

WSR 13-24-044
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed November 26, 2013, 8:59 a.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014.

Purpose: To establish the housing and essential needs (HEN) referral program effective January 1, 2014.

The department is amending WAC 388-442-0010; and creating WAC 388-400-0065, 388-400-0070, 388-406-0056, 388-408-0070, 388-447-0001, 388-447-0005, 388-447-0010, 388-447-0020, 388-447-0030, 388-447-0040, 388-447-0050, 388-447-0060, 388-447-0070, 388-447-0080, 388-447-0090, 388-447-0100, 388-447-0110, 388-447-0120, 388-450-0113, 388-450-0138, and 388-450-0178.

These changes are necessary to comply with SHB 2069, Laws of 2013.

Citation of Existing Rules Affected by this Order: Amending WAC 388-442-0010.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.08.025, 74.62.030.

Other Authority: SHB 2069, Laws of 2013.

Adopted under notice filed as WSR 13-19-065 on September 17, 2013.

Changes Other than Editing from Proposed to Adopted Version:

Comments Received from Northwest Justice Project		Department Response
388-447-0001 (1)(c)	We reiterate our request to add "cognitive" to the definition of impairment so that the language reads, "due to physical, mental, or cognitive impairment."	Not incorporated. The term mental disorder or impairment by definition includes cognitive/neurocognitive disorders. The Diagnostic and Statistical Manual of Mental Disorders – Fifth Edition (DSM-5) defines a mental disorder as follows: "A mental disorder is a syndrome characterized by clinically significant disturbance in an individual's cognition, emotional regulation, or behavior that reflects a dysfunction in the psychological, biological, or developmental process underlying mental functioning." Including cognitive impairment in addition to mental impairment would be unnecessary and redundant.
388-447-0001 (1)(c)	Our concern remains that starting the ninety day duration count from the application date instead of the date incapacity began (as is practiced now with SSA benefits) will result in DSHS denying HEN-referral eligibility to some people the legislature intended to benefit from HEN. SHB 2069 bases eligibility on incapacity from gainful employment due to incapacity "that will likely continue for a minimum of ninety days." As stated in our previous comment, limiting this period to ninety days post-application may result in inappropriate denials. One example is people who might need only a month or two of HEN at the tail end of a ninety plus day incapacity to prevent or end homelessness and allow	Not incorporated. The recommended change is not consistent with statutory requirements, which limit eligibility to individuals with impairments "that <i>will</i> likely continue for 90 days." The adopted rules are consistent with ESB [SHB] 2069 Section 3 (1)(a), which requires the department to base eligibility on prospective duration.

Comments Received from Northwest Justice Project		Department Response
	stability for rehabilitation. Another example is people whose incapacity meets the HEN or even ABD duration requirements but who do not currently have objective medical evidence to establish this an [and] need the stability of HEN benefits to obtain objective medical evidence.	
388-447-0001(4)	Typo "pay of profit" should be "pay or profit."	Incorporated.
388-447-0001 (6)(e) and (f)	Proposed WAC 388-447-0001 (6)(e) and (f) permit a HEN referral to be authorized if the individual meets the noted requirement and was released within the past thirty days. Under WAC 182-508-0010 (2)(a), the agency or designee determines the individual in [is] incapacitated if the individual was released within the past ninety days. We understand the department's concern that HEN referral eligibility extends twelve months before the department must review incapacity. However, people being released from AL TSA-based institutional care or inpatient mental health treatment facilities are likely to require significant time and assistance to gain stability and reintegrate into the community. This provision deals only with eligibility for referral, not provision of actual benefits. Local HEN benefit priorities and criteria will determine who needs/qualifies for actual assistance. Decreasing the eligibility window so drastically will have an unduly harsh impact on some of the most vulnerable and marginal HEN applicants and remove decision-making flexibility from local contracted HEN providers. We strongly urge the department to retain the ninety day criterion currently in the MCS regulation.	Incorporated.
388-447-0001 (7) and (8)	<p>Thank you for incorporating many of our comments related to the impact of substance use on eligibility for HEN referral. It is an area in which legal advocates continue to see a lot of confusion resulting from an inaccurate denial or termination of benefits. One problem is using the term "substance use" which is very broad and could include use that does not implicate addiction or use of prescription drugs. This term results in inconsistent determinations based on diverse interpretation. We look forward to working with you on policy, training, and field communication to clarify these requirements.</p> <p>In subsection (8), the language should be consistent with the authorizing statute as follows: "we consider... if you are disabled primarily because of drug or alcohol use or addiction." SHB 2069, Sec. 3 (2)(a) mentions only drug or alcohol use or addiction. Broadening the ineligibility to "use or addiction" exceeds this statutory authority.</p>	<p>Incorporated recommended change to subsection (8).</p> <p>We look forward to working with you to ensure this requirement is applied consistently.</p>
388-447-0001(9)	In response to our request to add "using judgment" to the list of basic work activities, you responded that using judgment is not a basic work activity.	Note this comment appears to pertain to WAC 388-447-0001(10).

Comments Received from Northwest Justice Project	Department Response
<p>We disagree, and we encourage you to look at this section of the SSA policy manual on determining disability: https://secure.ssa.gov/apps10/poms.nsf/1nx/0425020010!opendocument and this social security ruling: http://www.ssa.gov/OP_Home/rulings/di/01/SSR96-09-di-01.html.</p> <p>The first states in part: 2. Mental Abilities Needed For Any Job a. Understanding, carrying out, and remembering simple instructions</p> <ul style="list-style-type: none"> • The ability to remember locations and worklike procedures. • The ability to understand and remember very short and simple instructions. • The ability to carry out very short and simple instructions. • The ability to maintain concentration and attention for extended periods (the approximately two hour segments between arrival and first break, lunch, second break, and departure). • The ability to perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances. • The ability to sustain an ordinary routine without special supervision. • The ability to work in coordination with or proximity to others without being (unduly) distracting to them. • The ability to complete a normal workday or work-week without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods. <p>b. Use of judgment</p> <ul style="list-style-type: none"> • The ability to make simple work-related decisions. • The ability to be aware of normal hazards and take appropriate precautions. <p>c. Responding appropriately to supervision, coworkers, and usual situations</p> <ul style="list-style-type: none"> • The ability to ask simple questions or request assistance. • The ability to accept instructions and respond appropriately to criticism from supervisors. • The ability to get along with coworkers or peers without (unduly) distracting them or exhibiting behavioral extremes. <p>d. Dealing with changes in a routine work setting – the ability to respond appropriately to changes in (a routine) work setting.</p> <p>SSA's manual identifies only four mental abilities needed for every job, and use of judgment is one of them.</p>	<p>Thank you for clarifying this issue and proving [providing] links to relevant SSA policy. While there is no requirement in SHB 2069 that HEN referral eligibility be based on whether an individual is likely to meet SSA disability criteria, consistency with both SSA and ABD rules is an important policy goal.</p> <p>Incorporated by adding "using judgment" to WAC 388-447-0001(10).</p> <p>No corresponding change is necessary for WAC 388-447-0070 or 388-447-0100 since the department already considers the basic work activity of "using judgment" by evaluating an impairment's impact on an individual's ability to "make simple work-related decisions" and "be aware of normal hazards and take appropriate precautions" (the two bullets including [included] under Use of judgment in the POMS manual link provided).</p>

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	<p>The relevant part of the second link is: Mental limitations or restrictions: A substantial loss of ability to meet any one of several basic work-related activities on a sustained basis (i.e., eight hours a day, five days a week, or an equivalent work schedule), will substantially erode the unskilled sedentary occupational base and would justify a finding of disability. These mental activities are generally required by competitive, remunerative, unskilled work:</p> <ul style="list-style-type: none"> • Understanding, remembering, and carrying out simple instructions. • Making judgments that are commensurate with the functions of unskilled work--i.e., simple work-related decisions. • Responding appropriately to supervision, coworkers and usual work situations. • Dealing with changes in a routine work setting. <p>A less than substantial loss of ability to perform any of the above basic work activities may or may not significantly erode the unskilled sedentary occupational base. The individual's remaining capacities must be assessed and a judgment made as to their effects on the unskilled occupational base considering the other vocational factors of age, education, and work experience. When an individual has been found to have a limited ability in one or more of these basic work activities, it may be useful to consult a vocational resource.</p> <p>We reiterate our request to add "using judgment" to the list of basic work activities in this subsection and anywhere else it appears.</p>	
388-447-0010 (3)(a)	<p>We recommend adding the words, "or any longer period customarily relied upon to support current diagnosis of a specific impairment;". Our prior comments noted that the ABD provision at WAC 388-449-0015 (3)(a) considers diagnoses from within the past five years. An even longer time limit, or none at all, should be adopted for diagnoses of conditions that are chronic, degenerative, or unlikely to change (e.g. mental retardation, cerebral palsy). Allowing DSHS to rely on older diagnoses of this type will save limited resources and advance legislative intent.</p> <p>Your response noted the need for an examination from the past twelve months to establish current incapacity. That makes sense, but the way this subsection is currently written, it requires that the diagnosis be based on such an exam. In many cases, the diagnosis has been established for years. The purpose of a recent exam is to verify the degree to which the diagnoses impact the person's ability to engage in substantial gainful activity.</p>	<p>Partially incorporated. WAC 388-447-0010 (3)(a) updated to require a diagnosis from within the past five years rather than twelve months as proposed.</p> <p>This change is consistent with both SSA and ABD requirements and helps to support the concurrent ABD/HEN referral determination process.</p>
388-447-0030 (1)(d) and (3)(b)	See comment to proposed WAC 388-447-0001 (1)(c) regarding ninety day duration.	Not incorporated. See response to WAC 388-447-0001 (1)(c) comment.

Comments Received from Northwest Justice Project		Department Response
388-447-0030 (3)(c)	We recommend removing this subsection as unnecessary and likely to result in inaccurate denials before any analysis of medical evidence. Based on our experience with HEN and ABD incapacity issues, many workers will use this "reason" for denial inappropriately (as they currently do with the ABD SEP Step II threshold). What situation is this meant to cover? If it is intended for situations in which there is no objective medical evidence, it should say that, and so should the client's denial letter. Retaining this provision would result in inadequate denial notices because there would not be enough information to explain to the applicant why the information the department reviewed fails to meet incapacity requirements.	Partially incorporated for readability and clarity. WAC 388-447-0030 revised as follows: "(3) We deny incapacity if: (a) The reported impairment isn't expected to last ninety days or more from the date of application; or (b) We don't have the medical evidence detailed in WAC 388-447-0010, which is necessary to determine incapacity." Denial notices are outside the scope of the rule development process.
388-447-0110 (1) and (2)	Our August comments were primarily targeted at clarifying confusing references to "period of eligibility" and "authorization period" without defining those terms. The following language we discussed at our meeting on August 27, 2013, does not change the meaning of the proposed rule, clarifies terminology, and simplifies the language: (1) The maximum authorization period of eligibility for referral to the housing and essential needs (HEN) program is twelve months. We must review your incapacity at the end of your authorization period. (2) You must give us current medical evidence before the end of your authorization period. Your HEN referral eligibility ends unless the evidence demonstrates there was no material improvement in your impairment. No material improvement means that your impairment continues to meet the incapacity criteria in WAC 388-447-0001.	Partially incorporated for clarity and readability. Subsection (1) now reads: "If we determine you are incapacitated and you meet the eligibility requirements in WAC 388-400-0070, you are eligible for referral to the housing and essential needs (HEN) program for a maximum period of twelve months. This is your incapacity authorization period." Subsection (2) now reads: "Your HEN referral eligibility stops at the end of your incapacity authorization period unless...."
388-447-0120 (3)(b)	This allows for a finding of good cause for not following through with a chemical dependency assessment if the outpatient treatment needed isn't available in the county where the client lives. Many counties are large, and many counties do not have adequate public transportation. Expecting a client in Packwood to travel to Chehalis for outpatient treatment weekly or more is not reasonable. Instead of "the county where you live," we recommend using the language included in the next subsection, "at a location you can reasonably access."	Not incorporated. The good cause provisions outlined in WAC 388-447-0120(3) maintain the distinction drawn between inpatient and outpatient chemical dependency treatment in SHB 2069 Section 3 (2)(c). The statute draws a distinction between what constitutes good cause for failure to follow through with inpatient treatment and what constitutes good cause for failure to follow through with outpatient treatment. For outpatient treatment, good cause exists if the treatment isn't available in the county where the individual lives. For inpatient treatment, good cause exists if the treatment isn't available at a location the individual can reasonably

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	access. The department interprets the phrase "a location the individual can reasonably access" to include locations in counties other than the county in which the individual lives. Because outpatient treatment involves many trips to and from treatment, the department elects to maintain the more lenient standard based on the county where the individual lives.

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 21, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 21, Amended 1, Repealed 0.

Date Adopted: November 21, 2013.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-400-0065 Housing and essential needs (HEN) (1) For the purposes of this chapter:

(a) "Commerce" means the Washington state department of commerce.

(b) "Department" means the department of social and health services (DSHS).

(c) "Housing support" means assistance provided to maintain existing housing or to obtain housing or utilities.

(d) "Essential needs items" means personal health and hygiene items, cleaning supplies, transportation passes, and other personal needs items.

(2) What is housing and essential needs (HEN)?

Within available funds, HEN provides housing support and essential needs items to eligible individuals.

(3) Who administers HEN? HEN is administered by commerce through its network of local contracted HEN providers.

(4) Who determines eligibility for HEN?

(a) The department determines eligibility for referral to the HEN program and sends you a notice to say whether you are eligible for referral.

(b) After the department determines you eligible for a HEN referral, the local HEN provider decides whether you can receive HEN and what benefits you can receive based on guidelines established by commerce.

(c) Within their funding, the local HEN provider can continue your benefits as long as you remain eligible for referral to the HEN program.

(5) If your notice from the department says you are eligible for HEN referral, you must contact your local HEN provider to apply for housing supports and essential needs items. Referral to the HEN program does not guarantee that you will receive HEN.

NEW SECTION

WAC 388-400-0070 Who is eligible for referral to the housing and essential needs (HEN) program? (1) You are eligible for referral to the housing and essential needs (HEN) program if you:

(a) Apply for cash assistance as detailed in WAC 388-406-0010;

(b) Complete an interview with the department;

(c) Are incapacitated as defined in WAC 388-447-0001 through 388-447-0100;

(d) Are at least eighteen years old or, if under eighteen, legally emancipated or a member of a married couple;

(e) Are in financial need according to income rules in chapter 388-450 WAC and resource requirements in RCW 74.04.005 and chapter 388-470 WAC. We determine who is in your assistance unit according to WAC 388-408-0070;

(f) Have countable income, as defined in WAC 388-450-0162, at or below the monthly income limits defined in WAC 388-478-0090;

(g) Meet the citizenship/alien status requirement for ABD cash assistance under WAC 388-424-0015;

(h) Meet the Social Security number verification requirement for cash assistance under WAC 388-476-0005;

(i) Meet the residency requirement for cash assistance under WAC 388-468-0005;

(j) Meet verification requirements for cash assistance detailed in WAC 388-490-0005.

(k) To remain eligible for HEN referral, you must also:

(i) Report changes in your circumstances as required for cash assistance under WAC 388-418-0007; and

(ii) Complete and return eligibility reviews we send you under WAC 388-434-0005.

(2) You are not eligible for referral to the HEN program if you:

(a) Are eligible for the aged, blind, or disabled (ABD) cash assistance program;

(b) Are eligible for the pregnant women assistance (PWA) program;

(c) Are eligible for temporary assistance for needy families (TANF) program;

(d) Refuse or fail to meet a TANF rule without good cause;

(e) Refuse or fail to cooperate in obtaining federal aid assistance, including but not limited to medicaid, without good cause;

(f) Refuse or fail to participate in drug or alcohol treatment as required in WAC 388-447-0120;

(g) Are eligible for supplemental security income (SSI) benefits and receiving a state supplemental payment (SSP) under WAC 388-474-0012;

(h) Are an ineligible spouse of an SSI recipient;

(i) Refuse or fail to follow a social security administration (SSA) program rule or application requirement without good cause and SSA denied or terminated your benefits;

(j) Are terminated from ABD for refusing or failing to sign an interim assistance reimbursement authorization agreement under WAC 388-400-0060; or

(k) Are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony as described in WAC 388-442-0010.

(l) Are disqualified from receiving cash assistance due to a conviction related to unlawful practices in obtaining cash assistance as described in WAC 388-446-0005.

(3) If you reside in a public institution and meet all other requirements, your eligibility for referral to the HEN program depends on the type of institution. A "public institution" is an institution that is supported by public funds, and a governmental unit either is responsible for it or exercises administrative control over it.

(a) You may be eligible for referral to the HEN program if you are:

(i) A patient in a public medical institution; or

(ii) A patient in a public mental institution and are sixty-five years of age or older.

(b) You aren't eligible for referral to the HEN program if you are in the custody of or confined in a public institution such as a state penitentiary or county jail, including placement:

(i) In a work release program; or

(ii) Outside of the institution including home detention.

NEW SECTION

WAC 388-406-0056 When does my eligibility for referral to the housing and essential needs (HEN) program begin? This section applies to referrals to the housing and essential needs (HEN) program.

(1) If you meet the eligibility requirements in WAC 388-400-0070, HEN referral eligibility begins:

(a) The date we have enough information to make an eligibility decision; or

(b) No later than the forty-fifth day from the date we receive your application.

NEW SECTION

WAC 388-408-0070 Who is included in my assistance unit when the department determines eligibility for referral to the housing and essential needs (HEN) program?

(1) If you are an adult who is incapacitated as defined in WAC 388-447-0001, you are included in the housing and essential needs (HEN) referral assistance unit (AU).

(2) If you are married and live with your spouse, we decide who to include in the AU based on who is incapacitated:

(a) If both spouses are incapacitated as defined in WAC 388-447-0001, we include both spouses in the same AU.

(b) If only one spouse is incapacitated, we include only the incapacitated spouse in the AU. We count some of the income of the other spouse under WAC 388-450-0138.

(3) If you are unmarried, you are the only person in your AU.

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

WAC 388-442-0010 How does being a fleeing felon impact my eligibility for benefits? (1) You are a fleeing felon if you are fleeing to avoid prosecution, custody, or confinement for a crime or an attempt to commit a crime that is considered a felony in the place from which you are fleeing.

(2) If you are a fleeing felon, or violating a condition of probation or parole as determined by an administrative body or court that has the authority to make this decision, you are not eligible for TANF/SFA, PWA, ABD cash, referral to the HEN program, or Basic Food benefits.

NEW SECTION

WAC 388-447-0001 What are the incapacity requirements for referral to the housing and essential needs (HEN) program? (1) For the purposes of this chapter, the following definitions apply:

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

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

(c) "Incapacitated" means you cannot be gainfully employed due to a physical or mental impairment that is expected to continue for at least ninety days from the date you apply.

(d) "Mental impairment" means a diagnosable mental disorder.

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

(2) You must be incapacitated in order to receive a HEN referral.

(3) We determine if you are incapacitated when:

(a) You apply for a referral to the HEN program;

(b) You become gainfully employed;

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

(d) We receive new information that indicates you may be able to work; or

(e) Your incapacity authorization period ends.

(4) We deny your HEN referral if you are gainfully employed at the time of application for referral to the HEN program. "Gainfully employed" means you are performing, in a regular predictable manner, an activity usually done for pay or profit and earning more than the substantial gainful activity standard defined by the social security administration (SSA).

(5) We do not consider you to be gainfully employed if you are working:

(a) Under special conditions that go beyond providing reasonable accommodation; or

(b) Occasionally or part-time because your impairment limits the hours you are able to work compared to unimpaired workers in the same job.

(6) We determine you are incapacitated if you are:

(a) Approved through the progressive evaluation process (PEP). The PEP is a sequence of eight steps described in WAC 388-447-0030 through 388-447-0100;

(b) Eligible for services from the developmental disabilities administration (DDA);

(c) Diagnosed as having an intellectual disability based on a full scale score of seventy or lower on the Wechsler adult intelligence scale (WAIS);

(d) Eligible for long-term care services from aging and long-term support administration (ALTSA);

(e) Released from a medical institution where you received services from ALTSA within the past 90 days; or

(f) Released from inpatient treatment for a mental impairment within the past 90 days if:

(i) The release from inpatient treatment was not against medical advice; and

(ii) You were discharged into outpatient mental health treatment.

(7) If you have a physical or mental impairment, are impaired by alcohol or drug addiction, and do not meet the other incapacity criteria in section 6 (b) through (f), we decide if you are incapacitated by applying the PEP. We do not consider symptoms related to substance use or a diagnosis of chemical dependency when determining incapacity when we have evidence substance use is material to your impairment(s).

(8) We consider substance use material to your impairment(s) if you are disabled primarily because of drug or alcohol addiction.

(9) If your impairment will persist at least sixty days after you stop using drugs or alcohol, we do not consider substance use to be material to your impairment(s).

(10) In determining incapacity, 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 co-workers, tolerating the pressures of a work setting, maintaining appropriate behavior, using judgment, and adapting to changes in a routine work setting.

NEW SECTION

WAC 388-447-0005 What evidence does the department consider to determine incapacity? We accept medical evidence from the following sources when considering incapacity:

(1) For a physical impairment:

(a) A physician, which includes:

(i) Medical doctor (M.D.); and

(ii) Doctor of osteopathy (D.O.);

(b) An advanced registered nurse practitioner (ARNP) for physical impairments that are within their area of certification to treat;

(c) A Physician's Assistant (P.A.);

(d) A Doctor of optometry (O.D.) for visual acuity impairments;

(e) Doctor of podiatry (D.P.) for foot disorders;

(f) Doctor of dental surgery (D.D.S.) or doctor of medical dentistry (D.M.D.) for tooth abscesses or temporomandibular joint (TMJ) disorders; or

(g) The chief of medical administration of the Veterans' Administration, or their designee, as authorized in federal law.

(2) For a mental impairment:

(a) A psychiatrist;

(b) A psychologist;

(c) An ARNP certified in psychiatric nursing; or

(d) At the department's discretion:

(i) A person identified as a mental health professional within the regional support network mental health treatment system provided the person's training and qualifications at a minimum include having a master's degree and two years of mental health treatment experience; or

(ii) A physician who is currently treating you for a mental impairment.

(3) We do not accept medical evidence from the medical professionals listed in (1) and (2) above, unless they are licensed in Washington State or the state where the examination was performed.

(4) "Supplemental medical evidence" means information from a health professional not listed in (1) or (2) above who can provide supporting documentation for impairments established by a medical professional listed in (1) or (2) above. Supplemental medical evidence sources include:

(a) Health professionals who have conducted tests or provided ongoing treatment to you, such as a physical therapist, chiropractor, nurse, naturopath, audiologist, or licensed social worker;

(b) Workers at state institutions and agencies who are not health professionals and are providing or have provided medical or health-related services to you; or

(c) Chemical dependency professionals (CDPs) when requesting information on the effects of alcohol or drug abuse.

(5) "Other evidence" means information from other sources not listed above who can provide supporting documentation of functioning for impairments established by acceptable medical sources in subsections (1) or (2) of this section. Sources of "other evidence" include public and private agencies, schools, parents, caregivers, employers, and practitioners such as social workers.

NEW SECTION

WAC 388-447-0010 What medical evidence do I need to provide? You must provide medical evidence of your impairment(s) and how your impairment(s) affects your ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective and complete.

- (1) Objective evidence for physical impairments means:
 - (a) Laboratory test results;
 - (b) Pathology reports;
 - (c) Radiology findings including results of X rays and diagnostic imaging scans;
 - (d) Clinical findings including, but not limited to, ranges of joint motion, blood pressure, temperature or pulse; and documentation of a physical examination; or
 - (e) Hospital history and physical reports and admission and discharge summaries; or
 - (f) Other medical history and physical reports related to your current impairments.
- (2) Objective evidence for mental impairments means:
 - (a) Clinical interview observations, including objective mental status exam results and interpretation.
 - (b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM).
 - (c) Hospital, outpatient and other treatment records related to your current impairments.
 - (d) Testing results, if any, including:
 - (i) Description and interpretation of tests of memory, concentration, cognition or intelligence; or
 - (ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.
- (3) Medical evidence sufficient for an incapacity determination must be from a medical professional described in WAC 388-447-0005 and must include:
 - (a) A diagnosis for the impairment, or impairments, based on an examination performed within five years of application;
 - (b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-447-0001; and
 - (c) Documentation of how the impairment, or impairments, is currently limiting your ability to work based on an examination performed within ninety days of the date of application or incapacity review.
- (4) We consider documentation in addition to objective evidence to support the medical evidence provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.
- (5) If you can't obtain medical evidence sufficient for us to determine if you are incapacitated without cost to you, and you meet the other eligibility conditions defined in WAC 388-447-0001, we pay the costs to obtain objective evidence based on our published payment limits and fee schedules.

NEW SECTION

WAC 388-447-0020 How does the department assign severity ratings to my impairments? (1) "Severity rating" is a rating of the extent of your impairment and how it impacts your ability to perform the basic work activities detailed in WAC 388-447-0001. Severity ratings are assigned in Steps II through IV of the progressive evaluation process (PEP). The following chart provides a description of levels of limitations on work activities and the severity ratings that would be assigned to each.

	Effect on Work Activities	Degree of Impairment	Numerical Value
(a)	There is no effect on your performance of one or more basic work-related activities.	None	1
(b)	There is no significant limit on your performance of one or more basic work-related activities.	Mild	2
(c)	There are significant limits on your performance of one or more basic work-related activities.	Moderate	3
(d)	There are very significant limits on your performance of one or more basic work-related activities.	Marked	4
(e)	You are unable to perform at least one basic work-related activity.	Severe	5

- (2) We use the description of how your condition impairs your ability to perform work activities given by the medical evidence provider to establish severity ratings when the impairments are supported by, and consistent with, the objective medical evidence.
 - (3) A contracted doctor reviews your medical evidence and the ratings assigned to your impairment when:
 - (a) The medical evidence indicates functional limitations consistent with at least a moderate physical or mental impairment; and
 - (b) Your impairment has lasted, or is expected to last, nine months or more with available treatment.
 - (4) The contracted doctor reviews the medical evidence, severity ratings, and functional assessment to determine whether:

- (a) The medical evidence is objective and sufficient to support the findings of the medical evidence provider;
 - (b) The description of impairments is supported by the medical evidence; and
 - (c) The severity rating, duration, and assessment of functional limitations assigned by DSHS are consistent with the medical evidence.
- (5) If the medical evidence provider's description of your impairments is not consistent with the objective medical evidence, we will:
- (a) Assign a severity rating, duration, and functional limitations consistent with the objective medical evidence;
 - (b) Clearly describe why we rejected the medical provider's opinion; and
 - (c) Identify the medical evidence used to make the determination.

NEW SECTION

WAC 388-447-0030 Progressive evaluation process step I—How does the department review the medical evidence required for an incapacity determination? (1) When we receive your medical evidence, we review it to see if it is sufficient to decide whether you meet the incapacity requirements. It must:

- (a) Contain sufficient information under WAC 388-447-0010;
- (b) Be written by an authorized medical professional described in WAC 388-447-0005;
- (c) Document a potentially incapacitating condition; and
- (d) Indicate an impairment is expected to last at least ninety days from the application date.

(2) If the information received isn't clear, we may require more information before we decide if you are incapacitated. As examples, we may require you to get more medical tests or be examined by a medical specialist.

(3) We deny incapacity if:

- (a) The reported impairment isn't expected to last ninety days or more from the date of application;
- (b) We don't have the medical evidence detailed in WAC 388-447-0010, which is necessary to determine incapacity.

NEW SECTION

WAC 388-447-0040 Progressive evaluation process step II—How does the department determine the severity of mental impairments? If you are diagnosed with a mental impairment by a professional described in WAC 388-447-0005, we use information from the medical evidence provider to determine how the impairment limits work-related activities.

(1) We review the following psychological evidence to determine the severity of your mental impairment:

- (a) Psychosocial and treatment history records;
- (b) Clinical findings of specific abnormalities of behavior, mood, thought, orientation, or perception;
- (c) Results of psychological tests; and
- (d) Symptoms observed by the examining professional that show how your impairment affects your ability to perform basic work-related activities.

(2) We do not consider diagnoses or symptoms of alcohol or substance use or dependency when the only impair-

ment supported by objective medical evidence is drug or alcohol addiction.

(3) If you are diagnosed with an intellectual disability, the diagnosis must be based on the Wechsler adult intelligence scale (WAIS). The following test results determine the severity rating:

Intelligence Quotient (IQ) Score	Severity Rating
85 or above	1
71 to 84	3
70 or lower	5

- (4) If you are diagnosed with a mental impairment with physical causes, we assign a severity rating based on the most severe of the following four areas of impairment:
- (a) Short term memory impairment;
 - (b) Perceptual or thinking disturbances;
 - (c) Disorientation to time and place; or
 - (d) Labile, shallow, or coarse affect.
- (5) We base the severity of an impairment diagnosed as a mood, anxiety, thought, memory, personality, or cognitive disorder on a clinical assessment of the intensity and frequency of symptoms that:
- (a) Affect your ability to perform basic work-related activities; and
 - (b) Are consistent with a diagnosis of a mental impairment as listed in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM).
- (6) We base the severity rating for a functional mental impairment on accumulated severity ratings for the symptoms in subsection (5) of this section as follows:

Condition	Severity Rating
(a) The clinical findings and objective evidence are consistent with a significant limitation on performing one or more basic work activities.	Moderate (3)
(b) You are diagnosed with a functional disorder with psychotic features;	Marked (4)
(c) You have had two or more hospitalizations for psychiatric reasons in the past two years;	
(d) You have had more than six months of continuous psychiatric inpatient or residential treatment in the past two years;	
(e) The clinical findings and objective evidence are consistent with very significant limitations on ability to perform one or more basic work activities.	

Condition	Severity Rating
(f) The clinical findings and objective evidence are consistent with an inability to perform one or more basic work activities.	Severe (5)

(7) If you are diagnosed with any combination of mental retardation, mental impairment with physical causes, or functional mental impairment, we assign a severity rating as follows:

Condition	Severity Rating
(a) Two or more disorders with moderate severity (3) ratings; or	Marked (4)
(b) One or more disorders rated moderate severity (3), and one rated marked severity (4).	
(c) Two or more disorders rated marked severity (4).	Severe (5)

(8) We deny incapacity when you haven't been diagnosed with a significant physical impairment and the overall severity of your mental impairment is one or two;

(9) We approve incapacity when your overall mental severity rating is severe (5).

NEW SECTION

WAC 388-447-0050 Progressive evaluation process step III—How does the department determine the severity of physical impairments? "Severity of a physical impairment" means the degree that an impairment restricts you from performing the basic work-related activities in WAC 388-447-0001. Severity ratings range from one to five, with five being the most severe. We assign severity ratings based on the table in WAC 388-447-0020.

(1) We assign to each physical impairment a severity rating that is supported by medical evidence.

(2) If your physical impairment is rated two, and there is no mental impairment or a mental impairment that is rated one, we deny incapacity.

(3) If your physical impairment is rated five, we approve incapacity.

NEW SECTION

WAC 388-447-0060 Progressive evaluation process step IV—How does the department determine the severity of multiple impairments? (1) If you have more than one impairment, we determine the overall severity rating by deciding if your impairments have a combined effect on your ability to be gainfully employed.

(2) When you have two or more diagnosed impairments that limit work activities, we assign an overall severity rating as follows:

Condition	Severity Rating
(a) All impairments are mild and there is no cumulative effect on basic work activities.	Mild 2
(b) All impairments are mild and there is a significant cumulative effect on one or more basic work activities.	Moderate 3
(c) Two or more impairments are of moderate severity and there is a very significant cumulative effect on basic work activities.	Marked 4
(d) Two or more impairments are of marked severity.	Severe 5

(3) We deny incapacity at this step when:

(a) The overall severity rating is two; or

(b) Substance use is material to your impairment under WAC 388-447-0001 and your overall severity rating is two when symptoms related to substance use or a diagnosis of chemical dependency are not considered.

(4) We approve incapacity at this step when the overall severity rating is five.

NEW SECTION

WAC 388-447-0070 Progressive evaluation process step V—How does the department determine the impact of a mental impairment on my ability to function in a work environment? If you have a mental impairment, we evaluate your cognitive and social functioning in a work setting. "Functioning" means your ability to perform typical tasks that would be required in a routine job setting and your ability to interact effectively while working.

(1) We evaluate cognitive and social functioning by assessing your ability to:

(a) Understand, remember, and persist in tasks by following very short and simple instructions.

(b) Understand, remember, and persist in tasks by following detailed instructions.

(c) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision.

(d) Learn new tasks.

(e) Perform routine tasks without special supervision.

(f) Adapt to changes in a routine work setting.

(g) Make simple work-related decisions.

(h) Be aware of normal hazards and take appropriate precautions.

(i) Ask simple questions or request assistance.

(j) Communicate and perform effectively in a work setting.

(k) Complete a normal workday and workweek without interruptions from psychologically based symptoms.

(l) Set realistic goals and plan independently.

(m) Maintain appropriate behavior in a work setting.

(2) We approve incapacity when we have objective medical evidence that demonstrates you are:

(a) At least moderately impaired in your ability to understand, remember, and persist in tasks following simple instructions, and at least moderately limited in your ability to:

- (i) Learn new tasks;
- (ii) Be aware of normal hazards and take appropriate precautions; and
- (iii) Perform routine tasks without undue supervision; or

(b) At least moderately impaired in your ability to understand, remember, and persist in tasks following complex instructions; and at least markedly limited in your ability to:

- (i) Learn new tasks;
- (ii) Be aware of normal hazards and take appropriate precautions; and
- (iii) Perform routine tasks without undue supervision.

(3) We approve incapacity when you are moderately impaired in your ability to:

(a) Communicate and perform effectively in a work setting; and

(b) Markedly impaired in your ability to maintain appropriate behavior in a work setting.

NEW SECTION

WAC 388-447-0080 Progressive evaluation process step VI—How does the department determine the impact of a physical impairment on my ability to function in a work setting? In Step VI of the progressive evaluation process (PEP), we review the medical evidence provided and determine how your physical impairment limits your ability to work. This determination is then used in Steps VII and VIII of the PEP to determine your ability to perform either work you have done in the past or other work available in the national economy.

(1) "Exertion level" means having strength, flexibility, and mobility to lift, carry, stand or walk as needed to fulfill job duties in the following work levels. For this section, "occasionally" means less than one third of the time and "frequently" means one third of the time or more.

The following table is used to determine your exertion level. Included in this table is a strength factor, which represents your ability to perform physical activities, as defined in Appendix C of the *Dictionary of Occupational Titles* (DOT), Revised Edition, published by the U.S. Department of Labor as posted on the Occupational Information Network (O.*NET).

If you are able to:	Then we assign this exertion level
(a) Lift ten pounds maximum and frequently lift or carry lightweight articles. Walking or standing only for brief periods.	Sedentary

If you are able to:	Then we assign this exertion level
(b) Lift twenty pounds maximum and frequently lift or carry objects weighing up to ten pounds. Walk six out of eight hours per day or stand during a significant portion of the workday. Sitting and using pushing or pulling arm or leg movements most of the day.	Light
(c) Lift fifty pounds maximum and frequently lift or carry up to twenty-five pounds.	Medium
(d) Lift one hundred pounds maximum and frequently lift or carry up to fifty pounds.	Heavy

(2) "Exertional limitation" means a restriction in mobility, agility or flexibility in the following twelve activities: Balancing, bending, climbing, crawling, crouching, handling, kneeling, pulling, pushing, reaching, sitting, and stooping. We consider any exertional limitations you have when determining your ability to work.

(3) "Functional physical capacity" means the degree of strength, agility, flexibility, and mobility you can apply to work-related activities. We consider the effect of the physical impairment on the ability to perform work-related activities when the severity of the physical impairment is moderate, marked, or severe. All limitations must be substantiated by the medical evidence and directly related to the diagnosed impairment(s).

(4) "Non-exertional physical limitation" means a restriction on work activities that does not affect strength, mobility, agility, or flexibility. Examples are:

(a) Environmental restrictions which may include, among other things, your inability to work in an area where you would be exposed to chemicals; and

(b) Workplace restrictions, such as impaired hearing or speech, which would limit the types of work environments you could work in.

NEW SECTION

WAC 388-447-0090 Progressive evaluation process step VII—How does the department determine ability to perform past work? (1) If your overall severity rating is moderate (three) or marked (four) and we have not approved or denied incapacity by this stage of the progressive evaluation process (PEP), then we decide if you are able to do the same or similar work as you have done in the past. We consider your current physical and/or mental limitations when making this decision. Vocational factors are education, relevant work history, and age.

(2) We evaluate your work experience to determine if you have relevant past work. "Relevant past work" means work that:

(a) Is defined as gainful employment per WAC 388-447-0001;

(b) Has been performed within the past five years; and

(c) You performed long enough to acquire the knowledge and skills to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation that you have, we compare:

(a) The exertion, non-exertional, educational, and skill requirements detailed in the DOT for that job; and

(b) Current cognitive, social, exertional, and non-exertion factors that significantly limit your ability to perform past work.

(4) After considering vocational factors, we deny incapacity when we determine you:

(a) Are able to perform any of your relevant past work; or

(b) Recently acquired specific work skills through completion of schooling or training, for jobs within your current physical and mental capacities.

(5) We approve incapacity at this step if you are fifty-five years of age or older and do not have the physical or mental ability to perform relevant past work.

NEW SECTION

WAC 388-447-0100 Progressive evaluation process Step VIII—How does the department determine ability to perform other work? When we determine you cannot do work you have done in the past, we consider your age, education, and other factors to decide if you are able to perform other work.

(1) We evaluate education in terms of formal schooling or other training to acquire skills that enable you to meet job requirements. We classify your level of education as follows:

If you:	Then your education level is:
(a) Can't read or write a simple communication, such as two sentences or a list of items.	Illiterate
(b) Have no formal schooling or vocational training beyond the eleventh grade; or	Limited education
(c) Have participated in special education in basic academic classes of reading, writing, or mathematics in high school.	
(d) Have received a high school diploma or high school equivalency certificate; or	High school and above level of education
(e) Have received skills training and was awarded a certificate, degree or license.	

(2) We approve incapacity if you have a moderate or marked physical impairment and meet the criteria below:

Exertion Level	Age	Education Level	Other Vocational Factors
Sedentary	Any age	Any level	Does not apply

Exertion Level	Age	Education Level	Other Vocational Factors
Light	50 and older	Any level	Does not apply
Light	35 and older	Illiterate or LEP	Does not apply
Light	18 and older	Limited Education	Does not have any past work
Medium	50 and older	Limited Education	Does not have any past work

(3) We approve incapacity when you have a moderate or marked mental health impairment and we have objective medical evidence that social or cognitive factors described in WAC 388-447-0070 interfere with working as follows:

Social and Cognitive Limitation	Age
(a) Moderately impaired in your ability to: <ul style="list-style-type: none"> (i) Communicate and perform effectively in a work setting; and (ii) Maintain appropriate behavior in a work setting. 	50 years and older
(b) Markedly impaired in your ability to: <ul style="list-style-type: none"> (i) Understand, remember, and persist in tasks following detailed instructions; (ii) Set realistic goals and plan independently; or (iii) Learn new tasks. 	45 years and older
(c) Markedly impaired in your ability to: <ul style="list-style-type: none"> (i) Understand, remember, and persist in tasks by following very short and simple instructions; (ii) Perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances without special supervision; (iii) Perform routine tasks without special supervision; (iv) Adapt to changes in a routine work setting; (v) Make simple work-related decisions; (vi) Be aware of normal hazards and take appropriate precautions; (vii) Ask simple questions or request assistance; 	Any age

Social and Cognitive Limitation		Age
(viii)	Communicate and perform effectively in a work setting;	
(ix)	Complete a normal workday and work week without interruption from psychologically based symptoms; or	
(x)	Maintain appropriate behavior in a work setting.	

(4) We approve incapacity when you have both a mental and physical impairment with at least a moderate overall severity and we have objective medical evidence that social or cognitive factors in WAC 388-447-0070 interfere with your ability to work as follows:

Age	Education	Other Restrictions
Any age	Any level	(a) You are moderately impaired in your ability to communicate and perform effectively in a work setting.
50 or older	Limited education or less	(b) You are restricted to medium exertion level or less.
Any age	Limited education or less	(c) You are restricted to light exertion level or less.

(5) If you do not meet the criteria listed above, and there are jobs you can do in the national economy, we will find you able to perform other work and take the following actions:

- (a) Deny incapacity; and
- (b) Give you examples of jobs you can do in the national economy despite your impairment(s).
- (3) If there are no jobs you can do in the national economy despite your impairment(s), we approve incapacity.

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.

NEW SECTION

WAC 388-447-0110 When does my eligibility for referral to the housing and essential needs (HEN) program end? (1) If we determine you are incapacitated and you meet the eligibility requirements in WAC 388-400-0070, you are eligible for referral to the housing and essential needs (HEN) program for a maximum period of twelve months. This is your incapacity authorization period.

(2) Your HEN referral eligibility stops at the end of your incapacity authorization period unless you provide current medical evidence that demonstrates there was no material improvement in your impairment. No material improvement means that your impairment continues to meet the incapacity criteria detailed in WAC 388-447-0001.

(3) The medical evidence must meet the criteria defined in WAC 388-447-0010.

(4) We use medical evidence received after your incapacity authorization period has ended when:

- (a) The delay was not due to your failure to cooperate;
- (b) We receive the evidence within thirty days of the end of your incapacity authorization period; and
- (c) The evidence meets the incapacity criteria in WAC 388-447-0001.

(5) Even if your condition has not improved, you aren't eligible for referral to the HEN program when:

- (a) We receive current medical evidence that doesn't meet the incapacity criteria in WAC 388-447-0001; or
- (b) We determine the prior decision that your condition met incapacity requirements was incorrect because:
 - (i) The information we had was incorrect or not enough to show incapacity; or
 - (ii) We didn't apply the rules correctly to the information we had at that time.

NEW SECTION

WAC 388-447-0120 How does alcohol or drug dependence affect my eligibility for referral to the housing and essential needs (HEN) program? (1) When we have information that indicates you may be chemically dependent, you must complete a chemical dependency assessment unless you have good cause to not do so.

(2) You must participate in drug or alcohol treatment if a certified chemical dependency professional indicates a need for treatment, unless you have good cause to not do so.

(3) We consider the following to be good cause for not following through with a chemical dependency assessment or treatment:

- (a) We determine that your physical or mental health impairment prevents you from participating in treatment;
- (b) The outpatient chemical dependency treatment you need isn't available in the county where you live; or
- (c) The inpatient chemical dependency treatment you need isn't available at a location you can reasonably access.

(4) If you refuse or fail to complete an assessment or treatment without good cause, your HEN referral eligibility will end following advance notification rules under WAC 388-458-0030.

NEW SECTION

WAC 388-450-0113 Does the department allocate income of a housing and essential needs (HEN) referral recipient to legal dependents? This section applies to referrals to the Housing and Essential Needs (HEN) program.

(1) The income of a HEN referral recipient is reduced by the following:

- (a) The HEN referral earned income disregard as specified in WAC 388-450-0178; and
- (b) The amount of current and/or back child support that the recipient is paying each month under a court or administrative order. If the monthly child support payment is greater than the department's standard of need, income is instead reduced by the department's standard of need.

(2) When a HEN referral recipient in a medical institution, alcohol or drug treatment center, congregate care facility or adult family home has income, the income is countable to meet the recipient's needs after the income is reduced by the following:

(a) The HEN referral program income limit for the non-applying spouse and legal dependents living in the home; and

(b) The standard of assistance the client is eligible for while residing in the alternative care facility.

NEW SECTION

WAC 388-450-0138 Does the department allocate income of an ineligible spouse to a housing and essential needs (HEN) referral recipient? This section applies to referrals to the Housing and Essential Needs (HEN) program.

(1) When a HEN referral recipient is married and lives with their nonapplying spouse, the following income is considered available to the client:

(a) The remainder of the recipient's wages, retirement benefits and other income after reducing the total income by:

(i) The HEN referral work incentive deduction, as specified in WAC 388-450-0178; and

(ii) The amount of current and/or back child support that the recipient is paying each month under a court or administrative order. If the monthly child support payment is greater than the department's standard of need, income is instead reduced by the department's standard of need.

(b) The remainder of the nonapplying spouse's wages, retirement benefits and other income after reducing the total income by:

(i) An amount not to exceed the department's standard of need for court ordered or administratively ordered current or back child support for legal dependents; and

(ii) The HEN referral income limit amount as specified under WAC 388-478-0090 which includes ineligible assistance unit members.

(c) One-half of all other community income.

NEW SECTION

WAC 388-450-0178 Does the department offer an income deduction for housing and essential needs (HEN) referral applicants and recipients as an incentive to work? We give a deduction to Housing and Essential Needs (HEN) referral recipients who receive income from work. The deduction applies to eligibility for referral to the HEN program only. We allow the following income deduction when we determine your eligibility for referral to the HEN program:

We only count fifty percent of your monthly gross earned income. We do this to encourage work.

WSR 14-01-002

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 4, 2013, 2:39 p.m., effective January 4, 2014]

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

Purpose: WAC 246-282-005, the rule adopts the most current version (2011) of the National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish (guide), which all shellfish producing states are required to follow in order to place molluscan shellfish into interstate commerce.

Citation of Existing Rules Affected by this Order: Amending WAC 246-282-005.

Statutory Authority for Adoption: RCW 69.30.030.

Adopted under notice filed as WSR 13-16-032 on July 29, 2013.

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

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

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

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

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

Date Adopted: December 4, 2013.

Jessica Todorovich
Deputy Secretary
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 11-17-104, filed 8/22/11, effective 9/22/11)

WAC 246-282-005 Minimum performance standards. (1) Any person engaged in a shellfish operation or possessing a commercial quantity of shellfish or any quantity of shellfish for sale for human consumption must comply with and is subject to:

(a) The requirements of the ((2009)) 2011 National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish, published by the United States Department of Health and Human Services, Public Health Service, Food and Drug Administration (copies available through the U.S. Food and Drug Administration, Shellfish Sanitation Branch, and the Washington state department of health, office of shellfish and water protection);

(b) The provisions of 21 Code of Federal Regulations (C.F.R.), Part 123 - Fish and Fishery Products, adopted December 18, 1995, by the United States Food and Drug Administration, regarding Hazard Analysis Critical Control Point (HACCP) plans (copies available through the U.S. Food and Drug Administration, Office of Seafood, and the Washington state department of health, office of food safety and shellfish programs); and

(c) All other provisions of this chapter.

(2) If a requirement of the NSSP Guide for the Control of Molluscan Shellfish or a provision of 21 C.F.R., Part 123, is

inconsistent with a provision otherwise established under this chapter or other state law or rule, then the more stringent provision, as determined by the department, will apply.

