

WSR 15-20-010
PERMANENT RULES
DEPARTMENT OF CORRECTIONS

[Filed September 24, 2015, 8:44 a.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: To reflect changes to the department of corrections (DOC) institutional industries programs. Achieve more consistent operation of institutional industries programs.

Citation of Existing Rules Affected by this Order: Amending WAC 137-80-010, 137-80-020, 137-80-030, 137-80-040, 137-80-050, and 137-80-060.

Statutory Authority for Adoption: RCW 72.01.090.

Other Authority: RCW 72.09.100.

Adopted under notice filed as WSR 15-11-067 on May 19, 2015.

Changes Other than Editing from Proposed to Adopted Version: Added to WAC 137-80-090(3): DOC and the entity requesting offender services will negotiate responsibility to provide PPE, equipment and tools for each distinct work project. The negotiated outcome will be written in the work project description for that project.

A final cost-benefit analysis is available by contacting Debra Eisen, P.O. Box 41114, Olympia, WA 98504-1114, phone (360) 725-8363, fax (360) 664-2009, e-mail debra.eisen@doc.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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 9, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 6, Repealed 0.

Date Adopted: September 16, 2015.

Bernard Warner
Secretary

Chapter 137-80 WAC

((INSTITUTIONAL)) CORRECTIONAL INDUSTRIES AND PROGRAMS

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-80-010 Purpose. These rules and regulations are adopted pursuant to and in accordance with chapter 34.05 RCW. The purpose is to provide standards and procedures ~~((for the operation of the division of institutional industries))~~ necessary to ensure the implementation of a comprehensive offender work program. (See RCW 72.09.015(32).) The headings and captions for the above classes are used for con-

venience only and do not constitute a part hereof. The use of the term "class" to identify a work program does not restrict the department to a singular description of an offender work program within that class or the use of other offender work programs authorized by separate statute. The secretary may adopt policies providing further guidance for establishing, among other things, offender participation eligibility and security requirements for each class of work program.

AMENDATORY SECTION (Amending WSR 07-12-073, filed 6/5/07, effective 7/6/07)

WAC 137-80-020 Definitions. ~~((1))~~ "Secretary" means the secretary of the department of corrections or his/her designee.

(2) "Program administrator" means the administrator of the institutional industries program appointed by the secretary.

(3) "Institutional industries board of directors" means the board established by the authority of the Corrections Reform Act of 1981, RCW 72.09.070.

(4) "Free venture industries" means any industry producing goods or services for sale to both the public and private sector which is operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. Inmates shall be paid a wage by the organization of not less than sixty percent of the approximate prevailing wage within the state for the occupation, as determined by the director, or minimum wage, whichever is greater.

(5) "Tax reduction industries" means any state owned and operated enterprises designed to reduce the cost for services and goods for tax supported agencies and for nonprofit organizations which assist persons who are poor or infirm. Products of these enterprises may be sold to public agencies and to nonprofit organizations which assist persons who are poor or infirm. Inmates shall be paid for their work on a gratuity scale, approved by the director, which shall not exceed the federal minimum wage.

(6) "Institutional support industries" means any industry operated by the department of corrections designed and managed to provide basic work training and experience to the inmate. All able and eligible inmates who are assigned work and who are not working in other classes of industries are included in this class. Inmates shall be paid for their work in accordance with an inmate gratuity scale adopted by the secretary.

(7) "Community work industries" means any industry operated by the department of corrections designed and managed to provide services in the inmate's resident community at a reduced cost. Services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations which assist the poor or infirm. Inmates shall receive a gratuity from a unit of local government which shall not exceed the minimum wage.

(8) "Community restitution programs" means any program operated by the state, local unit of government, or a nonprofit agency which assists persons who are poor or infirm which is subject to supervision by the department of corrections which enables an offender, placed on probation,

to work off all or part of a community service order as ordered by the sentencing court.

(9) "Department" means the department of corrections.

(10) "Institutional industries" means the program within the department of corrections charged with developing and managing comprehensive work programs to provide work skills, work experience and exposure to the work ethic for offenders under the jurisdiction of the department-)) (1) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time, or imposed as part of a sentence, and served in the community subject to controls placed on the offender's movement and activities by the department. (See RCW 9.94A.030.)

(2) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(3) "Community supervision" means a period of time during which a convicted offender, while living in the community, is subject to crime-related prohibitions and other sentence conditions imposed by a court. (See RCW 9.94B.020 (2).)

(4) "Contracting entity" means a for-profit corporation, a public benefit nonprofit corporation, or public agency, as these terms are defined herein.

(5) "Correctional facility" means a facility, prison, or institution operated directly or by contract by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

(6) "Correctional industries advisory committee" or "committee" means the committee created under RCW 72.09.070 to make recommendations to the secretary regarding the implementation of RCW 72.09.100.

(7) "Crew supervisor" means a department or other public agency employee who provides security and custody supervision of offenders and coordinates offender transportation to offender work program sites.

(8) "Department" means the department of corrections.

(9) "DOSH" means the division of occupational safety and health, the part of the Washington state department of labor and industries (L&I) that develops and enforces safety and health rules.

(10) "For-profit corporation" means a corporation of two or more persons having a joint or common economic interest and is engaged in any lawful business under RCW 23B.03.-010.

(11) "Good-will project" means a type of Class IV project, the cost of which is paid by the department of corrections and the criteria for which is determined by the secretary or designee.

(12) "Gratuity" means the sum of money paid to an offender, in accordance with an hourly rate scale approved by the department, when the offender works in an eligible class industry.

(13) "Not-for-profit corporation" or "nonprofit corporation" means a corporation or organization, no part of the income of which is distributable to its members, directors, or officers.

(14) "Offender" (formerly "inmate") means a person committed to the custody of the department including, but not limited to, persons residing in a correctional institution or

facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction. (See RCW 72.09.015(17).)

(15) "Offender work program" means comprehensive work programs designed to provide work skills, work experience and exposure to the work ethic for offenders.

