 201. WSR 19-24-063, § 182-538-130, filed 11/27/19, effective 1/1/20. Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 16-23-021, § 182-538-130, filed 11/4/16, effective 1/1/17; WSR 15-24-098, § 182-538-130, filed 12/1/15, effective 1/1/16. Statutory Authority: RCW 41.05.021, 42 C.F.R. 438. WSR 13-02-010, § 182-538-130, filed 12/19/12, effective 2/1/13. WSR 11-14-075, recodified as § 182-538-130, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.522. WSR 08-15-110, § 388-538-130, filed 7/18/08, effective 8/18/08; WSR 06-03-081, § 388-538-130, filed 1/12/06, effective 2/12/06; WSR 03-18-111, § 388-538-130, filed 9/2/03, effective 10/3/03. Statutory Authority: RCW 74.09.080, 74.08.510, [74.08.]522, 74.09.450, 1115 Waiver, 42 U.S.C. 1396. WSR 02-01-075, § 388-538-130, filed 12/14/01, effective 1/14/02. Statutory Authority: RCW 74.08.090, 74.09.510 and [74.09.]522 and 1115 Federal Waiver, 42 U.S.C. 1396 (a), (e), (p), 42 U.S.C. 1396r-6(b), 42 U.S.C. 1396u-2. WSR 00-04-080, § 388-538-130, filed 2/1/00, effective 3/3/00. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-538-130, filed 7/31/98, effective 9/1/98. Statutory Authority: RCW 74.08.090 and 1995 2nd sp.s. c 18. WSR 95-18-046 (Order 3886), § 388-538-130, filed 8/29/95, effective 9/1/95. Statutory Authority: RCW 74.08.090. WSR 93-17-039 (Order 3621), § 388-538-130, filed 8/11/93, effective 9/11/93.]

WSR 22-07-110
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 23, 2022, 11:27 a.m., effective April 23, 2022]

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

Purpose: The department of labor and industries (L&I) is creating new rules and updating existing rules in chapters 296-23 and 296-15 WAC to define or outline criteria for "case progress" in relation to independent medical examinations (IMEs) requested by L&I and self-insured employers. The rules provide dispute rights when a requested IME is not for one of the reasons outlined in Title 51 RCW. Another new rule will regularly update interested parties with IME data that may reflect emerging trends. WAC 296-23-307 is being repealed as the rule is obsolete.

Citation of Rules Affected by this Order: New WAC 296-23-308, 296-23-309, 296-23-403 and 296-15-440; repealing WAC 296-23-307; and amending WAC 296-23-302.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Other Authority: RCW 51.36.070.

Adopted under notice filed as WSR 22-01-202 on December 21, 2021.

Changes Other than Editing from Proposed to Adopted Version:
WAC 296-23-302:

- Subsection (a), added reference to WAC 296-20-01002 that defines "proper and necessary" at stakeholder request.
- Subsection (b), was removed at stakeholders felt it was unnecessary. The removed criteria are defined under "proper and necessary."
- Subsection (c), was changed to subsection (b) as (b) was removed. The word "stalled" was kept from subsection (b) to describe the impact on the need for a case progress examination.

WAC 296-23-308:

- Subsection (1)(b), added "if requested" after "receipt of the last case progress examination report and additional treatment of the condition." This was done to provide clarity that the receipt of this information is not mandatory, it's only needed if that documentation exists.
- Subsection (2), "medical" was replaced with "attending," and changed "working" to "business." This was done to clarify the worker's doctor is the attending doctor not just any medical provider; and "working" was changed to "business" to reflect proper language.
- Subsection (2)(b)(iv), "is not proper and necessary or" was added to clarify the level of treatment and use consistent language with WAC 296-23-302 Definitions.

WAC 296-23-309:

- Subsections (1), (2), and (3), added "complete" and "including report." This was done because more than one examiner specialty may be needed for the examination.
- Subsections (2) and (3), added "from all appropriate specialty(ies)." This was done to clarify there may be more than one examiner necessary.

- Subsection (2), added "prior rating examination." This was for clarification as there could have been a previous rating examination.
- Subsection (4), was renumbered to subsection (3)(a) because subsection (3) is about reopening examinations.
- Subsection (4) (previously subsection (5)), added "to resolve a new medical issue prior to a final order, under RCW 51.52.050 or 51.52.060, accepting or denying responsibility of the condition, unless the department authorized an additional examination in state fund and self-insured cases." This was done to be consistent with subsections (1) and (3), and subsection (6) was renumbered to subsection (5).

WAC 296-15-440: Removed "their representative" from subsection (2)(a) and (3)(a) because it is redundant. Stating worker in the rule includes a representative if the worker has one.

A final cost-benefit analysis is available by contacting Suzy Campbell, L&I, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@Lni.wa.gov.

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

Number of Sections Adopted at the Request of a 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 4, Amended 1, Repealed 1.