WSR 14-01-003
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed December 4, 2013, 2:50 p.m., effective January 4, 2014]

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

Purpose: Chapter 246-292 WAC, the rule addresses statutory changes that better protect public health by establishing specific certification requirements for cross-connection control specialists and backflow assembly testers, incorporate long-standing guidance and current program practices, and clarify rule language and procedural requirements.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-292-160; and amending WAC 246-292-001, 246-292-010, 246-292-020, 246-292-031, 246-292-040, 246-292-050, 246-292-055, 246-292-060, 246-292-070, 246-292-075, 246-292-080, 246-292-085, 246-292-090, 246-292-100, and 246-292-110.

Statutory Authority for Adoption: RCW 70.119.050.

Other Authority: Chapter 70.119 RCW.

Adopted under notice filed as WSR 13-17-070 on August 16, 2013.

Changes Other than Editing from Proposed to Adopted Version: Deleted rule language regarding the general design criteria in WAC 246-292-034(5). The remaining language in this subsection is sufficient to determine that a field test kit meets minimum performance standards.

A final cost-benefit analysis is available by contacting Brad Burnham, Washington State Department of Health, P.O. Box 47822, Olympia, WA 98504-7822, phone (360) 236-3158, fax (360) 236-2254, e-mail brad.burnham@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 2, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 13, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 13, 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 8, Amended 15, Repealed 1.

Date Adopted: December 4, 2013.

Jessica Todorovich
Deputy Secretary
for John Wiesman, DrPH, MPH
Secretary

Chapter 246-292 WAC

**~~((WATER WORKS))~~ WATERWORKS OPERATOR
CERTIFICATION**

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-001 Purpose. ~~((Pursuant to the provisions of chapter 70.119 RCW.))~~ The purpose of this chapter is to protect public health by setting minimum requirements and standards for ~~((public water system operation and certification of operators in responsible charge of public water systems. Certification under this chapter is available to all operators who can meet the minimum qualifications of a given classification.))~~.

(1) Public water systems required to have a certified operator in responsible charge:

(2) Certified operators of public water systems:

(3) Certified operators that develop and implement cross-connection control programs; and

(4) Certified operators that inspect, field test, maintain, and repair backflow assemblies, devices, and air gaps that protect public water systems.

AMENDATORY SECTION (Amending WSR 05-06-122, filed 3/2/05, effective 4/2/05)

WAC 246-292-010 Definitions, abbreviations, and acronyms. ~~((Abbreviations and acronyms:~~

~~BAT—backflow assembly tester;~~

~~BTO—basic treatment operator;~~

~~CCS—cross-connection control specialist;~~

~~GWI—groundwater under the direct influence of surface water;~~

~~NTNC—nontransient noncommunity;~~

~~OIT—operator in training;~~

~~SMA—satellite management agency;~~

~~TNC—transient noncommunity;~~

~~WAC—Washington Administrative Code;~~

~~WDM—water distribution manager;~~

~~WDS—water distribution specialist;~~

~~WTPO—water treatment plant operator;~~

~~"Available" means based on system size, complexity, and source water quality, a certified operator must be on-site or able to be contacted as needed to initiate the appropriate action in a timely manner.))~~ 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 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 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 RCW to develop and implement a cross-connection control program.

(15) **"Certificate"** means a ~~((certificate of competency))~~ document issued annually by the department stating that the operator has met the requirements for ~~((the specified))~~ a specific certified operator classification ~~((of the certification program))~~ in WAC 246-292-060.

(16) **"Certified operator"** means ~~((a person who has met the applicable requirements of this chapter and holds))~~ an individual meeting the requirements of this chapter, certified under chapter 70.119 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.

~~("Complex filtration technology" means conventional, direct, in-line or diatomaceous earth filtration.))~~ (17) **"CEU (continuing education unit)"** means the nationally recog-

nized measurement, similar to college credit, developed by IACET, in which one CEU is awarded for every ten 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 or more service connections used by year-round residents for one hundred eighty or more days within a calendar year, regardless of the number of people, or regularly serving at least twenty-five year-round (i.e., more than one hundred eighty days per year) residents. ~~((Examples of a community water system might include a municipality, subdivision, mobile home park, apartment complex, college with dormitories, nursing home, or prison.~~

~~"Continuing education unit (CEU)" means a nationally recognized unit of measurement similar to college credits. One CEU is awarded for every ten contact hours of participation in an organized continuing education experience under responsible sponsorship, capable direction and qualified instruction. Forty five relevant CEUs equals forty five relevant college quarter credits or thirty relevant college semester credits as determined by the department.))~~

(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 ~~((person in charge of the daily operational activities of))~~ 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 ~~((owner))~~ 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 ~~((, through the secretary of health or the secretary's designee)).~~

(26) **"Distribution system"** means all piping components of a public water system that serve ~~((s))~~ to convey water from transmission mains linked to source, storage and treatment facilities to the consumer excluding individual services.

("Grandparenting" means the exemption for the existing operator in responsible charge from meeting the initial education, experience and examination requirements for the class of certification the system has been assigned.) (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. ((In considering whether an act or omission constitutes gross negligence, the department shall consider all relevant factors including, but not limited to:

(1) The standard of care commonly exercised by operators;

(2) Whether the legal duty was known or should have been known to the alleged violator; and

(3) The degree to which the alleged violation endangered public health.

"Groundwater under the direct influence of surface water (GWI)" means any water beneath the surface of the ground with:

Significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*; or

Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH closely correlating to climatological or surface water condition.

"**Group A water system**" means a public water system providing service such that it meets the definition of a public water system provided in the 1996 amendments to the federal Safe Drinking Water Act (Public Law 104-182, Section 101, subsection b). Group A water systems are further defined as community and noncommunity water systems (see other definitions):

"Group B water system" means a public water system with less than fifteen residential connections and serving:

An average of less than twenty-five people per day for sixty or more days within a calendar year; or

Any number of people for less than sixty days within a calendar year.)

(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, ((water)) distribution systems, ((wastewater facilities)) and certification of operators;

(*) (c) Facilitates reciprocity between a state or provincial program((s)); and

(*) (d) Assists authorities in establishing new certification programs and updating existing ((certification)) 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 ((NTNC)) and transient noncommunity ((TNC)).

(35) "**Nontransient noncommunity water system ((NTNC))**" means a Group A public water system that provides service opportunities to twenty-five or more of the same nonresidential people for one hundred eighty or more days within a calendar year. ((Examples of a NTNC water system include a school or day care center, or a business, factory, motel or restaurant with twenty-five or more employees on-site.

"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.)

(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 RCW to perform routine on-site duties in a water treatment plant or distribution system.

(37) "**Operating experience**" means the routine ((on-site)) performance or management of duties ((in a water purification plant or distribution system. Those duties affect plant or system performance and/or water quality)):

(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 ((that)) a designated period of time ((during)) in which a certified operator makes decisions ((are made)) and takes actions ((are taken)) that ((with)) directly impact drinking water quality ((and/or)), water quantity ((of drinking water)), 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 (~~(time)~~) period of ~~time~~ not less than three years, in which a certified operator (~~(shall demonstrate)~~) completes the professional growth requirement in WAC 246-292-095.

~~("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:~~

~~• Collection, treatment, storage, and/or distribution facilities under control of the owner and used primarily in connection with such systems; and~~

~~• Collection or pretreatment storage facilities not under control of the owner, but primarily in connection with such system.~~

~~"Purification plant" means that portion of a public water system that treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards. Unit processes installed to perform water filtration, ion exchange, electro dialysis, reverse osmosis, or iron and manganese removal shall be included within the scope of the term purification plant. Unit processes installed to allow in line fluoridation, in line chlorination, or chemical addition to inhibit corrosion are not included within the scope of the term purification plant.)~~

~~(42) "**Public water system (Group A public water system)**" means:~~

~~(a) A system with fifteen or more service connections, regardless of the number of people; or~~

~~(b) A system serving an average of twenty-five or more people per day for sixty 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:~~

~~((1) Is approved by the department;~~

~~(2) Has an influence on water quality, water supply, or public health protection; and~~

~~(3) Is directly related to the)) (a) The operation(~~(s)~~) or maintenance activities of a public water system; or~~

~~((4) Is directly related to)) (b) Managing the operation or maintenance activities of a public water system. (~~Examples of acceptable management training include drinking water regulatory compliance, capacity development, rate setting, financial viability, water system security, and responding to drinking water emergencies.~~~~

~~"Responsible charge" means the operator(s) designated by the owner to be the certified operator(s) who makes the decisions regarding the daily operational activities of a public water system, water treatment facility and/or distribution system that will directly impact water quality and/or quantity of drinking water including, but not limited to, decisions concerning process control and system integrity.~~

~~"Satellite management agency (SMA)" means a person or entity that is approved by the department to own or operate public water systems on a regional or county-wide basis without the necessity for a physical connection between such systems.~~

~~"Service connection" means a connection to a public water system designed to provide water to a single family residence, or other residential or nonresidential population.~~

~~"**Significant noncomplier**" means a system that is violating or has violated department rules, and the violation may create, or has created an imminent or a significant risk to human health. Such violations include, but are not limited to, repeated violations of monitoring requirements, failure to address an exceedance of permissible levels of regulated contaminants, or failure to comply with treatment technique standards or requirements.)~~

~~(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 ((FNC)) water system**" means a Group A public water system that serves:~~

~~((*) (a) Twenty-five or more different people each day for sixty or more days within a calendar year; or~~

~~((*) (b) Twenty-five or more of the same people each day for sixty or more days, but less than one hundred eighty days within the calendar year.~~

~~(50) "**USC**" means the University of Southern California.~~

~~(51) "**Validated ((exam)) examination**" means an ((exam)) examination that is independently reviewed by subject matter experts, to ((ensure)) verify that the ((exam)) examination is based on a job analysis ((and related to the classification of the system or facility)) and, where applica-~~

ble. 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 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 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 RCW to perform or manage on-site duties in a distribution system of a public water system that serves two hundred fifty 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 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.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-020 ((General)) Public water system requirements. (1) ((The following public water systems)) A purveyor shall designate ((the)) at least one certified operator((s)) in responsible charge ((of the daily operational activities of the public water system, water treatment facility, and/or distribution system that will directly impact water quality and/or quantity of drinking water)) to meet the requirements of WAC 246-292-032 and as required ((under)) in WAC 246-292-050(:

(a) Group A community or nontransient noncommunity (NTNC) systems; and

(b) Group A transient noncommunity (TNC) systems classified as significant noncompliers (SNCs); and

(c) Group A transient noncommunity (TNC) systems using a surface water or GWI source)) (1), (2), and (4), as applicable.

(2) ((Operator certification requirement.)) A purveyor may designate additional certified operators in responsible charge ((of the following public water systems or portions thereof shall be certified:

(a) Group A community and nontransient noncommunity (NTNC) systems;

(b) Group A transient noncommunity (TNC) systems classified as significant noncompliers (SNCs); and

(c) Group A transient noncommunity (TNC) systems using a surface water or GWI source.

(3) A designated certified operator shall be in responsible charge and available for each operating shift)) in accordance with WAC 246-292-050(3) when a purveyor has designated operating shifts and major segments.

(3) A purveyor shall designate and report mandatory certified operators in responsible charge positions to the department within thirty days of:

(a) Starting operations of a public water system; or

(b) When a mandatory certified operator in responsible charge position is vacated.

(4) The purveyor shall not require certified operators to perform an action or correction that is inconsistent with their experience, skills, abilities, or level of certification.

AMENDATORY SECTION (Amending WSR 05-06-122, filed 3/2/05, effective 4/2/05)

WAC 246-292-031 Duties of a certified operator ((duties)). (1) A certified operator shall:

((1) The certified operator shall)) (a) Operate the public water system with due care and diligence ((for protecting)) to protect public health and ((shall abide by)) comply with this chapter and applicable state and federal drinking water laws and regulations.

((2) The certified operator shall operate the water system)) (b) Perform only the duties consistent with ((experience and training appropriate to their)) the operator's experience, skills, abilities, or level of certification.

((3) The certified operator shall perform his or her duties in accordance with this section. Failure to do so may threaten public health and safety which could result in the suspension or revocation of his or her certification.)) (c) Inform the purveyor if a required action or correction is inconsistent with the operator's experience, skills, abilities, or level of certification.

(2) The certified operator duties in this chapter do not relieve a purveyor of the responsibility to comply with the requirements of chapter 246-290 WAC.

NEW SECTION

WAC 246-292-032 Duties of a certified operator in responsible charge. (1) A certified operator designated by the purveyor to be in responsible charge as required in WAC 246-292-020 shall perform or manage the public water system's daily operational and maintenance activities in this chapter, chapter 246-290 WAC, and according to acceptable public health practices and water industry standards.

(2) A certified operator in responsible charge or designee must be available on-site or able to be contacted immediately by telephone or other electronic communication twenty-four hours per day, every day, and able to initiate appropriate action within two hours of contact. Appropriate action may include, but is not limited to:

- (a) Making necessary repairs or resolving problems; or
- (b) Directing staff or contractors to make necessary repairs or resolve problems.

(3) The duties of a certified operator in responsible charge or designee include, but are not limited to:

(a) Conducting water quality monitoring, maintaining adequate records and taking follow-up action, if necessary, to comply with state and federal drinking water regulations;

(b) Implementing preventive maintenance programs, inspecting treatment and other public water system components for malfunctions, maintaining adequate records, and making needed repairs;

(c) Analyzing, reviewing, and maintaining records of instrument readings and laboratory test results, determining the location and causes of any malfunctions, adjusting various treatment processes or other components;

(d) Implementing a cross-connection control program, if directed by the purveyor;

(e) Determining and implementing remedial actions in an emergency and, if applicable, following departmental directives;

(f) Cooperating during a special purpose investigation or sanitary survey as required in chapter 246-290 WAC;

(g) Providing required records and reports to the department or its representative upon request; and

(h) Providing written notification to the department within thirty days of:

- (i) Starting operations of a public water system; or
- (ii) Ending operations of a public water system.

(4) The duties of a certified operator in responsible charge required in this chapter do not relieve a purveyor of the responsibility to comply with the requirements of chapter 246-290 WAC.

NEW SECTION

WAC 246-292-033 Duties of a CCS. (1) A CCS designated by a purveyor as required in WAC 246-292-050(4) shall develop, implement, and maintain a cross-connection control program that meets the requirements in WAC 246-290-490.

(2) A CCS shall perform the following duties:

(a) Assess the degree of hazard posed by the consumer's water system to the public water system, as required in WAC 246-290-490 (4)(a)(i);

(b) Determine the appropriate method of backflow protection to prevent contamination of the public water system by the consumer's water system, as required in WAC 246-290-490 (4)(a)(ii);

(c) Inspect backflow preventer installations to verify that the protection provided is appropriate for the assessed degree of hazard, as required in WAC 246-290-490 (7)(a)(i);

(d) Investigate and respond to backflow incidents known to have contaminated or suspected of contaminating the public water system, as required in WAC 246-290-490 (3)(h);

(e) Develop and maintain the purveyor's cross-connection control records, as required in WAC 246-290-490 (3), (4), and (8);

(f) Complete and sign the purveyor's cross-connection control related reports and make the reports available to the department upon request, as required in WAC 246-290-490(8) including:

(i) The cross-connection control annual summary reports; and

(ii) Backflow incident reports after an incident has occurred that contaminated the public water system;

(g) Take corrective action as required in WAC 246-290-490 (2)(h) when a consumer fails to comply with the purveyor's cross-connection control requirements regarding the installation, inspection, field testing, maintenance, or repair of a backflow preventer that protects the public water system; and

(h) Review inspection and field test reports for backflow preventers that protect the public water system and take follow-up action to resolve incomplete, erroneous, or fraudulent reports as required in WAC 246-290-490 (3)(g).

(3) If the purveyor grants exceptions to mandatory premises isolation as allowed under WAC 246-290-490 (4)(b), the CCS shall:

(a) Determine, on a case-by-case basis, if granting the consumer an exception to mandatory premises isolation is appropriate;

(b) Complete and sign an exception form provided by the department for each exception granted;

(c) Include the completed exception forms in the purveyor's cross-connection control annual summary report; and

(d) Submit the completed and signed exception forms to the department upon request.

(4) As allowed in WAC 246-290-490 (7)(a)(ii), a CCS's duties may include inspecting:

(a) Air gaps to determine if they are approved air gaps, and reporting the results of the inspections as required in WAC 246-292-036(8); and

(b) Backflow prevention assemblies to determine if they are installed correctly and approved by the department.

(5) The CCS duties in this chapter do not relieve a purveyor of the responsibility to comply with the requirements of chapter 246-290 WAC.

NEW SECTION

WAC 246-292-034 Duties of a BAT. (1) A BAT shall inspect, field test, maintain, and repair backflow prevention assemblies, backflow prevention devices, and air gaps that protect the public water system and report the results as required in WAC 246-290-490(7).

(2) A BAT must be equipped with and capable of using a field test kit, all tools, and other equipment needed to inspect and field test backflow prevention assemblies, and to inspect air gaps and AVBs.

(3) When conducting inspections and field tests of backflow preventers, a BAT shall:

- (a) Use procedures that:
- (i) Meet the requirements in WAC 246-290-490 (7)(d); and
- (ii) Are consistent with the field test procedures used on the BAT's most recently passed practical exam;
- (b) Accurately perform inspections and field tests;
- (c) Record inspection and field test results completely, accurately, and legibly on a backflow preventer inspection and field test report that meets the requirements in WAC 246-292-036;
- (d) Accurately interpret inspection results and determine whether or not the backflow prevention assembly is properly installed;
- (e) Accurately interpret the field test results and determine if a backflow prevention assembly passed or failed the field test;
- (f) Accurately interpret air gap inspection results and determine if the air gap is an approved air gap at the time of inspection; and
- (g) Accurately interpret inspection results and determine if an AVB is properly installed and operating properly.
- (4) A BAT shall submit a completed backflow preventer inspection and field test report in an original, copy, facsimile, or electronic format to the owner of the backflow preventer and to the purveyor.
- (5) When field testing a backflow prevention assembly, a BAT shall use a field test kit that meets the criteria in Appendix A, Section A.7 of the *Manual of Cross-Connection Control*, 10th Edition, published by the University of Southern California, October 2009 (*USC Manual*).
- (6) A BAT shall have the field test kit and components:
- (a) Evaluated for performance, pressure-tested, and checked for accuracy:
- (i) At least once within the twelve month period before the inspection and field test date; and
- (ii) By an independent laboratory that meets criteria and uses procedures specified in Appendix A, Section A.7 of the *USC Manual*.
- (b) Recalibrated, repaired, or replaced, if the pressure test or accuracy check results fail to meet the criteria in Appendix A, Section A.7 of the *USC Manual*.
- (7) A BAT shall submit to the purveyor as required in WAC 246-290-490 (3)(g):
- (a) Laboratory-issued documentation that verifies the accuracy of the field test kit and provides the results of the pressure testing; and
- (b) A copy of the department-issued BAT validation card that verifies the BAT's current certification status.
- (8) When inspecting, testing, maintaining, or repairing a backflow prevention assembly or AVB, a BAT shall:
- (a) Use only replacement parts from the original manufacturer so that the backflow prevention assembly or AVB meets the approval requirements of WAC 246-290-490(5);
- (b) Retain, or restore if needed, the manufacturer's design, material, and operational characteristics of the backflow prevention assembly or AVB so that the backflow preventer meets the approval requirements of WAC 246-290-490(5); and
- (c) Be a certified plumber as required in chapter 18.106 RCW, if applicable.

NEW SECTION

WAC 246-292-036 Backflow preventer inspection and field test report content. (1) A BAT shall complete a backflow preventer inspection and field test report as required in WAC 246-292-034 (3)(c).

(2) The completed backflow preventer inspection and field test report must contain facility and hazard information including:

- (a) Facility name;
- (b) Service address;
- (c) Name and contact information of the facility owner or owner's representative; and
- (d) Description of downstream hazards or premises, such as the categories identified in WAC 246-290-490, Table 9, if known to the BAT.

(3) The completed backflow preventer inspection and field test report must contain backflow prevention assembly or AVB information including:

- (a) Description of physical location;
- (b) Assembly type;
- (c) Manufacturer;
- (d) Model;
- (e) Serial number, if applicable;
- (f) Size;
- (g) Whether or not the assembly or AVB met the approval requirements in WAC 246-290-490(5) at the time of inspection;

(h) Whether or not the installation is new, existing, or a replacement; and

(i) For a replacement installation, the serial number of the previously installed assembly or AVB, if known to the BAT.

(4) The completed backflow preventer inspection and field test report must contain installation information including whether or not the backflow prevention assembly or AVB is properly installed:

- (a) In an orientation that meets the approval requirements of WAC 246-290-490 (6)(a);
- (b) According to industry standards, as required in WAC 246-290-490(6); and
- (c) So that the air gap under the relief valve of a reduced pressure backflow assembly meets the approved air gap requirements in chapter 246-290 WAC.

(5) The completed backflow preventer inspection and field test report must contain results of backflow prevention assembly inspections and field tests conducted according to the field test procedures that meet the requirements of WAC 246-290-490 (7)(d), including:

- (a) Accurate field test kit readings for the initial field test;
- (b) Accurate field test kit readings for the field test conducted after maintenance or repair, if applicable; and
- (c) If the backflow prevention assembly passed or failed each field test.

(6) The completed backflow preventer inspection and field test report must contain backflow prevention assembly or AVB maintenance and repair information, if applicable and known to the BAT, including a:

- (a) Description of maintenance performed;
- (b) Description of repairs made; and

(c) List of materials or replacement parts used.

(7) The completed backflow preventer inspection and field test report must contain field test kit information for each field test conducted, including:

- (a) Manufacturer;
- (b) Model;
- (c) Serial number; and

(d) Date of the most recent laboratory accuracy verification or laboratory calibration that meets the requirements of WAC 246-292-034(6).

(8) The completed backflow preventer inspection and field test report must contain results of air gap inspections including:

- (a) Measurements of the supply pipe diameter;
- (b) Measurements of the air gap separation; and
- (c) Whether or not the air gap is an approved air gap at the time of inspection.

(9) The completed backflow preventer inspection and field test report must contain remarks, if applicable, including, but not limited to:

(a) A statement that the backflow prevention assembly or AVB does not meet the approval requirements in WAC 246-290-490(5);

(b) A list of all missing or defective backflow prevention assembly or AVB components, including shutoff valves and test cocks; and

(c) A description of any conditions that could adversely affect the performance of the backflow preventer.

(10) The completed backflow preventer inspection and field test report must contain information about the BAT who inspected, field tested, maintained, or repaired the backflow preventer, including the BAT's:

- (a) Printed name;
- (b) Company name;
- (c) Phone number; and
- (d) BAT certification number issued by the department.

(11) The completed backflow preventer inspection and field test report must contain the date of each inspection, field test, maintenance or repair, if applicable, performed by the BAT.

(12) The completed backflow preventer inspection and field test report must contain a statement certifying that the BAT:

- (a) Personally inspected and field tested the backflow prevention assembly; or
- (b) Personally inspected the air gap or AVB; and
- (c) Used field test procedures that met the requirements of WAC 246-290-490 (7)(d); and
- (d) Provided true, complete, and accurate information in the report.

(13) The completed backflow preventer inspection and field test report must contain the signature of the BAT who inspected, field tested, maintained, or repaired the backflow preventer. The signature must be in original, copy, facsimile, or electronic format.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-040 Classification of public water systems. ~~((+))~~ The department shall classify ~~((purification))~~ water treatment plants ~~((according to the Association of Boards of Certification's "Purification Plant Criteria" and set forth in the Water Works Certification Program Guideline (guideline). Copies of the guideline are available on request by contacting the Department of Health, Drinking Water Division, Water Works Certification Program P.O. Box 47822, Olympia, Washington 98504 7822.~~

~~(2) The department shall classify distribution systems into groups as follows:~~

Classification	Population Served*
Group S	less than 251
Group 1	251 to 1,500
Group 2	1,501 to 15,000
Group 3	15,001 to 50,000
Group 4	greater than 50,000

* If the population served is not known, apply this formula: Number of Service Connections x 2.5 = Population Served)

and distribution systems.

(1) Water treatment plants.

(a) Water treatment plants are classified according to the point system in the ABC "Purification Plant Criteria" publication (October 2007) and are in Table 1.

Table 1
Water Treatment Plant Classification

<u>Total Points Assigned</u>	<u>Water Treatment Plant Classification</u>
<u>Less than 31</u>	<u>Class 1</u>
<u>31 to 55</u>	<u>Class 2</u>
<u>56 to 75</u>	<u>Class 3</u>
<u>More than 75</u>	<u>Class 4</u>

(b) The scope of water treatment plant processes include, but are not limited to:

- (i) Water filtration;
- (ii) Ion exchange;
- (iii) Electrodialysis;
- (iv) Reverse osmosis; or
- (v) Inorganic contaminant removal.

(c) The scope of a water treatment plant does not include unit processes installed for:

- (i) In-line fluoridation;
- (ii) In-line chlorination; or
- (iii) Chemical addition to inhibit corrosion.

(2) Distribution systems are classified according to the population served from a public water system's WFI form and are in Table 2.

Table 2
Distribution Systems Classification

<u>Population Served</u>	<u>Distribution System Classification</u>
<u>Less than 251</u>	<u>Class S</u>
<u>251 to 1,500</u>	<u>Class 1</u>
<u>1,501 to 15,000</u>	<u>Class 2</u>
<u>15,001 to 50,000</u>	<u>Class 3</u>
<u>More than 50,000</u>	<u>Class 4</u>

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-050 Public water system minimum operator certification requirements ((for public water systems)). ((1) Owners shall have at least one certified operator in responsible charge of the daily operational activities of their system as follows:

(a) A water treatment plant operator (WTPO) shall be responsible for the operation of:

- (i) A purification plant with a Class 2 rating or higher;
- (ii) Any purification plant using complex filtration technology; or
- (iii) Any unfiltered Group A surface water or GWI system with one hundred or more services in use at any one time.

(b) A basic treatment operator (BTO) shall be responsible for the operation of:

- (i) A public water system with a Class 1 purification plant rating; or
- (ii) An unfiltered Group A surface water or GWI system with less than one hundred services in use at any one time.

(c) A water distribution manager (WDM) shall be responsible for the operation of a Group A water system:

- (i) Serving a population greater than two hundred fifty people;
- (ii) A Class 2 purification plant rating or higher; or
- (iii) Any purification plant using complex filtration technology.

(d) A water distribution specialist (WDS) shall be responsible for the operation of:

- (i) Group A community or NTNC water systems serving a population of two hundred fifty people or less;
- (ii) Group A TNC systems classified as significant non-compliers (SNCs) and not required to provide treatment other than simple disinfection if serving a population of two hundred fifty people or less;

(2) Owners required to develop a cross-connection control program in accordance with WAC 246-290-490 shall ensure that a cross-connection control specialist (CCS) is responsible for:

- (a) The system's cross-connection control program;
- (b) Initial inspection of premises served by the system, for cross-connections; and
- (c) Periodic reinspection of premises served by the system, for cross-connections.

(3) Owners shall ensure that a backflow assembly tester (BAT) is responsible for inspecting, testing, and monitoring

backflow prevention assemblies in accordance with WAC 246-290-490.

(4) A WTPO and WDM shall be certified at a level equal to or higher than the water system's classification rating assigned by the department in accordance with WAC 246-292-040.

(5) The certified operator in responsible charge of each operating shift shall be certified at a minimum of one level lower than the classification of the purification plant or distribution system.)) (1) A purveyor of a public water system shall designate at least one certified operator in responsible charge of a water treatment plant according to the minimum operator certification levels in Table 3.

Table 3
Water Treatment Plant Classification for the Minimum Level of Certified Operators in Responsible Charge

<u>Water Treatment Plant Classification</u>	<u>Minimum Operator Certification Level</u>
<u>Class 1</u>	<u>WTPO 1</u>
<u>Class 2</u>	<u>WTPO 2</u>
<u>Class 3</u>	<u>WTPO 3</u>
<u>Class 4</u>	<u>WTPO 4</u>

(2) A purveyor of a public water system shall designate at least one certified operator in responsible charge of a distribution system according to the minimum operator certification levels in Table 4 for:

(a) A community or nontransient noncommunity water system;

(b) A transient noncommunity water system, if the system has a groundwater source that requires 4-log treatment as required in WAC 246-290-451 or 246-290-453; or

(c) A transient noncommunity water system that is violating or has violated requirements in chapter 246-290 WAC, and the violations may create, or have created an imminent or significant risk to human health. Violations include, but are not limited to:

(i) Repeated violations of monitoring or reporting requirements;

(ii) Failure to address an exceedance of permissible levels of regulated contaminants;

(iii) Failure to comply with treatment technique standards or requirements;

(iv) Failure to comply with waterworks operator certification requirements;

(v) Failure to submit to a sanitary survey; or

(vi) Failure to comply with Tier 1 public notification requirements.

Table 4
Distribution System Classification for the Minimum Level of Certified Operators in Responsible Charge

<u>Distribution System Classification</u>	<u>Minimum Operator Certification Level</u>
<u>Class S</u>	<u>WDS</u>
<u>Class 1</u>	<u>WDM 1</u>

Distribution System Classification	Minimum Operator Certification Level
Class 2	WDM 2
Class 3	WDM 3
Class 4	WDM 4

(3) A purveyor of a public water system with designated operating shifts and major segments may:

(a) Designate a certified operator in responsible charge at one level lower than the minimum certification requirements in subsections (1) and (2) of this section for each operating shift outside of regular operating hours, or each major segment of a water treatment plant or distribution system; and

(b) Assign a major segment to an operator that is certified at less than the minimum certification level requirement in (a) of this subsection if the purveyor has written procedures that include:

(i) Which operational decisions the assigned operator may make that are consistent with their experience, skills, or abilities;

(ii) Identification of the conditions that require the assigned operator to consult with the certified operator in responsible charge in (a) of this subsection, and contact information; and

(iii) The date and signatures of the certified operator in responsible charge in (a) of this subsection, and the assigned operator.

(4) A purveyor shall designate a CCS to be in responsible charge of a public water system's cross-connection control program.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-055 Minimum requirements for contract operators. (1) ~~((Contract operators in responsible charge of the daily operational activities of three or more public water systems for operation of a system shall be certified as follows:~~

~~(a) At a minimum, a WDM and CCS, with the WDM level determined by the largest public water system operated;~~

~~(b) A BTO for public water systems with a Class 1 purification plant rating; and~~

~~(c) A WTPO for public water systems with a Class 2 purification plant rating or higher or any purification plant using complex filtration technology.~~

~~(2) Contract operators shall be available on a twenty-four hour per day basis.~~

~~(3)) A contract operator((s shall submit two copies of all signed operations contracts to the department within thirty days of the effective date)) must:~~

~~(a) Be certified, at a minimum, as a CCS and a WDM 1;~~

~~(b) Be certified at a level determined by the highest classification of the water treatment plant or distribution system operated as required in WAC 246-292-050 in Tables 3 and 4;~~

~~(c) For each public water system under contract with the operator:~~

~~(i) Be available on-site or able to be contacted immediately by telephone or other electronic communication twenty-four hours per day, every day; and~~

~~(ii) Be able to initiate appropriate action within two hours of contact, as required for certified operators in responsible charge under WAC 246-292-032(2), for every public water system that the contract operator is under contract;~~

~~(d) Submit one copy of each public water system operations contract to the department within thirty days of the effective date of the contract. An operations contract must include the following:~~

~~(i) Contract operator name and certification number;~~

~~(ii) List of the duties that must be performed;~~

~~(iii) Duration of the contract term;~~

~~(iv) Signature of the public water system representative;~~

~~(v) Signature of the contract operator; and~~

~~(vi) Effective date of the contract.~~

~~(e) Notify the department within thirty days when starting operation of a public water system, or ending operation of a public water system.~~

~~((4)) (2) A contract operator((s) who ((are satellite management agencies (-)) is an approved SMA((s)) shall ((also)) comply with ((the provisions of RCW 70.116.134)) chapter 246-295 WAC.~~

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-060 Minimum education and experience requirements ((for water works)) to become a certified operator((s)). (1) Minimum education and operating experience requirements for ~~((the following water works operator classifications and levels shall be as indicated in Tables 1A and 1B:~~

Table 1A
MINIMUM EDUCATION AND OPERATING EXPERIENCE REQUIREMENTS

WATER WORKS OPERATOR CLASSIFICATIONS	LEVEL									
	OPERATOR-IN-TRAINING-OFF*		1		2		3		4	
	Education	Operating-Experience	Education	Operating-Experience	Education	Operating-Experience	Education	Operating-Experience	Education	Operating-Experience
Water Distribution Manager (WDM)	12 years	3 months	12 years	1 year	12 years	3 years	14 years	4 years	16 years	4 years
Water Treatment Plant Operator (WTPO)	12 years	3 months	12 years	1 year	12 years	3 years	14 years	4 years	16 years	4 years

* OIT experience may be fulfilled by three months operating experience or thirty hours of relevant water system training (three CEUs or college credits).

Table 1B

MINIMUM EDUCATION AND OPERATING EXPERIENCE REQUIREMENTS

WATER WORKS- OPERATOR CLASSIFICATIONS	Education	Operating- Experience
Basic Treatment Operator (BTO)	12 years	6 months
Water Distribution Specialist (WDS)	12 years	6 months
Cross-connection Control Specialist (CCS)	12 years	6 months

WATER WORKS- OPERATOR CLASSIFICATIONS	Education	Operating- Experience
Backflow Assembly Tester (BAT)	NA	NA

(1) Minimum education requirement shall be the acceptable level of education, or experience which may be substituted for education as outlined in the guideline.

(2) Minimum operating experience requirement shall be the routine on-site performance of duties in a water purification plant or distribution system. Those duties shall affect plant or system performance and/or water quality.

(3) The department may allow substitutions of a person's relevant experience when the person cannot meet the formal education requirement, or vice versa in the WDM, WTPO, BTO, WDS and CCS classifications as outlined in the guideline.)) a water treatment plant operator are in Table 5.

Table 5

WTPO Minimum Education and Experience Requirements

Certification Level	Minimum Education Requirement (see Table 7 for equivalents)	Minimum Experience Requirement
WTPO - OIT	12 years	One of the following: <ul style="list-style-type: none"> • 3 months operating experience in a water treatment plant or distribution system; • 3 months water-related experience; or • 30 hours of relevant water system training (3 CEUs or 3 college credits).
WTPO 1	12 years	12 months experience in a water treatment plant.
WTPO 2	12 years	<ul style="list-style-type: none"> • 18 months operating experience in a water treatment plant; and • 18 months additional water-related experience. • Relevant excess education may substitute for additional experience requirement.
WTPO 3	14 years	<ul style="list-style-type: none"> • 24 months operating experience in a Class 2 or higher rated water treatment plant; and • 24 months additional water-related experience. • Relevant excess education may substitute for additional water-related experience requirement.
WTPO 4	16 years	<ul style="list-style-type: none"> • 24 months operating experience in a Class 3 or higher rated water treatment plant; and • 24 months additional water-related experience. • Relevant excess education may substitute for additional water-related experience requirement.

(2) Minimum education and operating experience requirements for WDS and WDM certification levels are in Table 6.

Table 6
WDS and WDM Minimum Education and Experience Requirements

<u>Certification Level</u>	<u>Minimum Education Requirement (see Table 7 for equivalents)</u>	<u>Minimum Experience Requirement</u>
<u>WDS</u>	<u>12 years</u>	<u>6 months operating experience in a water treatment plant or distribution system.</u>
<u>WDM - OIT</u>	<u>12 years</u>	<u>One of the following:</u> <ul style="list-style-type: none"> • <u>3 months operating experience in a water treatment plant or distribution system;</u> • <u>3 months water-related experience; or</u> • <u>30 hours of relevant water system training (3 CEUs or 3 college credits).</u>
<u>WDM 1</u>	<u>12 years</u>	<u>12 months operating experience in a water treatment plant or distribution system.</u>
<u>WDM 2</u>	<u>12 years</u>	<ul style="list-style-type: none"> • <u>12 months operating experience in a water treatment plant or distribution system; and</u> • <u>24 months additional water-related experience.</u> • <u>Relevant excess education may substitute for additional water-related experience requirement.</u>
<u>WDM 3</u>	<u>14 years</u>	<ul style="list-style-type: none"> • <u>12 months operating experience in a water treatment plant or distribution system; and</u> • <u>36 months additional water-related experience.</u> • <u>Relevant excess education may substitute for additional water-related experience requirement.</u>
<u>WDM 4</u>	<u>16 years</u>	<ul style="list-style-type: none"> • <u>12 months operating experience in a water treatment plant or distribution system; and</u> • <u>36 months additional water-related experience.</u> • <u>Relevant excess education may substitute for additional water-related experience requirement.</u>

(3) The minimum education and operating experience requirements for a CCS are:

(a) Twelve years of education (refer to Table 7 for equivalent education requirements); and

(b) At least six months operating experience in a public water system's water treatment plant, distribution system, or water-related experience implementing a cross-connection control program for a consumer's water system not subject to WAC 246-290-490.

(4) A BAT shall have at least twelve years of education (refer to Table 7 for equivalent education requirements).

Table 7
Minimum Education Requirements and Equivalent Education and Substitutions

<u>Minimum Education Requirement</u>	<u>Equivalent Education and Substitutions</u>
<u>12 years of education</u>	<ul style="list-style-type: none"> • <u>High school diploma or GED;</u> • <u>One year of water-related experience may substitute for each year of education through twelfth grade.</u>
<u>14 years of education</u>	<ul style="list-style-type: none"> • <u>High school diploma or GED, and one of the following:</u> <ul style="list-style-type: none"> • <u>A two-year college degree;</u> • <u>60 college semester credits;</u> • <u>90 college quarter credits; or</u> • <u>90 CEUs from relevant water system training.</u>

Minimum Education Requirement	Equivalent Education and Substitutions
	<ul style="list-style-type: none"> • <u>One year of operating experience or water-related experience may substitute for each year of education through twelfth grade.</u> • <u>Two years of operating experience or water-related experience may substitute for each year of college education.</u>
<u>16 years of education</u>	<ul style="list-style-type: none"> • <u>High school diploma or GED, and one of the following:</u> <ul style="list-style-type: none"> • <u>A four-year college degree;</u> • <u>120 college semester credits;</u> • <u>180 college quarter credits; or</u> • <u>180 CEUs from relevant water system training.</u> • <u>One year of operating experience or water-related experience may substitute for each year of education through twelfth grade.</u> • <u>Two years of operating experience or water-related experience may substitute for each year of college education.</u>

(5) Water-related experience used to substitute for the minimum education requirements must exceed the minimum experience requirements for certification in Tables 5 and 6 before the experience is used as an equivalent education substitution in Table 7.

(6) The department may approve an applicant's relevant excess education or water-related experience that meets the requirements in Tables 5, 6, and 7.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-070 Application and examination.

~~((1) Applicants for any classification of water works operator shall:~~

~~(a) Submit a completed application, application fee and examination charge to cover the cost of a validated exam;~~

~~(b) Meet the minimum education and operating experience criteria for the level of certification for which they are applying in accordance with WAC 246-292-060; and~~

~~(c) Pass a validated examination.~~

~~(2) The department shall:~~

~~(a) Ensure a validated examination is conducted at least three times annually at convenient places and times as set by the department;~~

~~(b) Provide notice of places and times of regularly scheduled examinations; and~~

~~(c) Issue applicable certificates to applicants meeting all the conditions for certification.~~

~~(3) Applicants who fail or do not appear for their scheduled examination may reapply for a regularly scheduled examination by submitting a new application, application fee and examination charge.) (1) To become certified as a CCS, WDS, WDM, or WTPO, an applicant shall:~~

(a) Submit to the department a completed application on a form provided by the department, and include:

(i) An application fee, as specified in WAC 246-292-995;

(ii) A completed "Waterworks Operator Information" form;

(iii) Affidavits of employment that documents experience;

(iv) Transcripts of education and training, if applicable; and

(v) Other supporting documentation, as required in this chapter.

(b) Meet the minimum education and operating experience requirements in WAC 246-292-060; and

(c) Take and pass a validated examination, including payment of an examination fee made payable to the department's examination contractor as specified in the application packet.

(2) The effective date of the certificate for CCS, WDS, WDM, or WTPO classifications is the last day of the month in which the applicant took and passed the examination.

(3) To become certified as a BAT, an applicant shall:

(a) Submit to the department a completed application on a form provided by the department, and include:

(i) An application fee, as specified in WAC 246-292-995; and

(ii) An examination fee to the department's examination contractor as specified in the application packet; and

(b) Take and pass:

(i) A validated computer-based examination; and

(ii) A department practical examination.

(4) The effective date of the certificate for a BAT is the date the applicant passed the examination.

(5) The department shall consider for approval all complete applications.

(6) The department may deny an application for certification as specified in WAC 246-292-105.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-075 Reciprocity. (1) The department may issue a certification for a WDS, WDM, or WTPO without examination to ~~((individuals))~~ an applicant who ~~((possess))~~ has a valid, unrestricted certificate from another state or province if:

~~((1) The applicant possesses a certificate from a state or province having substantially equivalent standards as determined by the department; and~~

~~(2) A completed application, application fee and a copy of the valid state or province certificate are submitted to the department.)~~ (a) The education, operating experience, and professional growth requirements from the other state or provincial certification program are substantially equivalent standards as the certification requirements in this chapter; and

(b) An applicant passed the ABC validated examination or an equivalent examination as determined by the department, with an equivalent Washington passing score of at least seventy percent.

(2) An applicant for a WDS, WDM, or WTPO certification by reciprocity shall comply with the requirements in WAC 246-292-070, except the examination and application fees and submit:

(a) Proof of a valid, unrestricted waterworks operator certification from the reciprocal state or province; and

(b) The reciprocity fee as specified in WAC 246-292-995, Table 8.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-080 Public water system temporary operator certification. (1) The department may issue a non-renewable temporary certification to an ~~(operator)~~ individual to fill a vacated position for a certified operator in responsible charge, or for a position reclassified in WAC 246-292-086, for a public water system that is required to have a certified operator. The purveyor of the public water system and the operator may jointly submit to the department an application for a temporary certification without the operator taking an examination if:

(a) The operator meets, or will meet before the end of the temporary certification period, the minimum education and operating experience requirements of the water treatment plant or distribution system classification as required in WAC 246-292-050 for the temporary position; and

(b) The ~~(public water system)~~ operator submits all of the following:

(i) A letter requesting temporary certification for the ~~(operator)~~ vacated certified operator in responsible charge position; ~~(and)~~

(ii) ~~(The applicable fee.~~

(b) The operator completes and submits a certification application; and

(e) The operator meets or will meet the minimum education and operating experience requirements of the mandatory classification for the vacated position, prior to the expiration date of the temporary certification.) A temporary certification application on a form provided by the department signed by the operator and the purveyor for department review and approval:

(iii) Affidavits of employment and other supporting information to document experience and demonstrate that the applicant will meet the requirements to become certified for

the position by the end of the temporary certification period; and

(iv) A temporary certification application fee as specified in WAC 246-292-995(4).

~~(2) ((Only one temporary certification may be issued in each instance of any position vacancy.~~

~~(3))~~ The department may issue a temporary certification ~~((shall be valid))~~ for up to twelve months except as specified in subsection (3) or (4) of this section.

(3) The department may issue a temporary certification for up to sixty days to an operator of a public water system that uses a surface water or a GWI source, if:

(a) The public water system has no more than two WTPO positions;

(b) All WTPO positions for the public water system are vacant at the same time;

(c) The operator meets the minimum education and operating experience requirements for the position in WAC 246-292-060 at the time the department receives the application; and

(d) The operator submits all information as required in subsection (1)(b) of this section.

(4) The department may issue a temporary certification for up to one hundred twenty days to an operator of a public water system if:

(a) The public water system meets the criteria in WAC 246-292-050 (2)(c);

(b) The operator meets the minimum education and operating experience requirements for the position in WAC 246-292-060 at the time the department receives the application; and

(c) The operator submits all information as required in subsection (1)(b) of this section.

~~((4) The))~~ (5) Only one temporary certification ~~((shall))~~ may be ~~((specific to the designated system and is not transferable to any other system or operator))~~ issued for each vacated position for a certified operator in responsible charge.

(6) A temporary certification issued by the department to an operator for a vacated certified operator in responsible charge position of a public water system is not transferable to:

(a) Another operator;

(b) Another position within the public water system; or

(c) Another public water system.

AMENDATORY SECTION (Amending WSR 05-06-122, filed 3/2/05, effective 4/2/05)

WAC 246-292-085 ~~((Grandparenting-)) Grandparented certification.~~ (1) A certified operator ~~((s))~~ who received a grandparented certification prior to January 1, 2001, ~~((for the minimum classification of a water system))~~ remains subject to the following:

~~((1))~~ (a) A ~~((grandparent))~~ grandparented operator certification is ~~((site specific))~~ valid only for the designated public water system and ~~((nontransferable))~~ is not transferable to another operator or public water system;

~~((2) A grandparented))~~ (b) An operator with a grandparented certification shall meet all ~~((certification))~~ renewal

requirements ~~((under the provisions of))~~ in WAC 246-292-090; and

~~((3))~~ (c) If an operator with a grandparented ~~((operator))~~ certification fails to renew ~~((his or her certification under))~~ the certificate as required in WAC 246-292-090, the ~~((grandparent certification is))~~ operator shall no longer ~~((valid))~~ be certified. ~~((To become recertified))~~ If the certificate expires, the operator must apply for a new certification and meet all the requirements of a new applicant ~~((; and~~

~~((4))~~ as required in WAC 246-292-060 and 246-292-070.

(2) If the classification of a water treatment plant or distribution system ~~((classification))~~ changes to a higher level, the ~~((grandparent))~~ grandparented certification is no longer valid ~~((; and the owner and operator))~~. The purveyor shall comply with ~~((chapter 246-292))~~ the requirements for obtaining a certified operator, as required in WAC 246-292-040 and 246-292-050.

NEW SECTION

WAC 246-292-086 Certified BTO. (1) The department shall:

(a) Reclassify a certified BTO that has twelve months or more of operating experience in a water treatment plant to a WTPO 1. To document operating experience in a water treatment plant, a BTO shall submit the following to the department for review and approval:

(i) Completed "Waterworks Operator Information" form provided by the department; and

(ii) Affidavits of employment that document water treatment plant experience.

(b) Issue a temporary operator certification to a BTO designated as a certified operator in responsible charge in WAC 246-292-020 for up to twelve months as a WTPO 1 under the following criteria:

(i) The BTO is currently operating a water treatment plant;

(ii) The BTO does not have twelve months of operating experience in a water treatment plant; and

(iii) The water treatment plant is classified as Class 1 in WAC 246-292-040 Table 1.