(16) "Program director (director)" means the administrator of the correctional industries program appointed by the secretary.

(17) "Project agreement" means the written agreement required between a prison and a public benefit nonprofit corporation or a public agency for offenders to perform Class IV good-will projects.

(18) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. (See RCW 39.34.020(1).)

(19) "Public benefit nonprofit corporation" means a corporation or an organization no part of the income of which is distributable to its members, directors, or officers and that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501 (c)(3) or is specifically exempted from the requirement to apply for its tax exempt status under 26 U.S.C. Sec. 501 (c)(3). (See RCW 24.03.005.)

(20) "Secretary" means the secretary of the department of corrections or his/her designee.

(21) "Work location" means the location where offenders perform the services or create the products requested by the contracting entity; over which the contracting entity has the right of access or control and includes, but is not limited to, all workplaces covered by industrial insurance under Title 51 RCW, as now adopted or hereafter amended.

(22) "Work project description" means a localized agreement that operates under a master Class IV or Class V contract to detail the responsibilities of each party for each distinct project.

(23) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

(24) "Worker" means an offender who provides his or her personal labor, whether manual labor or otherwise, to the department or to another entity contracting with the department for such labor, as permitted by law.

AMENDATORY SECTION (Amending WSR 82-18-042, filed 8/27/82)

WAC 137-80-030 Establishment of ((inmate)) offender programs. In order to provide a comprehensive work program the department, in following the recommendation of the legislature, has adopted the following classes of work programs ((are adopted)) and made variations thereof:

- (1) Class I: Free venture industries;
- (2) Class II: Tax reduction industries;

- (3) Class III: Institutional support industries;
- (4) Class IV: Community work (~~((industries))~~
crews; and
- (5) Class V: (~~((Community service programs))~~
Restitution, work release and com-
munity supervision or custody.

~~((The above listed classes of work programs are adopted as codified in RCW 72.09.100. The secretary shall set forth department policy for the establishment of each class of work program, regulating, among others, inmates participation and wages, space rental and contracts for inmate employment.))~~

NEW SECTION

WAC 137-80-031 Class I: Free venture industries.

(1) The employer model industries in this class shall be operated and managed in total or in part by any for-profit or non-profit corporation pursuant to an agreement between the corporation and the department. The corporation shall produce goods or services for sale to both the public and private sector.

(2) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(3) The department shall review these proposed industries, including any potential new Class I industries work program or the significant expansion of an existing Class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new Class I correctional industries work program, or an agreement for a significant expansion of an existing Class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(4) The department shall supply appropriate security and custody services without charge to the participating firms.

(5) Offenders who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the program director of correctional industries. If the program director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(6) An offender who is employed in the Class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

NEW SECTION

WAC 137-80-032 Class II: Tax reduction industries.

(1) The department may establish Class II industry work programs that are closely patterned after private sector industries but are designed primarily to reduce the cost of goods and services. Goods produced and services provided by Class II

work programs shall be provided at a reduced cost and only be available to the department, other tax-supported agencies and nonprofit corporations.

(a) The industries selected for development within this class shall, as much as possible, match the available pool of offender work skills and aptitudes with the work opportunities in the free community. Offenders working in Class II work programs do so at their own free choice.

(b) Except as provided in RCW 39.26.251 and this section, the products and services of this class, including purchased products and services necessary for a complete product line, may be sold by the department to the following:

- (i) Public agencies;
- (ii) Nonprofit corporations;
- (iii) Private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit corporation;

(iv) An employee and immediate family members of an employee of the department;

(v) A person under the supervision of the department and his or her immediate family members; and

(vi) A licensed health professional for the sole purpose of providing eyeglasses to enrollees of the state medical program at no more than the health professional's cost of acquisition.

(c) The secretary may issue guidance governing the type and quantity of items that may be purchased for other than resale purpose and sold under (b)(iv) and (v) of this subsection.

(d) Clothing manufactured by an industry in this class may be donated to public benefit nonprofit corporations that provide clothing free of charge to low-income persons, but under no circumstance shall uniforms to be worn by correctional officers employed with the department be made or assembled by offenders under the custody of the department.

(2) Security and custody services shall be provided at state expense by the department.

(3) The department may establish Class II work programs operated and managed in partnership with a public benefit nonprofit corporation pursuant to a contract between the corporation and the department to provide goods and/or services. The work programs may provide job training to offenders and may allow those offenders who have successfully completed a public benefit nonprofit corporation's job training program to request work assignment to the work program.

NEW SECTION

WAC 137-80-033 Class III: Institutional work programs.

(1) Class III work programs are operated by the department to support internal prison operation and maintenance needs and if possible, offset tax and other public support costs. Offenders are assigned to Class III work programs.

(2) A contract is not required for Class III programs.

(3) Each prison will determine its own Class III work programs.

(4) Whenever possible, Class III programs will provide forty hours per week of basic work, or work training and

experience, to help offenders to qualify for better offender work programs and/or work in the community upon release.

(5) With approval of the secretary, a facility may, by written contract, partner with a public benefit nonprofit corporation to provide job specific training and work to offenders within the prison. Work performed by the offenders must be designed to produce goods or services for public agencies and/or public benefit nonprofit corporations at a reduced cost.

After completion of training, offenders may request assignment to the Class III program in the prison in which they received job specific training. Offenders assigned to such Class III programs may be required by the program to fulfill occasional job related work requirements outside of the prison. Offenders approved for such occasional off-site Class III work will be:

(a) Approved, in advance, by the prison superintendent or designee, to leave the prison grounds;

(b) Escorted by, and under the supervision of, a correctional officer at all times;

(c) Required to return to the prison the same day. Overnight absences will not be permitted; and

(d) Covered by the department offender health plan in the event of illness or injury while away from the prison.

(6) The department will:

(a) Screen and select the offenders to work in Class III programs based upon eligibility criteria developed by the department;

(b) At state expense, provide the management, work supervision, security and custody services required for all Class III programs; and

(c) Compensate offenders for work in Class III programs.