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

Date Adopted: March 23, 2022.

Joel Sacks
Director

OTS-3273.5

NEW SECTION

WAC 296-15-440 Use of independent medical examinations. What will the department consider when resolving a dispute to a scheduled independent medical exam (IME) in a self-insured claim?

(1) The department will consider whether:

(a) The notification letter included the self-insured employer's need for the IME consistent with RCW 51.36.070 and how this may be disputed by the worker.

(b) Notice of the IME was mailed to the injured worker and the worker's representative no later than 28 calendar days prior to the IME. Except for an IME scheduled to make a decision regarding claim allowance.

(c) The worker agreed to waive the 28 day notice for initial IME scheduling or reschedules.

(2) **When a written dispute is filed:**

(a) A worker or their attending provider may file a dispute at any time during the IME process. Disputes received by the self-insurer or third-party administrator must be submitted to the department within five working days of receipt.

(b) The department will only consider postponing an IME if the dispute is received by the department at least 15 calendar days prior to the IME.

(c) The dispute should include the specific reason(s) why the IME is out of compliance with RCW 51.36.070 and a copy of the notification letter from the self-insured employer.

(3) **The department will take action as follows:**

(a) Where the dispute presents a factual case that the examination was scheduled in violation of RCW 51.36.070 or these rules, pending a further investigation, the department may order the self-insurer to cancel the IME, and to notify the examiner, worker, and attending provider. The facts the employer provides in the IME notification letter, and the facts supplied by the worker or their attending provider will be used in this determination.

(b) The department will issue an order to resolve the dispute in accordance with RCW 51.52.050.

(c) Should a worker attend a disputed IME and, after a report is rendered, the department determines the IME was scheduled in violation of RCW 51.36.070, the report may not be considered in the administration of the claim.

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OTS-3259.5

AMENDATORY SECTION (Amending WSR 13-03-129, filed 1/22/13, effective 2/25/13)

WAC 296-23-302 Definitions. Approved independent medical examination (IME) provider - A licensed doctor or firm whose credentials are approved to conduct an independent medical examination, rating evaluation, or provide IME associated services including but not limited to file preparation, scheduling of examinations and processing billing. An approved IME provider is assigned a unique provider number.

Case progress examination - An examination requested for an accepted condition because:

(a) A proper and necessary treatment plan, per the definition of "proper and necessary" found in WAC 296-20-01002, is not in place; or

(b) The treatment plan has stalled or been completed without resulting in objective or functional improvement for physical conditions, or clinically meaningful signs of improvement for mental health conditions.

Department - For the purpose of this section, department means the department of labor and industries industrial insurance workers' compensation state fund and self-insured programs.

Direct patient care - For the purpose of meeting the qualifications of an independent medical examination (IME) provider, direct patient care means face-to-face contact with the patient for the purpose of evaluation and management of care that includes, but is not limited to:

- History taking and review of systems;
- Physical examination;
- Medical decision making;
- Coordination of care with other providers and agencies.

This does not include time spent in independent medical examinations.

Impairment rating examination - An examination to determine whether or not the injured/ill worker has any permanent impairment(s) as a result of the industrial injury or illness after the worker has reached maximum medical improvement. An impairment rating may be conducted by a qualified attending provider, a medical consultant, or an approved examiner. An impairment rating may be a component of an IME.

Independent medical examination (IME) - An objective medical-legal examination requested (by the department or self-insurer) to establish medical findings, opinions, and conclusions about a worker's physical condition. These examinations may only be conducted by department-approved examiners.

Independent medical examination (IME) provider - A firm, partnership, corporation, or individual licensed doctor (examiner) who has been approved and given an independent medical examination (IME) provider number by the department to perform IMEs.

Medical director - A licensed doctor and approved IME examiner in the firm, partnership, corporation or other legal entity responsible to provide oversight on quality of independent medical examinations, impairment ratings and reports.

Medical Examiners' Handbook - A handbook developed by the department containing department policy and information to assist providers who perform independent medical examinations and impairment rating examinations.

Patient related services - Patient related services are defined as one or more of the following professional activities:

- Direct patient care;
- Locum tenens;
- Clinical consultations for treating/attending doctors;
- Clinical instruction of medical, osteopathic, dental, podiatry, or chiropractic students and/or residents;
- On-call emergency services;
- Volunteer clinician providing direct patient care services in his or her specialty.

Provider number - A unique number(s) assigned to a provider by the department of labor and industries. The number identifies the provider and is linked to a tax identification number that has been designated by the provider for payment purposes. A provider may have more than one provider number assigned by the department.

Suspension - A department action during which the provider is approved by the department but not available to accept referrals.

Temporarily unavailable - Provider is approved by the department but is temporarily unavailable to accept referrals. Temporarily unavailable applies at the provider's request for personal reasons or by the department as part of an administrative action. Provider remains unavailable until the issue is resolved.