(2) A BTO that does not have twelve months of operating experience in a water treatment plant, and that does not meet the criteria in subsection (1)(b) of this section, shall remain a certified BTO.

(3) Within twelve months of the effective date of this chapter, a BTO may request that the department reclassify the certificate from a BTO to a WTPO-OIT by submitting the following information for department review and approval:

(a) Completed "Waterworks Operator Information" form; and

(b) Affidavits of employment that document water treatment plant experience.

AMENDATORY SECTION (Amending WSR 05-06-122, filed 3/2/05, effective 4/2/05)

WAC 246-292-090 Renewal of certificates. (1) ~~((The operator must renew his or her certificate by January 1st of each year))~~ Certificates are valid until December 31st each

year, except that an initial certificate issued after October 1st will be valid through the following calendar year.

(2) ~~((The department shall renew an operator's certificates when the operator:))~~ To renew a certificate, a certified operator shall submit to the department:

(a) ~~((Pays the applicable))~~ The annual renewal fee as specified in WAC 246-292-995; ~~((and))~~

(b) ~~((Demonstrates completion of required professional growth in accordance with subsections (3) and (4) of this section. The operator must provide evidence of professional growth acceptable to the department within the designated professional growth reporting period as described in the department guideline titled, Water Works Certification Program Guideline.~~

(3) To demonstrate professional growth, a holder of WDM, WTPO, WDS, BTO or CCS certification shall accomplish one of the following activities during each professional growth reporting period:

(a) Accumulate a minimum of three continuing education units (CEU), or college credits for training that:

(i) Has an influence on water quality, water supply, or public health protection; and

(ii) Is directly relevant to the operation, or maintenance of a water system; or

(iii) Is directly relevant to managing the operation, or maintenance activities of a water system;

(b) Advance by examination in the Washington water works operator certification program within the classifications WDM and WTPO to a level 2, 3, or 4; or

(c) Achieve certification by examination in a different classification as shown below:

(i) WDM to WTPO, BTO or CCS;

(ii) WTPO to WDM, or CCS;

(iii) WDS to WDM, WTPO, BTO or CCS;

(iv) BTO to WDM, WTPO, WDS or CCS; or

(v) CCS to WDM, WTPO, BTO, or WDS.

(4) To demonstrate professional growth, a certified BAT must satisfactorily complete the department's backflow assembly tester professional growth examination during each professional growth reporting period.

(5) If an operator fails to renew his or her certificate, the department shall notify the operator by December 31st, that the certificate is temporarily valid for two months beginning January 1st.

(6) If an operator fails to renew the certificate within the two month period, the certificate is invalid. The department shall notify the operator in writing of an invalid certificate.

(7) An operator who fails to renew his or her certification may reapply for certification, but must meet the requirements for a new applicant. ~~((The original annual renewal notice, and if applicable;~~

(c) Updated information on the renewal notice, including water system name and identification number for any change in the specific public water systems operated by the certified operator; and

(d) Completed professional growth documentation as required in WAC 246-292-095(3).

(3) A certified operator that fails to renew a certificate by January 1st shall pay a late fee as specified in WAC 246-292-995, Table 8. The department shall notify the operator that

the certificate is temporarily valid for two months, beginning January 1st. A temporarily valid certificate not renewed by the last day of February becomes invalid on March 1st. The department shall notify the operator in writing when a temporarily valid certificate is invalidated.

(4) A certified operator whose failure to renew results in an invalid certificate may reapply for certification and shall meet the requirements for a new certificate in WAC 246-292-060 and 246-292-070.

NEW SECTION

WAC 246-292-095 Professional growth. (1) A BTO, CCS, WDS, WDM, or WTPO shall demonstrate professional growth during each professional growth reporting period of at least three years, and complete the requirements by December 31st, as follows:

(a) Accumulate a minimum of three CEU or college credits meeting the definition of relevant water system training in WAC 246-292-010;

(b) Advance as a WDM or WTPO by examination to a higher level classification; or

(c) Achieve certification by examination in a different classification as follows:

(i) A BTO obtains a CCS, WDM, or WTPO certification;

(ii) A CCS obtains a WDS, WDM, or WTPO certification;

(iii) A WDM obtains a CCS or WTPO certification;

(iv) A WDS obtains a CCS, WDM, or WTPO certification; or

(v) A WTPO obtains a CCS or WDM certification.

(2) A certified BAT shall demonstrate professional growth by passing the department's BAT professional growth examination during each professional growth reporting period.

(3) All certified operators shall submit professional growth documentation to the department or its designee by February 15th following the end of the professional growth period.

(4) The department shall determine if training meets the relevant water system training requirements of WAC 246-292-060. If the department determines that training does not meet the definition, the certified operator may request a relevancy review.

AMENDATORY SECTION (Amending WSR 05-06-122, filed 3/2/05, effective 4/2/05)

WAC 246-292-100 Revocation and suspension. (1) The department may suspend an operator's certificate for up to ~~(a)~~ 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 ~~((in the operation of a purification plant or a distribution system; or))~~ when:

(i) Operating or maintaining a public water system;

(ii) Inspecting, testing, maintaining, or repairing back-flow 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.

~~(2) ((Except in a case of fraud, deceit, or gross negligence, the department may not revoke or suspend a certificate under subsection (1)(c) of this section until the department notifies the operator in writing of the violation and provides an opportunity for the operator to correct the violation.~~

~~(3) A revocation or suspension action brought under this section shall be conducted in accordance with RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.~~

~~(4) A person whose certificate is revoked may not apply for certification until the period of revocation has ended.~~

~~(5) After the revocation period has ended, a person whose certificate was revoked may reapply for certification as a new operator under WAC 246-292-070.~~

~~(6))~~ 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 ~~((accordance with))~~ WAC 246-292-090 and 246-292-095, in order to maintain certification after the suspension period has ~~((lapsed))~~ 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.~~

NEW SECTION

WAC 246-292-105 Certification denial. (1) The department may deny an application for certification if the applicant:

(a) Fails to meet any of the requirements of this chapter or falsifies information;

(b) At the time of application, and for any period of time during the prospective period of certification, the applicant:

(i) Has a waterworks operator certificate revoked, suspended, or restricted by another state or province with substantially equivalent standards as the requirements in this chapter;

(ii) Has a waterworks operator certificate revoked, suspended, or restricted by the department; or

(iii) Has a wastewater operator certificate in chapter 173-230 WAC revoked, suspended, or restricted by the department of ecology.

(2) The department shall give written notice to the applicant of the decision to deny a certificate and state the grounds and factual basis for the action.

AMENDATORY SECTION (Amending WSR 01-02-070, filed 12/29/00, effective 1/29/01)

WAC 246-292-110 Enforcement. ~~(1) When ((any Group)) a public water system or operator ((is out of compliance)) fails to comply with ((these regulations)) the requirements of this chapter, the department may initiate appropriate enforcement actions as authorized ((under)) in chapters 70.119 and 70.119A RCW. ((These))~~

~~(2) The department's enforcement actions against a public water system or operator may include ((any)) one or ((combination)) more of the following:~~

~~((1) Issuance of) (a) Issuing an informal letter((s instructing or requiring)) directing appropriate corrective measures;~~

~~((2) Issuance of) (b) Issuing a notice of violation requiring appropriate corrective measures;~~

~~((c) Issuing a compliance schedule of specific actions needed to achieve compliance;~~

~~((3) Issuance of a departmental) (d) Issuing an order requiring specific actions or ceasing unacceptable activities within a designated time period;~~

~~((4) Issuance of) (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;~~

~~((5) Prosecution as a criminal misdemeanor with fines up to one hundred dollars per offense;~~

~~((6) Revocation or suspension of a license) (f) Revoking or suspending a certification in accordance with WAC 246-292-100; and~~

~~((7)) (g) Other legal action by the attorney general or local prosecutor.~~

NEW SECTION

WAC 246-292-995 Certified operator and public water system certification fees. (1) Table 8 specifies certified operator fees:

Table 8
Certified Operator Fees

Operator Classification	Application Fee By Examination	Application Fee By Reciprocity	Annual Renewal Fee	Late Fee (Assessed for failure to submit the fee within the time period specified on the renewal form)
WTPO	\$87.00	\$177.00	\$42 (Regardless of the number of classifications held by the operator)	\$35 (Regardless of the number of classifications held by the operator)
WDM	\$87.00	\$177.00		
WDS	\$87.00	\$177.00		
CCS	\$51.00	Not applicable		
BAT	\$51.00	Not applicable		
BTO	Not applicable	Not applicable		

(2) A public water system shall pay the fee in Table 9 in combination with the system's annual operating permit fee as required in chapter 246-294 WAC.

(3) A public water system that fails to submit the required annual fees by the deadline specified on the renewal form shall pay the late fee as specified in Table 9.

(4) An individual applying for a temporary certification shall pay a fee of eighty-seven dollars to the department as required in WAC 246-292-080.

(5) Fees are not refundable or transferable.

Table 9

Public Water System Annual Certification Fees

Public Water System Size* (Number of Service Connections on WFI form)	Public Water System Certification Fee	Late Fee
Less than 601	\$132.00	\$35.00
601 through 6,000	\$403.00	\$40.30
6,001 through 20,000	\$536.00	\$53.60
More than 20,000	\$809.00	\$80.90

* Approved SMAs shall pay a fee based on total services in all public water systems owned by the SMA.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-292-160 Water works certification fees.

WSR 14-01-010

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed December 5, 2013, 5:04 p.m., effective January 5, 2014]

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

Purpose: In accordance with RCW 42.17A.125(1), WAC 390-05-400 is amended to make inflationary adjustments to contribution limits and other dollar amounts enacted by Initiative 134 and to insert and adjust contribution limits

for certain hospital commissioner candidates enacted by chapter 311, Laws of 2013 [2013], effective July 28, 2013.

In accordance with RCW 42.17A.250 [(1)](g), WAC 390-16-050 is amended to modify the disclosure threshold for major contributions reported by an out-of-state political committee participating in Washington state elections.

Citation of Existing Rules Affected by this Order: Amending WAC 390-05-400 and 390-16-050.

Statutory Authority for Adoption: RCW 42.17A.110, 42.17A.125(1), and 42.17A.250 (1)(g).

Adopted under notice filed as WSR 13-21-025 on October 7, 2013.

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

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

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

Date Adopted: December 5, 2013.

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 13-05-012, filed 2/7/13, effective 3/10/13)

WAC 390-05-400 Changes in dollar amounts. Pursuant to the requirement in RCW 42.17A.125 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW 42.17A.410 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	((2012)) <u>2014</u> Revision
.005	Definition of "Independent Expenditure"	\$ ((800)) <u>900</u>	\$ ((900)) <u>950</u>
.445(3)	Reimbursement of candidate for loan to own campaign	\$ ((4,700)) <u>5,000</u>	\$ ((5,000)) <u>5,500</u>
.630(1)	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$ ((16,000)) <u>18,000</u> \$ ((800)) <u>900</u>	\$ ((18,000)) <u>19,000</u> \$ ((900)) <u>950</u>
.405(2)	Contribution Limits— Candidates for state leg. office Candidates for county office Candidates for other state office Candidates for special purpose districts Candidates for city council office Candidates for mayoral office Candidates for school board office <u>Candidates for hospital district</u>	\$ ((800)) <u>900</u> \$ ((800)) <u>900</u> \$ ((1,600)) <u>1,800</u> \$ ((1,600)) <u>1,800</u> \$ ((800)) <u>900</u> \$ ((800)) <u>900</u> \$ ((800)) <u>900</u> <u>\$800</u>	\$ ((900)) <u>950</u> \$ ((900)) <u>950</u> \$ ((1,800)) <u>1,900</u> \$ ((1,800)) <u>1,900</u> \$ ((900)) <u>950</u> \$ ((900)) <u>950</u> \$ ((900)) <u>950</u> <u>\$950</u>
.405(3)	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	\$ ((800)) <u>900</u> \$ ((1,600)) <u>1,800</u>	\$ ((900)) <u>950</u> \$ ((1,800)) <u>1,900</u>
.405(4)	Contribution Limits— Contributions made by political parties and caucus committees		

Code Section	Subject Matter	Amount Enacted or Last Revised	((2012)) 2014 Revision
	State parties and caucus committees	((.80)) <u>.90</u> per voter	((.90)) <u>.95</u> per registered voter
	County and leg. district parties	((.40)) <u>.45</u> per voter	((.45)) <u>.50</u> per registered voter
	Limit for all county and leg. district parties to a candidate	((.40)) <u>.45</u> per voter	((.45)) <u>.50</u> per registered voter
.405(5)	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall		
	State parties and caucuses	((.80)) <u>.90</u> per voter	((.90)) <u>.95</u> per registered voter
	County and leg. district parties	((.40)) <u>.45</u> per voter	((.45)) <u>.50</u> per registered voter
	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	((.40)) <u>.45</u> per voter	((.45)) <u>.50</u> per registered voter
.405(7)	Limits on contributions to political parties and caucus committees		
	To caucus committee	\$((800)) <u>900</u>	\$((900)) <u>950</u>
	To political party	\$((4,000)) <u>4,500</u>	\$((4,500)) <u>5,000</u>
.410(1)	Candidates for judicial office	\$((1,600)) <u>1,800</u>	\$((1,800)) <u>1,900</u>
.475	Contribution must be made by written instrument	\$((80)) <u>90</u>	\$((90)) <u>95</u>

AMENDATORY SECTION (Amending WSR 12-11-033, filed 5/10/12, effective 6/10/12)

WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees. The official form for the report required by RCW 42.17A.250 of contributions and expenditures of an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17A.205 through 42.17A.240 is designated "C-5," revised ((6/12)) 1/14. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any paper attachments shall be on 8 1/2" x 11" white paper.

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Form C5 (6/12)	This space for office use P M A R K R E C E I V E D
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Out-of-State Political Committee Campaign Finance Report

1. Name and full address of committee making the contribution Name Street address City / State / Zip	2. Check appropriate box <input type="checkbox"/> This is the first report submitted during 20__ <input type="checkbox"/> This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.
----------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)

4. Officers or responsible leaders of committee: Name and full address	Title
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5. States where this political committee is registered and has been actively reporting campaign finance information for the preceding two years: Name of state(s) & administrative agency(s)	Agency(s) website address
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6. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than \$50.00.

Candidate name	Office sought	Political party	Date	Amount

7. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than \$50.00.

Committee name & full address	Ballot number	For or Against?	Date	Amount

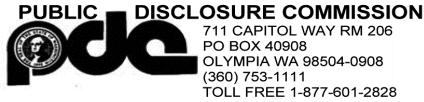
8. Other contributions and expenditures: List each other contribution or expenditure of more than \$50.00 made to or on behalf of any Washington state, local or judicial candidate, ballot measure or political committee.

Recipient name & full address	Purpose	Date	Amount

Check here if continued on an attached sheet

9. Total contributions and expenditures (Add parts 6, 7, 8)

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Form C5 (1/14)	This space for office use P M O S T R K R E C E I V E D
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Out-of-State Political Committee Campaign Finance Report

1. Name and full address of committee making the contribution
 Name
 Street address
 City / State / Zip

2. Check appropriate box
 This is the first report submitted during 20__
 This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.

3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)

4. Officers or responsible leaders of committee:
 Name and full address Title

5. States where this political committee is registered and has been actively reporting campaign finance information for the preceding two years:
 Name of state(s) & administrative agency(s) Agency(s) website address

6. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than \$50.00.

Candidate name	Office sought	Political party	Date	Amount

7. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than \$50.00.

Committee name & full address	Ballot number	For or Against?	Date	Amount

8. Other contributions and expenditures: List each other contribution or expenditure of more than \$50.00 made to or on behalf of any Washington state, local or judicial candidate, ballot measure or political committee.

Recipient name & full address	Purpose	Date	Amount

Check here if continued on an attached sheet

9. Total contributions and expenditures (Add parts 6, 7, 8)

((

10. Aggregate contributions and expenditures made during this calendar year in Washington State.
 Include amounts shown on this report and C5 reports previously submitted this calendar year. _____

Does this aggregate total represent 20% or more of the committee's nationwide campaign activity to date for this calendar year? Y N

11. Contributions received from Washington residents. List all contributions of more than \$25.00 in the aggregate to this out-of-state committee during the current calendar year from Washington residents or corporations with their headquarters or a primary place of business in Washington.

Name and full address	Date	Amount	Aggregate Total

Check here if continued on an attached sheet

12. Contributions received from persons residing outside of Washington. List the name, address, and employer of each person or corporation residing outside the state of Washington who has made contributions of more than \$2,615.00 in the aggregate to this out-of-state committee during the current calendar year.

Name and full address	Employer name, city and state	Date	Amount	Aggregate Total

Check here if continued on an attached sheet

13. Eligibility to Give to Political Committees and State Office Candidates: A committee must receive \$10 or more each from ten Washington State registered voters before contributing to a Washington State political committee. Additionally, during the six months prior to making a contribution to a state office candidate your committee must have received contributions of \$10 or more each from at least ten Washington State registered voters.

A check here indicates your awareness of and pledge to comply with these provisions. Absence of a check mark means your committee does not qualify to give to Washington State political committees and/or state office candidates.

14. Certification: I certify the information contained in this report is true, complete and correct to the best of my knowledge.

Signature of Committee Official _____ Name – Typed or Printed _____

Title _____ Daytime Telephone No. () _____

E-Mail Address _____

))

10. Aggregate contributions and expenditures made during this calendar year in Washington State.
 Include amounts shown on this report and C5 reports previously submitted this calendar year. _____

Does this aggregate total represent 20% or more of the committee's nationwide campaign activity to date for this calendar year? Y N

11. Contributions received from Washington residents. List all contributions of more than \$25.00 in the aggregate to this out-of-state committee during the current calendar year from Washington residents or corporations with their headquarters or a primary place of business in Washington.

Name and full address	Date	Amount	Aggregate Total

Check here if continued on an attached sheet

12. Contributions received from persons residing outside of Washington. List the name, address, and employer of each person or corporation residing outside the state of Washington who has made contributions of more than \$2,645.00 in the aggregate to this out-of-state committee during the current calendar year.

Name and full address	Employer name, city and state	Date	Amount	Aggregate Total

Check here if continued on an attached sheet

13. Eligibility to Give to Political Committees and State Office Candidates: A committee must receive \$10 or more each from ten Washington State registered voters before contributing to a Washington State political committee. Additionally, during the six months prior to making a contribution to a state office candidate your committee must have received contributions of \$10 or more each from at least ten Washington State registered voters.

A check here indicates your awareness of and pledge to comply with these provisions. Absence of a check mark means your committee does not qualify to give to Washington State political committees and/or state office candidates.

14. Certification: I certify the information contained in this report is true, complete and correct to the best of my knowledge.

Signature of Committee Official _____ Name – Typed or Printed _____

Title _____ Daytime Telephone No. () _____

E-Mail Address _____

Instructions – (Statutory reference: RCW 42.17A.250)

Who Must Report on C5 Form: An out-of-state political committee, including political committees filing with the Federal Election Commission, organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17A.205 through 42.17A.240 which has made contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state. See WAC 390-16-049 reprinted below. A political committee making contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state that fails to satisfy all of the conditions of WAC 390-16-049(3) shall not use the C5 form but instead shall register and report as a political committee pursuant to RCW 42.17A.205 through 42.17A.240 and as otherwise required by RCW 42.17A.

When to Report: A C5 report is due no later than the 10th day of the month following any month in which a contribution or other expenditure of more than \$50 is made to or on behalf of a Washington state candidate or political committee. After filing an initial C5 report, subsequent reports during the same calendar year shall be filed updating or amending the information previously reported. These follow-up reports are also due no later than the 10th day of the month following any month in which an additional contribution or other expenditure of more than \$50 is made. The C5 report is considered filed as of the postmark date.

Send Report to: Public Disclosure Commission, 711 Capitol Way, Room 206, PO Box 40908, Olympia, Washington 98504-0908

Questions? Contact PDC at www.pdc.wa.gov, toll free at 1-877-601-2828 or 1-360-753-1111

WAC 390-16-049 Out-of-state political committees – Implementation of RCW 42.17A.250

(1) RCW 42.17A.250 governs campaign reporting in Washington State by committees located outside of Washington. The statute directs that an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state (and that is not otherwise required to report as an in-state committee) reports the information listed in RCW 42.17A.250 on a C5 form (WAC 390-16-050). The committee begins reporting on a C5 form when it makes an expenditure supporting or opposing a Washington state candidate or political committee.

(2) To file as an out-of-state political committee, all the criteria in (a) and (b) below must be satisfied:

(a) **Out-of-State.** First, the committee must be located out-of-state. It must be maintaining its office or headquarters in another U.S. state or the District of Columbia, and has no office, street address or corporate registered agent in Washington State. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington State, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) **Organizational Purpose and Campaign Activities.** Second, the committee must also be currently organized primarily for engaging in campaign activities in another state. The political committee may be described in other states as a political committee, political action committee (PAC), group (Alaska) or similar terms to describe a committee. Therefore, to qualify as a current out-of-state committee, the committee must also:

(i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and,

(ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and,

(iii) Have spent less than 20 percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

(3) A committee that does not satisfy the criteria subsection (2) shall file as an in-state committee under RCW 42.17A, including RCW 42.17A.205 – RCW 42.17A.240.

(4) Out-of-state political committees reporting under RCW 42.17A.250 are also subject to reporting pursuant to RCW 42.17A.260 (political advertising independent expenditures) and 42.17A.305 through 42.17A.315 (electioneering communications).

WSR 14-01-011
PERMANENT RULES
PUBLIC DISCLOSURE COMMISSION

[Filed December 5, 2013, 5:06 p.m., effective January 5, 2014]

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

Purpose: Forms for lobbyist registration (PDC Form L-1) is amended to clarify when lobbyist employer's funders or members must be disclosed. Forms for lobbyist report of expenditures (PDC Form L-2) is amended to provide guidance for and an example showing how to comply with the statutory requirement to disclose lobbying expenditures for entertainment exceeding \$25.

Citation of Existing Rules Affected by this Order: Amending WAC 390-20-0101 and 390-20-020.

Statutory Authority for Adoption: RCW 42.17A.110(1).

Adopted under notice filed as WSR 13-21-094 on October 18, 2013.

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

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

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

Date Adopted: December 5, 2013.

Lori Anderson
 Communications and
 Training Officer

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-20-0101 Forms for lobbyist registration.

The official form for lobbyist registration as required by RCW 42.17A.600 is designated "L-1," revised ((2/05)) 1/14. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504. Any paper attachments shall be on 8-1/2" x 11" white paper.

((



LOBBYIST REGISTRATION

THIS SPACE FOR OFFICE USE
L1

1. Lobbyist Name

Permanent Business Address

City State Zip

Business Telephone Numbers
Permanent ()
Temporary ()
Cell Phone () or Pager

2. Temporary Thurston County address during legislative session

E-Mail Address

3. Employer's name and address (person or group for which you lobby)

Employer's occupation, business or description of purpose of organization

4. Name and address of person having custody of accounts, receipts, books or other documents which substantiate lobbyist reports.

E-Mail Address

5. What is your pay (compensation) for lobbying?
\$ _____ per _____ (hour, day, month, year)
Other: Explain:

Description of employment (check one or more boxes)
 Full time employee
 Part time or temporary employee
 Contractor, retainer or similar agreement
 Unalaried officer or member of group
 Sole duty is lobbying
 Lobbying is only a part of other duties

6. Are you reimbursed for lobbying expenses? Explain which expenses.
 Yes: \$ _____ per _____
 Yes: I am reimbursed for expenses.
 No: I am not reimbursed for expenses.

Does employer pay any of your lobbying expenses directly? If yes, explain which ones.

7. How long do you expect to lobby for this organization?
 Permanent lobbyist
 Only during legislative session
 Other, Explain:

8. Is your employer a business or trade association or similar organization which lobbies on behalf of its members? If "yes," attach a list showing the name and address of each member who has paid the association fees, dues or other payments over \$500 during either of the past two years or is expected to pay over \$500 this year.
 No
 Yes. However, no member has paid, pays, or is expected to pay over \$500.
 Yes. The list is attached

9. Does your employer have a connected, related or closely affiliated political action committee which will provide funds for you to make political contributions including purchase tickets to fund raising events? If so, list the name of that political action committee.
 No
 Yes. Name of the committee is:

11. Areas of interest. Lobbying is most frequent before legislative committee members or state agencies concerned with following subjects:

CODE	SUBJECT	CODE	SUBJECT
01 <input type="checkbox"/>	Agriculture	08 <input type="checkbox"/>	Fiscal
02 <input type="checkbox"/>	Business and consumer affairs	09 <input type="checkbox"/>	Higher education
03 <input type="checkbox"/>	Constitutions and elections	10 <input type="checkbox"/>	Human services
04 <input type="checkbox"/>	Education	11 <input type="checkbox"/>	Labor
05 <input type="checkbox"/>	Energy and utilities	12 <input type="checkbox"/>	Law and justice
06 <input type="checkbox"/>	Environmental affairs - natural resources - parks	13 <input type="checkbox"/>	Local government
07 <input type="checkbox"/>	Financial institutions and insurance	14 <input type="checkbox"/>	State government
		15 <input type="checkbox"/>	Transportation
		16 <input type="checkbox"/>	Other - Specify:

Remarks:

CERTIFICATION: I hereby certify that the above is a true, complete and correct statement.

EMPLOYER'S AUTHORIZATION: Confirming the employment authority to lobby described in this registration statement.

12. LOBBYIST'S SIGNATURE DATE

EMPLOYER'S SIGNATURE, NAME TYPED OR PRINTED, AND TITLE DATE

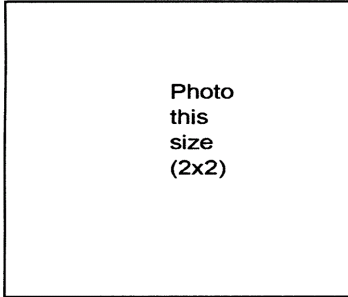
))

 <p>PUBLIC DISCLOSURE COMMISSION 711 CAPITOL WAY RM 206 PO BOX 40908 OLYMPIA WA 98504-0908 (360) 753-1111 TOLL FREE 1-877-601-2929</p>	<h2 style="margin:0;">LOBBYIST REGISTRATION</h2>	<h1 style="margin:0;">L1</h1> <p style="font-size: small;">(1/14)</p>	<p style="font-size: x-small;">THIS SPACE FOR OFFICE USE</p>																								
1. Lobbyist Name																											
Permanent Business Address		Business Telephone Numbers																									
City State Zip		Permanent () Temporary ()																									
2. Temporary Thurston County address during legislative session		Cell Phone () or Pager																									
3. Employer's name and address (person or group for which you lobby)		E-Mail Address																									
4. Name and address of person having custody of accounts, receipts, books or other documents which substantiate lobbyist reports. (Person responsible for producing the lobbyist employer's annual L-3 report.)		Employer's occupation, business or description of purpose of organization																									
5. What is your pay (compensation) for lobbying? \$ _____ per _____ (hour, day, month, year) Other: Explain:		Description of employment (check one or more boxes)																									
6. Are you reimbursed for lobbying expenses? Explain which expenses. <input type="checkbox"/> Yes: \$ _____ per _____ <input type="checkbox"/> Yes: I am reimbursed for expenses. <input type="checkbox"/> No: I am not reimbursed for expenses.		<input type="checkbox"/> Full time employee <input type="checkbox"/> Part time or temporary employee <input type="checkbox"/> Contractor, retainer or similar agreement <input type="checkbox"/> Unsalaried officer or member of group <input type="checkbox"/> Sole duty is lobbying <input type="checkbox"/> Lobbying is only a part of other duties																									
7. How long do you expect to lobby for this organization? <input type="checkbox"/> Permanent lobbyist <input type="checkbox"/> Only during legislative session <input type="checkbox"/> Other, Explain:		Does employer pay any of your lobbying expenses directly? If yes, explain which ones.																									
8. Is your employer a business or trade association or organization which lobbies on behalf of its members or a representative entity which lobbies on behalf of businesses, groups, associations, or organizations? If "yes," attach a list showing the name and address of each member or funder who has paid fees, dues or other payments over \$500 during either of the past two years or is expected to pay over \$500 this year. <input type="checkbox"/> No <input type="checkbox"/> Yes. However, no member or funder has paid, pays, or is expected to pay over \$500. <input type="checkbox"/> Yes. The list is attached																											
9. Does your employer have a connected, related or closely affiliated political action committee which will provide funds for you to make political contributions including purchase tickets to fund raising events? If so, list the name of that political action committee. <input type="checkbox"/> No <input type="checkbox"/> Yes. Name of the committee is:																											
10. If lobbyist is a company, partnership or similar business entity which employs others to perform actual lobbying duties, list name of each person who will lobby. (See WAC 390-20-143 and 144 for instructions.)																											
11. Areas of interest. Lobbying is most frequent before legislative committee members or state agencies concerned with following subjects:		Remarks:																									
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12. LOBBYIST'S SIGNATURE _____ DATE _____		EMPLOYER'S SIGNATURE, NAME TYPED OR PRINTED, AND TITLE _____ DATE _____																									

PDC Form L-1 (rev. 1/14)

NOT VALID UNLESS SIGNED BY BOTH

LOBBYIST IDENTIFICATION FORM



NAME:
BUSINESS ADDRESS:

PHONE:

OLYMPIA ADDRESS:

PHONE:

EMPLOYERS' NAMES:

YEAR FIRST EMPLOYED AS A LOBBYIST:
BIOGRAPHY:

INSTRUCTIONS

- ATTACH THIS PAGE TO YOUR L-1 REGISTRATION.
- ATTACH 2" x 2" PASSPORT TYPE PHOTO. PHOTO SHOULD BE HEAD AND SHOULDERS, FULL FACE, AND TAKEN WITHIN LAST 12 MONTHS.
- PLEASE WRITE NAME, LIGHTLY IN PENCIL, ON BACK OF PHOTO BEFORE ATTACHING.
- PHOTOS WILL NOT BE RETURNED.
- PLEASE SEE INSTRUCTION BOOKLET FOR EXAMPLE OF BIOGRAPHY.
- LIST ALL EMPLOYERS ON THIS PAGE.

PDC FORM L-1, PAGE 2 (Rev. 2/05)

AMENDATORY SECTION (Amending WSR 02-03-018, filed 1/4/02, effective 2/4/02)

WAC 390-20-020 Forms for lobbyist report of expenditures. The official form for the lobbyist report of expenditures is designated "L-2," revised ((1/02)) 1/14 which includes the L-2 Memo Report, dated 1/02. Copies of this form are available on the commission's web site, www.pdc.wa.gov, and at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504. Any attachments shall be on 8-1/2" x 11" white paper.

((

PUBLIC DISCLOSURE COMMISSION
711 CAPITOL WAY RM 206
PO BOX 40908
OLYMPIA WA 98504-0908
(360) 753-1111
TOLL FREE 1-877-601-2828

L2
1/02

PDC OFFICE USE

Lobbyist Monthly Expense Report
 (as required by Chapter 397, 1995 Session Laws)

1. Lobbyist Name _____
 Mailing Address _____
 City _____ State _____ Zip + 4 _____
 New Address? Yes No

2. This report is for the period _____ (Month) _____ (Year)
 This report corrects or amends the report for _____ (Month) _____ (Year)
 Business Telephone () - _____

ALL COMPLETE THIS PART		COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER			
Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period		Amount attributed to each employer			
Expense Category	TOTAL AMOUNT THIS MONTH All employers plus own expense (Columns a + b + c + d and attached pages)	Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A	Employer No. ____ Column B	Employer No. ____ Column C	Employer No. ____ Column D
3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
4. PERSONAL EXPENSES for travel, food and refreshments	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
9. OTHER EXPENSES AND SERVICES (See #18)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

(Attach additional page(s) if you lobby for more than three employers.)

11. EMPLOYERS' NAMES
 No. ____ (B)
 No. ____ (C)
 No. ____ (D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.
 Subject Matter, Issue or Bill No. _____ Legislative Committee or State Agency Considering Matter _____ Employer Represented _____

Continued on attached pages

13. Of the time spent lobbying, what percentage was devoted to lobbying: _____ the Legislature _____% State Agencies _____%.

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)
 Date registration ends: _____ Employer's name: _____

I understand that an L-2 report is required for any month or portion thereof in which I am a registered lobbyist. I also understand that once I have terminated my registration, I must file a new registration prior to lobbying for that employer in the future. All registrations terminate automatically on the second Monday in January of each odd numbered year.

I certify that this report is true and complete to the best of my knowledge.

CERTIFICATION
 LOBBYIST SIGNATURE _____ DATE _____

CONTINUE ON REVERSE

))



L2
1/14

PDC OFFICE USE

Lobbyist Monthly Expense Report
(as required by Chapter 397, 1995 Session Laws)

1. Lobbyist Name _____

Mailing Address _____

City _____ State _____ Zip + 4 _____

New Address? Yes No

2. This report is for the period _____ (Month) _____ (Year) This report corrects or amends the report for _____ (Month) _____ (Year) Business Telephone () - _____

ALL COMPLETE THIS PART			COMPLETE IF YOU HAVE MORE THAN ONE EMPLOYER		
Include all reportable expenditures by lobbyist and lobbyist's employer for or on behalf of the lobbyist incurred during the reporting period			Amount attributed to each employer		
Expense Category	TOTAL AMOUNT THIS MONTH All employers plus own expense (Columns a + b + c + d and attached pages)	Amounts paid from lobbyist's own funds, not reimbursed or attributed to an employer. Column A	Employer No. _____ Column B	Employer No. _____ Column C	Employer No. _____ Column D
3. COMPENSATION earned from employer for lobbying this period (salary, wages, retainer)	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
4. PERSONAL EXPENSES for travel, food and refreshments		\$ _____			
5. ENTERTAINMENT, GRATUITIES, TRAVEL, SEMINARS for state officials, employees, their families (See #15)					
6. CONTRIBUTIONS to elected officials, candidates and political committees (See #16)					
7. ADVERTISING, PRINTING, INFORMATIONAL LITERATURE					
8. POLITICAL ADS, PUBLIC RELATIONS, POLLING, TELEMARKETING, ETC. (See #17)					
9. OTHER EXPENSES AND SERVICES (See #18)					
10. TOTAL COMPENSATION AND EXPENSES INCURRED THIS MONTH	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

(Attach additional page(s) if you lobby for more than three employers.)

11. EMPLOYERS' NAMES No. _____ (B)
No. _____ (C)
No. _____ (D)

12. Subject matter of proposed legislation or other legislative activity or rulemaking the lobbyist was supporting or opposing.
Subject Matter, Issue or Bill No. **Legislative Committee or State Agency Considering Matter** **Employer Represented**

Continued on attached pages

13. Of the time spent lobbying, what percentage was devoted to lobbying: the Legislature _____% State Agencies _____%.

14. TERMINATION: (COMPLETE THIS ITEM ONLY IF YOU WISH TO TERMINATE YOUR REGISTRATION)

Date registration ends: _____ Employer's name: _____

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CERTIFICATION

I certify that this report is true and complete to the best of my knowledge. _____ LOBBYIST SIGNATURE _____ DATE _____

CONTINUE ON REVERSE

((

Page 2

L2

Lobbyist Name _____ Reporting Period _____ (Month) _____ (Year) _____

15. Itemize all of the following expenditures that were incurred by lobbyist or lobbyist employer(s) for legislators, state officials, state employees and members of their immediate families. Show the actual amount incurred for each individual or the amount fairly attributed to each.

- Entertainment expenditures exceeding \$25 per occasion (including lobbyist's expense) for meals, beverages, tickets, passes, or for other forms of entertainment.
- Travel, lodging and subsistence expenses in connection with a speech, presentation, appearance, trade mission, seminar or educational program.
- Enrollment and course fees in connection with a seminar or educational program.

Lobbyists must provide an elected official with a copy of the L-2 or Memo Report if the lobbyist reports: 1) spending on one occasion over \$50 for food or beverages for the official and/or his or her family member(s); or 2) providing travel, lodging, subsistence expenses or enrollment or course fees for the official and, if permitted, the official's family.

Date	Names of all Persons Entertained or Provided Travel, etc.	Description, Place, etc.	Sponsoring Employer	Amount
				\$
N/A	Total expenses itemized on attached Memo Reports			

Continued on attached pages.

16. If a monetary or in-kind contribution exceeding \$25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below or on a Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding \$25 was given to the following, itemize the contribution below: a caucus political committee; a political party; or a grass roots lobbying campaign.

Date	Name of Individual or Committee Receiving Contribution	Source of Contribution	Amount
			\$
N/A	Total contributions itemized on attached Memo Reports		

If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be again included in this L-2 report.)

Continued on attached pages. PAC Name: _____

17. Expenditures for: a) political advertising supporting or opposing a state or local candidate or ballot measure; or b) public relations, telemarketing, polling or similar activities that directly or indirectly are lobbying-related must be itemized by amount, vendor or person receiving payment, and a brief description of the activity. Itemize each expenditure on an attached page that also shows lobbyist name and report date. Put the aggregate total of these expenditures on line 8.

18. Payments by the lobbyist for other lobbying expenses and services, including payments to subcontract lobbyists, expert witnesses and others retained to provide lobbying services or assistance in lobbying and payments for grass roots lobbying campaigns (except advertising/printing costs listed in Item 7).

Date	Recipient's Name and Address	Employer for Whom Expense was Incurred	Amount
			\$

Continued on attached page.

))

L2

Page 2

Lobbyist Name _____

Reporting Period _____ (Month) _____ (Year)

15. Itemize all of the following expenditures that were incurred by lobbyist or lobbyist employer(s) for legislators, state officials, state employees and members of their immediate families. **In the total amount column, show the total amount spent for each occasion including any staging costs, tax, and gratuity. Also show the actual amount spent entertaining each individual, as shown in the example. When reporting a reception or similar event, show the amount fairly attributed to each individual.**
- **Entertainment expenditures exceeding \$25 per occasion** (including lobbyist's expense) for meals, beverages, tickets, passes, or for other forms of entertainment.
 - **Travel, lodging and subsistence expenses** in connection with a speech, presentation, appearance, trade mission, seminar or educational program.
 - **Enrollment and course fees** in connection with a seminar or educational program.
- Lobbyists must provide an elected official with a copy of the L-2 or Memo Report if the lobbyist reports: 1) spending on one occasion over \$50 for food or beverages for the official and/or his or her family member(s); or 2) providing travel, lodging, subsistence expenses or enrollment or course fees for the official and, if permitted, the official's family.

Date <i>mm/dd/year</i>	Names of all Persons Entertained or Provided Travel, etc. Include actual amounts spent for entertainment <i>Example: Sen Bow (\$32), Rep Arrow (\$28), and J. D. Lobbyist (\$36) tax & gratuity (\$25.41)</i>	Description, Place, etc. <i>Dinner at Anthony's, Olympia</i>	Sponsoring Employer <i>XYZ Corporation</i>	Total Amount <i>\$121.41</i>
N/A	Total expenses itemized on attached Memo Reports →			

Continued on attached pages.

16. If a monetary or in-kind contribution exceeding \$25 was given or transmitted by the lobbyist to any of the following, itemize the contribution below or on a Memo Report: local and state candidates or elected officials; local and state officers or employees; political committees supporting or opposing any candidate, elected official, officer or employee or any local or state ballot proposition. If a contribution exceeding \$25 was given to the following, itemize the contribution below: a caucus political committee; a political party; or a grass roots lobbying campaign.

Date	Name of Individual or Committee Receiving Contribution	Source of Contribution	Amount \$
N/A	Total contributions itemized on attached Memo Reports →		

If contributions were made directly by a political action committee associated, affiliated or sponsored by your employer, show name of the PAC below. (Information reported by PAC on C-4 report need not be again included in this L-2 report.)

Continued on attached pages. PAC Name: _____

17. Expenditures for: a) political advertising supporting or opposing a state or local candidate or ballot measure; or b) public relations, telemarketing, polling or similar activities that directly or indirectly are lobbying-related must be itemized by amount, vendor or person receiving payment, and a brief description of the activity. Itemize each expenditure on an attached page that also shows lobbyist name and report date. Put the aggregate total of these expenditures on line 8.
18. Payments by the lobbyist for other lobbying expenses and services, including payments to subcontract lobbyists, expert witnesses and others retained to provide lobbying services or assistance in lobbying and payments for grass roots lobbying campaigns (except advertising/printing costs listed in Item 7).

Date	Recipient's Name and Address	Employer for Whom Expense was Incurred	Amount \$

Continued on attached page.

INFORMATION CONTINUED

(Use this page if you need additional space for Items 12, 15 or 16)

L2

Lobbyist Name	Reporting Period	_____ (Month)	_____ (Year)
12. Subject Matter, Issue or Bill No.	Legislative Committee or State Agency Considering Matter	Employer Represented	

15. Date	Names of all Persons Entertained or Provided Travel, etc.	Description, Place, etc.	Sponsoring Employer	Amount
				\$

16. Date	Name of Individual or Committee Receiving Contribution	Source of Contribution	Amount
			\$

INFORMATION CONTINUED

L2

(Use this page if you need additional space for Items 17 or 18)

Lobbyist Name _____				
Reporting Period _____ (Month) _____ (Year)				
17. Date	Names of Vendor or Person Receiving Payment	Description, Place, etc.	Sponsoring Employer	Amount \$
18. Date	Recipient's Name and Address	Employer for Whom Expense was Incurred		Amount \$



L-2 Memo Report
1/02

Instructions: This Memo Report may be used by a lobbyist to notify a state elected official or other recipient of contributions, meals, travel expenses or educational benefits that have been provided during the preceding calendar month. The specific list of persons to whom a copy of this report must be delivered is shown below in the "Contributions" and "Meals, Travel, Seminars" sections. If the expenditures disclosed on this Memo Report do not also appear on the lobbyist's L-2 Report, a copy of this Memo Report must accompany the L-2 filing. See L-2 instruction manual for further details.

<p>TO: _____ Recipient's Name*</p> <p>FROM: _____ Lobbyist's Name</p> <p>_____ Mailing Address</p> <p>_____ City State Zip + 4</p>	<p>PDC OFFICE USE</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------

This report is for the period _____ <small>(Month) (Year)</small>	This report corrects or amends the report for _____ <small>(Month) (Year)</small>	Business Telephone () -
----------------------------------------------------------------------	--------------------------------------------------------------------------------------	-----------------------------

CONTRIBUTIONS to state or local candidate, elected official, or employee, legislative staff person or ballot issue committee.

Date Made	Amount or Value	Description (if in-kind)	Source of Contribution (Employer's Name or Own Funds)
	\$		

MEALS, TRAVEL, SEMINARS to a state elected official, including a legislator, or members of the official's immediate family. Disclose: a) expenditures totaling over \$50 on one occasion for food or beverages for the official and/or the official's family; or b) expenditures for providing permissible travel, lodging, subsistence expenses or enrollment or course fees for the official and the official's family.

Date Given	Amount or Value	Description	Source of Gift (Employer's Name or Own Funds)	Recipient (if family member)
	\$			

Lobbyist's Signature Date

*Recipients of Contributions will report receipt of a cash donation on a C-3 report or in-kind on a Schedule B to the C-4 report; recipients of meals, travel and seminars will report receipt of these items on their annual F-1 statement.

WSR 14-01-015
PERMANENT RULES
SEATTLE COMMUNITY COLLEGES
[Filed December 6, 2013, 3:36 p.m., effective January 6, 2014]

Effective Date of Rule: Thirty-one days after filing.
Purpose: Update and creation of new policies regarding the usage of the Seattle Community Colleges for first amendment activities on campus. The changes outline how the campus can be used for first amendment activities.

Citation of Existing Rules Affected by this Order:
Amending WAC 132F-136-030 and 132F-136-050.
Statutory Authority for Adoption: RCW 28B.50.140 (13).
Adopted under notice filed as WSR 13-17-003 on August 7, 2013.
Changes Other than Editing from Proposed to Adopted Version: WAC 132F-142-040(4) is revised to read as follows: "(4) Before engaging in first amendment activities;

~~upon request by the college, all noncollege groups are encouraged must report to campus security to sign in and notify the college of the noncollege group's presence on campus and to acknowledge receipt of these rules and to ensure that there are no scheduling conflicts. This notice does not involve any application or approval process, and therefore, the ability to use designated areas will not be denied unless they are already reserved for use by another group. This notice is intended to provide the college with knowledge of the noncollege group's presence on campus so that the college can notify the appropriate members of its staff whose services might be needed or impacted by the use of the designated area. When signing in, the individual or group must are encouraged to provide the following information:["].~~

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 5, 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 0, Repealed 0.

Date Adopted: December 5, 2013.

Jill Wakefield
Chancellor

AMENDATORY SECTION (Amending WSR 12-12-010, filed 5/24/12, effective 6/24/12)

WAC 132F-136-030 Limitation of use. (1) Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, research, or public service programs.

(2) ~~((In general, the)) College facilities ((of the college shall not)) may be rented to((, or used by,)) private or commercial organizations or associations((, nor)) but shall ((the facilities)) not be rented to persons or organizations conducting programs for private gain.~~

(3) ~~((College facilities may not be used for commercial sales, advertising, or promotional activities except when such activities clearly serve educational objectives (as in display of books of interest to the academic community or in the display or demonstration of technical or research equipment) and when they are conducted under the sponsorship or at the request of a college department, administrative office or student organization.~~

(4) ~~College facilities may not be used for purposes of political campaigning by or for candidates who have filed for public office except for student sponsored activities.~~

(5) ~~Activities of commercial or political nature will not be approved if they involve the use of promotional signs or posters on buildings, trees, walls, or bulletin boards, or the distribution of samples outside rooms or facilities to which access has been granted.~~

(6)) ~~College facilities are available to recognized student groups, subject to these general policies and to the rules and regulations of the college governing student affairs.~~

((7) ~~Handbills, leaflets, and similar materials except those which are commercial, obscene, or unlawful in character may be distributed only in designated areas on the campus where, and at times when, such distribution shall not interfere with the orderly administration of the college affairs or the free flow of traffic. Any distribution of materials as authorized by the designated administrative officer and regulated by established guidelines shall not be construed as support or approval of the content by the college community or the board of trustees.~~

(8) ~~Use of audio amplifying equipment is permitted only in locations and at times that will not interfere with the normal conduct of college affairs as determined by the appropriate administrative officer.~~

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

((10) ~~The right of peaceful dissent within the college community shall be preserved. The college retains the right to insure the safety of individuals, the continuity of the educational process, and the protection of property. While peaceful dissent is acceptable, violence or disruptive behavior is an illegitimate means of dissent. Should any person, group or organization attempt to resolve differences by means of violence, the college and its officials need not negotiate while such methods are employed.~~

(11) ~~Orderly picketing and other forms of peaceful dissent are protected activities on and about the college premises. However, interference with free passage through areas where members of the college community have a right to be, interference with ingress and egress to college facilities, interruption of classes, injury to persons, or damage to property exceeds permissible limits.~~

(12) ~~Peaceful picketing and other orderly demonstrations are permitted in public areas and other places set aside for public meetings in college buildings. Where college space is used for an authorized function, such as a class or a public or private meeting under approved sponsorship, administrative functions or service related activities, groups must obey or comply with directions of the designated administrative officer or individual in charge of the meeting.~~

(13) ~~If a college facility abuts a public area or street, and if student activity, although on public property, unreasonably interferes with ingress and egress to college buildings, the college may choose to impose its own sanctions although remedies might be available through local law enforcement agencies.~~

(14) ~~College and noncollege groups may use the campus for first amendment activities between the hours of 6:00 a.m. and 10:00 p.m. and the colleges and their campuses are not open to the public except during these times.~~

~~(15) There shall be no overnight camping on college facilities or grounds. Camping is defined to include sleeping, carrying on cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.)~~

AMENDATORY SECTION (Amending WSR 12-12-010, filed 5/24/12, effective 6/24/12)

WAC 132F-136-050 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate the district's rules, or whose conduct threatens the safety or security of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or his or her designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW or Seattle Municipal Code 12A.08.040.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accord with established college policies.