(i) The compensation paid to offenders working under Class III job descriptions shall be the same across all prisons for work that utilizes the same or similar job descriptions; and

(ii) Compensation will be paid to offenders in accordance with a payment scale established by the department for Class III work.

(7) Offenders working in Class III work programs are not eligible for industrial insurance benefits. (See RCW 72.60.102.)

NEW SECTION

WAC 137-80-034 Class IV: Community work crews.

Offenders in Class IV work status reside in facilities contracted for, owned or licensed by the department and participate in programs that have both education and work components.

(1) Prisons may provide two types of Class IV services. The first or standard type (standard), will constitute the majority of Class IV work and be paid for by the recipient of the services. The second and far less frequent type of Class IV service, a "good-will project" (project), will be paid for by the department.

(2) The secretary or designee will determine the criteria for Class IV good-will projects.

(3) Class IV services may be initiated by the department or provided at the request of a public agency or a public benefit nonprofit corporation.

(4) Class IV services are performed in the community, generally in the county in which the prison is located.

(5) Offenders in the same facility, who perform Class IV work utilizing the same or similar job descriptions, shall be compensated equally for the services that they provide.

(6) Class IV services do not require skilled labor, are not performed on private property, unless owned or operated by a public benefit nonprofit corporation, and have minimal negative impact on existing private industries or the labor force in the county where the service is provided.

(7) For standard Class IV services:

(a) The department will require:

(i) A master contract, written with program input, in the department's office of contracts and legal affairs and signed by the department secretary or contracts administrator and an authorized representative of the public agency or public benefit nonprofit corporation requesting the work; and

(ii) The master contract must be signed by both parties before a work project description, which operates under the master contract to detail the responsibilities of each party for each project, is signed and services may begin.

(b) The public agency or public benefit nonprofit corporation that requests/receives the services will:

(i) Sign a Class IV master contract and, for each distinct project, sign a work project description under that master contract;

(ii) Provide offenders with relevant job specific and site specific safety training as well as instruction in the use of any specialized equipment;

(iii) At no cost to the department, supervise the project and direct the work performed;

(iv) Pay the department directly:

(A) At the then current state mileage rate, for transporting offenders to and from the worksite each day; and

(B) Offender compensation for the work performed.

(v) At the start of each calendar quarter, pay the cost of worker's compensation insurance coverage directly to the Washington state department of labor and industries, for each hour of offender services received during the previous quarter;

(vi) At the start of each calendar quarter, report the total number of offender service hours received during the previous quarter, directly to the department of labor and industries.

(8) For good-will projects the department will:

(a) Require a written and signed "project agreement" before offenders may begin work:

(i) The project agreement template is available from DOC contracts and legal affairs for customization and completion at the facility;

(ii) The customized project agreement must be signed by the prison superintendent or designee and an authorized representative of the public benefit nonprofit or public agency; and

(iii) Must be sent to DOC contracts and legal affairs, within two calendar days after it is signed by both parties.

(b) At state expense, provide the management, work supervision, security and custody services required;

(c) Compensate offenders for work performed;

(d) At the start of each calendar quarter, pay the cost of offender worker's compensation insurance coverage directly

to the Washington state department of labor and industries, for each hour of offender good-will services provided during the previous quarter;

(e) At the start of each calendar quarter, report the total number of offender good-will service hours provided during the previous quarter, directly to the department of labor and industries; and

(f) Have the option, at its own discretion for a specific project, to conduct the advance hazardous conditions and/or materials inspection itself or waive the requirement. Any waiver of the requirement will be based upon facility experience with the project site or the work to be performed.

(9) For all Class IV services:

(a) The department will:

(i) Screen and select the offenders for work crews based upon eligibility criteria developed by the department;

(ii) Review the public agency or public benefit nonprofit's hazardous conditions/materials report to assess whether or not to provide the requested services, require specific personal protective equipment (PPE) for offenders or require site remediation by the agency or nonprofit before offenders can begin the work;

(iii) Suspend offender work where/if hazardous materials or conditions are discovered and make appropriate notifications for further assessment;

(iv) Transport offenders to and from worksites;

(v) Provide custody and security supervision of the offenders; and

(vi) Provide or coordinate the educational components of the program.

(b) The department will not reimburse any public agency or public benefit nonprofit corporation that uses offender services, for liability insurance costs associated with the services provided by offenders to the public agency or public benefit nonprofit corporation;

(c) The public agency or public benefit nonprofit corporation that requests/receives the offender services will, in accordance with WAC 296-800-160, conduct an advance hazardous conditions and materials assessment, for each distinct project and report the results using DOC Form 03-247 or other similar hazard assessment and PPE selection worksheet, to the department.

(10) Class IV correctional industries programs operated in work camps established pursuant to RCW 72.64.050 are managed under separate intergovernmental and local agreements and are exempt from these requirements.

NEW SECTION

WAC 137-80-035 Class V: Restitution, work release, and community supervision or custody. (1) Participants in this class are offenders who are:

(a) In court ordered community restitution programs;

(b) In work release status; or

(c) Under community supervision or custody.

(2) Class V programs require a master contract, written in the department's office of contracts and legal affairs and signed by the department secretary or contracts administrator and an authorized representative of the public agency or public benefit nonprofit corporation requesting the work. The

master contract must be signed by both parties before a work project description, which operates under the master contract to detail the responsibilities of each party for each project, is signed and services may begin.

(3) Class V programs may be operated by the department or by another public agency. Services in this class may only be provided to public agencies or to public benefit nonprofit corporations. The department may, by written contract, operate Class V crews that include offenders under the jurisdiction of other governmental entities. The department's authority over offenders under the jurisdiction of other governmental entities will be limited to that which is necessary for those offenders to participate on department Class V crews.