Termination - The permanent removal of a provider from the list of approved IME examiners. All IME provider numbers assigned to the examiner are inactivated.

[Statutory Authority: RCW 51.04.020, 51.04.030, 51.32.112, 51.32.114, 51.32.055, 51.36.060, 51.36.070. WSR 13-03-129, § 296-23-302, filed 1/22/13, effective 2/25/13. Statutory Authority: RCW 51.32.055, 51,32,112 [51.32.112], 51.32.114, 51.36.060, and 51.36.070. WSR 09-24-085, § 296-23-302, filed 11/30/09, effective 3/1/10; WSR 04-04-029, § 296-23-302, filed 1/27/04, effective 3/1/04.]

OTS-3385.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-23-307 Why are independent medical examinations requested?

OTS-3272.5

NEW SECTION

WAC 296-23-308 Scheduling case progress examinations. (1) Unless a case progress examination is requested by the attending provider, no case progress examination may be scheduled until 120 days have passed since the later of:

(a) The department or self-insurer's receipt of the claim; or
 (b) The department or self-insurer's receipt of the last case progress examination report and additional treatment of the condition, if requested, has been authorized.

(2) Subject to subsection (1) of this section, the department or self-insurer may schedule a case progress examination of an injured worker after:

(a) Requesting an explanation from the attending provider regarding status of the treatment plan per WAC 296-23-302, definition of case progress examination, or a referral of the injured worker to a consultation with the appropriate specialty(ies) per WAC 296-20-051 within 15 business days of the request; and

(b) The attending provider or consultant:
 (i) Did not respond within 15 business days of the department or self-insured employer request or the consultation could not be completed within 90 days;
 (ii) Omitted requested information;
 (iii) Did not have further treatment recommendations;
 (iv) Recommended a treatment plan that is not proper and necessary or does not meet the department's medical treatment guidelines; or

(v) Wrote a report that does not comply with the provisions of WAC 296-20-06101.

[]

NEW SECTION

WAC 296-23-309 How many examinations may be requested? Unless explicitly required by statute, the total number of examinations per claim is limited as follows:

(1) One complete examination including report prior to an order under RCW 51.52.050 or 51.52.060 allowing or denying a new claim unless an additional examination is authorized by the department in state fund or self-insured cases;

(2) One complete examination including report(s) from all appropriate specialty(ies) for an impairment rating unless the prior rating examination determined a rating was premature and/or further treatment was needed and is authorized by the self-insured employer or department;

(3) One complete examination including report(s) from all appropriate specialty(ies) to adjudicate any application to reopen a claim under RCW 51.32.160 prior to a final order under RCW 51.52.050 or 51.52.060 allowing or denying reopening of the claim, unless the department authorizes an additional examination in state fund and self-insured cases. Additional impairment rating examinations are allowed following each time a claim is reopened under RCW 51.32.160;

(4) One examination may be performed after any new medical issue is contended to resolve a new medical issue prior to a final order, under RCW 51.52.050 or 51.52.060, accepting or denying responsibility of the condition, unless the department authorizes an additional examination in state fund and self-insured cases; and

(5) Additional examinations per case progress rules and to resolve appeals as outlined in WAC 296-23-308 and 296-23-401.

[]

NEW SECTION

WAC 296-23-403 Independent medical examinations—Department data reporting. The department will regularly provide independent medical examination data to interested parties that includes emerging trends.

As much as possible, the data should include and differentiate between examinations for claims insured by the department and those covered by self-insured employers.

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WSR 22-07-111
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed March 23, 2022, 11:28 a.m., effective April 23, 2022]

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

Purpose: The rule is needed to clarify when an independent medical examination (IME) can be requested by labor and industries and self-insurers in order to resolve an appeal to the board of industrial insurance appeals.

Citation of Rules Affected by this Order: New WAC 296-23-401.

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030.

Other Authority: RCW 51.36.070.

Adopted under notice filed as WSR 22-01-203 on December 21, 2021.

Changes Other than Editing from Proposed to Adopted Version: In the first sentence, "reassume and" was added. The end of the sentence was removed as it's unnecessary. The last sentence was removed because the sentence purported to regulate the board of industrial insurance appeals.

A final cost-benefit analysis is available by contacting Suzy Campbell, Department of Labor and Industries, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, phone 360-902-5003, fax 360-902-5029, email suzanne.campbell@Lni.wa.gov.

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

Number of Sections Adopted at the Request of a 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 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: March 23, 2022.

Joel Sacks
Director

OTS-3262.3

NEW SECTION

WAC 296-23-401 Can the department schedule an examination or order a self-insured employer to schedule an examination after receipt of an appeal to the board of industrial insurance appeals (BIIA)?

Following receipt of an appeal by any party, the department may reassume and schedule, or may order the self-insured employer to schedule, an examination.

The self-insured employer may also schedule an examination regarding an appeal if a request has been approved by the department.

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