(3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the ~~((manager of campus security))~~ vice-president of administration or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the ~~((manager of campus security))~~ vice-president of administration or designee will be the final decision of the college and should be issued within five work days.

Chapter 132F-142 WAC

USE OF FACILITIES FOR FIRST AMENDMENT ACTIVITIES

NEW SECTION

WAC 132F-142-010 Statement of purpose. The Seattle Community Colleges are educational institutions provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the colleges. The public character of the colleges does not grant to individuals the right to substantially interfere with, or otherwise disrupt the normal activities for and to which the colleges' facilities and grounds are dedicated. Accordingly, the colleges are designated public forums opened for the purposes recited herein and further subject to the time, place, and manner provisions set forth in these rules.

The purpose of the time, place and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the colleges' responsibility to fulfill their mission as state educational institutions of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The colleges recognize that college groups should be accorded the opportunity to utilize the facilities and grounds of the colleges to the fullest extent possible. The college intends to open its campus to noncollege groups to the extent that the usage does not conflict with the rights of college groups or substantially disrupt the educational process.

NEW SECTION

WAC 132F-142-020 Definitions. (1) "College facilities" or "campus" includes all buildings, structures, grounds, office space, and parking lots.

(2) "College group" means individuals who are currently enrolled students or current employees of the Seattle Community Colleges or individuals who are sponsored by faculty, a recognized student organization or a recognized employee group of the college.

(3) "Noncollege group" means individuals or groups who are not currently enrolled students or current employees of the Seattle Community Colleges.

(4) "Public forum areas" means those areas of each campus that the college has chosen to be open as places for expressive activities protected by the first amendment, subject to reasonable time, place or manner provisions.

(5) "Sponsor" means that when a college group invites a noncollege group onto campus, the college group will be responsible for the activity and will designate an individual to be present at all times during the activity. The sponsor will ensure that those participating in the sponsored activity are aware of the college's rules and policies governing the activity. This definition does not apply to noncollege groups that rent college facilities.

NEW SECTION

WAC 132F-142-030 Use of facilities. (1) There shall be no camping on college facilities or grounds between the hours of 10:00 p.m. and 6:00 a.m. Camping is defined to include sleeping, cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(2) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories, or any previously scheduled college activity.

(3) College groups are encouraged to notify the campus public safety department no later than twenty four hours in advance of an activity. However, unscheduled activities are permitted so long as the activity does not displace any other activities occurring at the college.

(4) All sites used for first amendment activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the activity. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

(5) All college and noncollege groups must comply with fire, safety, sanitation or special regulations specified for the activity.

(6) The activity must not be conducted in such a manner as to obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the college, college buildings or facilities, or college activities. The activity must not create safety hazards or pose safety risks to others.

(7) The activity must not substantially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The activity must not substantially infringe on the rights and privileges of college students, employees or invitees to the college.

(8) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department, office, or officially chartered student club.

(9) The activity must also be conducted in accordance with any other applicable college policies and rules, local ordinances, state, and federal laws.

NEW SECTION

WAC 132F-142-040 Additional requirements for noncollege groups. (1) College facilities may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities in accordance with the Seattle Community Colleges' rules.

(2) The college designates its grounds and outdoor spaces as the public forum area(s) for use by noncollege groups for first amendment activities on campus. Nothing in these rules prohibits noncollege groups from engaging in first amendment activities at open public meetings, subject to the requirements of RCW 42.30.050.

(3) Noncollege groups at North Seattle Community College and South Seattle Community College may use the public forum areas for first amendment activities between the hours of 6:00 a.m. and 10:00 p.m. and those colleges and their campuses are not open to the general public except during these times. Due to Seattle Central Community College's urban setting, there are no temporal restrictions on first amendment activities at that college except as otherwise provided in these rules.

(4) Before engaging in first amendment activities, all noncollege groups are encouraged to sign in and notify the college of the noncollege group's presence on campus and to acknowledge receipt of these rules and to ensure that there are no scheduling conflicts. This notice does not involve any

application or approval process, and therefore, the ability to use designated areas will not be denied unless they are already reserved for use by another group. This notice is intended to provide the college with knowledge of the non-college group's presence on campus so that the college can notify the appropriate members of its staff whose services might be needed or impacted by the use of the designated area. When signing in, the individual or group are encouraged to provide the following information:

(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the activity (hereinafter "the sponsoring organization"); and

(b) The name, address, and telephone number of a contact person for the sponsoring organization; and

(c) The date, time, and requested location of the activity; and

(d) The type of sound amplification devices to be used in connection with the activity, if any; and

(e) The estimated number of people expected to participate in the activity.

NEW SECTION

WAC 132F-142-050 Distribution of materials. Information may be distributed as long as it is not obscene or does not promote the imminent prospect of actual violence or harm. The distributor is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only on the grounds and outside spaces of the campuses.

WSR 14-01-021

PERMANENT RULES

HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed December 9, 2013, 8:51 a.m., effective January 9, 2014]

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

Purpose: **Medicaid expansion WACs - Phase 3**, the health care authority (HCA) is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of standalone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administration and supervision of Washington's medicaid program (Washington apple health).

Citation of Existing Rules Affected by this Order: Amending WAC 182-500-0010, 182-500-0045, 182-500-0070, 182-500-0095, 182-500-0100, 182-506-0010, and 182-509-0001.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Adopted under notice filed as WSR 13-16-096 on August 7, 2013.

Changes Other than Editing from Proposed to Adopted Version: The following changes were made from the version filed as WSR 13-16-096 on August 7, 2013:

- WAC 182-500-0070, added clarifying language to the definition of "Modified adjusted gross income (MAGI)."
- WAC 182-500-0100, changed the definition of "Spouse" to comply with the recent state Supreme Court ruling on same-sex marriages.
- WAC 182-506-0010(4), struck the word "verified."
- WAC 182-506-0015(4), removed the first sentence of subsection (4) and placed it in new subsection (5).
- WAC 182-509-0001, corrected WAC citation in subsection (2)(d). Moved subsection (3) down to subsection (5). In subsection (5), added qualifying language "subject to reporting requirements."
- WAC 182-509-0220(3), added "and exclusions" to lead-in sentence; corrected WAC citation; and added reference to "medical care services" in new subsection (3)(f).
- WAC 182-509-0300 (2)(c), added "any amount of" and the clause "which is excluded from gross income under Section 86 of the IRC." In subsection (4), added exception for parents or caretaker relatives whose child's net income is below thirty-five percent of the FPL.
- WAC 182-509-0305 (1), (4), (5), and (6), changed income thresholds to comply with new federal standards.
- WAC 182-509-0310, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs. In subsection (4), replaced entire subsection with a cross-reference to WAC 182-503-0050.
- WAC 182-509-0315, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs. In subsection (3), added the word "may" in front of the word "conduct" and added a cross-reference to WAC 182-503-0050.
- WAC 182-509-0320, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs.
- WAC 182-509-0325, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs.
- WAC 182-509-0330, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs. In subsection (1)(e), deleted the web site address to DSHS manual.
- WAC 182-509-0335, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs.
- WAC 182-509-0340, revised this section based on public comments received. It has been repropounded under WSR 13-22-077 and scheduled for another public hearing on December 10, 2013.
- WAC 182-509-0350, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs.
- WAC 182-509-0355, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs. In subsection (1), substituted the phrase "property received by" for "an item furnished to" and simplified the wording in reference to the estate of a deceased person. In subsection (2), clarified the reference to gift or inheritance income.
- WAC 182-509-0360, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs.
- WAC 182-509-0365, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs.
- WAC 182-509-0370, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs.
- WAC 182-509-0375, added a lead-in sentence to make it clear this section only applies to MAGI-based WAH programs.
- WAC 182-520-0010(1), added clarifying language regarding overpayments, including that a review judge can preside over an appeal as well as an administrative law judge. Added subsection (3) to clarify that the agency will not attempt to recover an overpayment from a nonneedy caretaker relative or guardian unless it's fraudulent.

Number of Sections Adopted in Order to Comply with Federal Statute: New 21, Amended 7, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 21, Amended 7, Repealed 0.

Date Adopted: December 9, 2013.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0010 Medical assistance definition—
A. "Administrative renewal" means the agency uses verification from electronically available income data sources to verify and recertify a person's Washington apple health benefits for a subsequent certification period. A case is administratively renewed when the person's self-attested income is reasonably compatible (as defined in WAC 182-500-0095)

with the information available to the agency from the electronic data sources and the person meets citizenship, immigration, Social Security number, and age requirements.

"**Agency**" means the Washington state health care authority (HCA), created pursuant to chapter 41.05 RCW.

"**Agency's designee**" means the Washington state department of social and health services (DSHS), created pursuant to chapter 43.20A RCW.

"**Allowable costs**" are the documented costs as reported after any cost adjustment, cost disallowances, reclassifications, or reclassifications to nonallowable costs which are necessary, ordinary and related to the outpatient care of medical care clients are not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

"**Alternative benefits plan**" means the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"**Ancillary services**" means additional services ordered by the provider to support the core treatment provided to the patient. These services may include, but are not limited to, laboratory services, radiology services, drugs, physical therapy, occupational therapy, and speech therapy.

"**Apple health for kids**" is the umbrella term for health care coverage for certain groups of children that is funded by the state and federal governments under Title XIX medicaid programs or Title XXI Children's Health Insurance Program, or solely through state funds (including the program formerly known as the children's health program). Funding for any given child depends on the program for which the child is determined to be eligible. (~~Children who may be eligible for medical assistance but who are not included under the apple health for kids umbrella are described in WAC 388-505-0240.~~) Apple health for kids programs are included in the array of health care programs available through Washington apple health (WAH).

"**Attested income**" means a self-declared statement of a person's income made under penalty of perjury to be true. (See also "self-attested income.")

"**Authorization**" means the agency's or the agency's designee's determination that criteria are met, as one of the preconditions to the agency's or the agency's designee's decision to provide payment for a specific service or device. (See also "expedited prior authorization" and "prior authorization.")

"**Authorized representative**" means a family member, friend, organization or someone acting responsibly on behalf of a person who is designated by the person to act on his or her behalf in all matters relating to an application or renewal of Washington apple health or other ongoing communications with agency or its designee. The authorization must be made in writing and signed by the person unless the person's medical condition prevents such written authorization. Authority to act on behalf of an applicant or beneficiary under state law can substitute for the person's authorization. The power to act as an authorized representative ends when

the person or a court-appointed guardian of the person informs the agency or its designee that the representative is no longer authorized to act on his or her behalf, or when the agency learns of a change in the legal authority upon which the authorization is based.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0045 Medical assistance definitions—
H. "Health benefit exchange" means the public-private partnership created pursuant to chapter 43.71 RCW.

"**Health insurance premium tax credit (HIPTC)**" is a premium tax credit that is refundable and can also be paid in advance from the Internal Revenue Service to a taxpayer's insurance company to help cover the cost of premiums for a taxpayer enrolled in a qualified health plan (QHP) through the health benefit exchange. This tax credit is specified in Section 36B of the Internal Revenue Code of 1986.

"**Health maintenance organization (HMO)**" means an entity licensed by the office of the insurance commissioner to provide comprehensive medical services directly to an eligible enrolled client in exchange for a premium paid by the agency on a prepaid capitation risk basis.

"**Health care professional**" means a provider of health care services licensed or certified by the state in which they practice.

"**Health care service category**" means a grouping of health care services listed in the table in WAC (~~388-501-0060~~) 182-501-0060. A health care service category is included or excluded depending on the client's medical assistance benefits package.

"**Home health agency**" means an agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence.

"**Hospital**" means an entity that is licensed as an acute care hospital in accordance with applicable state laws and rules, or the applicable state laws and rules of the state in which the entity is located when the entity is out-of-state, and is certified under Title XVIII of the federal Social Security Act. The term "hospital" includes a medicare or state-certified distinct rehabilitation unit or a psychiatric hospital.

AMENDATORY SECTION (Amending WSR 12-19-051, filed 9/13/12, effective 10/14/12)

WAC 182-500-0070 Medical assistance definitions—
M. "Medicaid" is the federal aid (~~Title XIX~~) program under Title XIX of the Social Security Act under which (~~medical~~) health care is provided to eligible persons.

"**Medical assistance**" (~~for the purposes of chapters 388-500 through 388-561 WAC, means the various~~) is the term the agency and its predecessors used prior to the implementation of the Affordable Care Act in Washington state to mean all federal and/or state-funded health care programs administered by the agency or (~~the agency's~~) its designee that (~~provide federally funded and/or state-funded health care benefits to eligible clients~~) are now known as Washington apple health.

"Medical assistance administration (MAA)" is the former organization within the department of social and health services authorized to administer the federally funded and/or state-funded health care programs that are now administered by the agency, formerly the medicaid purchasing administration (MPA), of the health and recovery services administration (HRSA).

"Medical care services (MCS)" means the limited scope ~~((of))~~ health care ~~((medical))~~ program financed by state funds for clients who meet the incapacity criteria defined in chapter 182-508 WAC or who are eligible for the Alcohol and Drug Addiction Treatment and Support Act (ADATSA) program.

"Medical consultant" means a physician employed or contracted by the agency or the agency's designee.

"Medical facility" means a medical institution or clinic that provides health care services.

"Medical institution" See "institution" in WAC 182-500-0050.

"Medical services card" means the card issued by the agency at the initial approval of a person's Washington apple health (WAH) benefit. The card identifies the person's name and medical services identification number, but is not proof of eligibility for WAH. The card may be replaced upon request if it is lost or stolen, but is not required to access health care through WAH.

"Medically necessary" is a term for describing requested service which is reasonably calculated to prevent, diagnose, correct, cure, alleviate or prevent worsening of conditions in the client that endanger life, or cause suffering or pain, or result in an illness or infirmity, or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction. There is no other equally effective, more conservative or substantially less costly course of treatment available or suitable for the client requesting the service. For the purposes of this section, "course of treatment" may include mere observation or, where appropriate, no medical treatment at all.

"Medically needy (MN) or medically needy program (MNP)" is the state- and federally funded health care program available to specific groups of persons who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income and/or resources above the CN standard may also qualify for MN.

"Medicare" is the federal government health insurance program for certain aged or disabled persons under Titles II and XVIII of the Social Security Act. Medicare has four parts:

(1) **"Part A"** - Covers medicare inpatient hospital services, post-hospital skilled nursing facility care, home health services, and hospice care.

(2) **"Part B"** - The supplementary medical insurance benefit (SMIB) that covers medicare doctors' services, outpatient hospital care, outpatient physical therapy and speech pathology services, home health care, and other health services and supplies not covered under Part A of medicare.

(3) **"Part C"** - Covers medicare benefits for clients enrolled in a medicare advantage plan.

(4) **"Part D"** - The medicare prescription drug insurance benefit.

"Medicare assignment" means the process by which a provider agrees to provide services to a medicare beneficiary and accept medicare's payment for the services.

"Medicare cost-sharing" means out-of-pocket medical expenses related to services provided by medicare. For medical assistance clients who are enrolled in medicare, cost-sharing may include Part A and Part B premiums, co-insurance, deductibles, and copayments for medicare services. See chapter 182-517 WAC for more information.

"Minimum essential coverage" means coverage defined in Section 5000A(f) of Subtitle D of the Internal Revenue Code of 1986, as added by Section 1401 of the Affordable Care Act.

"Modified adjusted gross income (MAGI)" means the adjusted gross income (as determined by the Internal Revenue Service under the Internal Revenue Code of 1986 (IRC)) increased by:

(1) Any amount excluded from gross income under Section 911 of the IRC;

(2) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(3) Any amount of Title II Social Security income or Tier 1 railroad retirement income which is excluded from gross income under Section 86 of the IRC. See WAC 182-509-0300 through 182-509-0375 for additional rules regarding MAGI.

NEW SECTION

WAC 182-500-0090 Medical assistance definitions—
Q. "Qualified health plan (QHP)" means a health insurance plan that has been certified by the Washington health benefit exchange to meet at minimum the standards described in 45 C.F.R. Part 156, Subpart C and RCW 43.71.065 and offered in accordance with the process described in 45 C.F.R. Part 155, Subpart K and RCW 43.71.065.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0095 Medical assistance definitions—
R. "Reasonably compatible" means the amount of a person's self-attested income (as defined in WAC 182-500-0100) and the amount of a person's income verified via electronic data sources are either both above or both below the applicable income standard for Washington apple health (WAH). When self-attested income is less than the standard for WAH, but income from available data sources is more than the WAH standard, or when the self-attested income cannot be verified via electronic data sources, the self-attested income is considered not reasonably compatible.

"Regional support network (RSN)" means a single or multiple-county authority or other entity operating as a pre-paid health plan through which the agency or the agency's designee contracts for the delivery of community outpatient and inpatient mental health services system in a defined geographic area.

"Retroactive period" means approval of medical coverage for any or all of the retroactive period. A client may be eligible only in the retroactive period or may have both current eligibility and a separate retroactive period of eligibility approved.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-500-0100 Medical assistance definitions—
S. "Self-attestation" means a person's written, verbal, or electronic declaration of his or her income and/or circumstances made under penalty of perjury, confirming a statement to be true. (See also "attested income.")

"Spendedown" is a term used in the medically needy (MN) program and means the process by which a person uses incurred medical expenses to offset income and/or resources to meet the financial standards established by the agency. See WAC ((388-519-0110)) 182-519-0110.

"Spouse" means(~~(, for the purposes of Medicaid,)~~ a person who is ((~~a husband or wife~~)) legally married to ((~~a~~)) another person ((of the opposite sex)). Washington state recognizes other states' determinations of legal and common-law marriages between two persons ((~~of the opposite gender~~)).

(1) **"Community spouse"** means a person who:

(a) Does not reside in a medical institution; and

(b) Is legally married to a client who resides in a medical institution or receives services from a home and community-based waiver program. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

(2) **"Eligible spouse"** means an aged, blind or disabled husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and is also eligible for SSI.

(3) **"Essential spouse"** means a husband or wife whose needs were taken into account in determining old age assistance (OAA), aid to the blind (AB), or disability assistance (DA) for a client in December 1973, who continues to live in the home and remains married to the client.

(4) **"Ineligible spouse"** means the husband or wife of an SSI-eligible person, who lives with the SSI-eligible person, and who has not applied or is not eligible to receive SSI.

(5) **"Institutionalized spouse"** means a legally married person who has attained institutional status as described in chapter ((388-513)) 182-513 WAC, and receives services in a medical institution or from a home or community-based waiver program described in chapter ((388-515)) 182-515 WAC. A person is considered married if not divorced, even when physically or legally separated from his or her spouse.

(6) **"Nonapplying spouse"** means an SSI-related person's husband or wife, who has not applied for medical assistance.

"SSI-related" means an aged, blind or disabled person not receiving an SSI cash grant.

"State supplemental payment (SSP)" is a state-funded cash benefit for certain individuals who are either recipients of the Title XVI supplemental security income (SSI) program or who are clients of the division of developmental disabilities. The SSP allotment for Washington state is a fixed

amount of twenty-eight million nine hundred thousand dollars and must be shared between all individuals who fall into one of the groups listed below. The amount of the SSP may vary each year depending on the number of individuals who qualify. The following groups are eligible for an SSP:

(1) **Mandatory SSP group**—SSP made to a mandatory income level client (MIL) who was grandfathered into the SSI program. To be eligible in this group, an individual must have been receiving cash assistance in December 1973 under the department of social and health services former old age assistance program or aid to the blind and disability assistance. Individuals in this group receive an SSP to bring their income to the level they received prior to the implementation of the SSI program in 1973.

(2) **Optional SSP group**—SSP made to any of the following:

(a) An individual who receives SSI and has an ineligible spouse.

(b) An individual who receives SSI based on meeting the age criteria of sixty-five or older.

(c) An individual who receives SSI based on blindness.

(d) An individual who has been determined eligible for SSP by the division of developmental disabilities.

(e) An individual who is eligible for SSI as a foster child as described in WAC 388-474-0012.

"Supplemental security income (SSI) program (Title XVI)" is the federal grant program for aged, blind, and disabled persons, established by section 301 of the Social Security amendments of 1972, and subsequent amendments, and administered by the Social Security Administration (SSA).

NEW SECTION

WAC 182-505-0211 Washington apple health (WAH)—Foster care. (1) A person under the age of nineteen is eligible for Washington apple health (WAH) when he or she:

(a) Is in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state; and

(b) Meets Washington residency requirements as described in WAC 182-503-0520 or 182-503-0525.

(2) A person under the age of twenty-one is eligible for WAH when he or she meets:

(a) Washington residency requirements as described in WAC 182-503-0520 or 182-503-0525;

(b) Citizenship or immigration status requirements as described in WAC 182-503-0535;

(c) Social Security number requirements as described in WAC 182-503-0515; and

(d) One of the following requirements:

(i) Is in foster care, or is eligible for continued foster care services as determined by the children's administration, under the legal responsibility of the state, or a federally recognized tribe located within the state; or

(ii) Receives subsidized adoption services through the children's administration; or

(iii) Is enrolled in the unaccompanied refugee minor (URM) program as authorized by the office of refugee and immigrant assistance (ORIA); or

(iv) Is living in a group home operated or contracted by the juvenile rehabilitation administration; or

(v) Is placed in a foster home or group home through the voluntary placement waiver program managed by the division of developmental disabilities.

(3) A person age nineteen or older but under age twenty-six is eligible for WAH when he or she:

(a) Was both in foster care under the legal responsibility of the state or a federally recognized tribe located within the state and enrolled in medicaid:

(i) On his or her eighteenth birthday; or

(ii) At such higher age at which foster care assistance ended; and

(b) Meets residency, Social Security number, and citizenship requirements as described in subsection (2) of this section.

(4) A person described in subsections (1) through (3) of this section is not eligible for WAH if he or she is confined to a public institution as defined in WAC 182-500-0050, except:

(a) If he or she is under age twenty-one;

(b) Resides in an institution for mental disease (IMD); and

(c) Meets the institutional status requirements in WAC 182-505-0240.

AMENDATORY SECTION (Amending WSR 11-24-018, filed 11/29/11, effective 12/1/11)

WAC 182-506-0010 Medical assistance units (MAU) for MAGI-based Washington apple health programs.

~~((1) One or more medical assistance units (MAU) is established for individuals living in the same household based on the type of medical program, each individual's relationship to other family members, and the individual's financial responsibility for the other family members.~~

~~(2) Financial responsibility applies only to spouses and to parents, as follows:~~

~~(a) Married persons, living together are financially responsible for each other; and~~

~~(b) Persons who meet the definition of a natural, adoptive, or step parent described in WAC 388-454-0010 are financially responsible for their unmarried, minor children living in the same household.~~

~~(3) Minor children are not financially responsible for their parents or for their siblings.~~

~~(4) When determining eligibility for family, pregnancy, or children's medical programs, follow the income rules as described in WAC 388-450-0106 (1) through (7). Only one MAU is required when all family members are eligible for categorically needy (CN) medical coverage.~~

~~(5) If a family is not eligible as one MAU for a CN program, separate MAUs are required for family members living in the same household in the following situations:~~

~~(a) A pregnant minor, regardless of whether she lives with her parent(s);~~

~~(b) A child with earned or unearned income;~~

~~(c) A child with resources which make another family member ineligible for medical assistance;~~

~~(d) A child of unmarried parents when both parents reside with the child;~~

~~(e) Each unmarried parent of a child in common, plus any of their children who are not in separate MAUs;~~

~~(f) A caretaker relative that is not financially responsible for the support of the child;~~

~~(6) For a family with multiple MAUs established based on the criteria described in subsection (5) of this section, a parent's:~~

~~(a) Income up to one hundred percent of the federal poverty level (FPL) is allocated to the parent and other members of the parent's MAU. The excess is allocated to their children in separate MAUs.~~

~~(b) Resources are allocated equally to the parent and all persons in the parent's household for whom the parent is financially responsible. This includes family members in separate MAUs.~~

~~(7) The exceptions to the income allocations described in subsection (6) of this section are as follows:~~

~~(a) Only the parent's income actually contributed to a pregnant minor is considered income to the minor.~~

~~(b) A parent's financial responsibility is limited when the minor child is receiving inpatient chemical dependency or mental health treatment. Only the income a parent chooses to contribute to the child is considered available when:~~

~~(i) The treatment is expected to last ninety days or more;~~

~~(ii) The child is in court-ordered, out-of-home care in accordance with chapter 13.34 RCW; or~~

~~(iii) The department determines the parents are not exercising responsibility for the care and control of the child.~~

~~(8) When determining eligibility for an SSI-related medical program, a separate MAU is required for:~~

~~(a) SSI recipients;~~

~~(b) An SSI-related person who has not been found eligible for family medical under this chapter; or~~

~~(c) The purpose of applying medical income standards for an:~~

~~(i) SSI-related applicant whose spouse is not related to SSI or is not applying for SSI-related medical; and~~

~~(ii) Ineligible spouse of an SSI recipient.~~

~~(9) For a person in a separate MAU, based on the criteria described in subsection (8) of this section, the income and resource allocations described in subsection (6) of this section are not used. The SSI-related individual's eligibility is determined using the allocations or deeming rules in chapter 388-475 WAC.~~

~~(10) Countable income for medical programs:~~

~~(a) For SSI individuals is described in chapter 388-475 WAC; or~~

~~(b) For family medical, pregnancy medical, and children's medical is described in WAC 388-450-0210.)~~

(1) A person's financial eligibility for programs that use modified adjusted gross income (MAGI) methodology, as described in WAC 182-509-0300, is based on multiple factors including relationship to other household members, age, tax status and pregnancy. The rules in this section describe which household members' income is counted in determining a person's eligibility. These household members comprise the person's "medical assistance unit" (MAU). Members of a single household may have different MAUs.

(2) The determination of countable income for MAGI-based programs is described in chapter 182-509 WAC.

(3) A person's MAGI-based countable income equals the total countable income of the members of the person's MAU (see WAC 182-509-0001). This income is compared to the income standard for the MAU size when determining eligibility for programs based on a federal poverty limit standard.

(4) The number of persons in the MAU is increased by one for each unborn child for each pregnant woman already included in the MAU under this section.

(5) For any given tax year in which an initial eligibility determination, renewal of eligibility, post-eligibility review or change of circumstance is made, MAUs are determined as follows:

(a) The MAU for a person who expects to file a federal tax return and does not expect to be claimed as a tax dependent by another tax filer includes the following:

(i) The person (tax filer) and all persons the tax filer expects to claim as a tax dependent; and

(ii) The following additional persons, but only if they live in the same residence:

(A) The person's spouse;

(B) The person's natural, adopted and step-children less than nineteen years of age;

(C) If the person is less than nineteen years of age, the person's natural, adopted and step-parents; and

(D) If the person is less than nineteen years of age, the natural, adoptive and step-siblings who are less than nineteen years of age.

(b) The MAU for a person who expects to be claimed as a tax dependent by a tax filer includes:

(i) The person (tax dependent), the tax filer, and any other persons in the tax filer's MAU (as determined according to (a) of this subsection), except if:

(A) The person is not the spouse or biological, adopted, or natural child of the tax filer;

(B) The person is under age nineteen and living in the same residence as both parents, but is expected to be claimed as a tax dependent by only one parent, either because the parents are unmarried or do not expect to file taxes jointly; or

(C) The person is under age nineteen and expects to be claimed by a noncustodial parent.

(ii) If (b)(i)(A), (B) or (C) of this section applies, the person's MAU is determined according to the nonfiler rules described in (c) of this subsection.

(c) The MAU for a person who does not expect to file a federal tax return and who either does not expect to be claimed as a tax dependent or meets one of the tax dependent exceptions in (b) of this subsection includes the following persons, but only if they live in the same residence:

(i) The person (self);

(ii) The person's spouse;

(iii) The person's natural, adopted and step-children less than nineteen years of age;

(iv) If the person is less than nineteen years of age, the person's natural, adopted and step-parents; and

(v) If the person is less than nineteen years of age, the natural, adoptive and step-siblings who are less than nineteen years of age.

NEW SECTION

WAC 182-506-0015 Medical assistance units for non-MAGI-based Washington apple health programs. This section explains how medical assistance units (MAUs) are constructed for programs not based on modified adjusted gross income (MAGI) methodologies. (MAGI-based programs are described in WAC 182-503-0510.)

(1) An MAU is a person or group of people who must be included together when determining eligibility. MAUs are established based on each person's relationship to other family members and the person's financial responsibility for the other family members.

(2) Financial responsibility applies only to spouses and to parents, as follows:

(a) Married persons, living together are financially responsible for each other;

(b) Natural, adoptive, or step-parents are financially responsible for their unmarried, minor children living in the same household;

(c) Minor children are not financially responsible for their parents or for their siblings;

(d) Married persons' financial responsibility for each other when not living together because one or both are residing in a medical institution is described in chapter 182-513 WAC.

(3) The number of persons in the MAU is increased by one for each verified unborn child for each pregnant woman already included in the MAU under this section.

(4) A separate SSI-related MAU is required for:

(a) SSI recipients;

(b) SSI-related persons;

(c) Institutionalized persons;

(d) The purpose of applying medical income standards for an:

(i) SSI-related applicant whose spouse is not relatable to SSI or is not applying for SSI-related medical; and

(ii) Ineligible spouse of an SSI recipient.

(5) When determining eligibility for an SSI-related medical program, the agency determines how household income is allocated and deemed to the SSI-related person according to the rules described in WAC 182-512-0820 and 182-512-0900 through 182-512-0960.

AMENDATORY SECTION (Amending WSR 11-23-091, filed 11/17/11, effective 11/21/11)

WAC 182-509-0001 Countable income for ((~~medi~~eat)) Washington apple health programs. (1) For purposes of ((~~medical~~)) Washington apple health (WAH) program eligibility, a ((~~client's~~)) person's countable income is income which remains when:

(a) The income cannot be specifically excluded; and

(b) All appropriate deductions and disregards allowed by a specific program((s)) have been applied.

(2) A ((~~client's~~)) person's countable income ((~~cannot~~)) may not exceed the income standard for the specific ((~~medi~~eat)) WAH program((s described in WAC 388-478-0065, 388-478-0070, 388-478-0075, 388-478-0080, or 388-513-1305, 388-513-1315, or 388-513-1395)), unless the program

allows for those limits to be exceeded. Specific program standards are described below:

(a) For modified adjusted gross income (MAGI)-based programs described in WAC 182-503-0510, see WAC 182-505-0100 for the applicable program standard based on a percentage of the federal poverty level (FPL);

(b) For WAH SSI-related CN coverage, see WAC 182-512-0010;

(c) For WAH MN coverage, see WAC 182-519-0050;

(d) For WAH for workers with disabilities, see WAC 182-511-1060;

(e) For WAH medicare savings programs, see WAC 182-517-0100;

(f) For WAH noninstitutional medical in an alternative living facility, see WAC 182-513-1305; and

(g) For WAH long-term care programs, see WAC 182-513-1315 and 182-513-1395.

(3) ((Unless modified by subsection (4) or (6) of this section, the TANF/SFA income rules, as described in this chapter, are used to determine a client's countable income for the following programs:

(a) Family medical program as described in WAC 388-505-0220;

(b) Medical extensions as described in chapter 388-523 WAC;

(c) Pregnant women's program as described in WAC 388-462-0015;

(d) Children's health care programs as described in WAC 388-505-0210; and

(e) Psychiatric indigent inpatient (PII) program as described in WAC 388-865-0217.

(4) Exceptions to the TANF/SFA cash assistance methodology apply as follows:

(a) The financial responsibility of relatives when a client is applying for medical for families, children, pregnant women or for the psychiatric indigent inpatient program is specified in WAC 388-408-0055;

(b) Actual work-related child and dependent care expenses, which are the client's responsibility, are income deductions (the limits on this deduction in WAC 388-450-0170 (3) and (4) do not apply);

(c) Court or administratively ordered current or back support paid to meet the needs of legal dependents, are income deductions;

(d) Only income actually contributed to an alien client from the alien's sponsor is countable unless the sponsor signed the affidavit of support I-864 or I-864A. See subsection (5) of this section;

(e) TANF/SFA gross earned income limits as described in WAC 388-450-0165 do not apply;

(f) The fifty percent earned income deduction is not used to calculate countable income for CN scope of care programs with income levels based upon the federal poverty level (FPL). These programs are listed in subsections (3)(c) and (d). The only work related income deductions for these programs are:

(i) Ninety dollars; and

(ii) Actual work related child and dependent care expenses, as described in (b) of this subsection; and

(iii) Child support as described in (c) of this subsection.

(g) When determining medically needy (MN) or MN scope of care coverage for children or pregnant women for the programs described in subsections (3)(c) and (d), the exception described in subsection (4)(f) is not used as the MN income standards are not based on the FPL;

(h) For nonrecurring lump sum payments, see chapter 388-455 WAC and WAC 388-475-0300(4);

(i) Diversion cash assistance (DCA), is not countable income;

(j) Effective April 1, 2002, the department will disregard an increase in earned income when:

(i) A family is receiving benefits under the family medical program; and

(ii) The increase occurs during the second or third month of eligibility. The disregard stops the last day of the third month of eligibility for a family medical program.

(5) When an alien's sponsor has signed the affidavit of support I-864 or I-864A, the sponsor's income and resources are counted as described in WAC 388-450-0155, 388-450-0156, 388-450-0160, and 388-470-0060.

(6) Except when this state has adopted more liberal rules, SSI income rules are used to determine a client's countable income for the following programs:

(a) SSI-related CN or MN; and

(b) Medicare savings programs. Refer to chapter 388-475 WAC.) For the MAGI-based programs listed below, the agency or its designee determines eligibility based on the countable MAGI income of the members of the person's medical assistance unit as determined per WAC 182-506-0010:

(a) WAH for parents and caretaker relatives program as described in WAC 182-505-0240;

(b) WAH pregnancy program as described in WAC 182-505-0115;

(c) WAH for kids programs as described in WAC 182-505-0210 with the following exceptions:

(i) Newborn children born to a woman who is eligible for WAH on the date of the newborn's birth, including a retroactive eligibility determination;

(ii) Children who are receiving SSI;

(iii) Children who are in foster care or receiving subsidized adoption services.

(d) WAH MAGI-based adult medical as described in WAC 182-505-0250; and

(e) WAH MAGI-based alien emergency medical as described in WAC 182-507-0110.

(4) For the following SSI-related WAH programs, unless the state has adopted more liberal rules, income rules for the SSI program are used to determine a person's countable income:

(a) WAH noninstitutional SSI-related CN or medically needy (MN) coverage described in chapters 182-511 and 182-512 WAC;

(b) WAH institutional SSI-related CN or MN long-term care or hospice coverage described in chapters 182-513 and 182-515 WAC;

(c) WAH alien emergency medical programs based on age sixty-five or older or disability described in chapter 182-507 WAC; and

(d) WAH medicare savings programs described in chapter 182-517 WAC.

(5) Anticipated nonrecurring lump sum payments received by an applicant or recipient of a WAH SSI-related medical program are counted as income in the month of receipt, subject to reporting requirements, with the exception of retroactive supplemental security income (SSI)/Social Security disability lump sum payments. See WAC 182-512-0300(4) and 182-512-0700 for more information.

(6) Countable income for the WAH refugee medical (RMA) program and WAH MN program for pregnant women and children is determined as follows:

(a) The agency or its designee allows the following deductions from a person's gross earnings:

- (i) Fifty percent of gross earned income;
- (ii) Actual work-related child and dependent care expenses, which are the person's responsibility; and
- (iii) Court or administratively ordered current or back support paid to meet the needs of legal dependents.

(b) Only income actually contributed to an alien client from the alien's sponsor is countable unless the sponsor signs the affidavit of support I-864 or I-864A.

(c) Nonrecurring lump sum payments are counted as income in the month of receipt and as a resource if the person retains the payment after the month of receipt (resource limits do not apply to MN coverage for pregnant women and children). For RMA, nonrecurring lump sum payments are counted as income if received in the month of application and not considered if received thereafter per WAC 182-507-0130.

(7) Countable income rules for other WAH programs that are not MAGI-based or SSI-related are described in the specific program rules listed in WAC 182-503-0510 (3)(c).

(8) Some WAH programs are not based on a person's or household's countable income but are based on a specific status or entitlement in federal rule. The rules for these deemed eligible WAH programs are described in WAC 182-503-0510(4).

NEW SECTION

WAC 182-509-0220 Washington apple health—How resources are considered. (1) A resource is any cash, other personal property, or real property that a person:

- (a) Owns;
- (b) Has the right, authority, or power to convert to cash (if not already cash); and
- (c) Has the legal right to use for his or her support and maintenance.

(2) There is no resource limit for an applicant or recipient of the following Washington apple health (WAH) programs:

- (a) WAH for workers with disabilities (HWD) program, as described in chapter 182-511 WAC;
- (b) WAH foster care program (see WAC 182-505-0211);
- (c) All programs that are based on modified adjusted gross income (MAGI) methodologies, as described in WAC 182-503-0510. This includes the following:
 - (i) WAH for parents and caretaker relatives (see WAC 182-505-0240);

(ii) WAH for pregnant women (see WAC 182-505-0115);

(iii) WAH for kids (see WAC 182-505-0210);

(iv) Premium-based WAH for kids (see WAC 182-505-0215);

(v) WAH long-term care for children and adults (see WAC 182-514-0230);

(vi) WAH for MAGI-based adult coverage (see WAC 182-505-0250); and

(vii) WAH MAGI-based adult alien emergency medical (see WAC 182-507-0110).

(3) For all other WAH programs, the resource limits and exclusions can be found in the following chapters:

(a) WAH SSI-related medical (see chapter 182-512 WAC);

(b) WAH long-term care (see chapters 182-513 and 182-515 WAC);

(c) SSI-related WAH alien medical program (see chapter 182-507 WAC);

(d) Medicare savings program (see WAC 182-517-0310);

(e) WAH for refugees (see WAC 182-507-0130); and

(f) Medical care services (see WAC 182-509-0200).

(4) The agency or its designee determines how trusts, annuities and life estates affect eligibility for WAH coverage for the programs listed in subsections (3)(a) through (f) of this section by following the rules described in chapter 182-516 WAC.

(5) Receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of protected resources, such as fishing, shell-fishing, or selling timber, is considered conversion of an exempt resource during the month of receipt. Any amounts remaining from the conversion of this exempt resource on the first of the month after the month of receipt will remain exempt if the funds were used to purchase another exempt resource. Any amounts remaining in the form of countable resources (such as in checking or savings accounts) on the first of the month after receipt, will be added to other countable resources for eligibility determinations when a resource determination is required by the specific WAH program. If no resource determination is required by the specific WAH program, eligibility is not affected.

NEW SECTION

WAC 182-509-0300 Modified adjusted gross income (MAGI). (1) The agency uses the modified adjusted gross income (MAGI) methodology to determine eligibility for MAGI-based Washington apple health (WAH) programs described in WAC 182-509-0305.

(2) MAGI methodology is described in WAC 182-509-0300 through 182-509-0375. Generally, MAGI includes adjusted gross income (as determined by the Internal Revenue Code (IRC)) increased by:

(a) Any amount excluded from gross income under Section 911 of the IRC;

(b) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(c) Any amount of Title II Social Security income or Tier 1 Railroad Retirement income which is excluded from gross income under Section 86 of the IRC.

(3) When calculating a person's eligibility for the programs listed in WAC 182-509-0305, the agency uses the person's MAGI income with the following exceptions:

(a) Scholarships or fellowship grants described in WAC 182-509-0335 used for education purposes are excluded from income;

(b) Income received by American Indian/Alaskan Native individuals described in WAC 182-509-0340 is excluded from income; and

(c) Any income received as a lump sum as described in WAC 182-509-0375 is counted as income only in the month in which it is received.

(4) Countable MAGI income is reduced by an amount equal to five percentage points of the federal poverty level (FPL) based on household size to determine net income except that there is no such reduction of countable MAGI income for parents or caretaker relatives with an eligible dependent child whose net countable income is below thirty-five percent of the FPL (as described in WAC 182-509-0305(1)). Net income is compared to the applicable standard described in WAC 182-505-0100.

(5) When calculating a person's eligibility for MAGI-based programs listed in WAC 182-509-0305, the agency determines the medical assistance unit for each person according to WAC 182-506-0010.

NEW SECTION

WAC 182-509-0305 MAGI income—Persons subject to the modified adjusted gross income (MAGI) methodology. Eligibility for Washington apple health (WAH) for the following persons is determined using the modified adjusted gross income (MAGI) methodology described in WAC 182-509-0300.

(1) Parents or caretaker relatives with an eligible dependent child (described in WAC 182-503-0565) whose net countable income is below fifty-four percent of the federal poverty level (FPL) as described in WAC 182-505-0240.

(2) Parents or caretaker relatives with an eligible dependent child whose net countable income exceeds the standard described in subsection (1) of this section but is at or below one hundred thirty-three percent FPL as described in WAC 182-505-0250 and 182-507-0110.

(3) Adults with no eligible dependent child with net countable income at or below one hundred thirty-three percent FPL as described in WAC 182-505-0250 and 182-507-0110.

(4) Pregnant women or women within a two-month postpartum period whose net countable income, based on a household size that includes any unborn children, is below one hundred ninety-three percent FPL at the time of application, as described in WAC 182-505-0115.

(5) Children age eighteen or younger in households with net countable income which is below two hundred ten percent FPL as described in WAC 182-505-0210 (3)(a).

(6) Children age eighteen or younger in households with net countable income which is between two hundred ten per-

cent and three hundred twelve percent FPL as described in WAC 182-505-0215. Children who are eligible under this section are subject to premiums as described in WAC 182-505-0225.

(7) Household size for a person who is subject to MAGI income methodologies is determined according to WAC 182-506-0010.

NEW SECTION

WAC 182-509-0310 MAGI income—Timing of income. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) The agency uses a point-in-time estimate to determine a person's countable income.

(2) Point-in-time means that the income is received, or is likely to be received, in the month in which the person submits an application or renewal for WAH, or the month in which the agency completes a redetermination of coverage, with the following provisions:

(a) When a person is paid less frequently than on a monthly basis, (for example, they are self-employed), the agency uses an average to calculate the monthly amount. The average is calculated by:

(i) Adding the total income for representative period of time;

(ii) Dividing by the number of months in the time frame; and

(iii) Using the result as a monthly average.

(b) When a person is paid more frequently than on a monthly basis, the agency uses the following budgeting method to calculate a monthly amount:

(i) If the person is paid weekly, the agency multiplies weekly expected income by 4.3;

(ii) If the person is paid every other week, the agency multiplies expected income by 2.15.

(c) If the person's current income does not represent his or her projected income as evidenced by clear indications of future changes in income, the agency permits the person to estimate a monthly amount by averaging income over a representative period of time.

(3) If the person normally gets the income:

(a) On a specific day, the agency counts it as available on that date.

(b) Monthly or twice monthly and pay dates change due to a reason beyond the person's control, such as a weekend or holiday, it is counted in the month it would normally be received.

(c) Weekly or every other week and pay dates change due to a reason beyond the person's control, it is counted in the month it would normally be received.

(4) For information about how income is verified, see WAC 182-503-0050.

(5) If the person reports a change in income as required under WAC 182-504-0105 and the change is expected to last for two months or longer, the agency updates the estimate of income based on this change, unless the person receives categorically needy WAH coverage as a pregnant woman or child.

NEW SECTION

WAC 182-509-0315 MAGI income—Ownership of income. (1) For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300) income is considered available to a person if:

(a) An individual in the person's medical assistance unit receives or can reasonably predict that he or she will receive the income.

(b) The income must be counted based on rules under chapter 182-509 WAC.

(c) The person has control over the income, which means the income is available to them. If the person has a representative payee, protective payee, or other individual who manages the income on the person's behalf, it is considered as if the person has control over this income.

(d) The person can use the income to meet current needs.

(2) Income that is included in the person's taxable gross income which is required to be reported to the Internal Revenue Service (IRS) is considered as available even if it is paid to someone else or withheld to pay a garnishment, lien or other obligation. (For example, a person manages a block of apartments and lives in one of the apartments. The employer withholds a portion of the person's monthly wages as rent due for the apartment in which he resides. The income that is counted is the gross amount prior to the deduction for rent.)

(3) The agency may conduct post-eligibility reviews of health care applications as described in WAC 182-503-0050. Upon request by the agency, a person must provide proof about a type of income, including submitting clarification on:

- (a) Who owns the income;
- (b) Who has legal control of the income;
- (c) The amount of the income; or
- (d) If the income is available.

NEW SECTION

WAC 182-509-0320 MAGI income—Noncountable income. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) Some types of income are not counted when determining eligibility for MAGI-based WAH. Under the MAGI income methodology described in WAC 182-509-0300, income is not counted if the Internal Revenue Service (IRS) permits it to be excluded or deducted for purposes of determining the tax liability of a person. (See 26 U.S.C. Sections 62(a) and 101-140.)