(4) When Class V programs are operated by the department, the department will:

(a) Transport offenders to and from worksites;

(b) Provide custody and security supervision of the offenders;

(c) Review the public agency or public benefit nonprofit's hazardous conditions/materials report to assess whether or not to provide the requested services, require specific personal protective equipment (PPE) for offenders or require site remediation by the agency or nonprofit before offenders can begin the work; and

(d) Suspend offender work where/if hazardous materials or conditions are discovered and make appropriate notifications for further assessment.

(5) The public agency or public benefit nonprofit corporation that receives the services will:

(a) In accordance with WAC 296-800-160, conduct an advance hazardous conditions and materials assessment for each distinct project and report the results using DOC Form 03-247 or other similar hazard assessment and PPE selection worksheet, to the department;

(b) Provide offenders with relevant job specific and site specific safety training as well as instruction in the use of any specialized equipment;

(c) At no cost to the department, supervise the project and direct the work performed by the offenders;

(d) Pay the department, at the then current state mileage rate, for transporting offenders to and from the project site each day;

(e) At the start of each calendar quarter, pay the cost of worker's compensation insurance coverage directly to the Washington state department of labor and industries, for each hour of offender services received during the previous quarter; and

(f) At the start of each calendar quarter, report the total number of offender service hours received during the previous quarter, directly to the department of labor and industries. (See WAC 137-80-080 and RCW 51.12.045.)

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-80-040 Sale of goods. (1) The ~~((program administrator))~~ director or his/her designee may sell all articles, materials, and supplies authorized by statute to be produced or manufactured in correctional institutions to any

state agency, political subdivision of the state or as otherwise authorized by statute.

(2) The secretary shall require those institutions under his/her direction to give preference to those articles, materials, and supplies produced or manufactured by (~~institutional~~) correctional industries when purchases are made for institution needs.

(3) The (~~program administrator~~) director may cause to be prepared annually, at such times he/she may determine, lists containing the descriptions of all articles and supplies manufactured and produced in state correctional institutions; copies of such list shall be sent to the supervisor of purchasing and to all departments, institutions and agencies of the state of Washington.

AMENDATORY SECTION (Amending WSR 82-18-042, filed 8/27/82)

WAC 137-80-050 Proceeds of sale. Except for any sum recommended by the (~~institutional industries board of directors~~) committee to be returned to the state general fund, all net profits from institutional industries shall be placed in a special revolving fund (Class II account) and shall be used exclusively, without appropriation, in the expansion and improvement of Class II industries.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-80-060 Inmate job opportunities. (See RCW 72.09.120.) The (~~program administrator~~) director shall cause to be periodically prepared and distributed to a central location in each institution a list of (~~prison~~) correctional industries' and programs' job opportunities. This list shall include, but not be limited to, job descriptions and the educational and skill requirements of each job and shall be made available to institution personnel (~~of the institution~~), institutional industries and (~~to the inmates~~) offenders.

NEW SECTION

WAC 137-80-070 Safety and health. (1) As required by the state division of occupational safety and health (DOSH), participants in offender work programs will be provided a safe and healthy workplace free from recognized hazards.

(2) All correctional industries and programs will adhere to relevant federal and state safety laws as well as to departmental safety policies and requirements.

(3) The department, as the custodial authority, will determine whether or not it is safe for offenders to perform the requested services in Classes IV and V. The department's determination will be based upon the results of a hazardous conditions and materials assessment, performed in accordance with WAC 296-800-160 by the recipient of the offender services and provided to the department, using DOC Form 03-247 or other similar hazard assessment and PPE selection worksheet.

(4) Offenders in Classes I, IV, and V shall receive work and safety training and any necessary personal protective equipment (PPE), in accordance with the contract scope of

work, the work project description and chapter 296-800 WAC, Safety and health core rules.

(5) Offenders participating in Class III programs are not considered "employees" for DOSH purposes.

(6) For DOSH purposes, offenders participating in Class V programs may be considered "employees" or "workers" of the public agency or public benefit nonprofit corporation for which the services are performed. (See RCW 51.12.045.)

NEW SECTION

WAC 137-80-080 Industrial insurance. (1) No offender compensated for work in correctional industries shall be considered as an employee or to be employed by the state or the department.

(2) Offenders working in Classes I, II, and IV of correctional industries are eligible for industrial insurance benefits as provided by Title 51 RCW.

(3) Offenders working in Class III industries are ineligible for industrial insurance benefits.

(4) For offenders working in Class V, the cost to provide offenders with industrial insurance medical aid coverage will be paid for by the entity for which the offenders perform the work. To initiate coverage, the entity will complete, sign and submit directly to L&I, the L&I application for elective coverage of excluded workers (application), before the occurrence of an injury or contraction of an occupational disease, by offenders to be covered. Entities will check application box number 10 (community service workers, 7203) of L&I Form F213-112-000 to initiate coverage.

(5) Any premiums or assessments due under Title 51 RCW for an offender's coverage shall be the obligation of the entity for which the offender is performing the work, and shall be paid directly to the department of labor and industries by that entity. Except that, L&I premiums due for offenders performing Class IV good-will projects shall be paid directly to L&I by the department of corrections.

NEW SECTION

WAC 137-80-090 Work crew costs and responsibilities. (1) Nothing in this chapter shall be construed as limiting the regulatory authority of the department of labor and industries in determining health and safety compliance and employer status for purposes of DOSH and Title 51 RCW, the issuance or review of citations or corrective actions related to health and safety compliance in the workplace provided the offender crew, or in determining responsibility for payment of fees due under Title 51 RCW.

It is understood that the responsible divisions within the department of labor and industries shall act independently in any review of claims or citations. Public agencies and public benefit nonprofit corporations that contract with the department for offender services will be responsible for safety and health conditions at the worksite, will have the responsibility and the authority for ensuring that any hazardous condition is corrected, and as applicable, pay the cost of offender industrial insurance coverage. For standard Class IV services only, public agencies and public benefit nonprofit corporations, will be responsible for paying offender gratuities.

(2) The department will provide security and custody supervision of offenders to fulfill its mission to improve public safety and to maintain custody as required by state law.