(2) Examples of income that are not counted include, but are not limited to:

(a) Bona fide loans, except certain student loans as specified under WAC 182-509-0335;

(b) Federal income tax refunds and earned income tax credit (EITC) payments for up to twelve months from the date received;

(c) Child support payments received by any person included in household size under WAC 182-506-0010;

(d) Time loss benefits or other compensation received for sickness or injury, such as benefits from the department of labor and industries (L&I) or a private insurance company;

(e) Title IV-E and state foster care maintenance payments;

(f) Veteran's benefits including, but not limited to, disability compensation and pension payments for disabilities paid to the veteran or family members; education, training and subsistence; benefits under a dependent-care assistance program for veterans, housebound allowance and aid and attendance benefits;

(g) Educational assistance that is not counted under WAC 182-509-0335;

(h) Native American benefits and payments that are not counted under WAC 182-509-0340;

(i) Income from employment and training programs that is not counted under WAC 182-509-0345;

(j) Needs-based assistance from other agencies or organizations that is not counted under WAC 182-509-0350;

(k) Money withheld from a benefit to repay an overpayment from the same income source;

(l) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as Voluntary Agency (VOLAG) payments;

(m) Any portion of income used to repay the cost of obtaining that income source;

(n) Insurance proceeds or other income received as a result of being a Holocaust survivor;

(o) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(p) Federal twenty-five dollar supplement weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(q) Income from a sponsor given to a sponsored immigrant;

(r) Energy assistance payments;

(s) Fringe benefits provided on a pretax basis by an employer, such as transportation benefits or moving expenses;

(t) Employer contributions to certain pretax benefits funded by an employee's elective salary reduction, such as amounts for a flexible spending account;

(u) Distribution of pension payments paid by the employee (such as premiums or contributions) that were previously subject to tax;

(v) Gifts or inheritances to the person that are not counted under WAC 182-509-0355;

(w) Death benefits from life insurance and certain benefits paid for deaths that occur in the line of duty; and

(x) Other payments that are excluded from income under state or federal law.

(3) Income received from the following cash programs is not countable income for MAGI-based WAH programs:

(a) Diversion cash assistance (DCA);

(b) Temporary assistance for needy families (TANF);

(c) State family assistance (SFA);

(d) Pregnant women's assistance (PWA);

(e) Refugee cash assistance (RCA);

(f) Aged, blind, disabled cash assistance (ABD); and

(g) Supplemental security income (SSI).

NEW SECTION

WAC 182-509-0325 MAGI income—Unearned income. For purposes of determining eligibility for modified adjusted gross income (MAGI)–based Washington apple health (WAH) (see WAC 182-509-0300):

(1) Unearned income is income received from a source other than employment or self-employment. Examples of unearned income include, but are not limited to:

- (a) Tier 1 Railroad Retirement;
- (b) Unemployment compensation, except as described in WAC 182-509-0320;
- (c) Title II Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);
- (d) Rental income;
- (e) Pensions, IRAs, military retirement and annuity payments, except as described in WAC 182-509-0320;
- (f) Dividend payments from stocks or shares held in companies; and
- (g) Per capita distributions from gaming made by a tribe (see WAC 182-509-0340).

(2) When the unearned income must be counted, the agency counts the gross amount before any taxes or premiums are taken out.

(3) See WAC 182-509-0320 for examples of unearned income that are not counted.

NEW SECTION

WAC 182-509-0330 MAGI income—Earned income. For purposes of determining eligibility for modified adjusted gross income (MAGI)–based Washington apple health (WAH) (see WAC 182-509-0300):

(1) Earned income is income received from working. This includes, but is not limited to:

- (a) Wages;
- (b) Salaries;
- (c) Tips;
- (d) Commissions;
- (e) Profits from self-employment activities as described in WAC 182-509-0365; and
- (f) One-time payments for work done over a period of time, if the income is received in the month of application.

(2) When earned income must be counted, the agency computes the countable amount based on deductions from income allowed by the Internal Revenue Service when determining a person's tax liability.

(3) See WAC 182-509-0370 for information on how self-employment income is counted.

NEW SECTION

WAC 182-509-0335 MAGI income—Educational benefits. For purposes of determining eligibility for modified adjusted gross income (MAGI)–based Washington apple health (WAH) (see WAC 182-509-0300), the agency or its designee does not count educational assistance as income. Examples include, but are not limited to:

(1) Educational assistance in the form of grants or loans issued under Title IV of the Higher Education Amendments

(Title IV - HEA) or through a program administered by the Department of Education (DOE), such as:

- (a) Pell grants (Title IV);
 - (b) Stafford loans (Title IV);
 - (c) Perkins loan program (Title IV);
 - (d) State need grant program (Title IV);
 - (e) Christa McAuliffe fellowship program (DOE);
 - (f) Jacob K. Javits fellowship program (DOE); and
 - (g) Library career training program (DOE).
- (2) Payments received for education, training, or subsistence under any law administered by the department of Veteran's Affairs (VA).
- (3) Student financial assistance provided under the Bureau of Indian Affairs education programs.
- (4) Educational assistance in the form of grants or loans under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-392.
- (5) Work study income including:
- (a) Federal or state work study income; and
 - (b) WorkFirst work study income.
- (6) Payments to service academy cadets at a military academy.
- (7) Payments for the purposes of tuition made on behalf of the individual to an educational organization for the education or training of such individual.

NEW SECTION

WAC 182-509-0345 MAGI income—Income from employment and training programs. For purposes of determining eligibility for modified adjusted gross income (MAGI)–based Washington apple health (WAH) (see WAC 182-509-0300):

(1) The agency excludes income received from the following programs:

- (a) Payments issued under the Workforce Investment Act (WIA);
- (b) Payments issued under the National and Community Service Trust Act of 1993. This includes payments made through the AmeriCorps program;
- (c) Payments issued under Title I of the Domestic Volunteer Act of 1973, such as VISTA, AmeriCorps VISTA, University Year for Action, and Urban Crime Prevention Program; and

(d) All payments issued under Title II of the Domestic Volunteer Act of 1973. These include:

- (i) Retired senior volunteer program (RSVP);
 - (ii) Foster grandparents program; and
 - (iii) Senior companion program.
- (2) The agency counts training allowances from vocational and rehabilitative programs as earned income when:
- (a) The program is recognized by federal, state, or local governments;
 - (b) The allowance is not a reimbursement; and
 - (c) The person is required to file a U.S. tax return and the IRS considers the income to be taxable.

NEW SECTION

WAC 182-509-0350 MAGI income—Needs-based assistance from other agencies or organizations. For pur-

poses of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) The agency does not count needs-based assistance given to a person by other agencies or organizations if the assistance given is not treated as taxable income by the IRS. Examples of needs-based assistance are:

- (a) Clothing;
- (b) Food;
- (c) Household supplies;
- (d) Medical supplies (nonprescription);
- (e) Personal care items;
- (f) Shelter;
- (g) Transportation; and
- (h) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(2) **"Needs-based"** means eligibility for the program is based on having limited income and/or resources. This definition excludes such incomes as retirement benefits or unemployment compensation which are not needs-based.

NEW SECTION

WAC 182-509-0355 MAGI income—Gifts and inheritances. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) A gift is property received by a person without work or cost on his or her part. An inheritance is property received by a person from the estate of a deceased person.

(2) The agency does not count as income to a person any gifts or inheritances, whether cash or noncash, received by the person, except that the agency does count as income to a person any income from any gift or inheritance.

(3) The agency does not count as income to a person any amounts paid on behalf of that person to any person who provides medical care (as defined in Internal Revenue Code Section 213(d)) to that person.

NEW SECTION

WAC 182-509-0360 MAGI income—How a child's income is counted. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) Income received by a child claimed as a tax dependent by someone else is not counted when determining the eligibility of the tax filers who claim the tax dependent.

(2) Income received by a child in a nonfiling medical assistance unit (as described in WAC 182-506-0010) is not counted when determining the eligibility of the child or the other household members in the nonfiling household.

(3) Income received by a child age eighteen or younger who is required to file his or her own tax return but who is also claimed as a tax dependent by another person is counted when determining eligibility for WAH for the child, but not the person that claims them.

(4) Income of a sibling is not counted when determining the eligibility of any other sibling in the household.

NEW SECTION

WAC 182-509-0365 MAGI income—Self-employment income. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) Self-employment income is income earned by a person from running a business, performing a service, selling items that are made, or reselling items with the intent to make a profit. This income can be earned if the person is carrying on a trade or business as a sole proprietor or an independent contractor; a member of a partnership that carries on a trade or business; or otherwise in business for themselves (including a part-time business).

(2) A person is considered to be self-employed if they earn income without having an employer/employee relationship with the individual who pays the income. Factors to consider are:

(a) The person has primary control or has the right to control what they do and how they do their job;

(b) The business aspects of the person's job are controlled by the person and not the payer (this includes things like how the person is paid, whether expenses are reimbursed, or who provides tools/supplies);

(c) The person has a written contract stating that he or she is an independent contractor; or

(d) The person reports his or her income using IRS Schedule C, Schedule C-EZ, Schedule K-1, or Schedule SE.

(3) A person is considered to have an employer/employee relationship when:

(a) The individual the person provides services for has primary control of how the work is done; or

(b) The person receives an IRS Form W-2 to report the income that is earned.

(4) Self-employment does not have to be a licensed business for a person's business or activity to qualify as self-employment. Some examples of self-employment are:

(a) Child care that requires a license under chapter 74.15 RCW;

(b) Driving a taxi cab;

(c) Farming/fishing;

(d) Odd jobs such as mowing lawns, house painting, gutter cleaning, or car care;

(e) Running lodging for roomers or boarders. Roomer income includes money paid to a person for shelter costs by someone not included in the person's household who resides in the same home when:

(i) The person owns or is buying his or her residence; or

(ii) The person rents all or a part of the residence and the total rent charged to all others in the home is more than the total rent obligation of the person.

(f) Running an adult family home;

(g) Providing services such as a massage therapist or a professional escort;

(h) Retainer fees to reserve a bed for a foster child;

(i) Selling home-made items or items that are supplied to the individual;

(j) Selling or donating biological products such as providing blood or reproductive material for profit;

(k) Working as an independent contractor; and

(1) Running a business or trade either as a sole proprietorship or in a partnership.

(5) A person must keep records of his or her self-employment income and deductions and provide this information to the agency upon request.

(6) The agency does not count receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources as self-employment income (such as fishing, shell-fishing, or selling timber from protected tribal land). This is considered conversion of a resource. See WAC 182-509-0340.

(7) A person who is an employee of a company or other individual who does the activities listed in subsection (4) of this section as a part of his or her job duties is not considered to be self-employed.

(8) Self-employment income is counted as earned income as described in WAC 182-509-0330.

NEW SECTION

WAC 182-509-0370 MAGI income—How self-employment income is counted. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) If the person has worked long enough at the business to file a federal tax return for the previous year and it represents his or her current income, the agency determines self-employment income by using the income and deductions claimed on the previous year's tax return.

(2) If the person has not worked long enough at the business to file a federal tax return in the previous year, the agency permits a determination of monthly self-employment income by:

(a) Adding together gross self-employment income and any profit made from selling business property or equipment over the period of time the business has been in operation within the last year;

(b) Subtracting business expenses and income deduction expenses allowed by the Internal Revenue Service that the person would be entitled to if they were filing a full year return; and

(c) Averaging the income to come up with a monthly amount based on the period of time the business has been in operation within the last year.

(3) If the person's current income does not represent his or her projected income as evidenced by clear indications of future changes in income, the agency permits the person to estimate a monthly amount by averaging income over a representative period of time.

NEW SECTION

WAC 182-509-0375 MAGI income—Lump sums. For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300):

(1) A lump sum payment is money that a person receives but does not expect to receive on a continuing basis, such as an insurance settlement.

(2) Any portion of a lump sum payment that is awarded for wrongful death, personal injury, damage, or loss of property is excluded from income.

(3) Any remaining portion of a lump sum payment is counted as income if it is received in the month of application, unless it qualifies as noncounted income under another rule, and with the exception of subsections (4) and (5) of this section.

(4) Receipt of a lump sum by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt resource in the month of receipt and is not budgeted as income.

(5) Federal, state and local tax refunds (including any interest and penalties) and earned income tax lump sums are not counted as income.

NEW SECTION

WAC 182-520-0005 Washington apple health fraud referrals and overpayments. (1) The agency or its designee may refer a case to the office of fraud and accountability for a fraud investigation when it has reliable information that the person purposely misrepresented their circumstances in order to qualify for Washington apple health (WAH).

(2) When a fraud investigation reveals substantial evidence to support a finding of fraud, the case is referred for prosecution. The prosecuting attorney's office decides which cases will be prosecuted.

(3) When a referral results in a conviction, an overpayment amount for the cost of the WAH coverage is established.

(4) The person is responsible to pay the agency for the amount of overpayment established as a result of a fraud conviction.

NEW SECTION

WAC 182-520-0010 Washington apple health overpayments resulting from an administrative hearing. (1) If a person asks for Washington apple health (WAH) coverage to continue during an appeal, he or she must pay the agency for the cost of that coverage if both (a) and (b) of this subsection occur:

(a) The administrative law judge, or review judge if applicable, enters an order:

(i) That the person was not eligible for WAH coverage during the appeal;

(ii) Dismissing the hearing under WAC 182-526-0285 (3) because the person defaulted (did not attend or refused to participate) and the agency's action that was appealed included a finding that the person was not eligible for WAH coverage; or

(iii) Dismissing the hearing under WAC 182-526-0285(4) due to a written agreement between all the parties that the person will pay for an overpayment of the cost of WAH coverage.

(b) The agency decides to collect the overpayment.

(2) The overpayment amount is limited to payments for WAH coverage that were spent:

(a) During the sixty days following receipt of the hearing request; and

(b) For a person who was not eligible for WAH coverage.

(3) The agency will not attempt to recover a WAH overpayment from a nonneedy caretaker relative or guardian except in the case of fraud by the caretaker relative or guardian as described in WAC 182-520-0005.

WSR 14-01-039
PERMANENT RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-13—Filed December 11, 2013, 10:41 a.m., effective January 11, 2014]

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

Purpose: The purpose of the rules is to protect consumers during the transition to health care benefit plans in the individual, small and large groups that comply with the Affordable Care Act and its implementing regulations. The rules provide ongoing market conduct guidance to issuers on required documentation related to plans designated as grandfathered, and determining which market standards apply when offering and issuing coverage to an association's membership.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.700, 48.43.715, 48.44.050, 48.46.200.

Other Authority: 45 C.F.R. 150.101(2).

Adopted under notice filed as WSR 13-20-141 on October 2, 2013.

Changes Other than Editing from Proposed to Adopted Version: 1. Additional language was added to WAC 284-170-950(2) to clarify the application of the rule to fully insured grandfathered plans.

2. WAC 284-170-950 (3)(b) was amended to conform to existing federal law 45 C.F.R. 147.170 (g)(1).

3. WAC 284-170-952(1) was amended to include the reference to the prior grandfathered plan WAC, WAC 284-170-950.

4. WAC 284-170-954 (2)(a) was amended to specifically confirm that rate information is not required to be in the ninety day notice. This is a clarification, for as a practical matter, for some product withdrawal and replacement scenarios, rates are not developed at the time the notice is issued.

5. WAC 284-170-958(1) was amended to eliminate redundant references to types of large groups.

6. WAC 284-170-958(2) was amended to include a sentence explaining that an issuer must retain the documentation on which it made a determination about what market groups filing through associations belong to, and provide it to the commissioner upon request. This is a clarification requested by commenters.

7. WAC 284-170-958(4) was deleted. Because the federal standard on which the section is based still applies, this change does not result in a substantially different rule from that published, pursuant to RCW 34.05.335.

A final cost-benefit analysis is available by contacting Jim Keogh, P.O. Box 40258, Olympia, WA 98504, phone

(360) 725-7056, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 4, Amended 0, Repealed 0; Federal Rules or Standards: New 4, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Date Adopted: December 11, 2013.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-170-950 Grandfathered health plan status. (1) An issuer must retain in its files all necessary documentation to support its determination that a purchaser's plan is grandfathered. The information must be sufficient to demonstrate that the issuer's determination of grandfathered status is credible. For purposes of this section, "grandfathered plan" means a health plan that meets the requirements of this section and as defined in RCW 48.43.005.

(2) An issuer's documentation supporting grandfathered plan designation must be made available to the commissioner or the U.S. Department of Health and Human Services for review and examination upon request. Beginning with the effective date of this section, for fully insured health plans designated as grandfathered, an issuer must retain the records for a period of not less than ten years. For each plan, the records supporting the issuer's determination must also be made available to participants and beneficiaries upon request.

(3) An issuer's documentation must establish for each grandfathered plan that since March 23, 2010:

(a) The plan was not amended to eliminate all or substantially all the benefits to diagnose or treat a particular condition. A list of all plan benefit amendments that eliminate benefits and the date of the amendment is the minimum level of acceptable documentation that must be available to support this criteria;

(b) The percentage of fixed amount cost-sharing percentage requirements, if applicable, for the plan were not increased when measured from March 23, 2010. A list of each cost-sharing percentage that has been in place for a grandfathered group's plan, beginning with the cost-sharing percentage on March 23, 2010, is the minimum level of acceptable documentation that must be available to support this criteria;

(c) The fixed cost-sharing requirements other than copayments did not increase by a total percentage measured from March 23, 2010, to the date of change that is more than

the sum of medical inflation plus fifteen percent. A list of the fixed cost-sharing requirements other than copayments that apply to a grandfathered group's plan beginning on March 23, 2010, and a record of any increase, the date and the amount of the increase, is the minimum level of documentation that must be available to support this criteria;

(d) Copayments did not increase by an amount that exceeds the greater of:

(i) A total percentage measured from March 23, 2010, to the date of change that is more than the sum of medical inflation plus fifteen percent; or

(ii) Five dollars, adjusted annually for medical inflation measured from March 23, 2010. A record of all copayments beginning on March 23, 2010, applicable to a grandfathered group plan, and any changes in the copayment since that date is the minimum level of documentation that must be available to support this criterion.

(e) The employer's contribution rate toward any tier of coverage for any class of similarly situated individuals did not decrease by more than five percent below the contribution rate in place on March 23, 2010, expressed as a percentage of the total cost of coverage. The total cost of coverage must be determined using the methodology for determining applicable COBRA premiums. If the employer's contribution rate is based on a formula such as hours worked, a decrease of more than five percent in the employer's contributions under the formula will cause the plan to lose grandfathered status. The issuer must retain a record of the employer's contribution rate for each tier of coverage, and any changes in that contribution rate, beginning March 23, 2010, as the minimum level of documentation that must be available to support this criteria;

(f) On or after March 23, 2010, the plan was not amended to impose an overall annual limit on the dollar value of benefits that was not in the applicable plan documents on March 23, 2010;

(g) On or after March 23, 2010, the plan was not amended to adopt an overall annual limit at a dollar value that is lower than the dollar value of the lifetime limit for all benefits that was in effect on March 23, 2010; and

(h) The plan was not amended to decrease the dollar value of the annual limit, regardless of whether the plan or health insurance coverage also imposes an overall lifetime limit on the dollar value of all benefits.

(4) In addition to documentation establishing that none of the prohibited changes described in subsection (3) of this section have occurred, an issuer must also make available to the commissioner upon request the following information for each grandfathered plan:

(a) Enrollment records of new employees and members added to the plan after March 23, 2010;

(b) Underwriting rules and guidelines applied to enrollees on or after March 23, 2010; and

(c) Proof of notification to the individual or group of its plan's grandfathered status designation for each year for which the status is claimed.

(5) A change made to a plan before March 23, 2010, but that became effective after March 23, 2010, is permitted without negating a plan's grandfathered status if the change was adopted pursuant to a legally binding contract, state

insurance department filing or written plan amendment. If the plan change resulted from a merger, acquisition or similar business action where one of the principal purposes is covering new individuals from the merged or acquired group under a grandfathered health plan, the plan may not be designated as grandfathered.

(6) An issuer may delegate the administrative functions related to documenting or determining grandfathered status designation to a third party. Such delegation does not relieve the issuer of its obligation to ensure that the designation is correctly made, that replacement plans are issued in a timely and compliant manner as required by state or federal law, and that all requisite documentation is kept by the issuer.

(7) If the commissioner determines that an issuer incorrectly designated a group plan as grandfathered, the plan is nongrandfathered, and must be discontinued and replaced with a plan that complies with all relevant market requirements within thirty days. This section does not preclude additional enforcement action.

(8) An issuer must designate on its filings whether a plan is grandfathered or nongrandfathered as required by the Washington state system for electronic rate and form filing (SERFF) filing instructions.

NEW SECTION

WAC 284-170-952 Market conduct requirements related to grandfathered status. (1) An issuer may allow a group covered by grandfathered health insurance coverage to add new employees to its health benefit plan, and move employees between benefit options at open enrollment without affecting grandfathered status, as long as the group's plan does not change in any way that triggers the loss of grandfathered status as set forth in 45 C.F.R. 147.140 and WAC 284-170-950.

(2) An issuer must provide a statement in the plan materials provided to participants or beneficiaries describing the benefits provided under the plan, explaining that the group health plan believes it is a grandfathered health plan within the meaning of Section 1251 of the Affordable Care Act, and include contact information for questions and complaints that conforms to the model notice language found in 45 C.F.R. 147.140.

(3) An issuer must not restrict group eligibility to purchase a nongrandfathered plan offered through an association or member-governed group because the group is not affiliated with or does not participate in the association or member-governed group, unless the association or member-governed group meets the requirements of WAC 284-170-958 (1).

(4) WAC 284-170-950 through 284-170-958 does not prohibit an issuer from discontinuing a grandfathered plan design and replacing it with a nongrandfathered plan.

(5) An issuer must not limit eligibility based on health status for either grandfathered or nongrandfathered health plans.

NEW SECTION

WAC 284-170-954 Small group coverage market transition requirements. (1) For all nongrandfathered small

group plans issued and in effect prior to January 1, 2014, in 2014 issuers must replace issued nongrandfathered small group health benefit plans with health benefit plans approved by the commissioner as follows:

(a) An issuer may elect to withdraw a product pursuant to RCW 48.43.035, and discontinue each health benefit plan in force under that product on the same date, requiring groups to select a replacement plan to be effective on the date of discontinuation; or

(b) An issuer may discontinue a small group's coverage at renewal and offer the full range of plans the issuer offers in the small group market as replacement options, to take effect on the small group's renewal date. For small groups covered by nongrandfathered health benefit plans purchased based on an association or member-governed group affiliation or membership, the requirements of WAC 284-170-955 and 284-170-958 apply;

(c) If an issuer does not have a replacement plan approved by the commissioner to offer in place of the discontinued plan, the issuer must assist each enrollee in identifying a replacement option offered by another issuer.

(2) If an issuer selects the replacement option described in subsection (1)(b) of this section, the issuer must provide the small group plan sponsor with written notice of the discontinuation and replacement options not later than ninety days before the renewal date for the small group's coverage. The commissioner may, for good cause shown, permit a shorter notice period for providing the replacement option information to a group. The written notice must contain the following information:

(a) Specific descriptions of the replacement plans for which the small group and its enrollees are eligible, both on or off the health benefit exchange. At the issuer's discretion, rate information may but is not required to be, included in the notice describing the replacement plans, provided subsequent rating information is provided with renewal;

(b) Electronic link information to the summary of benefits and explanation of coverage for each replacement plan option;

(c) Contact information to access assistance from the issuer in selecting the replacement plan option or answering enrollee questions about the replacement plans made available to them by their employer.

(3) For either replacement option set forth in subsection (1) of this section, the issuer must provide a separate written notice to each enrollee notifying the enrollee that their small group plan coverage will be discontinued and replaced. The notice must be provided not later than ninety days prior to the discontinuation and replacement date.

(4) If an issuer has electronic mail contact information for the small group plan sponsor or the enrollees, the written notice may be provided electronically. The issuer must be able to document to the commissioner's satisfaction both the content and timing of transmission. The issuer must send written notice by U.S. mail to a sponsor or enrollee for whom the electronic mail message was rejected.

(5) An issuer may offer small groups the option to voluntarily discontinue and replace their coverage prior to their renewal date.

(a) An issuer must not selectively offer early renewal to small groups, but must make this option universally available.

(b) An issuer must not alter or change a small group's renewal date to lengthen the period of time before discontinuation and replacement occurs in 2014. For example, if a small group's renewal date is March 31st of each year, the issuer may not adjust the small group's benefit year in 2013 to effect a renewal date of November 30th.

(6) This section applies to each health benefit plan that provides coverage based on receipt of claims for services, even if the coverage falls under one of the categories excepted from the definition of "health plan" as set forth in RCW 48.43.005 (26)(i) and (l). This section does not apply to a health benefit plan that provides per diem or single payment coverage based on a triggering event or diagnosis regardless of the medical necessity of the type or range of services received by an enrollee.

NEW SECTION

WAC 284-170-955 Association health plan compliance with statutory or regulatory changes. (1) An issuer offering plans through an association or member-governed group must implement all new federal or state health plan market requirements when they become effective. Replacement requirements for this section apply based on whether the purchaser is classified as an individual, small group, or large group purchaser. These requirements also apply to member employer groups of less than two or to individual member purchasers.

(2) An issuer providing plans of the type referenced in subsection (1) of this section must discontinue a noncompliant plan, and offer replacement plans effective on the renewal date of the master group contract for large groups, and on the group's anniversary renewal date for nongrandfathered small group and individual plans.

(3) If the association is a large group as defined in WAC 284-170-958(1), the same renewal date must apply to all participating employers and individuals, and the replacement coverage must take effect on the same date for each participant. The purchaser's anniversary date must not be used in lieu of this uniform renewal date for purposes of discontinuation and replacement of noncompliant coverage.

(4) If the association is not a large group as defined in WAC 284-170-958(1), and the master group contract and the member group do not have the same renewal date, an issuer must provide notice of the discontinuation and replacement of the plan to the affected association member group or plan sponsor, and each enrollee in the affected member group, not fewer than ninety days prior to the member's anniversary renewal date.

(5) If an issuer does not have a replacement plan approved by the commissioner to offer in place of a discontinued plan, the issuer must assist each enrollee in identifying a replacement option offered by another issuer.

(6) For purposes of this section, "purchaser" means the group or individual whose eligibility for the plan is based in whole or in part on membership in the association or member-governed group.

(7) For purposes of this section, the "anniversary renewal date" means the initial or first date on which a purchasing group's health benefit plan coverage became effective with the issuer, regardless of whether the issuer is subject to other agreements, contracts or trust documents that establish requirements related to the purchaser's coverage in addition to the health benefit plan.

(8) An issuer must not adjust the master contract renewal or anniversary date to delay or prevent application of any federal or state health plan market requirement.

NEW SECTION

WAC 284-170-958 Transition of plans purchased by association members. (1) An issuer must not offer or issue a plan to individuals or small groups through an association or member-governed group as a large group plan unless the association or member-governed group to whom the plan is issued constitutes an employer under 29 U.S.C. § 1002(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et. seq.), as amended, and the number of eligible employees is more than fifty.

(2) An issuer must make a good faith effort to ensure that any association or member-governed group to whom it issues a large group plan meets the requirements of subsection (1) of this section prior to submitting its form and rate filings to the commissioner, and prior to issuing such coverage. An issuer must maintain the documentation supporting the determination and provide it to the commissioner upon request. An issuer may reasonably rely upon an opinion from the U.S. Department of Labor as reasonable proof that the requirements of 29 U.S.C. 1002(5) are met by the association or member-governed group.

(3) For plans offered to association or member-governed groups that do not meet the requirements of subsection (1) of this section, the following specific requirements apply:

(a) An issuer must treat grandfathered plans issued under those purchasing arrangements as a closed pool, and file a single case closed pool rate filing. For purposes of this section, a single case closed pool rate filing means a rate filing which includes the rates and the rate filing information only for the issuer's closed pool enrollees.

(b) For each single case closed pool rate filing, an issuer must file a certification from an officer of the issuer attesting that:

(i) The employer groups covered by the filing joined the association prior to or on March 23, 2010;

(ii) The issuer can establish with documentation in its files that none of the conditions triggering termination of grandfathered status set forth in WAC 284-170-950 or in 45 C.F.R. 2590.715-1251(g) have occurred for any plan members.

(4) For each grandfathered plan issued to an association or member governed group under subsection (3) of this section, the issuer must include the following items in its rate filing:

- (a) Plan number;
- (b) Identification number assigned to each employer group, including employer groups of less than two;
- (c) Initial contract or certificate date;

(d) Number of employees for each employer group, pursuant to RCW 48.43.005(11);

(e) Number of enrolled employees for each employer group for the prior calendar year;

(f) Current and proposed rate schedule for each employer group; and

(g) Description of the rating methodology and rate change for each employer group.

(5) WAC 284-43-950 applies for a single case rate closed pool under this section.

NEW SECTION

WAC 284-170-959 Individual coverage market transition requirements. (1) For all nongrandfathered individual health benefit plans issued and in effect prior to January 1, 2014, during 2014 issuers must replace the plans with health benefit plans approved by the commissioner as follows:

(a) An issuer may elect to withdraw a product, pursuant to RCW 48.43.038, and discontinue each health benefit plan in force under that product on the same date, requiring selection of a replacement plan to be effective on the date of discontinuation; or

(b) An issuer may discontinue an individual's coverage and offer the full range of plans the issuer offers in the individual market as replacement options. The replacement coverage must take effect on the individual's renewal date.

(c) If an issuer does not have a replacement plan approved by the commissioner to offer in place of the discontinued plan, the issuer must assist each enrollee in identifying a replacement option offered by another issuer.

(2) If an issuer selects the replacement option described in subsection (1)(b) of this section, not fewer than ninety days before the renewal date for the coverage, the issuer must provide the individual and each enrollee under the health benefit plan with written notice of the discontinuation and replacement options. The commissioner may, for good cause shown, permit a shorter notice period for providing the replacement option information to a group. The written notice must contain the following information:

(a) Specific descriptions of the replacement plans for which the enrollees are eligible, both on or off the health benefit exchange;

(b) Electronic link information to the summary of benefits and explanation of coverage for each replacement plan option;

(c) Contact information for assistance from the issuer in selecting the replacement plan option or answering enrollee questions about the replacement plans;

(d) If a renewal date is later than January 1, 2014, the issuer's ninety day discontinuation and replacement notice must notify the individual and any other enrollees on the plan of the shortened plan year for 2014 under the replacement coverage.

(3) For either replacement option set forth in subsection (1) of this section, the issuer must provide a separate written notice to each enrollee notifying the enrollee that their existing coverage will be discontinued and replaced. The notice must be provided not later than ninety days prior to the discontinuation and replacement date.

(4) If an issuer has electronic mail contact information for the enrollees, the notice may be provided electronically. The issuer must be able to document to the commissioner's satisfaction both the content and timing of transmission. The issuer must send written notice by U.S. mail to an enrollee for whom the electronic mail message was rejected.

(5) This section applies to each health benefit plan that provides coverage based on receipt of claims for services, even if the coverage falls under one of the categories excepted from the definition of "health plan" as set forth in RCW 48.43.005 (26)(i) and (l). This section does not apply to a health benefit plan that provides per diem or single payment coverage based on a triggering event or diagnosis regardless of the medical necessity of the type or range of services received by an enrollee.

(6) Between September 1st and September 30th of each year, an issuer must provide written notice to each enrollee under an individual health benefit plan of the availability of health benefit exchange coverage, and contact information for the health benefit exchange.

WSR 14-01-040
PERMANENT RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2013-17—Filed December 11,
2013, 11:15 a.m., effective January 11, 2014]

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

Purpose: This permanent rule incorporates the National Association of Insurance Commissioner's recently adopted annuity mortality table for use in stating annuity reserves into WAC 284-74-020.

Citation of Existing Rules Affected by this Order: [Amending WAC 284-74-020].

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 13-21-143 on October 23, 2013.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail rules coordinator@oic.wa.gov.

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

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

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

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

Date Adopted: December 11, 2013.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 98-05-069, filed 2/17/98, effective 3/20/98)

WAC 284-74-020 Annuity 2000 and 1994 GAR tables. The purpose of this section is to recognize the following mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts: The annuity 2000 mortality table, the 2012 individual annuity reserving (2012 IAR) table, and the 1994 group annuity reserving (1994 GAR) table.

(1) The following definitions apply to this section:

(a) "Period table" means a table of mortality rates applicable to a given year (the period).

(b) "Generational mortality table" means a mortality table containing a set of mortality rates that decreases for a given age from one year to the next based on a combination of a period table and a projection scale containing rates of mortality improvement.

(2) This section does not apply to an individual annuity or pure endowment contract, if the contract is based on life contingencies and is issued to fund periodic benefits arising from:

(a) Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions;

(b) Settlements involving similar actions such as worker's compensation claims; or

(c) Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments.

~~((2))~~ (3) The annuity 2000 mortality table, which was developed by the society of actuaries committee on life insurance research and adopted as a recognized mortality table for annuities in December 1996 by the National Association of Insurance Commissioners (NAIC), and which is set forth in *Transactions, Society of Actuaries*, Vol. XLVII (1995), p. 240, is recognized and approved as an individual annuity mortality table for valuation and shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after April 1, 1998. At the option of the company, the annuity 2000 mortality table may be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1998.

~~((3))~~ (4) The 2012 IAR table, which was developed by the society of actuaries committee on life insurance research and containing rates, q_x^{2012+n} , is the generational mortality table derived from a combination of the 2012 IAM period table and projection scale G2 and must be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 2015.

(5) In using the 2012 IAR table, the mortality rate for a person age x in year (2012 + n) is calculated as follows:

$$q_x^{2012+n} = q_x^{2012} (1 - G2_x)^n$$

The resulting q_x^{2012+n} shall be rounded to three decimal places per 1,000 e.g., 0.741 deaths per 1,000. Also, the rounding

shall occur according to the formula above, starting at the 2012 period table rate.

(6) The 2012 individual annuity mortality period life (2012 IAM period) table, developed by the society of actuar-

ies committee on life insurance research, shown below, contains loaded mortality rates for calendar year 2012. The table contains rates q_x^{2012} .

2012 IAM Period Table
Female, Age Nearest Birthday

<u>AGE</u>	<u>$1000 \cdot q_x^{2012}$</u>	<u>AGE</u>	<u>$1000 \cdot q_x^{2012}$</u>	<u>AGE</u>	<u>$1000 \cdot q_x^{2012}$</u>	<u>AGE</u>	<u>$1000 \cdot q_x^{2012}$</u>
<u>0</u>	<u>1.621</u>	<u>30</u>	<u>0.300</u>	<u>60</u>	<u>3.460</u>	<u>90</u>	<u>88.377</u>
<u>1</u>	<u>0.405</u>	<u>31</u>	<u>0.321</u>	<u>61</u>	<u>3.916</u>	<u>91</u>	<u>97.491</u>
<u>2</u>	<u>0.259</u>	<u>32</u>	<u>0.338</u>	<u>62</u>	<u>4.409</u>	<u>92</u>	<u>107.269</u>
<u>3</u>	<u>0.179</u>	<u>33</u>	<u>0.351</u>	<u>63</u>	<u>4.933</u>	<u>93</u>	<u>118.201</u>
<u>4</u>	<u>0.137</u>	<u>34</u>	<u>0.365</u>	<u>64</u>	<u>5.507</u>	<u>94</u>	<u>130.969</u>
<u>5</u>	<u>0.125</u>	<u>35</u>	<u>0.381</u>	<u>65</u>	<u>6.146</u>	<u>95</u>	<u>146.449</u>
<u>6</u>	<u>0.117</u>	<u>36</u>	<u>0.402</u>	<u>66</u>	<u>6.551</u>	<u>96</u>	<u>163.908</u>
<u>7</u>	<u>0.110</u>	<u>37</u>	<u>0.429</u>	<u>67</u>	<u>7.039</u>	<u>97</u>	<u>179.695</u>
<u>8</u>	<u>0.095</u>	<u>38</u>	<u>0.463</u>	<u>68</u>	<u>7.628</u>	<u>98</u>	<u>196.151</u>
<u>9</u>	<u>0.088</u>	<u>39</u>	<u>0.504</u>	<u>69</u>	<u>8.311</u>	<u>99</u>	<u>213.150</u>
<u>10</u>	<u>0.085</u>	<u>40</u>	<u>0.552</u>	<u>70</u>	<u>9.074</u>	<u>100</u>	<u>230.722</u>
<u>11</u>	<u>0.086</u>	<u>41</u>	<u>0.600</u>	<u>71</u>	<u>9.910</u>	<u>101</u>	<u>251.505</u>
<u>12</u>	<u>0.094</u>	<u>42</u>	<u>0.650</u>	<u>72</u>	<u>10.827</u>	<u>102</u>	<u>273.007</u>
<u>13</u>	<u>0.108</u>	<u>43</u>	<u>0.697</u>	<u>73</u>	<u>11.839</u>	<u>103</u>	<u>295.086</u>
<u>14</u>	<u>0.131</u>	<u>44</u>	<u>0.740</u>	<u>74</u>	<u>12.974</u>	<u>104</u>	<u>317.591</u>
<u>15</u>	<u>0.156</u>	<u>45</u>	<u>0.780</u>	<u>75</u>	<u>14.282</u>	<u>105</u>	<u>340.362</u>
<u>16</u>	<u>0.179</u>	<u>46</u>	<u>0.825</u>	<u>76</u>	<u>15.799</u>	<u>106</u>	<u>362.371</u>
<u>17</u>	<u>0.198</u>	<u>47</u>	<u>0.885</u>	<u>77</u>	<u>17.550</u>	<u>107</u>	<u>384.113</u>
<u>18</u>	<u>0.211</u>	<u>48</u>	<u>0.964</u>	<u>78</u>	<u>19.582</u>	<u>108</u>	<u>400.000</u>
<u>19</u>	<u>0.221</u>	<u>49</u>	<u>1.051</u>	<u>79</u>	<u>21.970</u>	<u>109</u>	<u>400.000</u>
<u>20</u>	<u>0.228</u>	<u>50</u>	<u>1.161</u>	<u>80</u>	<u>24.821</u>	<u>110</u>	<u>400.000</u>
<u>21</u>	<u>0.234</u>	<u>51</u>	<u>1.308</u>	<u>81</u>	<u>28.351</u>	<u>111</u>	<u>400.000</u>
<u>22</u>	<u>0.240</u>	<u>52</u>	<u>1.460</u>	<u>82</u>	<u>32.509</u>	<u>112</u>	<u>400.000</u>
<u>23</u>	<u>0.245</u>	<u>53</u>	<u>1.613</u>	<u>83</u>	<u>37.329</u>	<u>113</u>	<u>400.000</u>
<u>24</u>	<u>0.247</u>	<u>54</u>	<u>1.774</u>	<u>84</u>	<u>42.830</u>	<u>114</u>	<u>400.000</u>
<u>25</u>	<u>0.250</u>	<u>55</u>	<u>1.950</u>	<u>85</u>	<u>48.997</u>	<u>115</u>	<u>400.000</u>
<u>26</u>	<u>0.256</u>	<u>56</u>	<u>2.154</u>	<u>86</u>	<u>55.774</u>	<u>116</u>	<u>400.000</u>
<u>27</u>	<u>0.261</u>	<u>57</u>	<u>2.399</u>	<u>87</u>	<u>63.140</u>	<u>117</u>	<u>400.000</u>
<u>28</u>	<u>0.270</u>	<u>58</u>	<u>2.700</u>	<u>88</u>	<u>71.066</u>	<u>118</u>	<u>400.000</u>
<u>29</u>	<u>0.281</u>	<u>59</u>	<u>3.054</u>	<u>89</u>	<u>79.502</u>	<u>119</u>	<u>400.000</u>
						<u>120</u>	<u>1000.000</u>

APPENDIX II
2012 IAM Period Table
Male, Age Nearest Birthday

<u>AGE</u>	<u>$1000 \cdot q_x^{2012}$</u>	<u>AGE</u>	<u>$1000 \cdot q_x^{2012}$</u>	<u>AGE</u>	<u>$1000 \cdot q_x^{2012}$</u>	<u>AGE</u>	<u>$1000 \cdot q_x^{2012}$</u>
<u>0</u>	<u>1.605</u>	<u>30</u>	<u>0.741</u>	<u>60</u>	<u>5.096</u>	<u>90</u>	<u>109.993</u>
<u>1</u>	<u>0.401</u>	<u>31</u>	<u>0.751</u>	<u>61</u>	<u>5.614</u>	<u>91</u>	<u>123.119</u>
<u>2</u>	<u>0.275</u>	<u>32</u>	<u>0.754</u>	<u>62</u>	<u>6.169</u>	<u>92</u>	<u>137.168</u>

<u>AGE</u>	<u>1000 · q_x²⁰¹²</u>	<u>AGE</u>	<u>1000 · q_x²⁰¹²</u>	<u>AGE</u>	<u>1000 · q_x²⁰¹²</u>	<u>AGE</u>	<u>1000 · q_x²⁰¹²</u>
3	<u>0.229</u>	33	<u>0.756</u>	63	<u>6.759</u>	93	<u>152.171</u>
4	<u>0.174</u>	34	<u>0.756</u>	64	<u>7.398</u>	94	<u>168.194</u>
5	<u>0.168</u>	35	<u>0.756</u>	65	<u>8.106</u>	95	<u>185.260</u>
6	<u>0.165</u>	36	<u>0.756</u>	66	<u>8.548</u>	96	<u>197.322</u>
7	<u>0.159</u>	37	<u>0.756</u>	67	<u>9.076</u>	97	<u>214.751</u>
8	<u>0.143</u>	38	<u>0.756</u>	68	<u>9.708</u>	98	<u>232.507</u>
9	<u>0.129</u>	39	<u>0.800</u>	69	<u>10.463</u>	99	<u>250.397</u>
10	<u>0.113</u>	40	<u>0.859</u>	70	<u>11.357</u>	100	<u>268.607</u>
11	<u>0.111</u>	41	<u>0.926</u>	71	<u>12.418</u>	101	<u>290.016</u>
12	<u>0.132</u>	42	<u>0.999</u>	72	<u>13.675</u>	102	<u>311.849</u>
13	<u>0.169</u>	43	<u>1.069</u>	73	<u>15.150</u>	103	<u>333.962</u>
14	<u>0.213</u>	44	<u>1.142</u>	74	<u>16.860</u>	104	<u>356.207</u>
15	<u>0.254</u>	45	<u>1.219</u>	75	<u>18.815</u>	105	<u>380.000</u>
16	<u>0.293</u>	46	<u>1.318</u>	76	<u>21.031</u>	106	<u>400.000</u>
17	<u>0.328</u>	47	<u>1.454</u>	77	<u>23.540</u>	107	<u>400.000</u>
18	<u>0.359</u>	48	<u>1.627</u>	78	<u>26.375</u>	108	<u>400.000</u>
19	<u>0.387</u>	49	<u>1.829</u>	79	<u>29.572</u>	109	<u>400.000</u>
20	<u>0.414</u>	50	<u>2.057</u>	80	<u>33.234</u>	110	<u>400.000</u>
21	<u>0.443</u>	51	<u>2.302</u>	81	<u>37.533</u>	111	<u>400.000</u>
22	<u>0.473</u>	52	<u>2.545</u>	82	<u>42.261</u>	112	<u>400.000</u>
23	<u>0.513</u>	53	<u>2.779</u>	83	<u>47.441</u>	113	<u>400.000</u>
24	<u>0.554</u>	54	<u>3.011</u>	84	<u>53.233</u>	114	<u>400.000</u>
25	<u>0.602</u>	55	<u>3.254</u>	85	<u>59.855</u>	115	<u>400.000</u>
26	<u>0.655</u>	56	<u>3.529</u>	86	<u>67.514</u>	116	<u>400.000</u>
27	<u>0.688</u>	57	<u>3.845</u>	87	<u>76.340</u>	117	<u>400.000</u>
28	<u>0.710</u>	58	<u>4.213</u>	88	<u>86.388</u>	118	<u>400.000</u>
29	<u>0.727</u>	59	<u>4.631</u>	89	<u>97.634</u>	119	<u>400.000</u>
						120	<u>1000.000</u>

(7) Projection scale G2 (scale G2), which was developed by the society of actuaries committee on life insurance research, is a table of annual rates, G_{2x}, shown below, of mortality improvement by age for projecting future mortality rates beyond calendar year 2012.

Projection Scale G2
Female, Age Nearest Birthday

<u>AGE</u>	<u>G_{2x}</u>	<u>AGE</u>	<u>G_{2x}</u>	<u>AGE</u>	<u>G_{2x}</u>	<u>AGE</u>	<u>G_{2x}</u>
0	<u>0.010</u>	30	<u>0.010</u>	60	<u>0.013</u>	90	<u>0.006</u>
1	<u>0.010</u>	31	<u>0.010</u>	61	<u>0.013</u>	91	<u>0.006</u>
2	<u>0.010</u>	32	<u>0.010</u>	62	<u>0.013</u>	92	<u>0.005</u>
3	<u>0.010</u>	33	<u>0.010</u>	63	<u>0.013</u>	93	<u>0.005</u>
4	<u>0.010</u>	34	<u>0.010</u>	64	<u>0.013</u>	94	<u>0.004</u>
5	<u>0.010</u>	35	<u>0.010</u>	65	<u>0.013</u>	95	<u>0.004</u>
6	<u>0.010</u>	36	<u>0.010</u>	66	<u>0.013</u>	96	<u>0.004</u>
7	<u>0.010</u>	37	<u>0.010</u>	67	<u>0.013</u>	97	<u>0.003</u>
8	<u>0.010</u>	38	<u>0.010</u>	68	<u>0.013</u>	98	<u>0.003</u>

<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>
9	<u>0.010</u>	39	<u>0.010</u>	69	<u>0.013</u>	99	<u>0.002</u>
10	<u>0.010</u>	40	<u>0.010</u>	70	<u>0.013</u>	100	<u>0.002</u>
11	<u>0.010</u>	41	<u>0.010</u>	71	<u>0.013</u>	101	<u>0.002</u>
12	<u>0.010</u>	42	<u>0.010</u>	72	<u>0.013</u>	102	<u>0.001</u>
13	<u>0.010</u>	43	<u>0.010</u>	73	<u>0.013</u>	103	<u>0.001</u>
14	<u>0.010</u>	44	<u>0.010</u>	74	<u>0.013</u>	104	<u>0.000</u>
15	<u>0.010</u>	45	<u>0.010</u>	75	<u>0.013</u>	105	<u>0.000</u>
16	<u>0.010</u>	46	<u>0.010</u>	76	<u>0.013</u>	106	<u>0.000</u>
17	<u>0.010</u>	47	<u>0.010</u>	77	<u>0.013</u>	107	<u>0.000</u>
18	<u>0.010</u>	48	<u>0.010</u>	78	<u>0.013</u>	108	<u>0.000</u>
19	<u>0.010</u>	49	<u>0.010</u>	79	<u>0.013</u>	109	<u>0.000</u>
20	<u>0.010</u>	50	<u>0.010</u>	80	<u>0.013</u>	110	<u>0.000</u>
21	<u>0.010</u>	51	<u>0.010</u>	81	<u>0.012</u>	111	<u>0.000</u>
22	<u>0.010</u>	52	<u>0.011</u>	82	<u>0.012</u>	112	<u>0.000</u>
23	<u>0.010</u>	53	<u>0.011</u>	83	<u>0.011</u>	113	<u>0.000</u>
24	<u>0.010</u>	54	<u>0.011</u>	84	<u>0.010</u>	114	<u>0.000</u>
25	<u>0.010</u>	55	<u>0.012</u>	85	<u>0.010</u>	115	<u>0.000</u>
26	<u>0.010</u>	56	<u>0.012</u>	86	<u>0.009</u>	116	<u>0.000</u>
27	<u>0.010</u>	57	<u>0.012</u>	87	<u>0.008</u>	117	<u>0.000</u>
28	<u>0.010</u>	58	<u>0.012</u>	88	<u>0.007</u>	118	<u>0.000</u>
29	<u>0.010</u>	59	<u>0.013</u>	89	<u>0.007</u>	119	<u>0.000</u>
						120	<u>0.000</u>

APPENDIX IV
 Projection Scale G2
 Male, Age Nearest Birthday

<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>
0	<u>0.010</u>	30	<u>0.010</u>	60	<u>0.015</u>	90	<u>0.007</u>
1	<u>0.010</u>	31	<u>0.010</u>	61	<u>0.015</u>	91	<u>0.007</u>
2	<u>0.010</u>	32	<u>0.010</u>	62	<u>0.015</u>	92	<u>0.006</u>
3	<u>0.010</u>	33	<u>0.010</u>	63	<u>0.015</u>	93	<u>0.005</u>
4	<u>0.010</u>	34	<u>0.010</u>	64	<u>0.015</u>	94	<u>0.005</u>
5	<u>0.010</u>	35	<u>0.010</u>	65	<u>0.015</u>	95	<u>0.004</u>
6	<u>0.010</u>	36	<u>0.010</u>	66	<u>0.015</u>	96	<u>0.004</u>
7	<u>0.010</u>	37	<u>0.010</u>	67	<u>0.015</u>	97	<u>0.003</u>
8	<u>0.010</u>	38	<u>0.010</u>	68	<u>0.015</u>	98	<u>0.003</u>
9	<u>0.010</u>	39	<u>0.010</u>	69	<u>0.015</u>	99	<u>0.002</u>
10	<u>0.010</u>	40	<u>0.010</u>	70	<u>0.015</u>	100	<u>0.002</u>
11	<u>0.010</u>	41	<u>0.010</u>	71	<u>0.015</u>	101	<u>0.002</u>
12	<u>0.010</u>	42	<u>0.010</u>	72	<u>0.015</u>	102	<u>0.001</u>
13	<u>0.010</u>	43	<u>0.010</u>	73	<u>0.015</u>	103	<u>0.001</u>
14	<u>0.010</u>	44	<u>0.010</u>	74	<u>0.015</u>	104	<u>0.000</u>
15	<u>0.010</u>	45	<u>0.010</u>	75	<u>0.015</u>	105	<u>0.000</u>
16	<u>0.010</u>	46	<u>0.010</u>	76	<u>0.015</u>	106	<u>0.000</u>

<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>	<u>AGE</u>	<u>G2_x</u>
<u>17</u>	<u>0.010</u>	<u>47</u>	<u>0.010</u>	<u>77</u>	<u>0.015</u>	<u>107</u>	<u>0.000</u>
<u>18</u>	<u>0.010</u>	<u>48</u>	<u>0.010</u>	<u>78</u>	<u>0.015</u>	<u>108</u>	<u>0.000</u>
<u>19</u>	<u>0.010</u>	<u>49</u>	<u>0.010</u>	<u>79</u>	<u>0.015</u>	<u>109</u>	<u>0.000</u>
<u>20</u>	<u>0.010</u>	<u>50</u>	<u>0.010</u>	<u>80</u>	<u>0.015</u>	<u>110</u>	<u>0.000</u>
<u>21</u>	<u>0.010</u>	<u>51</u>	<u>0.011</u>	<u>81</u>	<u>0.014</u>	<u>111</u>	<u>0.000</u>
<u>22</u>	<u>0.010</u>	<u>52</u>	<u>0.011</u>	<u>82</u>	<u>0.013</u>	<u>112</u>	<u>0.000</u>
<u>23</u>	<u>0.010</u>	<u>53</u>	<u>0.012</u>	<u>83</u>	<u>0.013</u>	<u>113</u>	<u>0.000</u>
<u>24</u>	<u>0.010</u>	<u>54</u>	<u>0.012</u>	<u>84</u>	<u>0.012</u>	<u>114</u>	<u>0.000</u>
<u>25</u>	<u>0.010</u>	<u>55</u>	<u>0.013</u>	<u>85</u>	<u>0.011</u>	<u>115</u>	<u>0.000</u>
<u>26</u>	<u>0.010</u>	<u>56</u>	<u>0.013</u>	<u>86</u>	<u>0.010</u>	<u>116</u>	<u>0.000</u>
<u>27</u>	<u>0.010</u>	<u>57</u>	<u>0.014</u>	<u>87</u>	<u>0.009</u>	<u>117</u>	<u>0.000</u>
<u>28</u>	<u>0.010</u>	<u>58</u>	<u>0.014</u>	<u>88</u>	<u>0.009</u>	<u>118</u>	<u>0.000</u>
<u>29</u>	<u>0.010</u>	<u>59</u>	<u>0.015</u>	<u>89</u>	<u>0.008</u>	<u>119</u>	<u>0.000</u>
						<u>120</u>	<u>0.000</u>

(8) The 1994 GAR table, which was developed by the society of actuaries group annuity valuation table task force and adopted as a recognized mortality table for annuities in December 1996 by the NAIC, and which is set forth in *Transactions, Society of Actuaries*, Vol. XLVII (1995), pp. 866 and 867, is recognized and approved as a group annuity mortality table for valuation and shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after April 1, 1998, under a group annuity or pure endowment contract. At the option of the company, the 1994 GAR table may be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after January 1, 1998, under a group annuity or pure endowment contract.

((4)) (9) In using the 1994 GAR table, the mortality rate for a person age x in year (1994 + n) is calculated as follows:

$$q_x^{1994+n} = q_x^{1994} (1 - AA_x)^n,$$

where the q_x^{1994} and AA_x s are as specified in the 1994 GAR table.

**WSR 14-01-042
PERMANENT RULES**

**OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2013-02—Filed December 11, 2013, 11:48 a.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014. The commissioner finds that the regulation must be in effect on January 1, 2014, to establish special enrollment rights for individuals who lose coverage on or after January 1, 2014. If individuals do not have these rights, access to coverage is lost, with the associated loss of the ability to pay for necessary health care services.

Purpose: The rules are designed to align the exchange and off-exchange marketplaces to address the risk of adverse selection, and ensure that each issuer administers open and special enrollment periods for the individual and small group markets consistently.

Statutory Authority for Adoption: RCW 48.02.060, 48.18.120(2), 48.20.450, 48.43.0211, 48.43.720(3), 48.44.-050, and 48.46.200.

Other Authority: 45 C.F.R. 147.104; 45 C.F.R. 147.106; 45 C.F.R. 155.420; 45 C.F.R. 155.725.

Adopted under notice filed as WSR 13-19-090 on September 18, 2013.

A final cost-benefit analysis is available by contacting Jim Keogh, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-7056, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 8, 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 8, Amended 0, Repealed 0.

Date Adopted: December 11, 2013.

Mike Kreidler
Insurance Commissioner

NEW SECTION**WAC 284-170-400 Preexisting condition limitations.**

For health plans offered, issued or renewed on or after January 1, 2014, issuers must not condition or otherwise limit enrollment based on preexisting health conditions.

NEW SECTION

WAC 284-170-410 Special enrollment requirements for small group plans. (1) A "special enrollment period" means a period of time outside the initial or annual group renewal period during which an individual applicant may enroll if the individual has experienced a qualifying event. An issuer must make periods for special enrollment in its small group plans available to an otherwise eligible applicant if the applicant has experienced one of the qualifying events identified in this section.

(2) A qualifying event for special enrollment in small group plans offered on or off the health benefit exchange is one of the following:

(a) The loss of minimum essential benefits, including loss of employer sponsored insurance coverage, or of the coverage of a person under whose policy they were enrolled, unless the loss is based on the individual's voluntary termination of employer sponsored coverage, the misrepresentation of a material fact affecting coverage or for fraud related to the terminated health coverage;

(b) The loss of eligibility for medicaid or a public program providing health benefits;

(c) The loss of coverage as the result of dissolution of marriage or termination of a domestic partnership;

(d) A permanent change in residence, work, or living situation, whether or not within the choice of the individual, where the health plan under which they were covered does not provide coverage in that person's new service area;

(e) The birth, placement for adoption or adoption of the applicant for whom coverage is sought;

(f) A situation in which a plan no longer offers benefits to the class of similarly situated individuals that includes the applicant;

(g) Loss of individual or group coverage purchased on the health benefit exchange due to an error on the part of the exchange, the issuer or the U.S. Department of Health and Human Services;

(h) Marriage or entering into a domestic partnership, including eligibility as a dependent of an individual marrying or entering into a domestic partnership.

(3) Nothing in this rule is intended to alter or affect the requirements of RCW 48.43.517.

(4) An issuer may require reasonable proof or documentation that an individual seeking special enrollment has experienced a qualifying event.

(5) An issuer must offer a special enrollee each benefit package available to members of the group who enrolled when first eligible. A special enrollee cannot be required to pay more for coverage than other members of the group who enrolled in the same coverage when first eligible. Any difference in benefits or cost-sharing requirements constitutes a different benefit package.

(6) An issuer must include detailed information about special enrollment options and rights in its health plan documents provided pursuant to WAC 284-43-820, and in any policy or certificate of coverage provided to an employer, plan sponsor, or enrollee. The notice must be substantially similar to the model notice provided by the U.S. Department of Labor or the U.S. Department of Health and Human Services.

(7) For children who experience a qualifying event, if the selected plan is not the plan on which the parent is then enrolled, or if the parent does not have coverage, the issuer must permit the parent to enroll when the child seeks enrollment for dependent coverage. An enrolling child must have access to any benefit package offered to employees, even if that requires the issuer to permit the parent to switch benefit packages.

NEW SECTION

WAC 284-170-412 Special enrollment periods for small group qualified health plans. (1) Issuers of small group qualified health plans must comply with the additional special enrollment period requirements set forth in 45 C.F.R. 155.420 (b)(2) and 45 C.F.R. 155.725.

(2) In addition to meeting the requirements set forth in WAC 284-170-410, issuers must include in qualified health plan contract forms and required disclosure documents an explanation of special enrollment rights if one of the following triggering events occurs:

(a) In addition to the requirements for adopted, placed for adoption, and newborn children, the same special enrollment right accrues for foster children and children placed in foster care;

(b) The individual demonstrates to the health benefit exchange that the qualified health plan in which they are enrolled violated a material provision of the coverage contract in relation to the individual;

(c) An individual's enrollment in or nonenrollment in a qualified health plan is unintentional, inadvertent or erroneous, and is the result of the error, misinterpretation or inaction of an officer, employee or agent of the health benefit exchange of the U.S. Department of Health and Human Services, as determined by the health benefit exchange upon evaluation;

(d) In addition to the special enrollment event in WAC 284-170-410 (2)(d), a change in the individual's residence as the result of a permanent move results in new eligibility for previously unavailable qualified health plans;

(e) For qualified individuals who are an Indian, as defined by Section 4 of the Indian Health Care Improvement Act, enrollment in a qualified health plan or change from one qualified health plan to another must be permitted one time per month, without requiring an additional special enrollment triggering event.

(3) If the health benefit exchange establishes earlier effective dates for special enrollment periods, pursuant to 45 C.F.R. 155.420, an issuer must include in its plan documents and required disclosures an explanation of the effective date for special enrollment periods.

NEW SECTION

WAC 284-170-415 Duration and effective dates of small group special enrollment periods. (1) This section applies to nongrandfathered small group plans offered on or off the health benefit exchange.

(2) Special enrollment periods must not be shorter than sixty days from the date of the qualifying event.

(3) The effective date of coverage for those enrolling in a small group plan through a special enrollment period is the first date of the next month after the application for coverage is received, unless one of the following exceptions applies:

(a) For special enrollment of newborn, adopted or placed for adoption children, the date of birth, date of adoption or date of placement for adoption becomes the first effective date of coverage;

(b) For applicants enrolling after the fifteenth of the month, the issuer must begin coverage not later than the first date of the second month after the application is received, unless the applicant is enrolling due to marriage or the commencement of a domestic partnership. An issuer may establish an earlier effective date at their discretion. An issuer may establish an earlier effective date at their discretion;

(c) For applicants enrolling because of marriage or the commencement of a domestic partnership, when notice of the marriage or domestic partnership is received within sixty days of the marriage or commencement of the domestic partnership, either as spouse, domestic partner or as a dependent child, coverage must begin no later than the first date of the month immediately following the date of marriage or domestic partnership.

(4) An issuer must not refuse to enroll an applicant who applies within sixty days of the qualifying event, if the applicant would be eligible had the application been received during open enrollment.

NEW SECTION

WAC 284-170-420 Individual market open enrollment requirements. (1) For purposes of this section, "open enrollment" means a specific period of time each year during which enrollment in a health benefit plan is permitted. This section applies to plans offered in the individual market.

(2) An issuer must limit the dates for enrollment in plans offered on the individual market off the health benefit exchange to the same time period for open enrollment established by the health benefit exchange.

(3) In addition to the open enrollment period established by the exchange, an issuer participating in the off-exchange individual market must hold an open enrollment period between March 15th and April 30th each year, making its child-only policies available to those under age nineteen.

(4) An issuer must prominently display information on its web site about open enrollment periods and special enrollment periods applicable to its plans offered either on or off the health benefit exchange.

(a) The web site information about enrollment periods must provide a consumer with the ability to access or request and receive an application packet for enrollment at any time.

(b) The displayed information must include details written in plain language explaining what constitutes a qualifying event for special enrollment.

(5) Written notice of open enrollment must be provided to enrolled persons at some point between September 1st and September 30th of each year.

NEW SECTION

WAC 284-170-425 Individual market special enrollment requirements. (1) For a nongrandfathered individual health plan offered on or off the health benefit exchange, an issuer must make a special enrollment period of not less than sixty days available to any person who experiences a qualifying event, permitting enrollment in an individual health benefit plan outside the open enrollment period. This requirement applies to plans offered on the health benefit exchange that cover pediatric oral benefits offered as essential health benefits necessary to satisfy minimum essential coverage requirements.

(2) A qualifying event means the occurrence of one of the following:

(a) The loss of minimum essential coverage, including employer sponsored insurance coverage due to action by either the employer or the issuer or due to the individual's loss of eligibility for the employer sponsored coverage, or the loss of the individual or group coverage of a person under whose policy they were enrolled, unless the loss is based on the individual's misrepresentation of a material fact affecting coverage or for fraud related to the discontinued health coverage;

(b) The loss of eligibility for medicaid or a public program providing health benefits;

(c) The loss of coverage as the result of dissolution of marriage or termination of a domestic partnership;

(d) A permanent change in residence, work, or living situation, whether or not within the choice of the individual, where the health plan under which they were covered does not provide coverage in that person's new service area;

(e) The birth, placement for or adoption of the person for whom coverage is sought. For newborns, coverage must be effective from the moment of birth; for those adopted or placed for adoption, coverage must be effective from the date of adoption or placement for adoption, whichever occurs first;

(f) A situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual;

(g) Coverage is discontinued in a qualified health plan by the health benefit exchange pursuant to 45 C.F.R. 155.430 and the three month grace period for continuation of coverage has expired;

(h) Exhaustion of COBRA coverage due to failure of the employer to remit premium;

(i) Loss of COBRA coverage where the individual has exceeded the lifetime limit in the plan and no other COBRA coverage is available;

(j) If the person discontinues coverage under a health plan offered pursuant to chapter 48.41 RCW;

(k) Loss of coverage as a dependent on a group plan due to age;

(l) Marriage or entering into a domestic partnership, including eligibility as a dependent of an individual marrying or entering into a domestic partnership.

(3) If the special enrollee had prior coverage, an issuer must offer a special enrollee each of the benefit packages available to individuals who enrolled during the open enrollment period within the same metal tier or level at which the person was previously enrolled. Any difference in benefits or cost-sharing requirements for different individuals constitutes a different benefit package.

(a) A special enrollee cannot be required to pay more for coverage than a similarly situated individual who enrolls during open enrollment.

(b) An issuer may limit a special enrollee who was enrolled in a catastrophic plan as defined in RCW 48.43.005(8) to the plans available during open enrollment at either the bronze or silver level.

(c) An issuer may restrict a special enrollee whose eligibility is based on their status as a dependent to the same metal tier for the plan on which the primary subscriber is enrolled.

(4) An issuer may require reasonable proof or documentation that an individual seeking special enrollment has experienced a qualifying event.

NEW SECTION

WAC 284-170-430 Individual market special enrollment period requirements for qualified health plans. (1) An issuer offering individual qualified health plans on the health benefit exchange must make special enrollment opportunities, subject to the same terms and conditions specified in WAC 284-170-425, available to applicants who experience a qualifying event.

(2) In addition to the special enrollment qualifying events set forth in WAC 284-170-425, the following special enrollment opportunities must be made available for individual plans offered on the health benefit exchange:

(a) For qualified individuals who are an Indian, as defined by Section 4 of the Indian Health Care Improvement Act, enrollment in a qualified health plan or change from one qualified health plan to another must be permitted one time per month, without requiring an additional special enrollment triggering event;

(b) The applicant demonstrates to the health benefit exchange that the qualified health plan in which they are enrolled violated a material provision of the coverage contract in relation to the individual;

(c) If applicant lost prior coverage due to errors by the health benefit exchange staff or the U.S. Department of Health and Human Services;

(d) The applicant, or his or her dependent, not previously a citizen, national or lawfully present individual, gains such status. For purposes of this subsection, "dependent" means a dependent as defined in RCW 48.43.005;

(e) The individual becomes newly eligible or newly ineligible for advance payment of premium tax credits, has a change in eligibility for cost-sharing reductions, or the individual's dependent becomes newly eligible. For purposes of (e) and (f) of this subsection, "dependent" means dependent as defined in 26 C.F.R. 54.9801-2;

(f) The individual or their dependent who is currently enrolled in employer sponsored coverage is determined newly eligible for advance payment of premium tax credit pursuant to the criteria established in 45 C.F.R. 155.420 (d)(6)(iii);

(g) In addition to the special enrollment event in WAC 284-170-425 (2)(d), a change in the individual's residence as the result of a permanent move results in new eligibility for previously unavailable qualified health plans.

(3) An individual who experiences a qualifying event and whose prior coverage was on a catastrophic health plan as defined in RCW 48.43.005 (8)(c)(i) may be limited by the exchange to enrollment in a bronze or silver level plan.

(4) This section must not be interpreted or applied to preclude or limit the health benefit exchange's rights to automatically enroll qualified individuals based on good cause, exceptional circumstances as defined by the health benefit exchange or as required by the U.S. Department of Health and Human Services.

(5) Issuers must comply with the special enrollment event requirements established for qualified health plans offered on the health benefit exchange in 45 C.F.R. 155.420. If the health benefit exchange establishes earlier effective dates for special enrollment periods, pursuant to 45 C.F.R. 155.420, an issuer must include in its plan documents and required disclosures an explanation of the effective date for special enrollment periods.

NEW SECTION

WAC 284-170-435 Duration, notice requirements and effective dates of coverage for individual market special enrollment periods. (1) Special enrollment periods must not be shorter than sixty days from the date of the qualifying event.

(2) The effective date of coverage for those enrolling in an individual health plan through a special enrollment period is the first date of the next month after the premium is received by the issuer, unless one of the following exceptions applies:

(a) For those enrolling after the twentieth of the month, the issuer must begin coverage not later than the first date of the second month after the application is received. Issuers may establish an earlier effective date at their discretion;

(b) For special enrollment of newborn, adopted or placed for adoption children, the date of birth, date of adoption or date of placement for adoption, as applicable, becomes the first effective date of coverage. The same requirement applies to foster children or children placed for foster care on qualified health plans;

(c) For special enrollment based on marriage or the beginning of a domestic partnership, and for special enrollment based on loss of minimum essential coverage, coverage must begin on the first day of the next month.

(3) For individual plans offered either on or off the health benefit exchange, an issuer must include detailed information about special enrollment options and rights in its health plan documents provided pursuant to WAC 284-43-820, and in the policy, contract or certificate of coverage provided to an employer, plan sponsor or enrollee. The notice

must be substantially similar to the model notice provided by the U.S. Department of Health and Human Services.

WSR 14-01-044
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed December 11, 2013, 1:56 p.m., effective January 11, 2014]

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

Purpose: Changes to WAC 139-05-210 Basic law enforcement certification of equivalency, are needed to provide clarification and to streamline the existing process and requirements.

(1) A peace officer whose certification, commission, and/or licensing has been revoked, sanctioned, suspended, or is under review by this state or any other state or territory is not eligible for a certificate of equivalency, regardless of the officer's prior years of law enforcement service.

(2) Applicants will now need to attend the first available session of the equivalency academy regardless if it is held within the first sixty days of hire. Equivalency academies are held every three months; this change will eliminate lengthy gaps in training.

(3) It is not the Washington state criminal justice training commission's responsibility to ensure future police officers have a current and valid driver's license and basic first aid card; the responsibility lies with the employing agency.

(4) All applicants must have emergency vehicle operations training. If they do not, it will be provided at the employer's expense.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 13-21-059 on October 16, 2013.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7 [1], Repealed 0.

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

Date Adopted: December 11, 2013.

Sonja Hirsch
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-010, filed 9/18/08, effective 10/19/08)

WAC 139-05-210 Basic law enforcement certificate of equivalency. (1) A peace officer whose certification, commission, and/or licensing has been revoked, sanctioned, suspended, or is under review by this state or any other state or territory is not eligible for a certificate of equivalency, regardless of the officer's prior years of law enforcement service.

(2) A certificate of completion of equivalent basic law enforcement training is issued to applicants who successfully complete the equivalency process as required by the commission. For this purpose, the term "process" includes all documentation and prerequisites set forth in subsection (6) of this section and successful completion of all knowledge and skills requirements within the equivalency academy.

~~((2))~~ (3) Participation in the equivalency process is limited to:

(a) Fully commissioned peace officers of a city, county, or political subdivision of the state of Washington, who otherwise are eligible to attend the basic law enforcement academy; or

(b) Fully commissioned peace officers who have attained commissioned law enforcement status by completing a basic training program in this or another state. For this purpose, the term "basic training program" does not include any military or reserve training program or any federal training program not otherwise approved by the commission; or

(c) Persons who have not attained commissioned peace officer status but have successfully completed a basic law enforcement academy recognized as a full equivalent to the Washington state basic law enforcement academy by the commission and within twelve months of the date of completion been made a conditional offer of employment as a fully commissioned peace officer in Washington state; or

(d) Persons whose ~~((Washington))~~ peace officer certification, commission, and/or licensing has lapsed because of a break in service as a full-time, fully commissioned peace officer in this or any other state or territory for more than twenty-four months but less than sixty months and who are required to attend the equivalency.

~~((3))~~ (4) Applicants who are required to participate in the equivalency academy for the purpose of becoming a certified peace officer must attend the first available session of the equivalency academy ~~((following such applicant's date of hire unless the equivalency academy occurs within the first sixty days of the peace officer's initial date of employment in which case the peace officer must attend the next available academy))~~ as a condition of certification as a peace officer. Applicants approved to participate in the equivalency academy for training purposes only, will be admitted on a space available basis.

It is the responsibility of the applicant's agency to ensure that all necessary forms and documentation are completed and submitted to the commission in a timely manner, and as necessary, to ensure that the participation provided by this section is affected.

~~((4))~~ In those instances where an applicant has attended more than one basic training program, eligibility for participation in the equivalency process will be based upon success-

~~ful completion of the most recent of such programs attended.))~~

(5) The decision to request an officer's participation in the equivalency process is discretionary with the head of the officer's employing agency, who must advise the commission of that decision by appropriate notation upon the hiring notification form. Upon receipt of such notification, the commission will provide all necessary forms and information.

(6) Upon approval of an applicant's eligibility to participate in the equivalency process, the applicant's employing agency must submit to the commission the following documentation as a precondition of participation within such process:

~~(a) ((Proof of the applicant's current and valid driver's license;~~

~~(b) Proof of the applicant's current and valid basic first-aid card;~~

~~(e))~~) A statement of the applicant's health and physical condition by an examining physician;

~~((d))~~) ~~(b)~~ A record of the applicant's firearms qualification;

~~((e))~~) ~~(c)~~ A liability release agreement by the applicant; and

~~((f))~~) ~~(d)~~ A criminal records check regarding such applicant.

(7) If comparable emergency vehicle operations training has not been completed previously, the applicant will be required to complete the commission's current basic law enforcement academy emergency vehicle operation course, as scheduled by the commission; all costs associated with this training will be the responsibility of the law enforcement agency.

(8) Upon completion of the equivalency process and review and evaluation of the applicant's performance, the commission will:

(a) Issue a certificate of completion of equivalent basic law enforcement training; or

(b) Issue a certificate of completion of equivalent basic law enforcement training upon the applicant's successful completion of additional training as the commission may require; or

(c) Require completion of the commission's basic law enforcement academy.

WSR 14-01-045

PERMANENT RULES

CRIMINAL JUSTICE

TRAINING COMMISSION

[Filed December 11, 2013, 1:58 p.m., effective January 11, 2014]

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

Purpose: WAC 139-05-241 Sponsored reserve officer requirements for basic law enforcement academy training, this new rule is being proposed to provide guidelines for law enforcement agencies who wish to sponsor an applicant for basic law enforcement training who is not employed by the agency as a fully commissioned law enforcement officer.

(1) This new rule allows a law enforcement agency to sponsor a reserve officer as an applicant for basic law enforcement training.

(2) Reserve officers will not be given priority status for admittance into BLEA; only those that are fully commissioned law enforcement officers.

(3) Reserve officers are responsible for the full cost of attendance at the BLEA, which is nonrefundable.

(4) Reserve officer applicants must provide proof of agency L&I coverage or adequate medical insurance coverage throughout the duration of the academy.

(5) Reserve officer applicants must satisfy all requirements set forth in WAC 139-05-220, 139-05-230, and 139-05-240.

(6) Reserve officers are not eligible for peace officer or tribal police officer certification.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 13-21-060 on October 16, 2013.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 6 [1], Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 6 [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: December 11, 2013.

Sonja Hirsch
Rules Coordinator

NEW SECTION

WAC 139-05-241 Sponsored reserve officer requirements for basic law enforcement academy training. (1) A law enforcement agency may sponsor a reserve officer, as defined by WAC 139-05-810, as an applicant for basic law enforcement training.

(2) The commission has sole discretion to admit or deny admittance to the basic law enforcement academy. Priority for admittance to the basic law enforcement academy shall be given to applicants currently employed as fully commissioned law enforcement officers.

(3) Reserve officer applicants who are admitted to the basic law enforcement academy are responsible for the full cost of attendance at the basic law enforcement academy, including payment for room and board if room and board are requested by the applicant. Full payment for attendance at the basic law enforcement academy must be paid in advance as a condition of attendance and is nonrefundable.

(4) Reserve officer applicants must provide proof of agency labor and industries coverage or adequate medical

insurance coverage as a condition of admission to the basic law enforcement academy. Such applicants must maintain said medical insurance throughout the duration of the academy; and must immediately notify the commission in the event that medical insurance terminates, changes, or coverage and liability under the policy is substantially changed. The commission has sole discretion to determine what constitutes adequate medical insurance coverage for attendance at the basic law enforcement academy.

(5) Reserve officer applicants must satisfy all other requirements for admittance to and continued participation in the basic law enforcement academy, to include those requirements set forth in WAC 139-05-220, 139-05-230, and 139-05-240.

(6) Reserve officers are not eligible for peace officer or tribal police officer certification.

WSR 14-01-046
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed December 11, 2013, 2:00 p.m., effective January 11, 2014]

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

Purpose: WAC 139-06-140 Hearing on petition for eligibility for certification or reinstatement of certification, the proposed rule change will allow for a subsequent petition for reinstatement of certification to be filed five years after the date of the entry of the hearing panel's final written order denying the prior petition for reinstatement. If a second petition for reinstatement is denied, no further petitions may be filed. The commission will not consider or accept for filing a petition for reinstatement submitted after two prior petitions have been denied.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 13-20-097 on October 1, 2013.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1 [0], Amended 3 [1], Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1 [0], Amended 3 [1], Repealed 0.

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

Date Adopted: December 11, 2013.

Sonja Hirsch
Rules Coordinator

AMENDATORY SECTION (Amending WSR 03-02-010, filed 12/20/02, effective 1/20/03)

WAC 139-06-140 Hearing on petition for eligibility for certification or reinstatement of certification. (1) The commission may hold a hearing to determine the peace officer's eligibility for certification or reinstatement of certification.

(2) Upon receipt of a petition for eligibility for certification or reinstatement of certification, and a determination by commission staff that a hearing is necessary~~(;)~~ or required, the peace officer and the peace officer's employing agency shall be notified in writing. Where a hearing is not held, the peace officer and the peace officer's employing agency shall be notified in writing of the commission's decision ~~((whether to certify or reinstate the peace officer,))~~ to grant or deny the petition and the reasons for the decision. Where the ~~((peace officer is not certified or reinstated))~~ petition is denied, the peace officer or the peace officer's employing agency may request a hearing before a hearing panel by making such request in writing within fourteen days of the mailing of notification that ~~((certification is not being granted or reinstated))~~ the petition was denied.

(3) Hearings on eligibility for certification or reinstatement of certification shall be conducted by a hearing panel. The hearing panel shall review the certification file and any additional information submitted by the parties prior to the hearing and may request any additional information in order to assist in its determination. The issues shall be limited to whether the peace officer is eligible for ~~((certification or reinstatement of))~~ certification, whether certification should be reinstated, and whether appropriate probationary terms ~~((if the event certification is granted or reinstated))~~ should be imposed as a condition of reinstatement.

(4) The hearing panel shall enter ~~((;))~~ its decision on the petition by written order ~~((regarding certification or reinstatement of certification))~~ within ninety days of the conclusion of the hearing, unless the time period is extended for good cause, or waived. A copy of the order shall be sent to the parties~~(;)~~ and to the peace officer's employing agency.

(5) The decision of the hearing panel shall be the final order of the commission.

(6) A peace officer whose petition for eligibility for certification or reinstatement of certification was denied by a hearing panel may file a subsequent petition after five years have elapsed since the date of the entry of the hearing panel's final written order denying the prior petition. If a second petition for reinstatement is denied, no further petitions may be filed. The commission will not consider or accept for filing a petition for reinstatement submitted after two prior petitions have been denied.

WSR 14-01-047
PERMANENT RULES
CRIMINAL JUSTICE
TRAINING COMMISSION

[Filed December 11, 2013, 2:11 p.m., effective January 11, 2014]

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

Purpose: Chapter 139-33 WAC, Firearms certification—Bail bond recovery agents, is being proposed to provide guidelines for individuals and companies seeking application to carry a firearm as a bail bond recovery agent, or seeking renewal of an existing firearms certification pursuant to chapter 18.185 RCW. The bail bond recovery agent firearms certification is an element of a bail bond recovery agent armed license.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 13-22-055 on November 4, 2013.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 13 [5], Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 13 [5], Amended 3 [6], Repealed 0.

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

Date Adopted: December 11, 2013.

Sonja Hirsch
Rules Coordinator

Chapter 139-33 WAC

FIREARMS CERTIFICATION—BAIL BOND RECOVERY AGENTS

NEW SECTION

WAC 139-33-005 Firearms certification—Definitions. Words and terms used in WAC 139-33-005 through 139-33-025 shall have the same meaning as under chapter 18.185 RCW, unless otherwise clearly provided in these rules, or the context in which they are used in these rules clearly indicates that they be given some other meaning.

"Commission" means Washington state criminal justice training commission.

"Corporate officer" means a designee who exercises operational and administrative control over a bail bond recovery agency.

"Department" means Washington state department of licensing.

"Principal owner" means the sole owner of a bail bond recovery agency.

"Principal partner" means a partner who exercises operational control over a bail bond recovery agency.

NEW SECTION

WAC 139-33-010 Firearms certification—Licensing requirement. (1) Any licensed bail bond recovery agent

desiring to use a firearm while working as a bail bond recovery agent by the department shall, as a precondition of being licensed, obtain a firearms certification from the commission.

(2) An application for bail bond recovery agent license must be submitted to the department within ninety days following issuance of a firearms certification by the commission. If application is not submitted within that time period, the firearms certification will be deemed lapsed by the commission and shall not serve as the basis for a license.

NEW SECTION

WAC 139-33-015 Firearms certification—Application. (1) Any application for firearms certification shall:

(a) Be filed with the commission on a form provided by the commission;

(b) Be signed by the principal owner, principal partner, or corporate officer of the licensed bail bond recovery agency employing the applicant;

(c) Establish through required documentation or otherwise that applicant:

(i) Is at least twenty-one years of age; and

(ii) Possesses a valid and current bail bond recovery agent license, if applicable.

(d) Be accompanied by payment of a processing fee as set by the commission.

(2) After receipt and review of an application, the commission will provide written notification within ten business days to the requesting agency regarding applicant's ability to obtain and possess a firearms certification.

(3) An "armed" bail bond recovery agent must be qualified by a firearms instructor certified by the commission and provide the commission with proof of the initial qualification for each firearm that he/she is authorized to use in the performance of his/her duties.

(4) It shall be the responsibility of the employer to ensure that the armed bail bond recovery agent demonstrates proficiency standards on an annual basis with each firearm that he/she is certified to use. Proficiency standards shall be set by the commission.

(5) Per RCW 18.185.250(6), a bail bond recovery agent shall not have had certification as a peace officer revoked or denied under chapter 43.101 RCW, unless certification has subsequently been reinstated under RCW 43.101.115.

(a) If peace officer certification is revoked or denied, the bail bond recovery agent is ineligible for firearms certification.

(b) If peace officer certification status has been reinstated, the commission will review each request for bail bond recovery agent firearms certification to ensure the individual is eligible for firearms certification and meets all firearms certification requirements as stated in this chapter.

NEW SECTION

WAC 139-33-020 Firearms certification—Requirements. (1) A firearms certification will be issued to any eligible applicant who has satisfactorily completed an approved program of at least eight hours of instruction and testing prescribed by the commission for this purpose and conducted by a certified firearms instructor. Such program shall include:

(a) Classroom instruction which, through established learning objectives, addresses:

- (i) Legal issues regarding the use of deadly force;
- (ii) Decision making regarding the use of deadly force;
- (iii) Safe firearms handling; and
- (iv) Basic tactics in the use of deadly force.

(b) A written examination based upon the aforementioned learning objectives;

(c) A skills test wherein the applicant is required to demonstrate satisfactory proficiency in safe firearms handling; and

(d) A range qualification course wherein an applicant is required to demonstrate requisite proficiency with the specific firearm provided by the applicant or by the applicant's employing agency.

(2) A firearms certification shall be issued in the name of each successful applicant and forwarded to the respective employing agency, principal owner, principal partner, or corporate officer.

NEW SECTION

WAC 139-33-025 Firearms certification—Expiration and renewal. (1) Any firearms certification issued by the commission shall expire on the expiration date of any bail bond recovery agent license issued by the department.

(2) By renewing the bail bond recovery agent license with the department, the corporate officer, principal partner, or principal owner for the bail bond recovery agency is making declaration that the bail bond recovery agent has met the requirements for annual proficiency with the firearms for which he/she is certified to use while working.

(3) Proof of annual proficiency must be kept in the employee's file within the bail bond recovery agency.

WSR 14-01-050

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 12, 2013, 9:56 a.m., effective January 12, 2014]

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

Purpose: WAC 458-20-107 (Rule 107) Requirement to separately state sales tax—Advertised prices including sales tax, explains that retail sales tax must be separately stated from the selling price on sales invoices or other instruments of sale. Rule 107 has been revised to recognize *Dep't of Revenue v. Bi-Mor, Inc.*, 171 Wash.App. 197, 286 P.3d 417 (2012).

WAC 458-20-124 (Rule 124) Restaurants, cocktail bars, taverns and similar businesses, explains the business and occupation tax and retail sales tax applications to sales by restaurants and similar businesses. Rule 124 has been revised to recognize *Dep't of Revenue v. Bi-Mor, Inc.*, 171 Wash.App. 197, 286 P.3d 417 (2012) mentioned above. The revision also includes an explanation of the sales and use tax exemptions for products sold to restaurants that impart flavor to food during the cooking process (chapter 13, Laws of 2013 (ESSB 5882)).

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-107 Requirement to separately state sales tax—Advertised prices including sales tax and 458-20-124 Restaurants, cocktail bars, taverns and similar businesses.

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

Other Authority: RCW 82.08.050 and chapter 13, Laws of 2013.

Adopted under notice filed as WSR 13-19-041 on September 12, 2013.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: December 12, 2013.

Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 08-14-021, filed 6/20/08, effective 7/21/08)

WAC 458-20-107 Requirement to separately state sales tax—Advertised prices including sales tax. (1) **Introduction.** Under the provisions of RCW 82.08.020 the retail sales tax is to be collected and paid upon retail sales, measured by the selling price.

(2) **Retail sales tax separately stated.** RCW 82.08.050 specifically requires that the retail sales tax must be stated separately from the selling price on any sales invoice or other instrument of sale, i.e., contracts, sales slips, and/or customer billing receipts. (For an exception covering ~~((restaurant))~~ food and beverage receipts ((of Class H liquor licensees)), see WAC 458-20-124, Restaurants, cocktail bars, taverns and similar businesses.) This is required even though the seller and buyer may know and agree that the price quoted is to include state and local taxes, including the retail sales tax.

(a) The law creates a "conclusive presumption" that, for purposes of collecting the tax and remitting it to the state, the selling price quoted does not include the retail sales tax. This presumption is not overcome or rebutted by any written or oral agreement between seller and buyer.

(b) Selling prices may be advertised as including the tax ~~((or that the seller is paying the tax and))~~, and in such cases, the advertised price ~~((must not be considered to be))~~ is not the taxable selling price ~~((under certain prescribed conditions explained in this section. Even when prices are advertised as including the sales tax, the actual sales invoices, receipts,~~

contracts, or billing documents must list the retail sales tax as a separate charge. Failure to comply with this requirement may result in the retail sales tax due and payable to the state being computed on the gross amount charged even if it is claimed to already include all taxes due).

(3) **Advertising prices including tax.**

(a) ~~((The law))~~ RCW 82.08.055 provides that a seller may advertise prices as including the sales tax or that the seller is paying the sales tax under the following conditions:

(i) The words "tax included" are stated immediately following the advertised price in print size at least half as large as the advertised price print size, unless the advertised price is one in a listed series;

(ii) When advertised prices are listed in series, the words "tax included in all prices" are placed conspicuously at the head of the list in the same print size as the list;

(iii) If the price is advertised as including tax, the price listed on any price tag must be shown in the same way; and

(iv) All advertised prices and the words "tax included" are stated in the same medium, whether oral or visual, and if oral, in substantially the same inflection and volume.

(b) If these conditions are satisfied, as applicable, then price lists, reader boards, menus, and other price information mediums need not reflect the item price and separately show the actual amount of sales tax being collected on any or all items.

(c) The scope and intent of the foregoing is that buyers have the right to know whether retail sales tax is being included in advertised prices or not and that the tax is not to be used for the competitive advantage or disadvantage of retail sellers.

AMENDATORY SECTION (Amending WSR 12-07-060, filed 3/19/12, effective 4/19/12)

WAC 458-20-124 Restaurants, cocktail bars, taverns and similar businesses. (1) **Introduction.** This ~~((section))~~ rule explains Washington's business and occupation (B&O) tax and retail sales tax applications to sales by restaurants and similar businesses. It discusses the sales of meals, beverages, and foods at prices inclusive of the retail sales tax. This ~~((section))~~ rule also explains how discounted and promotional meals are taxed. Caterers and persons who merely manage the operations of a restaurant or similar business should refer to WAC 458-20-119 to determine their tax liability.

(a) **Restaurants, cocktail bars, and taverns.** The term "restaurants, cocktail bars, taverns, and similar businesses" means every place where prepared foods and beverages are sold and served to individuals, generally for consumption on the premises where sold.

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

(c) **What other ~~((sections))~~ rules might apply?** In addition to information available on the department's web site pertaining to prepared food and beverage sales, the following ~~((sections))~~ rules may contain additional relevant information:

- WAC 458-20-107 Requirement to separately state sales tax—Advertised prices including sales tax.

- WAC 458-20-119 Sales by caterers and food service contractors.

- WAC 458-20-131 Gambling activities.

- WAC 458-20-183 Amusement, recreation, and physical fitness services.

- WAC 458-20-187 Coin operated vending machines, amusement devices and service machines.

- WAC 458-20-189 Sales to and by the state of Washington, counties, cities, towns, school districts, and fire districts.

- WAC 458-20-190 Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments.

- WAC 458-20-243 Litter tax.

- WAC 458-20-244 Food and food ingredients.

(2) **Retailing B&O and retail sales taxes.** Sales to consumers of meals and prepared foods by restaurants, cocktail bars, taverns and similar businesses are subject to the retailing tax classification and generally subject to retail sales tax. A retail sales tax exemption is available for the following sales of meals:

(a) Prepared meals sold under a state-administered nutrition program for the aged as provided for in the Older Americans Act (Public Law 95-478 Title III) and RCW 74.38.040 (6);

(b) Prepared meals sold to or for senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW;

(c) Prepared meals sold to the federal government. (See WAC 458-20-190.) However, meals sold to federal employees are taxable, even if the federal employee will be reimbursed for the cost of the meals by the federal government;

(d) Effective July 1, 2011, ~~((chapter 55 (SB 5501), Laws of 2011))~~ RCW 82.08.9995 exempts meals from retail sales tax when provided without specific charge to employees by a restaurant. ~~((The legislation also exempts))~~ Such meals also are exempt from B&O tax and use tax. (RCW 82.04.750 and 82.12.9995.) If any charge is made for meals to employees, retailing B&O tax and retail sales tax apply.

For the purposes of (d) of this subsection, the following definitions apply:

(i) "Meal" means one or more items of prepared food or beverages other than alcoholic beverages. For the purposes of (d) of this subsection, "alcoholic beverage" and "prepared food" have the same meanings as provided in RCW 82.08-0293.

(ii) "Restaurant" means any establishment having special space and accommodation where food and beverages are regularly sold to the public for immediate, but not necessarily on-site, consumption, but excluding grocery stores, mini-markets, and convenience stores. Restaurant includes, but is not limited to, lunch counters, diners, coffee shops, espresso shops or bars, concession stands or counters, delicatessens, and cafeterias. It also includes space and accommodations where food and beverages are sold to the public for immediate consumption that are located within:

- Hotels, motels, lodges, boarding houses, bed and breakfast facilities;

- Hospitals, office buildings, movie theaters; and

- Schools, colleges, or universities, if a separate charge is made for such food or beverages.

Restaurants also include:

- Mobile sales units that sell food or beverages for immediate consumption within a place, the entrance to which is subject to an admission charge; and
- Public and private carriers, such as trains and vessels, that sell food or beverages for immediate consumption if a separate charge is made for such food or beverages.

A restaurant is open to the public for purposes of this subsection if members of the public can be served as guests. "Restaurant" does not include businesses making sales through vending machines or through mobile sales units such as catering trucks or sidewalk vendors of food or beverage items.

(3) **Wholesaling B&O tax.** Persons making sales of prepared meals to persons who will be reselling the meals are subject to the wholesaling B&O tax classification. Sellers must obtain resale certificates for sales made before January 1, 2010, or reseller permits for sales made on or after January 1, 2010, from their customers to document the wholesale nature of any sale as provided in WAC 458-20-102A (Resale certificates) and WAC 458-20-102 (Reseller permits). Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by the seller for five years from the date of last use or December 31, 2014.

(4) **Service B&O tax.** Compensation received from owners of vending machines for allowing the placement of those machines at the restaurant, cocktail bar, tavern, or similar business is subject to the service and other business activities tax. Persons operating games of chance should refer to WAC 458-20-131.

(5) **Exemptions.** Effective October 1, 2013, chapter 13 (ESSB 5882), Laws of 2013, provides retail sales tax and use tax exemptions for sales to restaurants of products that impart flavor to food during the cooking process; and

- Are completely or substantially consumed by combustion during the cooking process; or
- That support the food during the cooking process and are comprised entirely of wood.

The exemption includes products such as wood chips, charcoal, charcoal briquettes, grapevines, and cedar grilling planks. The exemptions do not apply to any type of gas fuel. For the purpose of these exemptions, "restaurant" has the same meaning as found in RCW 82.08.9995. These exemptions are scheduled to expire July 1, 2017.

(6) **Deferred sales or use tax.** If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred sales or use tax directly to the department.

(a) Purchases of dishes, kitchen utensils, linens, and items which do not become an ingredient of the meal, are subject to retail sales tax.

(b) Retail sales tax or use tax applies to purchases of equipment, repairs, appliances, and construction.

(c) The retail sales or use tax does not apply to purchases of food or beverage products which are ingredients of the meals being sold.

(d) Purchases of paper plates, paper cups, paper napkins, toothpicks, or any other articles which are furnished to customers, the first actual use of which renders such articles

unfit for further use, are not subject to retail sales tax when purchased by restaurants and similar businesses making actual sales of meals.

~~((6))~~ (7) **Combination business.** Persons operating a combination of two kinds of food sales, of which one is the sale of prepared food (i.e., an establishment, such as a deli, selling food products ready for consumption and in bulk quantities), should refer to WAC 458-20-244 for taxability information.

~~((7))~~ (8) **Discounted meals, promotional meals, and meals given away.** Persons who sell meals on a "two for one" or similar basis are not giving away a free meal, but rather are selling two meals at a discounted price. Both the retailing B&O and retail sales taxes should be calculated on the reduced price actually received by the seller.

Persons who provide meals free of charge to persons other than employees are consumers of those meals. Persons operating restaurants or similar businesses are not required to report use tax on food and food ingredients given away, even if the food or food ingredients are part of prepared meals. For example, a restaurant providing meals to the homeless or hot dogs free of charge to a little league team will not incur a retail sales or use tax liability with respect to these items given away. A sale has not occurred, and the food and food ingredients exemption applies. Should the restaurant provide the little league team with soft drinks free of charge, the restaurant will incur a deferred retail sales or use tax liability with respect to those soft drinks. Soft drinks are excluded from the exemption for food and food ingredients. (See WAC 458-20-244.)

~~((8))~~ (9) **Sales of meals, beverages and food at prices including retail sales tax.** Persons may advertise and/or sell meals, beverages, or any kind of food product at prices including sales tax. Any person electing to advertise and/or make sales in this manner must clearly indicate this pricing method on the menus and other price information.