(3) Any specific offender personal protective equipment that is required will be detailed in the work project description (WPD) for each distinct Class IV or Class V work crew project as well as in the project agreement for any Class IV good-will project. The party(ies) responsible for providing such PPE will also be designated in the WPD.

NEW SECTION

WAC 137-80-100 Application limited to this chapter.

The powers and authority conferred by this chapter shall be construed as limited to this chapter and nothing herein shall be construed as applying to any other offender work programs authorized by federal law or Washington state law. Neither shall anything contained herein be construed as limiting any other powers or authority of any public agency.

WSR 15-20-011

PERMANENT RULES

DEPARTMENT OF CORRECTIONS

[Filed September 24, 2015, 8:53 a.m., effective January 8, 2016]

Effective Date of Rule: January 8, 2016.

Purpose: Amendments to chapter 137-25 WAC, Serious infractions and chapter 137-28 WAC, Prisons discipline.

To revise and reorganize ensuring the WAC are consistent with state law and are applied equally in prison and work release facilities. Language and content changed throughout for consistency, clarification, and alignment with policy, practice, procedure and technology. Serious infraction categories expanded to include Category D violations. Adjustments to WAC violations include:

- (New) 882 (electronic/wireless communication devices or related equipment).
- (New) 893 (damaging, altering, or destroying any item that results in the concealment of contraband).
- (New) 896 (harassing, using abusive language, or engaging in other offensive behavior).
- (New) 899 (failing to obtain prior written authorization prior to civil action against victim(s)).
- Removal of 712 (attempted suicide) and 713 (self-mutilation).

Citation of Existing Rules Affected by this Order: Repealing WAC 137-28-185, 137-28-330, 137-28-340, 137-28-420 and 137-28-430; and amending WAC 137-28-140, 137-28-160, 137-28-170, 137-28-180, 137-28-190, 137-28-200, 137-28-210, 137-28-220, 137-28-230, 137-28-240, 137-28-250, 137-28-260, 137-28-270, 137-28-280, 137-28-285, 137-28-290, 137-28-300, 137-28-305, 137-28-310, 137-28-350, 137-28-360, 137-28-370, 137-28-380, 137-28-390, 137-28-410, 137-25-010, 137-25-020, and 137-25-030.

Statutory Authority for Adoption: RCW 72.01.090, 72.65.100, and 72.09.130.

Adopted under notice filed as WSR 15-09-056 on April 13, 2015.

Changes Other than Editing from Proposed to Adopted Version: Changed material shown by **bold**.

WAC 137-28-160 Definitions:

Revised (6) - **(6) Infraction - A term designating the procedures and documents related to offender misconduct and the facility disciplinary process as a result of a rule violation.**

WAC 137-28-350 Sanctions—Authority to impose:

Revised (3)(j) - **(j) Suspension or termination of visitation, for certain violations as outlined in department policy, for a period not to exceed: Thirty consecutive days for the first offense, ninety consecutive days for the second offense, and one hundred eighty consecutive days for the third offense within a one-year period. In cases of multiple or very serious violations, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s). (inserted from stricken through language from (n)(same section).**

WAC Violation 606: Readded "Possessing" (tobacco) to this WAC violation.

WAC 137-28-290 Preparations for hearing:

(2)(a) - **(a) Provide copies of the infraction report ((to the inmate)) and nonconfidential supporting documents, including a summary of the supporting evidence, to the offender;**

(b) Advise the offender in writing of the date, time, and location of the hearing and of the rights, restrictions, and responsibilities listed in this chapter;

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 3, Amended 27, Repealed 5.

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 3, Amended 27, Repealed 5.

Date Adopted: September 22, 2015.

Bernard Warner
Secretary

Chapter 137-25 WAC

SERIOUS ((INFRACTIONS)) VIOLATIONS—TOTAL AND PARTIAL CONFINEMENT FACILITIES

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-25-010 Application of chapter. The definitions and serious (~~infractions~~) violations described herein

apply to offenders committed to both ~~((full))~~ total and partial confinement facilities.

AMENDATORY SECTION (Amending WSR 13-18-002, filed 8/21/13, effective 9/21/13)

WAC 137-25-020 Definitions. ~~((★))~~ For the purposes of this chapter, the following ~~((words))~~ terms have the following meanings:

~~((Abusive sexual contact—An incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:~~

~~• Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.~~

~~Adult correctional institution and institution—A facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.)~~ (1) Aggravated assault - An assault resulting in a documented physical injury ~~((and))~~ requiring ~~((medical care (see definition of medical care).))~~ treatment in a medical facility/treatment center by medical staff including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered treatment.

(2) Assault - A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to, weapons, body parts, food products, or bodily secretions.

~~((Attempted suicide—An unsuccessful attempt to kill oneself as determined by a medical or mental health professional.~~

~~Attempt))~~ (3) Attempting - Putting forth an effort to commit any ~~((infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault))~~ violation.

(4) Bodily harm - Physical pain or injury, illness, or impairment of physical condition.

~~((Cell tag—If contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.~~

~~Conspiracy—An agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.~~

~~Deputy secretary—The deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.~~

~~Discovery—When a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.~~

~~Earned time—Means that portion of time an offender is eligible to earn for program participation approved by the~~

~~classification process and consistent with his/her case management plan.~~

~~Earned release time—Means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.~~

~~Good conduct time credits—That portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.~~

~~Hearing officer—Staff member(s) designated by the superintendent or hearings program administrator to conduct disciplinary hearings.~~

~~Infraction—Commission of, attempt to commit, or conspiracy with another to commit any violation of rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.~~

~~Infraction review officer—Staff member(s) designated by the superintendent to review a serious infraction.~~

~~Lesser included offense—Any infraction that must necessarily have been committed in order to commit another infraction.~~

~~Medical care—Any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to, bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.~~

~~Mental health professional—An individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at affecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.~~

~~Mitigating factors—Factors to be considered by the infraction officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.~~

~~Possession—Established when))~~ (5) Conspiring - Entering into an agreement with another person(s) to commit a violation.