~~(If sales slips, sales invoices, or dinner checks are given to the customer, the sales tax must be separately stated on all such sales slips, sales invoices, or dinner checks. If not separately stated on the sales slips, sales invoices, or dinner checks, it will be presumed that retail sales tax was not collected. In such cases the measure of tax will be gross receipts. (See WAC 458-20-107.)~~

~~(9))~~ (10) **Spirits, beer, and wine restaurant licensees.** Restaurants operating under the authority of a license from the liquor control board to sell spirits, beer, and wine by the glass for on-premises consumption generally have both dining and cocktail lounge areas. Customers purchasing beverages or food in lounge areas are generally not given sales invoices, sales slips, or dinner checks, nor are they generally provided with menus.

(a) Many spirits, beer, and wine restaurant licensees elect to sell beverages or food at prices inclusive of the sales tax in the cocktail lounge area. If this pricing method is used, notification that retail sales tax is included in the price of the beverages or foods must be posted in the lounge area in a manner and location so that customers can see the notice without entering employee work areas. It will be presumed that no retail sales tax has been collected or is included in the gross receipts when a notice is not posted and the customer does

not receive a sales slip or sales invoice separately stating the retail sales tax.

(b) The election to include retail sales tax in the selling price in one area of a location does not preclude the restaurant operator from selling beverages or food at a price exclusive of sales tax in another. For example, a spirits, beer, and wine restaurant licensee may elect to include the retail sales tax in the price charged for beverages in the lounge area, while the price charged in the dining area is exclusive of the sales tax.

(c) Spirits, beer, and wine restaurant licensees are not required to post actual drink prices in the cocktail lounge areas. However, if actual prices are posted, the advertising requirements expressed in WAC 458-20-107 must be met.

~~((H))~~ **(11) Gratuities.** Tips or gratuities representing donations or gifts by customers under circumstances which are clearly voluntary are not part of the selling price and not subject to tax. However, mandatory additions to the price by the seller, whether labeled service charges, tips, gratuities or otherwise must be included in the selling price and are subject to both the retailing B&O and retail sales taxes.

~~((H))~~ **(12) Examples.**

(a) XYZ Restaurant operates both a cocktail bar and a dining area. XYZ has elected to sell drinks and appetizers in the bar at prices including the retail sales tax while selling drinks and meals served in the dining area at prices exclusive of the sales tax. There is a sign posted in the bar area advising customers that all prices include retail sales tax. Customers in the dining area are given sales invoices which separately state the retail sales tax. As an example, a typical well drink purchased in the bar for \$2.50 inclusive of the sales tax, is sold for \$2.50 plus sales tax in the dining area. The pricing requirements have been satisfied and the drink and food totals are correctly reflected on the customers' dinner checks. XYZ may factor the retail sales tax out of the cocktail bar gross receipts when determining its retailing and retail sales tax liability.

(b) RBS Restaurant operates both a cocktail bar and a dining area. RBS has elected to sell drinks at prices inclusive of retail sales tax for all areas where drinks are served. It has a sign posted to inform customers in the bar area of this fact and a statement is also on the dinner menu indicating that any charges for drinks includes retail sales tax. Dinner checks are given to customers served in the dining area which state the price of the meal exclusive of sales tax, sales tax on the meal, and the drink price including retail sales tax. Because the business has met the sign posting requirement in the bar area and has indicated on the menu that sales tax is included in the price of the drinks, RBS may factor the sales tax out of the gross receipts received from its drink sales when determining its taxable retail sales.

(c) Z Tavern sells all foods and drinks at a price inclusive of the retail sales tax. However, there is no mention of this pricing structure on its menus or reader boards. The gross receipts from Z Tavern's food and drink sales are subject to the retailing and retail sales taxes. Z Tavern has failed to meet the conditions for selling foods and drinks at prices including tax. Z Tavern may not assume that the gross receipts include any sales tax and may not factor the retail sales tax out of the gross receipts.

WSR 14-01-051

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed December 12, 2013, 10:02 a.m., effective January 12, 2014]

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

Purpose: The existing statute governing disclosure of the names of vehicle owners requires that when the owner's name or address is requested by an attorney or by a private investigator the owner must be notified of the request and provided with the name and address of the requester. Effective January 1, 2014, owners will continue receiving notice of the request, but will no longer receive the name and address of the requester. This rule amendment aligns the WAC with the revised statute. DOL is also recodifying the rule from chapter 308-56A WAC to chapter 308-10 WAC to better align agency WAC sections with our organizational structure.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-56A-090; and amending WAC 308-10-075.

Statutory Authority for Adoption: RCW 46.01.110.

Other Authority: RCW 46.12.635.

Adopted under notice filed as WSR 13-21-135 and 13-21-136 on October 22, 2013.

Changes Other than Editing from Proposed to Adopted Version: WAC 308-10-075 (8)(a) should read: "The public disclosure unit ~~of the driver and vehicle services division~~ of the department of licensing; or."

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

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

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

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: December 12, 2013.

Damon Monroe
Rules Coordinator

NEW SECTION

WAC 308-10-075 Disclosure of vehicle owner information. (1) What vehicle record owner information is protected from disclosure? Vehicle information protected from disclosure is the same as under chapters 42.56 and 46.12 RCW, and 18 U.S.C. 2721.

(2) Who may receive vehicle owner names and addresses?

(a) Government agencies;

(b) Business entities that require the information in their normal course of conducting business;

(c) Vehicle manufacturers that require vehicle ownership information for recall of their product;

(d) Individuals who provide proof of personal identification:

(i) For vehicles currently registered in their name; or

(ii) For vehicles for which they can provide a bill of sale or acceptable documents indicating they purchased the vehicle.

(e) Please see subsection (3) of this section for additional restrictions.

Business and government agencies requesting disclosure of individual vehicle owner names and addresses must enter into a disclosure agreement with the department.

(3) When both a mailing and residence address are recorded on the vehicle record, which address will be disclosed? When both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests from courts, law enforcement agencies, or government agencies with enforcement, investigative, or taxing authority and only for use in the normal course of conducting business.

(4) What documentation does the department require to disclose vehicle owner name(s) and address(es)? The department requires:

(a) A signed vehicle/vessel information disclosure request form provided by the department and completed by the requestor indicating the specific purpose for which the information will be used; and

(b) A disclosure agreement with the department as required by RCW 46.12.635.

(c) Acceptable business verification; or

(d) A contract with the department.

(5) What is acceptable business verification? For purposes of this section, acceptable business verification includes:

(a) If the requester is a licensed Washington business, a copy of its current master business license;

(b) If the requester is a business that is not required to be licensed in this state, its federal employer identification number/federal tax number (or Uniform Business Identifier) on official letterhead with a signature of the owner or an authorized representative;

(c) If an attorney, a copy of the current bar card; or

(d) If a private investigator, a copy of the current private investigator's license.

(6) Does a business need to supply a new form and copy of the business license each time vehicle information is requested? Yes, each time a request is made for vehicle information a new form and copy of the business license is needed, unless an unexpired contract exists between the business and the department.

(7) Are businesses allowed individual owner information on vehicle records? Yes, if a business requires individual owner information to conduct its normal business and qualifies under RCW 46.12.635 and 18 U.S.C. 2721 (commonly known as Driver Privacy Protection Act), it may receive individual vehicle owner information.

(8) Who may release the vehicle owner name and address information?

(a) The public disclosure unit of the driver and vehicle services division of the department of licensing; or

(b) Agents and subagents, but only when disclosing information for purposes described in subsection (2)(d) of this section.

(9) When may the department disclose the name(s) and address(es) of vehicle owners? The department may only disclose names and addresses of vehicle owners under the provisions of chapters 42.56 and 46.12 RCW and 18 U.S.C. 2721-2725, and:

(a) The request is in writing, signed by the person requesting disclosure, contains the full legal name and address of the requesting party and/or their business, and specifies the purpose for which the information will be used; and

(b) The requesting party enters into a disclosure agreement with the department in which the parties agree that they will use the information only for the purpose stated in the request for the information.

(10) Is the department required to notify the vehicle owner when ownership information is disclosed? When the department grants a request from an attorney or private investigator for information under this section, the department will provide notice to the vehicle owner that the request has been granted. Additionally, if a contract holder releases owner information to a private investigator or attorney, they must notify the vehicle owner that a request has been granted, and provide a copy to the department's public disclosure unit.

(11) Who is responsible for assuring that the information is used appropriately? Any person, business, agency or association that receives vehicle owner information under this section is responsible for assuring, under penalty of perjury under the laws of the state of Washington, that the information received is not used for a purpose contrary to the agreement between the person, business, agency or association and the department.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-56A-090 Disclosure of individual vehicle owner information.

**WSR 14-01-056
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 13-301—Filed December 12, 2013, 3:04 p.m., effective January 12, 2014]

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

Purpose: This proposed rule making is to streamline, make technical changes to, and update rules in accordance with the WAC overhaul project currently underway. Outdated rules are also repealed. The Washington department of

fish and wildlife's (WDFW) administrative code is in need of updating and consolidation. The agency's RCWs were combined and updated after the department of fisheries and the department of wildlife consolidated, but a consolidation, clean-up, and streamlining of the administrative codes was never done. These proposed changes are part of a larger effort to reorganize and update the agency's administrative code.

Reasons Supporting Proposal: This rule change proposal was discussed during the fish and wildlife commission meeting and public hearing held on October 4, 2013. The proposed changes were adopted by the commission at the November 8, 2013, commission meeting. The changes promote increases in conservation and the availability of resources, and they reduce redundancy. The proposal is part of WDFW's WAC overhaul project to streamline, update, and reorganize WDFW's administrative code.

Citation of Existing Rules Affected by this Order: Repealing chapter 220-85 WAC, WAC 220-28-010 and 232-12-099; and amending WAC 220-47-001, 220-47-121, and 220-56-315.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Adopted under notice filed as WSR 13-14-118 on July 3, 2013.

Changes Other than Editing from Proposed to Adopted Version: Some small editing changes were made from the proposed to the adopted version. However, these were all technical changes rather than substantive. Changes include amending WAC titles for uniformity, correcting a few errors, and making minor word changes/additions for clarity. Additionally, the department withdrew the proposed amendments to WAC 220-56-112 and the repeal of WAC 232-12-082 from WSR 13-14-118 (withdrawal notice filed as WSR 14-01-052) to allow for a comprehensive rewrite of related rules at a later date.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 12.

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

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

Date Adopted: November 8, 2013.

Miranda Wecker, Chair
Fish and Wildlife Commission

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 220-28-010 Emergency regulations.

AMENDATORY SECTION (Amending WSR 07-20-006, filed 9/20/07, effective 10/21/07)

WAC 220-47-001 Puget Sound salmon—Quick reporting. All Puget Sound salmon fisheries are designated as "quick reporting required" fisheries, and commercial purchasers and receivers must comply with the provisions of WAC 220-69-240(~~(+2)~~) (14).

AMENDATORY SECTION (Amending WSR 84-13-078, filed 6/21/84)

WAC 220-47-121 Treaty Indian gear identification. It (~~shall be~~) is unlawful for any person exercising (~~his or her~~) treaty Indian fishing rights at adjudicated usual and accustomed grounds and stations within the Point No Point, Makah, Quinault, Medicine Creek, and Point Elliott treaty areas to leave any gear unattended unless there is affixed to it an identification tag of tribal affiliation and (~~specific fisherman~~) the person's valid treaty Indian identification number.

AMENDATORY SECTION (Amending WSR 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-56-315 Personal use crab, shrimp, crawfish—Unlawful acts. (1) It is unlawful to take and possess crab, shrimp, and crawfish taken for personal use except by hand or with hand dip nets, ring nets, shellfish pots, or any hand-operated instrument that will not penetrate the shell. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.380 or 77.15.382 depending on the circumstances of the violation.

(2) It is unlawful to set, fish, or pull more than 2 units of gear at any one time (~~except~~), unless otherwise provided in this subsection. A violation of this subsection is punishable under RCW 77.15.160, Infractions, or RCW 77.15.380. Unlawful recreational fishing in the second degree—Penalty, depending on the circumstances of the violation.

(a) In Puget Sound waters, it is unlawful to set, fish, or pull at any one time more than 2 units of crab gear and 2 additional units of shrimp gear.

(b) In Catch Record Card Areas 4 through 13, it is unlawful for the operator of any boat from which shrimp pots are set, fished, or pulled (~~in Catch Record Card Areas 4 through 13~~) to have on board or to fish more than 4 shrimp pots.

(c) In the Columbia River, it is unlawful to set, fish, or pull more than 3 units of crab gear (~~in the Columbia River~~).

(d) In fresh water, it is permissible to use up to 5 units of gear to fish for crawfish (~~in fresh water~~).

(3) It is unlawful for any person to operate a shellfish pot not attached to a buoy bearing that person's name, except that a second person may assist the pot owner in operation of the gear. A violation of this subsection is a misdemeanor, punishable

able under RCW 77.15.382, Unlawful use of shellfish gear for personal use purposes—Penalty.

(4) It is unlawful to salvage or attempt to salvage shellfish pot gear from Hood Canal that has been lost ~~((without))~~, unless the person first ~~((obtaining))~~ obtains a permit ~~((:))~~ issued by the director, authorizing that activity. A violation is punishable under RCW 77.15.180, Unlawful interference with fishing or hunting gear—Penalty. It is unlawful to fail to comply with all provisions of ~~((the))~~ a permit authorizing the salvage of gear from Hood Canal. A violation of this subsection is ~~((a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty))~~ RCW 77.15.750, Unlawful use of a department permit—Penalty.

(5) It is unlawful to dig for or possess ghost or mud shrimp taken for personal use by any method except hand operated suction devices or dug by hand. A violation of this subsection is ~~((a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty))~~ punishable under RCW 77.15.160, Infractions, or RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, depending on the circumstances of the violation.

(6) It is unlawful to have more than one unit of unattended gear attached to a buoy line or to fail to have a separate buoy for each unit of gear. "One unit of gear" means one ring net or one shellfish pot. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.382, Unlawful use of shellfish gear for personal use purposes—Penalty.

(7) In waters open only on certain days or certain hours during the day, except for those waters affected by the night closure set out in subsection ~~((9))~~ (8) of this section, it is unlawful to fail to remove gear from the water ~~((when))~~ if fishing for shellfish is not allowed. It is also unlawful to fail to remove gear from the water ~~((by))~~ within one hour after sunset if fishing is not allowed on the next calendar day. In waters that are open continuously, except for those waters affected by the night closure set out in subsection ~~((9))~~ (8) of this section, gear may be left in the water during ~~((the))~~ a night closure. A violation of this subsection is ~~((a misdemeanor,))~~ punishable under RCW 77.15.160, Infractions, or RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, depending on the circumstances of the violation.

(8) It is unlawful to set or pull shellfish pots, ring nets or star traps from a vessel in Catch Record Card Areas 1-13 from one hour after official sunset to one hour before official sunrise. A violation of this subsection is ~~((a misdemeanor,))~~ punishable under RCW 77.15.160, Infractions, or RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, depending on the circumstances of the violation.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 220-85-015 License moratorium review boards.

WAC 220-85-030	Moratorium advisory review boards—Secretarial and investigative assistance, place of hearings.
WAC 220-85-040	Moratorium advisory review boards—Director's action on license applications—Reasons stated in writing.
WAC 220-85-050	Moratorium advisory review boards—Who may appeal.
WAC 220-85-060	Moratorium advisory review boards—Proceedings to be informal—Rules of evidence inapplicable—Record to be kept.
WAC 220-85-070	Moratorium advisory review boards—Appeals—Requirements—Form for appeal.
WAC 220-85-080	Moratorium advisory review boards—Appeals—Time for scheduling hearings—Conduct of hearings.
WAC 220-85-090	Moratorium advisory review boards—Decisions by advisory review board—Form and content.
WAC 220-85-100	Moratorium advisory review boards—Decision on appeal by director.
WAC 220-85-110	Moratorium advisory review boards—Appeals—Information procedures optional.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-12-099 Treaty Indian fishing gear identification.

WSR 14-01-059

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 13, 2013, 9:40 a.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The department is adopting these rules with an effective date of January 1 because these rules provide rates used for refunds and property valuations during 2013.

Purpose:

- WAC 458-18-220 Refunds—Rate of interest, provides the rate of interest that applies to tax refunds made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100, and also to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. This rule has been amended to

provide the rate of interest to be used when refunding property taxes paid in 2014.

- WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component, provides the interest rate and the property tax component used to value farm and agricultural lands classified under chapter 84.34 RCW (open space program). This rule has been amended to provide the interest rate and property tax component to be used when valuing classified farm and agricultural land during the 2014 assessment year.
- WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation, provides the rate of inflation used to calculate interest on deferred special benefit assessments when farm and agricultural or timber land is removed or withdrawn from classification under chapter 84.34 RCW (open space program). This rule has been amended to provide the rate of inflation used in calculating interest for deferred special benefit assessments of land removed or withdrawn during 2014.

Citation of Existing Rules Affected by this Order: Amending WAC 458-18-220 Refunds—Rate of interest, 458-30-262 Agricultural land valuation—Interest rate—Property tax component, and 458-30-590 Rate of inflation—Publication—Interest rate—Calculation.

Statutory Authority for Adoption: RCW 84.34.360, 84.34.065, 84.34.141, and 84.69.100.

Adopted under notice filed as WSR 13-20-149 on October 2, 2013.

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

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

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

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

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

Date Adopted: December 13, 2013.

Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 13-02-053, filed 12/26/12, effective 1/1/13)

WAC 458-18-220 Refunds—Rate of interest. The following rates of interest shall apply on refunds of taxes made pursuant to RCW 84.69.010 through 84.69.090 in accordance with RCW 84.69.100. The following rates shall also apply to judgments entered in favor of the plaintiff pursuant to RCW 84.68.030. The interest rate is derived from the equivalent

coupon issue yield of the average bill rate for twenty-six week treasury bills as determined at the first bill market auction conducted after June 30th of the calendar year preceding the date the taxes were paid. The rate thus determined shall be applied to the amount of the judgment or the amount of the refund, until paid:

Year tax paid	Auction Year	Rate
1984	1983	9.29%
1985	1984	11.27%
1986	1985	7.36%
1987	1986	6.11%
1988	1987	5.95%
1989	1988	7.04%
1990	1989	8.05%
1991	1990	8.01%
1992	1991	5.98%
1993	1992	3.42%
1994	1993	3.19%
1995	1994	4.92%
1996	1995	5.71%
1997	1996	5.22%
1998	1997	5.14%
1999	1998	5.06%
2000	1999	4.96%
2001	2000	5.98%
2002	2001	3.50%
2003	2002	1.73%
2004	2003	0.95%
2005	2004	1.73%
2006	2005	3.33%
2007	2006	5.09%
2008	2007	4.81%
2009	2008	2.14%
2010	2009	0.29%
2011	2010	0.21%
2012	2011	0.08%
2013	2012	0.15%
<u>2014</u>	<u>2013</u>	<u>0.085%</u>

AMENDATORY SECTION (Amending WSR 13-02-053, filed 12/26/12, effective 1/1/13)

WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component. For assessment year (~~(2013)~~) 2014, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is ~~((5.24))~~ 4.69 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	((1.30)) <u>1.29</u>	Lewis	((1.04)) <u>1.09</u>
Asotin	((1.27)) <u>1.28</u>	Lincoln	((1.26)) <u>1.25</u>
Benton	((1.15)) <u>1.16</u>	Mason	((0.95)) <u>1.05</u>
Chelan	((1.01)) <u>1.06</u>	Okanogan	((1.02)) <u>1.06</u>
Clallam	((1.03)) <u>1.11</u>	Pacific	((1.24)) <u>1.26</u>
Clark	((1.37)) <u>1.45</u>	Pend Oreille	((0.88)) <u>0.90</u>
Columbia	((1.13)) <u>1.16</u>	Pierce	((1.39)) <u>1.54</u>
Cowlitz	((1.18)) <u>1.24</u>	<u>San Juan</u>	((0.56)) <u>0.68</u>
Douglas	((1.12)) <u>1.21</u>	Skagit	((1.13)) <u>1.23</u>
Ferry	((0.92)) <u>0.94</u>	Skamania	((0.90)) <u>1.06</u>
Franklin	((1.29)) <u>1.30</u>	Snohomish	((1.24)) <u>1.30</u>
Garfield	((1.03)) <u>1.13</u>	Spokane	((1.33)) <u>1.43</u>
Grant	((1.27)) <u>1.37</u>	Stevens	((0.98)) <u>0.99</u>
Grays Harbor	((1.16)) <u>1.22</u>	Thurston	((1.27)) <u>1.37</u>
Island	((0.84)) <u>0.87</u>	Wahkiakum	((0.90)) <u>0.96</u>
Jefferson	((0.92)) <u>0.97</u>	Walla Walla	((1.27)) <u>1.34</u>
King	((1.14)) <u>1.19</u>	Whatcom	((1.06)) <u>1.12</u>
Kitsap	((1.17)) <u>1.22</u>	Whitman	((1.33)) <u>1.38</u>
Kittitas	((0.80)) <u>0.92</u>	Yakima	((1.23)) <u>1.25</u>
Klickitat	0.90		

AMENDATORY SECTION (Amending WSR 13-02-053, filed 12/26/12, effective 1/1/13)

WAC 458-30-590 Rate of inflation—Publication—Interest rate—Calculation. (1) **Introduction.** This section sets forth the rates of inflation discussed in WAC 458-30-550. It also explains the department of revenue's obligation to

annually publish a rate of inflation and the manner in which this rate is determined.

(2) **General duty of department—Basis for inflation rate.** Each year the department determines and publishes a rule establishing an annual rate of inflation. This rate of inflation is used in computing the interest that is assessed when farm and agricultural or timber land, which are exempt from special benefit assessments, is withdrawn or removed from current use classification.

(a) The rate of inflation is based upon the implicit price deflator for personal consumption expenditures calculated by the United States Department of Commerce. This rate is used to calculate the rate of interest collected on exempt special benefit assessments.

(b) The rate is published by December 31st of each year and applies to all withdrawals or removals from farm and agricultural or timber land classification that occur the following year.

(3) **Assessment of rate of interest.** An owner of classified farm and agricultural or timber land is liable for interest on the exempt special benefit assessment. Interest accrues from the date the local improvement district is created until the land is withdrawn or removed from classification. Interest accrues and is assessed in accordance with WAC 458-30-550.

(a) Interest is assessed only for the time (years and months) the land remains classified under RCW 84.34.020 (2) or (3).

(b) If the classified land is exempt from the special benefit assessment for more than one year, the annual inflation rates are used to calculate an average rate of interest. This average is determined by adding the inflation rate for each year the classified land was exempt from the special benefit assessment after the local improvement district was created. The sum of the inflation rates is then divided by the number of years involved to determine the applicable rate of interest.

(c) Example. A local improvement district for a domestic water supply system was created in January 1990 and the owner used the statutory exemption provided in RCW 84.34.320. On July 1, 1997, the land was removed from the farm and agricultural classification. An average interest rate was calculated using the inflation rates for 1990 through 1997. The owner was then notified of the amount of previously exempt special benefit assessment, plus the average interest rate.

(4) **Rates of inflation.** The rates of inflation used to calculate the interest as required by WAC 458-30-550 are as follows:

YEAR	PERCENT	YEAR	PERCENT
1976	5.6	1977	6.5
1978	7.6	1979	11.3
1980	13.5	1981	10.3
1982	6.2	1983	3.2
1984	4.3	1985	3.5
1986	1.9	1987	3.7
1988	4.1	1989	4.8
1990	5.4	1991	4.2

YEAR	PERCENT	YEAR	PERCENT
1992	3.3	1993	2.7
1994	2.2	1995	2.3
1996	2.2	1997	2.1
1998	0.85	1999	1.42
2000	2.61	2001	1.89
2002	1.16	2003	1.84
2004	2.39	2005	2.54
2006	3.42	2007	2.08
2008	4.527	2009	-0.85 (negative)
2010	1.539	2011	2.755
2012	1.295	<u>2013</u>	<u>1.314</u>

WSR 14-01-071
PERMANENT RULES
DEPARTMENT OF HEALTH

(Board of Psychology)

[Filed December 16, 2013, 9:36 a.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Beginning January 1, 2014, RCW 43.70.422 requires licensed psychologists to complete training programs that are adopted in these rules.

Purpose: Amending WAC 246-924-230 and 246-924-240, and new WAC 246-924-255, the rules implement chapter 181, Laws of 2012 (ESHB 2366) and chapter 78, Laws of 2013 (SHB 1376), codified as RCW 43.70.422. The rules create new continuing education requirements for psychologists in suicide assessment, treatment and management, and clarify topics that must be included in approved courses.

Citation of Existing Rules Affected by this Order: Amending WAC 246-924-230 and 246-924-240.

Statutory Authority for Adoption: RCW 43.70.442(7), 18.83.090.

Other Authority: ESHB 2366 (chapter 181, Laws of 2012), SHB 1376 (chapter 78, Laws of 2013).

Adopted under notice filed as WSR 13-18-082 on September 4, 2013.

Changes Other than Editing from Proposed to Adopted Version: Only editorial changes were made.

A final cost-benefit analysis is available by contacting Betty Moe, Department of Health, P.O. Box 47852, Olympia, WA 98504, phone (360) 236-4912, fax (360) 236-2901, e-mail Betty.Moe@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 2, Repealed 0.

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

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

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

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

Date Adopted: November 15, 2013.

Thomas Wall, Ph.D
 Chair

AMENDATORY SECTION (Amending WSR 99-14-075, filed 7/6/99, effective 8/6/99)

WAC 246-924-230 Continuing education requirements. (1) ~~((The Washington state board of psychology (hereafter referred to as the board) requires))~~ To renew a license, a licensed psychologist must complete a minimum of sixty hours of continuing education ((hereafter referred to as)) (CE) every three years((-);

~~((2))~~ (a) A minimum of four hours ((credit in ethics)) must be ((included in the sixty hours required)) in ethics. Areas to be covered, depending on the licensee's primary area(s) of function are practice, consultation, research, teaching, ((and/)) or supervision.

(b) Beginning January 1, 2014, once every six years, a minimum of six hours must be training covering suicide assessment, treatment, and management as specified in WAC 246-924-255. These hours count toward the total sixty hours of CE.

(i) Except as provided in (b)(ii)(A) and (B) of this subsection, the training must be completed during the first full CE reporting period after January 1, 2014, or the first full CE period after initial licensure, whichever occurs later.

(ii) A psychologist applying for initial licensure on or after January 1, 2014, may delay completion of the first training for six years after initial licensure, if he or she can demonstrate successful completion of six-hour training in suicide assessment, treatment, and management that:

(A) Was completed no more than six years prior to the application for initial licensure; and

(B) Meets the qualifications listed in WAC 246-924-255(1).

~~((3))~~ (2) Faculty providing CE offerings shall meet the training and the full qualifications of their respective professions. All faculty shall have demonstrated an expertise in the areas in which they are instructing.

~~((4))~~ (3) The Washington state examining board ((reserves the right to)) of psychology may require any licensee to submit ((evidence, e.g., course or program certificate of training, transcript, course or workshop brochure description, evidence of attendance, etc., in addition to the affidavit form in order)) documentation to demonstrate compliance with the sixty hours of CE ((requirement)).

AMENDATORY SECTION (Amending WSR 99-14-075, filed 7/6/99, effective 8/6/99)

WAC 246-924-240 Definitions of categories of creditable (~~CE~~) continuing education. (1) All continuing education (CE) activities (~~shall~~) must be directly relevant to maintaining or increasing professional or scientific competence in psychology.

(2) Courses or workshops primarily designed to increase practice income or office efficiency, (~~while valuable to the licensee,~~) are specifically noneligible for CE credit.

(3) Program sponsors or institutes (~~should~~) will not (~~apply for, nor expect to~~) receive(~~s~~) prior or current board approval for CE status or category.

(~~Recognized activities shall include~~) (4) Courses, seminars, workshops, and postdoctoral institutes offered or sponsored by the following qualify for CE credit for a licensed psychologist:

(~~(1) Courses, seminars, workshops and post-doctoral institutes offered by~~) (a) Educational institutions chartered by a state and recognized (accredited) by a regional association of schools, colleges and universities as providing graduate level course offerings. (~~Such educational activities shall~~) Documentation must be recorded on an official transcript or certificate of completion(~~s~~);

(~~(2) Courses (including correspondence courses), seminars, workshops and post-doctoral institutes sponsored by~~) (b) The American Psychological Association(~~s~~);

(c) Regional or state psychological associations or their subchapters(~~s~~);

(d) Psychology internship training centers(~~s~~);

(e) Other professionally or scientifically recognized behavioral science organizations(~~s~~); and

(f) The Washington state examining board of psychology.

(~~(3)~~) (5) A licensed psychologist may earn credit toward the CE requirement (~~may be earned~~) through teaching an approved CE program. The CE credit earned (~~through teaching shall~~) may not exceed thirty hours every three years. Credit for teaching an approved CE program may be earned on the following basis:

(a) One credit hour for each sixty minutes actually spent teaching the program for the first event. Credit may be conferred for teaching similar subject matter only if the psychologist has actually spent an equal or greater amount of preparation time updating the subject matter to be taught on a later occasion.

(b) One credit hour for each sixty minutes actually spent participating in a panel presentation.

(6) A licensed psychologist may earn CE credit by attending an approved training in suicide assessment, treatment, and management.

NEW SECTION

WAC 246-924-255 Suicide training standards. (1) An approved training in suicide assessment, treatment, and management must:

(a) Be approved by the American Foundation for Suicide Prevention, the Suicide Prevention Resource Center, American Psychological Association, American Medical Association,

regional or state psychological associations or their subchapters, psychology internship training centers, or an equivalent organization, educational institution or association which approves training based on observation and experience or best available practices.

(b) Cover training in suicide assessment, including screening and referral, suicide treatment, and suicide management.

(c) Be provided by a single provider and must be at least six hours in length, which may be provided in one or more sessions.

(2) A licensed psychologist who is a state or local government employee is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

(3) A licensed psychologist who is an employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

(4) A licensed psychologist who obtained training under subsection (2) or (3) of this section may obtain continuing education credit for that training subject to documentation as defined in WAC 246-924-300.

WSR 14-01-077

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed December 16, 2013, 10:40 a.m., effective January 16, 2014]

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

Purpose: Occupational dose records: Chapters 246-220, 246-221, 246-222 WAC, and WAC 246-240-028.

The purpose of the adopted state rules is to be consistent with Nuclear Regulatory Commission rules (RATS 2008-1) that reduce the administrative and information collection burdens on licensees without affecting the level of protection for both the health and safety of workers and the public, and the environment.

Citation of Existing Rules Affected by this Order: Amending WAC 246-220-001, 246-220-003, 246-220-010, 246-220-020, 246-220-030, 246-220-040, 246-220-050, 246-220-090, 246-220-100, 246-221-010, 246-221-040, 246-221-060, 246-221-080, 246-221-110, 246-221-160, 246-221-220, 246-221-240, 246-221-250, 246-222-030, 246-222-040, 246-222-070, 246-222-080, and 246-240-028.

Statutory Authority for Adoption: RCW 70.98.050.

Adopted under notice filed as WSR 13-19-086 on September 18, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 23, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 23, Repealed 0.

Date Adopted: December 13, 2013.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

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

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-220-003 Scope. Except as otherwise specifically provided, these (~~(regulations)~~) rules apply to all persons who receive, possess, use, transfer, own or acquire any source of radiation, provided, however, that nothing in these (~~(regulations)~~) rules shall apply to any person to the extent such person is subject to regulation by the (~~(U.S. Nuclear Regulatory Commission)~~) NRC.*

Note: *Attention is directed to the fact that regulation by the (~~(state)~~) department of source material, by-product material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the (~~(U.S. Nuclear Regulatory Commission)~~) NRC and to (~~(Part 150 of the commission's regulations)~~) 10 C.F.R. Part 150(~~(g)~~).

AMENDATORY SECTION (Amending WSR 11-03-020, filed 1/7/11, effective 2/7/11)

WAC 246-220-010 Definitions, abbreviations, and acronyms. (~~(As used in chapters 246-220 through 246-254 WAC, these terms have the definitions set forth below.)~~) 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 will be found 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 nuclear energy and radiation, chapter 70.98 RCW.

(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 or more years of age.

(6) **"Agreement state"** means any state with which the (~~(United States Nuclear Regulatory Commission)~~) NRC has entered into an effective agreement under (~~(section 274 b-)~~) subsection 274b of the Atomic Energy Act of 1954, as amended (~~((73 Stat. 689))~~).

(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) **"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 (~~(offsite)~~) off-site response organizations to protect persons (~~(offsite)~~) off-site.

(11) **"ALI (annual limit on intake)"** (~~((ALI))~~) 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.

(12) **"APF (assigned protection factor)"** (~~((APF))~~) 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.

(13) **"Atmosphere-supplying respirator"** means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes (~~(supplied-air respirators)~~) SARs(~~(?)~~) and (~~(self-contained breathing apparatus)~~) SCBA(~~(?)~~) units.

(14) **"Background radiation"** means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that

contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the department.

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

(16) "**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 (~~((regulations))~~) rules, "radiobioassay" is an equivalent term.

(17) "**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 (~~((particular))~~) 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 commission, 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 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.

(18) "**Calendar quarter**" means at least twelve but no more than fourteen 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 (~~((regulations))~~) rules.

(19) "**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.

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

(21) "**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 days, for Class W, Weeks, from ten to one hundred days, and for Class Y, Years, of greater than one hundred days. For purposes of these (~~((regulations))~~) rules, "lung class" and "inhalation class" are equivalent terms. For "class of waste" see WAC 246-249-040.

(22) "**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.

(23) "**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 period following the intake.

(24) "**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 ($H_{E,50} = ((\&S_{gf})) \sum w_T H_{T,50}$).

(25) "**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 non-commercial 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.

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

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

(28) "**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).

(29) "**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.

(30) "**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).

(31) "**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.

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

(33) "**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.

(34) **"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 hours under conditions of light work, results in an intake of one ALI. For purposes of these ~~((regulations))~~ rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for two thousand hours in a year. DAC values are given in WAC 246-221-290.

(35) **"DAC-hour (derived air concentration-hour)"** ~~((DAC-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 DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

(36) **"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.

(37) **"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).

(38) **"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.

(39) **"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 years.

(40) **"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.

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

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

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

(44) **"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 ($H_E = (\sum w_T H_T)$).

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

(46) **"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.

(47) **"Exposure"** means (a) being exposed to ionizing radiation or to radioactive material, or (b) the quotient of ~~((AQ))~~ dQ by ~~((Am))~~ dm where ~~((AQ))~~ 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 ~~((Am))~~ 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.

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

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

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

(51) **"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.

(52) **"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.

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

(54) **"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.

(55) **"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.

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

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

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

(59) **"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 ~~((regulations))~~ rules, rooms or areas in which diagnostic X-ray systems are used for healing arts purposes are not considered high radiation areas.

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

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

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

(63) "**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.).

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

(65) "**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.

(66) "**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.

(67) "**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.

(68) "**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.

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

(70) "**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.

(71) "**LDE (lens dose equivalent)**" ~~((LDE))~~ 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).

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

(73) "**Licensed material**" means radioactive material received, possessed, used, transferred, or disposed under a general or specific license issued by the department.

(74) "**Licensee**" means any person who is licensed by the department under these rules and the act.

~~((75))~~ ~~((**"Licensing state"** means any state with regulations equivalent to the suggested state regulations for control of radiation relating to, and an effective program for, the regulatory control of NARM and which has been granted final designation by the Conference of Radiation Control Program Directors, Inc.~~

~~((76))~~ "**Loose-fitting facepiece**" means a respiratory inlet covering that is designed to form a partial seal with the face.

~~((77))~~ ~~((76))~~ "**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.

~~((78))~~ ~~((77))~~ "**Member of the public**" means an individual except when the individual is receiving an occupational dose.

~~((79))~~ ~~((78))~~ "**Minor**" means an individual less than eighteen years of age.

~~((80))~~ ~~((79))~~ "**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 ~~((regulations))~~ rules, radiation monitoring and radiation protection monitoring are equivalent terms.

~~((81))~~ ~~((80))~~ "**NARM**" means any naturally occurring or accelerator-produced radioactive material. It does not include by-product, source, or special nuclear material. ~~((For the purpose of meeting the definition of a licensing state by the Conference of Radiation Control Program Directors, Inc. (CRCPD), NARM refers only to discrete sources of NARM. Diffuse sources of NARM are excluded from consideration by the CRCPD for Licensing State designation purposes.~~

~~((82))~~ ~~((81))~~ "**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, subassembly, 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.

~~((83))~~ ~~((82))~~ "**Natural radioactivity**" means radioactivity of naturally occurring nuclides.

~~((84))~~ ~~((83))~~ "**NDA**" means a new drug application which has been submitted to the United States Food and Drug Administration.

~~((85))~~ ~~((84))~~ "**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.

~~((86))~~ ~~((85))~~ "**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 cat-

aract formation is an example of a nonstochastic effect. For purposes of these rules, a "deterministic effect" is an equivalent term.

~~((87))~~ ~~"Nuclear Regulatory Commission" (NRC))~~
 (86) **"NRC"** means the ~~((United States))~~ U.S. Nuclear Regulatory Commission ~~((or its duly authorized representatives))~~.

~~((88))~~ (87) **"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.

~~((89))~~ (88) **"Ore refineries"** means all processors of a radioactive material ore.

~~((90))~~ (89) **"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.

~~((91))~~ (90) **"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.

~~((92))~~ (91) **"Person"** means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, ~~((agency, political subdivision of this state, any other state or political subdivision or agency thereof,))~~ and any legal successor, representative, agent or agency of the foregoing ~~((, but shall not include federal government agencies))~~.

~~((93))~~ (92) **"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.

~~((94))~~ (93) **"Personnel monitoring equipment."** See individual monitoring devices.

~~((95))~~ (94) **"PET"** means positron emission tomography.

~~((96))~~ (95) **"Pharmacist"** means an individual licensed by this state to compound and dispense drugs, and poisons.

~~((97))~~ (96) **"Physician"** means a medical doctor or doctor of osteopathy licensed by this state to prescribe and dispense drugs in the practice of medicine.

~~((98))~~ (97) **"Planned special exposure"** means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

~~((99))~~ (98) **"Positive pressure respirator"** means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

~~((100))~~ (99) **"PAPR (powered air-purifying respirator)"** ~~((PAPR))~~ means an air-purifying respirator that uses

a blower to force the ambient air through air-purifying elements to the inlet covering.

~~((101))~~ (100) **"Practitioner"** means an individual licensed by the state ~~((in))~~ for the practice of a healing art (i.e., physician, dentist, podiatrist, chiropractor, etc.).

~~((102))~~ (101) **"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.

~~((103))~~ (102) **"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.

~~((104))~~ (103) **"Qualified expert"** means an individual who has demonstrated to the satisfaction of the department ~~((he/she has))~~ 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.

~~((105))~~ (104) **"OLFT (qualitative fit test)"** ~~((OLFT))~~ means a pass/fail fit test to assess the adequacy of respirator fit ~~((that))~~ which relies on the individual's response to the test agent.

~~((106))~~ (105) **"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 ~~((regulations))~~ rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence

rate per unit dose equivalent or the appropriate Q value from Table II to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

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

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

~~((107))~~ **(106) "QNFT (quantitative fit test)"** ~~((QNFT))~~ means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

~~((108))~~ **(107) "Quarter"** means a period of time equal to one-fourth of the year observed by the licensee, approximately thirteen 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.

~~((109))~~ **(108) "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).

~~((110))~~ **(109) "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 ~~((regulations,))~~ **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. ~~((Radiation, as used in these regulations, does not include magnetic fields or nonionizing radiation, like radio-waves or microwaves, visible, infrared, or ultraviolet light.~~

~~((111))~~ **(110) "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 centimeters from the source of radiation or from any surface that the radiation penetrates.

~~((112))~~ **(111) "Radiation machine"** means any device capable of producing ionizing radiation except those devices with radioactive material(s) as the only source of radiation.

~~((113))~~ **(112) "Radiation safety officer"** means an individual who has the knowledge and responsibility to apply appropriate radiation protection ~~((regulations))~~ **rules** and has been assigned that responsibility by the licensee or registrant.

~~((114))~~ **(113) "Radiation source."** See "Source of radiation."

~~((115))~~ **(114) "Radioactive material"** means any material (solid, liquid, or gas) which emits radiation spontaneously.

~~((116))~~ **(115) "Radioactive waste"** means any radioactive material which is no longer of use and intended for disposal or treatment for the purposes of disposal.

~~((117))~~ **(116) "Radioactivity"** means the transformation of unstable atomic nuclei by the emission of radiation.

~~((118))~~ **(117) "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.

~~((119))~~ **(118) "Registrable item"** means any ~~((radia-tion))~~ **radiation-producing** machine except those exempted by RCW 70.98.180 or exempted by the department under the authority of RCW 70.98.080.

~~((120))~~ **(119) "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.

~~((121))~~ **(120) "Registration"** means registration with the department in accordance with the ~~((regulations))~~ **rules** adopted by the department.

~~((122))~~ **(121) "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.

~~((123))~~ **(122) "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).

~~((124))~~ **(123) "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.

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

((126)) (125) **"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.

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

((128)) (127) **"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.

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

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

((131)) (130) **"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).

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

((133)) (132) **"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 ($1 \text{ Sv} = 100 \text{ rem}$).

((134)) (133) **"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 ((effsite)) off-site response organizations to protect persons ((effsite)) off-site.

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

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

((137)) (136) **"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.

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

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

((140)) (139) **"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 ((United States Nuclear Regulatory Commission)) 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.

((141)) (140) **"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 grams of contained U-235; uranium-233 in quantities not exceeding two hundred grams; plutonium in quantities not exceeding two hundred grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of the ratios for all of the kinds of special nuclear material in combination shall not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula:

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

((142)) (141) **"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 ((regulations)) rules, probabilistic effect is an equivalent term.

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

((144)) (143) **"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.

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

~~((146))~~ (145) **"These rules"** mean all parts of the rules for radiation protection of the state of Washington.

~~((147))~~ (146) **"Tight-fitting facepiece"** means a respiratory inlet covering that forms a complete seal with the face.

~~((148))~~ (147) **"TEDE (total effective dose equivalent)"** (~~((TEDE))~~) means the sum of the ~~((deep))~~ effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

~~((149))~~ (148) **"TODE (total organ dose equivalent)"** (~~((TODE))~~) means the sum of the deep dose equivalent and the committed dose equivalent to the organ or tissue receiving the highest dose.

~~((150))~~ (149) **"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).

~~((151))~~ (150) **"Unrefined and unprocessed ore"** means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

~~((152))~~ (151) **"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.

~~((153))~~ (152) **"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.

~~((154))~~ (153) **"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.

~~((155))~~ (154) **"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.

~~((156))~~ (155) **"Waste handling licensees"** mean persons licensed to receive and store radioactive wastes prior to disposal (~~(and)~~) or persons licensed to dispose of radioactive waste.

~~((157))~~ (156) **"Week"** means seven consecutive days starting on Sunday.

~~((158))~~ (157) **"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.

~~((159))~~ (158) **"Whole body"** means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

~~((160))~~ (159) **"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 years or older are subjected routinely to work involving radiation, then the students are considered to be workers. Individuals of less than eighteen years of age shall meet the requirements of WAC 246-221-050.

~~((161))~~ (160) **"WL (working level)"** (~~((WL))~~) 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.

~~((162))~~ (161) **"WLM (working level month)"** (~~((WLM))~~) means an exposure to one working level for one hundred seventy hours — two thousand working hours per year divided by twelve months per year is approximately equal to one hundred seventy hours per month.

~~((163))~~ (162) "Year" means the period of time beginning in January used to determine compliance with the provisions of these ~~((regulations))~~ 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.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-220-020 Records. (1) Each licensee or registrant shall maintain records relating to the receipt, use, storage, transfer, or disposal of radiation sources, and such other records as the department may require which will permit the determination of the extent of occupational and public exposure from such radiation sources. Copies of these records shall be submitted to the department on request. These requirements are subject to such exemptions as may be provided by department rules.

(2) In accordance with the Public Disclosure Act, the department shall make available to each licensee ~~((and/))~~ or registrant departmental records pertaining to that licensee or registrant, ~~((at his/her))~~ upon written request.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-220-030 Inspections. (1) Each licensee ~~((and/))~~ or registrant shall afford the department at all reasonable times opportunity to inspect sources of radiation and the premises and facilities wherein such sources of radiation are used or stored.

(2) Each licensee ~~((and/))~~ or registrant shall make available to the department for inspection, upon reasonable notice, records maintained pursuant to these ~~((regulations))~~ rules.

(3) In accordance with the Public Disclosure Act, the department shall make available to each licensee ~~((and/))~~ or registrant a copy of every inspection report written which covers any inspection of the licensee's ~~((and/))~~ or registrant's source of radiation, records, premises, or facilities. Copies of these inspection records shall be submitted to the licensee or registrant by the department upon ~~((the))~~ receipt of the written request of the licensee ~~((and/))~~ or registrant.

(4) Any person who resists, impedes, or in any manner interferes with ~~((;))~~ any individual who performs inspections which are related to any activity or facility registration/license issued by the department is subject to immediate license ~~((and/))~~ or registration certificate revocation as well as applicable civil and criminal penalties.

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-220-040 Tests and surveys. (1) Each licensee and registrant shall perform upon instructions from the department, or shall permit the department to perform, such reasonable tests and surveys as the department deems appropriate or necessary including, but not limited to, tests and surveys of:

(a) Sources of radiation;

(b) Facilities wherein sources of radiation are used or stored;

(c) Radiation detection and monitoring instruments; and

(d) Other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

(2) In accordance with the Public Disclosure Act, the department shall provide to the licensee ~~((and/))~~ or registrant copies of all tests and surveys conducted on the licensee's ~~((and/))~~ or registrant's sources of radiation, upon written request of the licensee ~~((and/))~~ or registrant. The department shall acknowledge the receipt of the request in a timely manner by telephone or letter.

AMENDATORY SECTION (Amending Order 184, filed 7/24/91, effective 8/24/91)

WAC 246-220-050 Exemptions. (1) The department may, upon application ~~((therefor))~~ or upon its own initiative, grant such exemptions or exceptions from the requirements of these ~~((regulations))~~ rules as it determines are authorized by law and will not result in undue hazard to public health and safety or property.

(2) Any U.S. Department of Energy contractor or subcontractor and any ~~((U.S. Nuclear Regulatory Commission))~~ NRC contractor or subcontractor of the following categories operating within this state is exempt from these ~~((regulations))~~ rules to the extent that such contractor or subcontractor under the applicable contract receives, possesses, uses, transfers or acquires sources of radiation:

(a) Prime contractors performing work for the Department of Energy at U.S. government-owned or controlled sites, including the transportation of sources of radiation to or from such sites and the performance of contract services during temporary interruptions of such transportation;

(b) Prime contractors of the Department of Energy performing research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof;

(c) Prime contractors of the Department of Energy using or operating nuclear reactors or other nuclear devices in a United States government-owned vehicle or vessel; and

(d) Any other prime contractor or subcontractor of the Department of Energy or ~~((of))~~ the ~~((Nuclear Regulatory Commission))~~ NRC when the state and the ~~((Nuclear Regulatory Commission))~~ NRC jointly determine (i) that the exemption of the prime contractor or subcontractor is authorized by law, and (ii) that under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-220-090 Communications. All communications and reports concerning these ~~((regulations))~~ rules, and applications filed thereunder, should be addressed to the Department of Health, ~~((Division))~~ Office of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827.

The emergency telephone number (~~(in Seattle,)~~) is 206-682-5327 or 206 (NUCLEAR).

AMENDATORY SECTION (Amending Order 121, filed 12/27/90, effective 1/31/91)

WAC 246-220-100 Additional requirements. The department may, by rule (~~(regulation,)~~) or order, impose upon any licensee or registrant such requirements in addition to those established in these (~~(regulations))~~ rules as it deems appropriate or necessary to minimize danger to public health and safety or property.

AMENDATORY SECTION (Amending WSR 04-23-093, filed 11/17/04, effective 12/18/04)

WAC 246-221-010 Occupational dose limits for adults. (1) The licensee or registrant shall control the occupational dose to individual adults, except for planned special exposures pursuant to WAC 246-221-030, to the following dose limits:

(a) An annual limit, which is the more limiting of:

(i) The total effective dose equivalent being equal to 0.05 Sv (5 rem); or

(ii) The sum of the (~~(deep))~~ effective dose equivalent and the committed dose equivalent to any individual organ or tissue other than the lens of the eye being equal to 0.50 Sv (50 rem).

(b) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities which are:

(i) A lens dose equivalent of 0.15 Sv (15 rem); and

(ii) A shallow dose equivalent of 0.50 Sv (50 rem) to the skin of the whole body or to the skin of any extremity.

(2) Doses received in excess of the annual limits, including doses received during accidents, emergencies, and planned special exposures, must be subtracted from the limits specified in WAC 246-221-030 for planned special exposures that the individual may receive during the current year and during the individual's lifetime.

(3) (~~(The assigned deep dose equivalent shall be for the portion))~~ When the external exposure is determined by measurement with an external personal monitoring device, the deep-dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the NRC or the department. The assigned deep-dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent shall be the dose averaged over the contiguous ten square centimeters of skin receiving the highest exposure. The deep dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of the individual monitoring are unavailable.

(4) Derived air concentration (DAC) and annual limit on intake (ALI) values are specified in WAC 246-221-290 and may be used to determine the individual's dose and to demonstrate compliance with the occupational dose limits.

(5) Notwithstanding the annual dose limits, the licensee shall limit the soluble uranium intake by an individual to 10 milligrams in a week in consideration of chemical toxicity.

(6) The licensee or registrant shall reduce the dose that an individual may be allowed to receive in the current year by the amount of occupational dose received while employed by any other person during the current year as determined in accordance with WAC 246-221-020.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-040 Determination of internal exposure of individuals to concentrations of radioactive materials in restricted areas. (1) For purposes of assessing dose used to determine compliance with occupational dose equivalent limits, the licensee shall, when required under WAC 246-221-100, take suitable and timely measurements of:

(a) Concentrations of radioactive materials in air in work areas; or

(b) Quantities of radionuclides in the body; or

(c) Quantities of radionuclides excreted from the body; or

(d) Combinations of these measurements.

(2) Unless respiratory protective equipment is used, as provided in WAC 246-221-117, or the assessment of intake is based on bioassays, the licensee shall assume that an individual inhales radioactive material at the airborne concentration in which the individual is present.

(3) When specific information on the physical and biochemical properties of the radionuclides taken into the body or the behavior or the material in an individual is known, the licensee may:

(a) Use that information to calculate the committed effective dose equivalent, and, if used, the licensee shall document that information in the individual's record; and

(b) Upon prior approval of the department, adjust the DAC or ALI values to reflect the actual physical and chemical characteristics of airborne radioactive material, for example, aerosol size distribution or density; and

(c) Separately assess the contribution of fractional intakes of Class D, W, or Y compounds of a given radionuclide to the committed effective dose equivalent. See WAC 246-221-290.

(4) If the licensee chooses to assess intakes of Class Y material using the measurements given in subsection (1)(b) or (c) of this section, the licensee may delay the recording and reporting of the assessments for periods up to seven months, unless otherwise required by WAC 246-221-250 or 246-221-260. This delay permits the licensee to make additional measurements basic to the assessments.

(5) If the identity and concentration of each radionuclide in a mixture are known, the fraction of the DAC applicable to the mixture for use in calculating DAC-hours shall be either:

(a) The sum of the ratios of the concentration to the appropriate DAC value, that is, D, W, or Y, from WAC 246-221-290 for each radionuclide in the mixture; or

(b) The ratio of the total concentration for all radionuclides in the mixture to the most restrictive DAC value for any radionuclide in the mixture.

(6) If the identity of each radionuclide in a mixture is known, but the concentration of one or more of the radionuclides in the mixture is not known, the DAC for the mixture shall be the most restrictive DAC of any radionuclide in the mixture.

(7) When a mixture of radionuclides in air exists, a licensee may disregard certain radionuclides in the mixture if:

(a) The licensee uses the total activity of the mixture in demonstrating compliance with the dose limits in WAC 246-221-010 and in complying with the monitoring requirements in WAC 246-221-100; and

(b) The concentration of any radionuclide disregarded is less than ten percent of its DAC; and

(c) The sum of these percentages for all of the radionuclides disregarded in the mixture does not exceed thirty percent.

(8) When determining the committed effective dose equivalent, the following information may be considered:

(a) In order to calculate the committed effective dose equivalent, the licensee may assume that the inhalation of one ALI, or an exposure of 2,000 DAC-hours, results in a committed effective dose equivalent of 0.05 Sv (5 rem) for radionuclides that have their ALIs or DACs based on the committed effective dose equivalent.

(b) For an ALI and the associated DAC determined by the nonstochastic organ dose limit of 0.50 Sv (50 rem), the intake of radionuclides that would result in a committed effective dose equivalent of 0.05 Sv (5 rem), that is, the stochastic ALI, is listed in parentheses in Table I of WAC 246-221-290. The licensee may, as a simplifying assumption, use the stochastic ALIs to determine committed effective dose equivalent. However, if the licensee uses the stochastic ALIs, the licensee shall also demonstrate that the limit in WAC 246-221-010 (1)(a)(ii) is met.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-221-060 Dose limits for individual members of the public. (1) Each licensee or registrant shall conduct operations so that:

(a) The total effective dose equivalent to individual members of the public from the licensed or registered operation does not exceed 1 mSv (0.1 rem) in a year, exclusive of the dose contributions 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, and from the licensee's or registrant's disposal of radioactive material into sanitary sewerage in accordance with WAC 246-221-190; and

(b) The dose in any unrestricted area from external sources, exclusive of the dose contributions from patients administered radioactive material and released under chapter 246-240 WAC, does not exceed 0.02 mSv (0.002 rem) in any one hour.

(2) If the licensee or registrant permits members of the public to have access to restricted areas, they shall be

escorted and the limits for members of the public continue to apply to those individuals.

(3) Notwithstanding subsection (1) of this section, a licensee or registrant may continue to operate a facility constructed and put into operation prior to January 1, 1994, where the annual dose limit for an individual member of the public is more than 1 mSv (0.1 rem) and less than 5 mSv (0.5 rem) total effective dose equivalent, if:

(a) The facility's approved operating conditions for each radiation source remain the same. Any increase in the following operating conditions shall require reevaluation by the department and ~~((/or))~~ modification of the facility shielding applicable to the source of radiation to meet the 1 mSv (0.1 rem) total effective dose equivalent limit for individual members of the public: Size of the radiation source, workload, or occupancy factors associated with the source of radiation; and

(b) Any change in the permanent shielding of the facility due to remodeling, repair or replacement requires the facility to meet the 1 mSv (0.1 rem) total effective dose equivalent limit for individual members of the public for areas affected by that portion of the shielding.

(4) Each licensee or registrant shall maintain records sufficient to demonstrate compliance with the dose limit for individual members of the public.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-080 Leak tests. (1) Each sealed radioactive source possessed under the provisions of a specific license, other than hydrogen-3 (tritium), with a half-life greater than thirty days and in any form other than gas, shall be tested and results obtained for leakage ~~((and))~~ or contamination prior to initial use and at six-month intervals or as specified by the license, except that each source designed for the purpose of emitting alpha particles shall be tested at intervals not to exceed three months. If at any other time there is reason to suspect that a sealed source might have been damaged, it shall be tested for leakage and results obtained before further use. In the absence of a certificate from a transferor indicating that a test for leakage has been made within six months prior to the transfer (three months for a source designed to emit alpha particles), the sealed source shall not be put into use until tested and the results received.

(2) Leak tests shall be capable of detecting the presence of 185 Bq (0.005 microcurie) of removable contamination. The results of leak tests made pursuant to subsection (1) of this section shall be recorded in units of becquerel or microcuries and shall be maintained for inspection by the department. Any test conducted pursuant to subsection (1) of this section which reveals the presence of 185 Bq (0.005 microcurie) or more of removable contamination shall be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the source from use shall take action to prevent the spread of contamination and shall cause it to be decontaminated and repaired or to be disposed in accordance with WAC 246-232-080. If a sealed source shows evidence of leaking, a report shall be filed with the department within

five days of the test, describing the equipment involved, the test results, and the corrective action taken.

(3) Test samples shall be taken from the sealed source or from the internal surfaces or the opening of the container in which the sealed source is stored or from surfaces of devices or equipment in which the sealed source is permanently mounted. Tests for contamination and leakage may be made by wiping appropriate accessible surfaces on which one might expect contamination to accumulate and measuring these wipes for transferred contamination. Test samples shall also be taken from the interior surfaces of the container in which a sealed source of radium is stored.

(4) Leak tests are required for sealed radioactive sources that are greater than 3.7 MBq (100 microcuries) for beta and gamma emitting sources and greater than 370 KBq (10 microcuries) for sources designed to emit alpha particles.

(5) Tests for leakage or contamination shall be performed by persons specifically authorized by the department, an agreement state, ~~((a licensing state,))~~ or the ~~((United States Nuclear Regulatory Commission))~~ NRC to perform such services.

AMENDATORY SECTION (Amending WSR 01-05-110, filed 2/21/01, effective 3/24/01)

WAC 246-221-110 Surveys. (1) Each licensee or registrant shall make or cause to be made such surveys, as defined in WAC 246-220-010, as may be necessary for the licensee or registrant to establish compliance with these regulations and are reasonable under the circumstances to evaluate the magnitude and extent of radiation levels, concentrations or quantities of radioactive material, and potential radiation hazards. Records of such surveys shall be preserved as specified in WAC 246-221-230. Information on performing surveys may be found in the ~~((United States Nuclear Regulatory Commission's))~~ NRC's Regulatory Guide 8.23 "Radiation Safety Surveys at Medical Institutions."

(2) The licensee shall ensure that instruments and equipment used for quantitative radiation measurements, for example, dose rate and effluent monitoring, are calibrated annually at intervals not to exceed thirteen months for the radiation measured.

AMENDATORY SECTION (Amending WSR 99-15-105, filed 7/21/99, effective 8/21/99)

WAC 246-221-160 Procedures for picking up, receiving, and opening packages. (1)~~((a))~~ Each licensee who expects to receive a package containing quantities of radioactive material in excess of the Type A₁ or A₂ quantities specified in WAC 246-231-200 shall make arrangements to receive:

~~((i))~~ (a) The package when it is offered for delivery by the carrier; or

~~((ii))~~ (b) Immediate notification from the carrier of the arrival of the package at the carrier's terminal.

~~((b))~~ (2) Each licensee who picks up a package of radioactive material from a carrier's terminal shall pick up the package expeditiously upon receipt of notification from the carrier of its arrival.

~~((2))~~ (3) Each licensee shall:

(a) Monitor for radioactive contamination the external surfaces of any package labeled with a Radioactive White I, Yellow II or Yellow III label unless the package contains only radioactive material in the form of gas or in special form as defined in WAC 246-231-010; and

(b) Monitor the radiation levels of the external surfaces of any package labeled with a Radioactive White I, Yellow II or Yellow III label unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in WAC 246-231-200; and

(c) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if the package has evidence of potential contamination, such as packages that are crushed, wet, or damaged.

~~((3-The))~~ (4) Monitoring shall be performed:

(a) Immediately upon receipt if there is evidence of package degradation or any other evidence of potential contamination or excessive radiation levels; or

(b) As soon as practicable after receipt, but no later than three hours after the package is received at the licensee's facility if received during the licensee's normal working hours, or no later than three hours from the beginning of the next working day if received after normal working hours.

~~((4))~~ (5) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the department when:

(a) For normal shipments, removable radioactive surface contamination exceeds either 22 dpm/~~((em2))~~ cm^2 for beta-gamma emitting radionuclides, all radionuclides with half-lives less than ten days, natural uranium, natural thorium, uranium-235, uranium-238, thorium-232, and thorium-228 and thorium 230 when contained in ores or concentrates; or 2.2 dpm/~~((em2))~~ cm^2 for all other alpha emitting radionuclides; or

(b) For exclusive use shipments, removable radioactive surface contamination exceeds either 220 dpm/~~((em2))~~ cm^2 for beta-gamma emitting radionuclides, all radionuclides with half-lives less than ten days, natural uranium, natural thorium, uranium-235, uranium-238, thorium-232, and thorium-228 and thorium 230 when contained in ores or concentrates; or 22 dpm/~~((em2))~~ cm^2 for all other alpha emitting radionuclides; or

(c) For normal or exclusive use shipments, external radiation levels exceed two mSv/hour (200 millirem per hour) at any point on the external surface of the package; or

(d) For exclusive use shipments where the shipment is made in a closed transport vehicle, packages are secured in a fixed position, and no loading or unloading occurs between the beginning and end of transportation, external radiation levels exceed ten mSv/hour (1000 millirem per hour) at any point on the external surface of the package.

~~((5))~~ (6) Each licensee shall establish and maintain procedures for safely opening packages in which radioactive material is received, and shall assure that such procedures are followed and that due consideration is given to instructions for the type of package being opened and the monitoring of potentially contaminated packaging material (including packages containing radioactive material in gaseous form) to

assure that only background levels of radiation are present prior to disposal of such material as nonradioactive waste.

~~((6))~~ (7) Licensees transferring special form sources to and from a work site in vehicles owned or operated by the licensee are exempt from the contamination monitoring requirements of subsection ~~((2))~~ (3)(a) of this section but are not exempt from the monitoring requirement in subsection ~~((2))~~ (3)(b) of this section for measuring radiation levels to ensure that the source is still properly lodged in its shield.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-220 Disposal of specific wastes. (1)

Any licensee may dispose of the following licensed material without regard to its radioactivity:

(a) 1.85 KBq (0.05 microcurie(~~s~~)) or less of hydrogen-3 or carbon-14, per gram of medium, used for liquid scintillation counting; and

(b) 1.85 KBq (0.05 microcurie(~~s~~)) or less of hydrogen-3 or carbon-14, per gram of animal tissue averaged over the weight of the entire animal.

(2) The licensee shall not dispose of tissue under this section in a manner that would permit its use either as food for humans or as animal feed; and

(3) Nothing in this section, however, relieves the licensee of maintaining records showing the receipt, transfer and disposal of such ~~((byproduct))~~ radioactive material as specified in WAC 246-220-020; and

(4) Nothing in this section relieves the licensee from complying with other applicable federal, state and local regulations governing any other toxic or hazardous property of these materials.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-221-240 Reports of stolen, lost or missing radiation sources. (1) Each licensee and ~~((or))~~ registrant shall report by telephone (206(~~+~~)-682-5327) and confirm promptly by letter, telegram, mailgram, or facsimile to the State Department of Health, ~~((Division))~~ Office of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827.

(a) Immediately after its occurrence becomes known to the licensee, stolen, lost, or missing radioactive material in an aggregate quantity equal to or greater than one thousand times the quantity specified in WAC 246-221-300, Appendix B; or

(b) Within thirty days after its occurrence becomes known to the licensee, lost, stolen, or missing radioactive material in an aggregate quantity greater than ten times the quantity specified in ~~((Appendix C))~~ WAC 246-221-300, Appendix B that is still missing or any item not exempted in chapter 246-232 WAC; or

(c) Immediately after its occurrence becomes known to the registrant, a stolen, lost, or missing radiation machine.

(2) Each licensee or registrant required to make a report pursuant to subsection (1) of this section shall, within thirty

days after making the telephone report, make a written report to the department setting forth the following information:

(a) A description of the licensed or registered source of radiation involved, including, for radioactive material, the kind, quantity, and chemical and physical form; and, for radiation machines, the manufacturer, model and serial number, type and maximum energy of radiation emitted; and

(b) A description of the circumstances under which the loss or theft occurred; and

(c) A statement of disposition, or probable disposition, of the licensed or registered source of radiation involved; and

(d) Exposures of individuals to radiation, circumstances under which the exposures occurred, and the possible total effective dose equivalent to persons in unrestricted areas; and

(e) Actions that have been taken, or will be taken, to recover the source of radiation; and

(f) Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed or registered sources of radiation.

(3) Subsequent to filing the written report, the licensee or registrant shall also report additional substantive information on the loss or theft within thirty days after the licensee or registrant learns of such information.

(4) The licensee or registrant shall prepare any report filed with the department pursuant to this section so that names of individuals who may have received exposure to radiation are stated in a separate and detachable portion of the report.

AMENDATORY SECTION (Amending WSR 01-05-110, filed 2/21/01, effective 3/24/01)

WAC 246-221-250 Notification of incidents. (1) **Immediate notification.** Notwithstanding other requirements for notification, each licensee and ~~((or))~~ registrant shall immediately (as soon as possible but no later than four hours after discovery of an incident) notify the State Department of Health, ~~((Division))~~ Office of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827, by telephone (206(~~+~~)-682-5327) and confirming letter, telegram, mailgram, or facsimile of any incident involving any radiation source which may have caused or threatens to cause:

(a) An individual to receive:

(i) A total effective dose equivalent of 0.25 Sv (25 rem) or more;

(ii) A lens dose equivalent of 0.75 Sv (75 rem) or more; or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent of 2.5 Sv (250 rem) or more;

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for twenty-four hours, the individual could have received an intake five times the occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures; or

(c) The loss of ability to take immediate protective actions necessary to avoid exposure to sources of radiation or releases of radioactive material that could exceed regulatory

limits. Events which could cause such a loss of ability include fires, explosions, toxic gas releases, etc.

(2) **Twenty-four hour notification.** Each licensee and ~~((or))~~ registrant shall within twenty-four hours of discovery of the event, notify the State Department of Health, ~~((Division))~~ Office of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827, by telephone (206~~((+))~~)-682-5327) and confirming letter, telegram, mailgram, or facsimile of any incident involving any radiation source possessed which may have caused or threatens to cause:

(a) An individual to receive, in a period of twenty-four hours:

(i) A total effective dose equivalent exceeding 0.05 Sv (5 rem);

(ii) A lens dose equivalent exceeding 0.15 Sv (15 rem); or

(iii) A shallow dose equivalent to the skin or extremities or a total organ dose equivalent exceeding 0.5 Sv (50 rem);

(b) The release of radioactive material, inside or outside of a restricted area, so that, had an individual been present for twenty-four hours, the individual could have received an intake in excess of one occupational ALI. This provision does not apply to locations where personnel are not normally stationed during routine operations, such as hot-cells or process enclosures;

(c) An unplanned contamination incident that:

(i) Requires access to the contaminated area, by workers or the general public, to be restricted for more than twenty-four hours by imposing additional radiological controls or by prohibiting entry into the area;

(ii) Involves a quantity of material greater than five times the lowest annual limit on intake specified in WAC 246-221-290; and

(iii) Has access to the area restricted for a reason other than to allow radionuclides with a half-life of less than twenty-four hours to decay prior to decontamination;

(d) Equipment failure or inability to function as designed when:

(i) The equipment is required by regulation or license condition to prevent releases exceeding regulatory limits, to prevent exposures to radiation and radioactive material exceeding regulatory limits or to mitigate the consequences of an accident;

(ii) The equipment is required to be available and operable at the time it becomes disabled or fails to function; and

(iii) No redundant equipment is available and operable to perform the required safety functions;

(e) An unplanned medical treatment at a medical facility of an individual with ~~((spreadable))~~ **removable** radioactive contamination on the individual's clothing or body; or

(f) An unplanned fire or explosion damaging any radioactive material or any device, container or equipment containing radioactive material when:

(i) The quantity of radioactive material involved is greater than five times the lowest annual limit on intake specified in WAC 246-221-290; and

(ii) The damage affects the integrity of the radioactive material or its container.

(3) For each occurrence requiring notification pursuant to this section, a prompt investigation of the situation shall be

initiated by the licensee/registrant. A written report of the findings of the investigation shall be sent to the department within thirty days.

(4) The licensee or registrant shall prepare each report filed with the department under this section so that names of individuals who have received exposure to sources of radiation are stated in a separate and detachable portion of the report.

Any report filed with the department under this section shall contain the information described in WAC 246-221-260 (2) and (3).

(5) The provisions of this section do not apply to doses that result from planned special exposures, provided such doses are within the limits for planned special exposures and are reported pursuant to WAC 246-221-265.

(6) Telephone notifications that do not involve immediate or twenty-four hour notification should be made to the ~~((Olympia))~~ **Tumwater** office (360-236-3300).

(7) Telephone notification required under this section shall include, to the extent that the information is available at the time of notification:

(a) The caller's name and call-back telephone number;

(b) A description of the incident including date and time;

(c) The exact location of the incident;

(d) The radionuclides, quantities, and chemical and physical forms of the radioactive materials involved; and

(e) Any personnel radiation exposure data available.

AMENDATORY SECTION (Amending WSR 99-05-012, filed 2/5/99, effective 3/8/99)

WAC 246-222-030 Instructions to workers. (1) All individuals likely to receive in a year an occupational dose in excess of 1 mSv (100 mrem):

(a) Shall be kept informed of the storage, transfer, or use of sources of radiation in the licensee's or registrant's facility;

(b) Shall be instructed in the health protection considerations for the individual and potential offspring associated with exposure to radiation or radioactive material, in precautions or procedures to minimize exposure, and in the purposes and functions of protective devices employed;

(c) Shall be instructed in, and instructed to observe, to the extent within the worker's control, the applicable provisions of these regulations, department form RHF-3 "Notice to employees," and license conditions for the protection of personnel from exposure~~((s))~~ to radiation or radioactive material;

(d) Shall be instructed that any worker or representative of workers who believes that a violation of the regulations, license conditions, or unnecessary exposure to radiation exists or occurred, may request an inspection by the department by oral or written notification. The notification shall set forth specific grounds for the complaint. Any such notification to the department is confidential;

(e) Shall be instructed of their right to notify the department if the individual suspects improper actions by a licensee/registrant, or conditions which may lead to a violation of these regulations, the license/registration, or unnecessary exposure to radiation or radioactive materials;

(f) Shall be instructed that employment discrimination by a licensee/registrant against an employee because of actions described in this chapter is prohibited;

(g) Shall be instructed as to their responsibility to report promptly to the licensee or registrant any condition which may constitute, lead to, or cause a violation of the act, these regulations, and licenses or unnecessary exposure to radiation or radioactive material;

(h) Shall be instructed in the appropriate response to warnings made in the event of any unusual occurrence or malfunction that may involve exposure to radiation or radioactive material; and

(i) Shall be advised as to the radiation exposure reports which workers shall be furnished pursuant to WAC 246-222-040.

(2) Records of these instructions described in subsection (1) of this section for all individuals working in, or frequenting any portion of, a restricted area shall be maintained for inspection by the department until further notice. These records shall include a copy of this section, or all the information contained in this section, along with a dated verification signature by the employee stating that the individual has received an explanation of the instructions contained in this section.

(3) In determining those individuals subject to the requirements of subsection (1) of this section, licensees and registrants shall take into consideration assigned activities during normal and abnormal situations involving exposure to sources of radiation which can reasonably be expected to occur during the life of a licensed or registered facility. The extent of these instructions shall be commensurate with potential radiological health protection considerations present in the workplace.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-222-040 Notifications and reports to individuals. (1) Radiation exposure data for an individual and the results of any measurements, analyses, and calculations of radioactive material deposited or retained in the body of an individual shall be reported to the individual as specified in this section. The information reported shall include data and results obtained pursuant to these regulations, orders, and license conditions, as shown in records maintained by the licensee or registrant pursuant to these regulations. Each notification and report shall:

(a) Be in writing;

(b) Include appropriate identifying data such as the name of the licensee or registrant, the name of the individual, and the individual's identification number, preferably Social Security number;

(c) Include the individual's exposure information; and

(d) Contain the following statement:

"This report is furnished to you under the provisions of the Washington state department of health, ((division)) office of radiation protection, rules ((and regulations)) for radiation protection. You should preserve this report for further reference."

(2) Each licensee or registrant shall advise each worker annually of the worker's dose as shown in records maintained by the licensee or registrant pursuant to WAC 246-221-090, 246-221-100, and 246-221-230.

(3) At the request of a worker formerly engaged in work controlled by the licensee or the registrant, each licensee or registrant shall furnish to each worker or former worker a report of the worker's dose due to exposure to radiation or radioactive material upon termination. For the purposes of this section, termination means the end of employment with the licensee or the end of a work assignment in the licensee's restricted area(s) in a given calendar quarter without expectation, or specific scheduling, of reentry into such restricted area(s) during the remainder of that calendar quarter. Such report shall be furnished within thirty days from the time the request is made, or within thirty days after the exposure of the individual has been determined by the licensee or registrant, whichever is later; shall cover, within the period of time specified in the request, the dose record for each year in which the worker's activities involved exposure to radiation from radioactive material licensed by, or radiation machines registered with the department; and shall include the dates and locations of work under the license or registration in which the worker participated during this period.

(4) In addition to the requirements of subsection (3) of this section, at the request of a worker who is terminating employment with the licensee or registrant in work involving radiation exposure, during the current year, each licensee or registrant shall provide at termination to each such worker, or to the worker's designee a written report regarding the radiation dose received by that worker from operations of the licensee or registrant during the current year. If the most recent individual monitoring results are not available at that time, a written estimate of the dose shall be provided together with a clear indication that this is an estimate.

(5) When a licensee or registrant is required pursuant to WAC 246-221-250, 246-221-260, or 246-221-265 to report to the department any exposure of an identified occupationally exposed individual, or an identified member of the public, to radiation or radioactive material, the licensee or the registrant shall also provide the individual a written report on the individual's exposure data included therein. Such reports shall be transmitted at a time not later than the transmittal to the department.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-222-070 Requests by workers for inspections. (1) Any worker or representative of workers who believes that a violation of the act, of these regulations, or of license conditions exists or has occurred in work under a license or registration with regard to radiological working conditions in which the worker is engaged, may request an inspection by giving notice of the alleged violation to the Washington state department of health, ((division)) office of radiation protection. Any such notice shall be in writing, shall set forth the specific grounds for the notice, and shall be signed by the worker or representative of the workers. A copy shall be provided to the licensee or registrant by the office of

radiation protection no later than at the time of inspection except that, upon the request of the worker giving such notice, his or her name and the name of individuals referred to therein shall not appear in such copy or on any record published, released, or made available by the department, except for good cause shown.

(2) If, upon receipt of such notice, the inspector for the ~~((division))~~ office of radiation protection determines that the complaint meets the requirements set forth in subsection (1) of this section, and that there are reasonable grounds to believe that the alleged violation exists or has occurred, the inspector shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists or has occurred. Inspections pursuant to this section need not be limited to matters referred to in the complaint.

(3) No licensee or registrant shall discharge or in any manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under these regulations or has testified or is about to testify in any such proceeding or because of the exercise by such worker on behalf of the worker or other workers of any option afforded by this chapter.

AMENDATORY SECTION (Amending WSR 98-13-037, filed 6/8/98, effective 7/9/98)

WAC 246-222-080 Inspections not warranted—Informal review. (1) If the department of health, ~~((division))~~ office of radiation protection determines, with respect to a complaint under WAC 246-222-070 that an inspection is not warranted because there are no reasonable grounds to believe that a violation exists or has occurred, the ~~((division))~~ office of radiation protection shall notify the complainant in writing of such determination.

(a) If the complaint resulted from activities concerning naturally occurring or accelerator produced radioactive materials ~~((and))~~ or radiation producing machines: The complainant may obtain review of such determination by submitting a written statement of position to the Assistant Director, Division of Industrial Safety and Health, P.O. Box 4600, Olympia, Washington 98504-4600. Such request for informal review will be processed according to the provisions of WAC 296-350-460 and the provisions of the interagency agreement between the department of labor and industries and the department of health, ~~((division))~~ office of radiation protection, if any.

(b) If the complaint resulted from activities concerning ~~((byproduct))~~ radioactive material ~~((, source material, and/or special nuclear material))~~: The complainant may obtain review of such determination by submitting a written statement of position with the Department of Health, ~~((Division))~~ Office of Radiation Protection, P.O. Box 47827, Olympia, Washington 98504-7827 (360-236-3300), who will provide the licensee or registrant with a copy of such statement by certified mail, excluding, at the request of the complainant, the name of the complainant. The licensee or registrant may submit an opposing written statement of position with the department of health, ~~((division))~~ office of radiation protection, who will provide the complainant with a copy of such statement by certified mail. Upon the request of the com-

plainant, the department of health may hold an informal conference in which the complainant and the licensee or registrant may orally present their views. An informal conference may also be held at the request of the licensee or registrant, but disclosure of the identity of the complainant will be made only following receipt of written authorization from the complainant. After considering all written or oral views presented, the department of health shall affirm, modify, or reverse the determination of the ~~((division))~~ office of radiation protection and furnish the complainant and the licensee or registrant a written notification of the decision and the reason(s) ~~((therefor))~~ therefore.

(2) If the ~~((division))~~ office of radiation protection determines that an inspection is not warranted because the requirements of WAC 246-222-070(1) have not been met, it shall notify the complainant in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of WAC 246-222-070(1).

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-240-028 Exemptions regarding Type A specific licenses of broad scope. A licensee possessing a Type A specific license of broad scope for medical use, issued under WAC 246-235-090, is exempt from the provisions of:

(1) WAC 246-240-019 regarding the need to file an amendment to the license for medical use of radioactive material, as described in WAC 246-240-501;

(2) WAC 246-240-022~~(2)~~;

(3) WAC 246-240-022~~(5)~~ regarding additions to or changes in the areas of use at the addresses identified in the application or on the license;

(4) WAC 246-240-025 ~~(1)(a)(i)~~;

~~(5) WAC 246-240-025))~~ for an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist;

~~((6))~~ ~~(5)~~ WAC 246-240-025 ~~(1)(d)~~ regarding additions to or changes in the areas of use identified in the application or on the license where radioactive material is used in accordance with either WAC 246-240-151 or 246-240-157;

~~((7))~~ ~~(6)~~ WAC ~~((246-240-122))~~ 246-240-066.

WSR 14-01-097

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed December 17, 2013, 3:31 p.m., effective January 1, 2014]

Effective Date of Rule: January 1, 2014.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The forest land value rule is required by statute (RCW 84.33.140) to be effective on January 1, 2014. The stumpage value rule is also required by statute (RCW 84.33.091) to be effective on January 1, 2014.

Purpose: WAC 458-40-540 contains the forest land values, which must be adjusted annually by a statutory formula

contained in RCW 84.33.140(3). This rule has been amended to provide county assessors with forest land values for the 2014 assessment year.

WAC 458-40-660 contains the stumpage values used by harvesters of timber to calculate the timber excise tax. This rule is being revised to provide the stumpage values to be used during the first half of 2014.

Citation of Existing Rules Affected by this Order: Amending WAC 458-40-540 Forest land values and 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments.

Statutory Authority for Adoption: RCW 82.01.060(2), 82.32.300, and 84.33.096.

Other Authority: RCW 84.33.091.

Adopted under notice filed as WSR 13-22-066 on November 5, 2013.

A final cost-benefit analysis is available by contacting Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1574, fax (360) 534-1606, e-mail markbohe@dor.wa.gov.

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

Number of Sections Adopted at 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 0, Repealed 0.

Date Adopted: December 17, 2013.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-02-034, filed 12/21/12, effective 1/1/13)

WAC 458-40-540 Forest land values—((2013)) 2014. The forest land values, per acre, for each grade of forest land for the ((2013)) 2014 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	((2013)) 2014 VALUES PER ACRE
1	1	\$191
	2	189
	3	177
	4	128
2	1	161
	2	156
	3	149
	4	107

LAND GRADE	OPERABILITY CLASS	((2013)) 2014 VALUES PER ACRE
3	1	125
	2	121
	3	120
	4	93
4	1	97
	2	94
	3	93
	4	70
5	1	70
	2	63
	3	62
	4	43
6	1	35
	2	33
	3	33
	4	31
7	1	16
	2	16
	3	15
	4	15
8	1	11)
	1	\$189
	2	187
	3	175
1	4	127
	1	160
	2	155
	3	148
2	4	106
	1	124
	2	120
	3	119
3	4	92
	1	96
	2	93
	3	92
4	4	69
	1	69
	2	62
	3	61
5	4	43
	1	35
	2	33
	3	33
6	4	31
	1	16
	2	16
	3	15
7	4	15

LAND GRADE	OPERABILITY CLASS	((2013)) 2014 VALUES PER ACRE
<u>8</u>	<u>1</u>	<u>1</u>

AMENDATORY SECTION (Amending WSR 13-14-056, filed 6/28/13, effective 7/1/13)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((July)) January 1 through ((December 31, 2013)) June 30, 2014:

**Washington State Department of Revenue
STUMPAGE VALUE TABLE**

((July)) January 1 through ((December 31, 2013)) June 30, 2014

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Starting July 1, 2012, there are no separate Quality Codes per Species Code.

((Species Name	Species-Code	SVA (Stumpage-Value Area)	Haul Zone				
			1	2	3	4	5
Douglas-fir ⁽²⁾	DF	1	\$392	\$385	\$378	\$371	\$364
		2	388	381	374	367	360
		3	308	301	294	287	280
		4	442	435	428	421	414
		5	424	417	410	403	396
		6	224	217	210	203	196
Western-Hemlock and Other Conifer ⁽³⁾	WH	1	361	354	347	340	333
		2	353	346	339	332	325
		3	260	253	246	239	232
		4	340	333	326	319	312
		5	352	345	338	331	324
		6	211	204	197	190	183
Western-Red-cedar ⁽⁴⁾	RC	1-5	808	801	794	787	780
		6	483	476	469	462	455
Ponderosa-Pine ⁽⁵⁾	PP	1-6	190	183	176	169	162
Red-Alder	RA	1-5	479	472	465	458	451
Black Cotton-wood	BC	1-5	90	83	76	69	62
Other Hard-wood	OH	1-5	229	222	215	208	201
		6	23	16	9	2	1
Douglas-fir Poles & Piles	DFL	1-5	789	782	775	768	761
Western-Red-cedar Poles	RCL	1-5	1379	1372	1365	1358	1351
		6	854	847	840	833	826

((Species Name	Species-Code	SVA (Stumpage-Value Area)	Haul Zone				
			1	2	3	4	5
Chipwood ⁽⁶⁾	CHW	1-5	10	9	8	7	6
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	27	26	25	24	23
RC Shake & Shingle-Blocks ⁽⁷⁾	RCS	1-5	164	157	150	143	136
		Posts ⁽⁸⁾	LPP	1-5	0.35	0.35	0.35
DF-Christmas-Trees ⁽⁹⁾	DFX	1-5	0.25	0.25	0.25	0.25	0.25
Other-Christmas-Trees ⁽⁹⁾	TFX	1-5	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

(2) Includes Western Larch.

(3) Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine, or any other conifer not listed on this page.

(4) Includes Alaska Cedar.

(5) Includes Western White Pine.

(6) Stumpage value per ton.

(7) Stumpage value per cord.

(8) Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.

(9) Stumpage Value per lineal foot.))

Species Name	Species Code	SVA (Stumpage-Value Area)	Haul Zone				
			1	2	3	4	5
Douglas-fir ⁽²⁾	DF	1	\$440	\$433	\$426	\$419	\$412
		2	462	455	448	441	434
		3	379	372	365	358	351
		4	476	469	462	455	448
		5	437	430	423	416	409
		6	250	243	236	229	222
Western-Hemlock and Other Conifer ⁽³⁾	WH	1	380	373	366	359	352
		2	392	385	378	371	364
		3	344	337	330	323	316
		4	357	350	343	336	329
		5	337	330	323	316	309
		6	253	246	239	232	225
Western-Red-cedar ⁽⁴⁾	RC	1-5	972	965	958	951	944
		6	654	647	640	633	626
Ponderosa-Pine ⁽⁵⁾	PP	1-6	209	202	195	188	181
		Red Alder	RA	1-5	464	457	450
Black Cotton-wood	BC	1-5	52	45	38	31	24
Other Hard-wood	OH	1-5	262	255	248	241	234
		6	23	16	9	2	1

Species Name	Species Code	SVA (Stumpage Value Area)	Haul Zone				
			1	2	3	4	5
Douglas-fir Poles & Piles	DFL	1-5	802	795	788	781	774
Western Redcedar Poles	RCL	1-5	1401	1394	1387	1380	1373
		6	913	906	899	892	885
Chipwood ⁽⁶⁾	CHW	1-5	6	5	4	3	2
		6	1	1	1	1	1
Small Logs ⁽⁶⁾	SML	6	30	29	28	27	26
RC Shake & Shingle Blocks ⁽⁷⁾	RCS	1-5	178	171	164	157	150
Posts ⁽⁸⁾	LPP	1-5	0.35	0.35	0.35	0.35	0.35
DF Christmas Trees ⁽⁹⁾	DFX	1-5	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	TFX	1-5	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes all Hemlock, Spruce and true Fir species, Lodgepole Pine, or any other conifer not listed on this page.
- (4) Includes Alaska-Cedar.
- (5) Includes Western White Pine.
- (6) Stumpage value per ton.
- (7) Stumpage value per cord.
- (8) Includes Lodgepole posts and other posts, Stumpage Value per 8 lineal feet or portion thereof.
- (9) Stumpage Value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber** - Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber** - Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ((July)) January 1 through ((December 31, 2013)) June 30, 2014:

TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, and 5
 ((July)) January 1 through ((December 31, 2013)) June 30, 2014

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	-\$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	-\$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	-\$50.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Area 6**
(July) January 1 through ((December 31, 2013)) June 30, 2014

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 8 thousand board feet per acre and less.	-\$8.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$50.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$75.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	-\$145.00
Note:	A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.	
III. Remote island adjustment:		
	For timber harvested from a remote island	-\$50.00

TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
	SVAs 1 through 5 only:	\$((9.00)) <u>8.00</u>

Note: This adjustment only applies to published MBF sawlog values.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

- (i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.
- (ii) Others not listed; volcanic activity, earthquake.
- (b) Causes that do not qualify for adjustment include:
 - (i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and
 - (ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.
- (c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.
- (d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.
- (5) **Forest-derived biomass**, has a \$0/ton stumpage value.

WSR 14-01-102
PERMANENT RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed December 18, 2013, 10:08 a.m., effective January 18, 2014]

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

Purpose: The health care authority (HCA) is implementing new regulations under the federal Patient Protection and Affordable Care Act in preparation for healthcare reform in Washington state. This includes the establishment of stand-alone rules for medical assistance programs, which are required under 2E2SHB 1738, Laws of 2011, which creates HCA as the single state agency responsible for the administration and supervision of Washington's medicaid program (Washington apple health).

Citation of Existing Rules Affected by this Order: Amending WAC 182-509-0340.

Statutory Authority for Adoption: RCW 41.05.021.

Other Authority: Patient Protection and Affordable Care Act (Public Law 111-148); 42 C.F.R. § 431, 435, and 457; and 45 C.F.R. § 155.

Adopted under notice filed as WSR 13-22-077 on November 5, 2013.

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

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

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

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

Date Adopted: December 18, 2013.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-509-0340 MAGI income—American Indian/Alaska Native excluded income. For the purposes of determining eligibility of American Indians/Alaska Natives for modified adjusted gross income (MAGI)-based Washington apple health (WAH) (see WAC 182-509-0300), the agency excludes from MAGI the following:

(1) Distributions from Alaska Native corporations and settlement trusts;

(2) Distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation, or otherwise under the supervision of the Secretary of the Interior;

(3) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest from:

(a) Rights of ownership or possession in any lands described in (b) of this subsection; or

(b) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources.

(4) Distributions resulting from real property ownership interests related to natural resources and improvements that are:

(a) Located on or near a reservation or within the most recent boundaries of a prior federal reservation; or

(b) Resulting from the exercise of federally protected rights relating to such real property ownership interests.

(5) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom;

(6) Student financial assistance provided under the Bureau of Indian Affairs education programs; and

(7) Any other applicable income exclusion as provided by federal law, regulation, or rule, including the Internal Revenue Code, treasury regulations, and Internal Revenue Service revenue rulings, revenue procedures, notices, and other official tax guidance.

WSR 14-01-112

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed December 18, 2013, 10:58 a.m., effective January 18, 2014]

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

Purpose: The department is amending chapter 388-106 WAC due to changes the Centers for Medicare and Medicaid Services (CMS) made to eligibility rules for the federal

money follows the person (MFP) grant. As part of the Patient Affordable Care Act (PACA), MFP eligibility was reduced from a six-month institutional stay to ninety qualified days and medicaid eligibility changed from thirty days to one day immediately prior to discharge. Current WAC does not reflect these changes. PACA also extended the grant from an expiration of 2013 to 2020. Due to this extension, it was also decided that additional rule needed to be add to roads to community living WAC for use in planned action notices and exception to rule requests.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0250, 388-106-0255, 388-106-0260, and 388-106-0265.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: Affordable Care Act (ACA).

Adopted under notice filed as WSR 13-21-125 on October 22, 2013.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 4, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 4, Repealed 0.

Date Adopted: December 11, 2013.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-18-046, filed 8/29/08, effective 9/29/08)

WAC 388-106-0250 What is the roads to community living (RCL) demonstration project and who is eligible?

(1) Roads to community living (RCL) is a demonstration project, funded by a ~~((five-year))~~ "money follows the person" grant originally authorized under section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Patient Affordable Care Act (P.L. 111-148). It is designed to test services and supports which help customers move from institutional settings into the community if they wish to.

(2) To be eligible, the department must assess your needs in CARE per chapter 388-106 or 388-845 WAC and you must:

(a) Have a continuous ~~((six months or longer))~~ stay of at least 90 days in a qualified institutional setting (hospital, nursing home, residential habilitation center);

(i) Any days you were solely receiving medicare-paid short term rehabilitation services are excluded from the 90 days.

(ii) If you are discharging from a state psychiatric hospital and meet the length of stay criteria, you must be under age 22, or age 65 and older.

(b) ~~((Be medicaid eligible for at least thirty days))~~ Have received at least one day of medicaid-paid inpatient services immediately prior to discharge from the institutional setting;

(c) Intend to move to a qualified community setting (home, apartment, licensed residential setting with four or less unrelated individuals); and

(d) ~~((Not be able to move into a qualified community setting using available long term care resources))~~ On the day of discharge, you must be functionally and financially eligible for, but are not required to receive, medicaid waiver or state plan services.

~~((3) When you are discharged to a qualified community setting, you are eligible for continuous medicaid coverage until your RCL services end.))~~

AMENDATORY SECTION (Amending WSR 08-18-046, filed 8/29/08, effective 9/29/08)

~~WAC 388-106-0255 ((How long are RCL services available to me)) What services may I receive under RCL? ((Roads to community living (RCL) can be authorized for no longer than three hundred sixty-five days in a qualified community setting. Day one of the demonstration year is the day you move from the institutional setting into the qualified community setting. Day three hundred sixty-five is the last day you can receive demonstration services.)) Following eligibility and case management criteria outlined in chapters 388-106 or 388-845 WAC:~~

(1) The state plan or medicaid waiver services for which you would otherwise be eligible;

(2) You may receive additional RCL demonstration services; and

(3) When you are discharged to a qualified community setting, you are eligible for continuous medicaid coverage until your RCL services end.

NEW SECTION

WAC 388-106-0256 When do RCL services start? (1) RCL services to prepare for your discharge may begin while you are in the institution.

(2) After discharge, roads to community living (RCL) can be authorized for no longer than three hundred sixty-five days in a qualified community setting. Day one of the demonstration year is the day you move from the institutional setting into the qualified community setting. Day three hundred sixty-five is the last day you can receive demonstration services.

NEW SECTION

WAC 388-106-0257 How do I remain eligible for RCL? You remain eligible for RCL until any of the following occur:

- (1) Reach the end of your demonstration year;
- (2) Return to an institution for longer than 30 days (you can re-enroll later);
- (3) Move out of state; or

- (4) No longer want the service.

AMENDATORY SECTION (Amending WSR 08-18-046, filed 8/29/08, effective 9/29/08)

WAC 388-106-0260 How do I pay for RCL services?

Depending on your income and resources, you may be required to ~~((pay participation))~~ participate toward the cost of ~~((your))~~ the services you receive under RCL, including personal care and demonstration services, as outlined in chapters 388-515 or 388-106 WAC.

NEW SECTION

WAC 388-106-0261 How does the department determine the number of hours or the payment rate for my personal care in RCL? (1) The number of personal care hours you receive is determined by the CARE assessment as outlined in chapter 388-106 WAC.

(2) The payment rate structure for residential personal care received in a residential facility is outlined in chapter 388-106 WAC.

NEW SECTION

WAC 388-106-0262 What may change the number of hours or payment rate for my personal care in RCL? The maximum number of in-home personal care hours or payment rate you can receive may change:

(1) When you have a change in any of the criteria listed in WAC 388-106-0125, 388-106-0115, 388-106-0120 and/or 388-106-0130; or

(2) Because you meet the criteria in WAC 388-440-0001, an exception to rule is approved by the department.

AMENDATORY SECTION (Amending WSR 08-18-046, filed 8/29/08, effective 9/29/08)

WAC 388-106-0265 Do I have the right to ~~((a fair))~~ an administrative hearing while receiving RCL services?

Yes, you may request ~~((a fair))~~ an administrative hearing based on the rules outlined in WAC 388-106-1305 to contest eligibility decisions made by the department. Once your three hundred sixty-five days of roads to community living (RCL) eligibility end, per WAC ~~((388-106-0255))~~ 388-106-0256, you may not request ~~((a fair))~~ an administrative hearing to contest the conclusion of RCL services or to request an extension.