(6) Facility - A correctional facility as defined in RCW 72.09.015.

(7) Infraction - A term designating the procedures and documents related to offender misconduct and the facility disciplinary process.

(8) Offender - An inmate as defined in RCW 72.09.015.

(9) Possessing - When an item(s) is found on ~~((a person))~~ an offender or in an ~~((area which is under the control of the individual(s) charged))~~ offender's assigned area of responsibility.

~~((Promptly) To act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.~~

~~Secretary—The secretary of the Washington state department of corrections, or the secretary's designee.~~

~~Sexual harassment—Any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.~~

~~Sexual assault—An incident in which the act occurs against the will of the victim (without his/her consent and/or he/she is unable to consent or refuse) as the result of the threat of the force or force used to obtain compliance. A sexual assault includes one or more of the following behaviors:~~

~~•Contact between the penis and the vagina or the penis and the anus involving penetration. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit;~~

~~•Contact between the mouth and the penis, vagina and/or anus;~~

~~•Penetration of the anal or genital opening of another person by hand, finger or other object.~~

~~Sexually explicit—Materials consist of any item displaying, portraying, depicting, or describing:~~

~~(a) Nudity, which includes exposed/visible (in whole or part, including under or through translucent/thin materials providing intimate physical detail) genitals/genitalia, anus, and/or female/transgender breast nipple(s);~~

~~(b) A sex act(s) which) (10) Sex act - Includes, but is not limited to, any of the following acts: Genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration((-)); genital or anal contact/penetration with an inanimate object((-); masturbation((-); sadistic/masochistic abuse((-); bondage((-); bestiality((-); and/or bodily excretory behavior which appears to be sexual in nature((-;~~

~~(c) A participant(s) who appears to be nonconsenting, dominated, degraded, humiliated, or in a submissive role, and/or acting in a forceful, threatening, dominating, or violent manner which appears to be sexual in nature; and/or~~

~~(d) Minor(s), or models depicting minors, in a sexually suggestive setting/pose/attire.~~

~~Staff member—For purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.~~

~~Superintendent—Superintendent of an adult correctional institution or the superintendent's designee.~~

~~Working days—Monday through Friday, excluding weekends and holidays)).~~

(11) Sexual assault against a staff member - An incident in which one or more of the following actions is taken or threatened against a staff member without his/her consent or when he/she is unable to consent or refuse:

(a) Contact between genitalia (i.e., penis, vagina) or between genitalia and the anus involving penetration, however slight. This does not include kicking, grabbing, or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.

(b) Contact between the mouth and the penis, vagina, or anus.

(c) Penetration of the anal or genital opening of the staff member by hand, finger, or other object.

(12) Sexual contact against a staff member - Contact against a staff member without his/her consent or when the staff member is unable to consent or refuse which includes intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttock of the staff member. This does not include kicking, grabbing, or punching when the intent is to harm or debilitate rather than to sexually exploit.

(13) Sexual harassment against a staff member, visitor, or community member - Any word, action, gesture, or other behavior taken against a staff member, visitor, or community member that is sexual in nature and that would be offensive to a reasonable person.

(14) Staff member - A department of corrections employee, contract staff, or volunteer.

(15) Violation - The act of failing to comply with a rule enumerated in this chapter.

NEW SECTION

WAC 137-25-025 Adoption or revision of serious violations. (1) The secretary may adopt and/or revise serious violations.

(2) Before adopting or revising a serious violation, the secretary shall, when applicable, follow the rule-making procedures of chapter 34.05 RCW, the Administrative Procedure Act.

(3) Nothing herein shall be construed as limiting the department of corrections' exclusion from the Administrative Procedure Act under RCW 34.05.030 (1)(c).

AMENDATORY SECTION (Amending WSR 14-12-095, filed 6/4/14, effective 7/1/14)

WAC 137-25-030 Serious ~~((infractions))~~ violations.

(1) Any of the following types of behavior may constitute a serious violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation, with the exception of attempting an aggravated assault. Attempting to commit an aggravated assault will be charged as violation:

- (a) #633 When against another offender;
- (b) #704 When against a staff member; or
- (c) #711 When against a visitor or community member.

Category A

501 - Committing homicide((-))
502 - Committing aggravated assault ((\oplus)) against another offender((-))
507 - Committing an act that would constitute a felony and that is not otherwise included in these rules((-))
511 - Committing aggravated assault ((\oplus)) against a visitor or community member((-))
521 - Taking or holding any person hostage((-))
550 - ((Escape;)) Escaping

601 - ((Possession, manufacture, or introduction of)) Possessing, manufacturing, or introducing an explosive device or any ammunition, or any component ((s of an explosive device or ammunition.)) thereof
602 - ((Possession, manufacture, or introduction of)) Possessing, manufacturing, or introducing any ((gun.)) firearm, weapon, sharpened instrument, knife, or poison, or any component thereof ((.))
603 - ((Possession, introduction, use or transfer of any narcotic, controlled substance, illegal drug.)) <u>Introducing or transferring any unauthorized drug((, mind altering substance.)) or drug paraphernalia((.))</u>
604 - ((Aggravated assault on)) <u>Committing aggravated assault against a staff member((.))</u>
611 - ((Sexual assault on)) <u>Committing sexual assault against a staff member((.))</u>
((612 - Attempted sexual assault of staff.
613 - Abusive sexual contact with staff.
635 - Sexual assault on another offender.
636 - Attempted sexual assault of another offender.
637 - Abusive sexual contact with another offender.
650 - Rioting.
651 - Inciting others to riot.
882 - Possession or unauthorized use of a cell phone.))
613 - <u>Committing an act of sexual contact against a staff member</u>
635 - <u>Committing sexual assault against another offender, as defined in department policy (i.e., aggravated sexual assault or offender-on-offender sexual assault)</u>
637 - <u>Committing sexual abuse against another offender, as defined in department policy</u>
650 - <u>Rioting, as defined in RCW 9.94.010</u>
651 - <u>Inciting others to riot, as defined in RCW 9.94.010</u>
830 - <u>Escaping from work/training release with voluntary return within 24 hours</u>
831 - <u>While in work/training release, failing to return from an authorized sign out</u>
882 - <u>While in prison, introducing, possessing, or using a cell phone, electronic/wireless communication device, or related equipment without authorization</u>

Category B - Level 1

504 - Engaging in ((sexual acts)) <u>a sex act with ((others)) another person(s) within the facility ((with the exception of)) that is not otherwise included in these rules, except in an approved ((conjugal visits.)) <u>extended family visit</u></u>
553 - <u>Setting a fire((.))</u>

560 - ((Unauthorized possession of)) <u>Possessing items or materials likely to be used in an escape ((attempt.)) without authorization</u>
633 - ((Assault on)) <u>Assaulting another offender((.))</u>
704 - ((Assault on)) <u>Assaulting a staff member((.))</u>
711 - ((Assault on)) <u>Assaulting a visitor or community member((.))</u>
744 - <u>Making a bomb threat((.))</u>
884 - <u>Urinating, defecating, or placing feces or urine((.)) in any location other than a toilet or authorized receptacle((.))</u>
886 - ((Adulteration of)) <u>Adulterating any food or drink((s.))</u>
892 - <u>Giving, selling, or trading any prescribed medication ((with another offender.)), or possessing another offender's prescribed medication</u>

Category B - Level 2

505 - <u>Fighting with ((any person.)) another offender</u>
556 - <u>Refusing to submit to or cooperate in a search when ordered to do so by a staff member((.))</u>
607 - <u>Refusing to submit to a urinalysis and/or ((failure)) failing to provide a urine sample within the allotted time frame when ordered to do so by a staff member ((within the allotted time frame.))</u>
608 - <u>Refusing or failing to submit to a ((breathalyzer)) breath alcohol test or other standard sobriety test when ordered to do so by a staff member((.))</u>
609 - <u>Refusing or failing to submit to testing required by policy, statute, or court order, ((such as DNA blood tests)) not otherwise included in these rules, when ordered to do so by a staff member((.))</u>
652 - <u>Engaging in or inciting a group demonstration((.))</u>
655 - <u>Making ((intoxicants, alcohol, controlled substances, narcotics, or possession of)) any drug, alcohol, or intoxicating substance, or possessing ingredients, equipment, items, formulas, or instructions that are used in making ((intoxicants, alcohol, controlled substances, or narcotics.)) any drug, alcohol, or intoxicating substance</u>
682 - <u>Engaging in or inciting an organized work stoppage((.))</u>
707 - ((Possession, introduction, or transfer of any alcoholic or intoxicating beverage or substance.)) <u>Introducing or transferring alcohol or any intoxicating substance not otherwise included in these rules</u>
716 - ((Unauthorized use of)) <u>Using an over the counter medication without authorization or ((failure)) failing to take prescribed medication as required when administered under supervision((.))</u>
736 - ((Possession, manufacture or introduction of unauthorized keys.)) <u>Possessing, manufacturing, or introducing an unauthorized key or electronic security access device</u>

750 - Committing indecent exposure((-))
752 - Possessing, or receiving a positive test for use of, <u>an unauthorized drug((s)), alcohol, or ((other intoxicants)) intoxicating substance</u>
((830 - Any escape from work release with voluntary return within 24 hours.)) 778 - <u>Providing a urine specimen that has been diluted, substituted, or altered in any way</u>

Category B - Level 3

503 - ((Extortion, blackmail,)) <u>Extorting or blackmailing, or demanding or receiving ((money or)) anything of value in return for protection against others((-)) or under threat of informing((-))</u>
506 - Threatening another with bodily harm or with any offense against ((another person, property, or family.)) <u>any person or property</u>
509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area((-))
525 - Violating conditions of a furlough((-))
549 - Providing false or misleading information during any stage of an investigation of sexual misconduct, as defined in ((DOC policy on Response to and Investigation of Sexual Misconduct.)) <u>department policy</u>
558 - Interfering with staff members, medical personnel, firefighters, or law enforcement personnel in the performance of their duties((-))
600 - Tampering with, damaging, blocking, or interfering with any locking, <u>monitoring, or security device((-))</u>
605 - Impersonating any staff member, ((contracted staff member, volunteer,)) other offender((s)), or visitor((-))
653 - Causing an inaccurate count or interfering with count by means of unauthorized absence, hiding, concealing oneself, or other form of deception or distraction((-))
654 - Counterfeiting((- forger, altering, falsification, or unauthorized reproduction of)) <u>or forging, or altering, falsifying, or reproducing</u> any document, article of identification, money, <u>or security((-)) or other official paper((-)) without authorization</u>
660 - ((Unauthorized possession of)) <u>Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is five dollars or more((-))</u>
709 - Out-of-bounds: Being in another offender's cell or being in an area in the facility with one or more offenders without authorization((-))
738 - ((Possession of)) <u>Possessing clothing or assigned equipment of a staff member((-))</u>
739 - ((Possession of personal)) <u>Possessing, transferring, or soliciting any person's identification information ((about currently employed)), including current staff((-, contractors, or volunteers,)) members or their immediate family members, when not voluntarily given ((to the offender by the</u>

individual involved; including, but not limited to:)), <u>Identification information includes</u> Social Security numbers, ((unpublished)) home addresses ((or)) , telephone numbers, driver's license numbers, medical, personnel, financial, or real estate ((records)) <u>information</u> , bank or credit card numbers, or other like information not authorized by the ((court or the)) superintendent((-))
745 - Refusing a transfer to another ((institution.)) <u>facility</u>
746 - Engaging in or inciting an organized hunger strike((-))
762 - Failing to complete((-)) or administrative termination from((-)) a DOSA substance abuse treatment program. Note: <i>This ((infraction)) violation must be initiated by authorized staff and heard by a community corrections hearing officer in accordance with chapter 137-24 WAC((-))</i>
777 - Causing injury to another person by resisting orders, ((resisting)) assisted movement, or physical efforts to restrain((-))
813 - ((Unauthorized/unaccounted time)) <u>Being in the community without authorization, or being in an unauthorized location in the community((-))</u>
814 - While in work/ <u>training</u> release, ((violation of)) <u>violating</u> an imposed special condition((-))
((831 - While in work release, failure to return from an authorized sign out.
879 - Operating a motor vehicle without permission or in an unauthorized manner or location.
889 - Unauthorized use of facility phones/related equipment or use of computer to conduct unauthorized or illegal business.))
879 - Operating or being in a motor vehicle without permission or in an unauthorized manner or location
889 - Using facility phones, information technology resources/systems, or related equipment without authorization

Category C - Level 1

508 - <u>Spitting</u> or throwing objects, materials, or substances((- or spitting)) in the direction of another person(s)(-
517 - Committing any act that would constitute a misdemeanor and that is not otherwise included in these rules.
555 - Theft of property or possession of stolen property.))
557 - Refusing to participate in an available <u>work, training, education ((or work program)),</u> or other mandatory programming assignment((-))
563 - Making a false fire alarm or tampering with, damaging, blocking, or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other firefighting equipment or devices((-))

610 - ((Unauthorized possession of prescribed medication greater than a single or daily dose.)) <u>While in prison, receiving or possessing prescribed medication without authorization</u>
620 - ((Receipt or possession of)) <u>Receiving or possessing contraband during participation in off-grounds or outer perimeter activity or work detail((-))</u>
659 - <u>Committing sexual harassment((-)) against another offender, as defined in department policy</u>
661 - <u>Committing sexual harassment against a staff member, visitor, or community member</u>
663 - <u>Using physical force, intimidation, or coercion against any person((-))</u>
702 - ((Possession, manufacture or introduction of)) <u>Pos- sessing, manufacturing, or introducing an unauthorized tool((-))</u>
708 - <u>Organizing or participating in an unauthorized group activity or meeting(-)</u>
714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another offender or that offender's friend(s) or family, the value of which is ten dollars or more.))
717 - <u>Causing a threat of injury to another person by resist- ing orders, ((resisting)) assisted movement, or physical efforts to restrain((-))</u>
720 - <u>Flooding a cell or other area of the ((institution/facil- ity.)) facility</u>
724 - <u>Refusing a cell or housing assignment((-))</u>
734 - <u>Participating or engaging in the activities of any unauthorized club, organization, gang, or security threat group; or wearing or possessing the symbols of an unautho- rized club, organization, gang, or security threat group((-))</u>
810 - ((Failure)) <u>Failing to seek/maintain employment or training or maintain oneself financially, or being termi- nated from a ((job)) work, training, education, or other pro- gramming assignment for negative or substandard perfor- mance((-))</u>
893 - <u>Damaging, altering, or destroying any item that results in the concealment of contraband or demonstrates the ability to conceal contraband</u>
896 - <u>Harassing, using abusive language, or engaging in other offensive behavior directed to or in the presence of another person(s) or group(s) based upon race, creed, color, age, sex, national origin, religion, sexual orientation, mari- tal status or status as a state registered domestic partner, disability, veteran's status, or genetic information</u>

899 - <u>Failing to obtain prior written authorization from the sentencing court, contrary to RCW 9.94A.645, prior to commencing or engaging in any civil action against any victim or family of the victim of any serious violent crime the offender committed</u>

Category C - Level 2

552 - <u>Causing an innocent person to be penalized or pro- ceeded against by providing false information((-))</u>
554 - <u>Damaging, altering, or destroying ((state property- or)) any ((other)) item that is not the offender's personal property, the value of which is ten dollars or more ((and that is not the personal property of the offender.</u>
559 - <u>Gambling; possession of gambling paraphernalia.</u>
656 - <u>Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service.</u>
706 - <u>Giving false information when proposing a release plan.))</u>
710 - ((Being tattooed while incarcerated)) <u>Acquiring an unauthorized tattoo/piercing/scar, tattooing/piercing/scar- ring another, or possessing tattoo/piercing/scarring para- phernalia((-))</u>
718 - ((Use of)) <u>Using the mail ((or)), telephone, or elec- tronic communications in violation of any law, court order, or ((local, state, or federal law.)) previous written warning, direction, and/or documented disciplinary action</u>
((725 - Any telephonic or written correspondence with any offender in a correctional facility without prior written approval of the superintendent/community corrections supervisor/designee.))
726 - <u>Telephoning ((or)), sending written or electronic communication, or otherwise initiating communication with a minor without the approval of that minor's parent or guardian(-)</u>
727 - Telephoning or sending written communications to any person contrary to previous written warnings or direc- tion and/or documented disciplinary action.
728 - <u>Possession of any sexually explicit material(s), as defined by department policy and/or WAC 137-25-020.</u>
740 - <u>Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.</u>
742 - <u>A pattern of creating a false emergency by feigning illness.</u>
778 - <u>Providing a urine specimen that has been diluted, substituted or altered in any way.))</u>

Category C - Level 3

((551 - Providing false information to the disciplinary hear- ings officer or on a disciplinary appeal.))
--

606 - ((Possession, introduction, or transfer of)) Possessing, introducing, or transferring any tobacco, tobacco products, matches, or tobacco paraphernalia((-))
657 - Being found guilty of four or more general ((infractions)) violations arising out of separate incidents within a 90-day period((-))
658 - Failing to comply with any administrative or post-hearing sanction imposed for committing any ((general or serious infraction-)) violation
((662 - Soliciting goods or services for which the provider would expect payment when the offender knows or should know that no funds are available to pay for those goods or services-))
741 - Theft of food the value of which is more than five dollars-
755 - Misuse or waste of issued supplies, goods, services, or property the replacement value of which is ten dollars or more-
811 - Entering into an unauthorized contract-))
812 - ((Failure)) Failing to report/turn in all earnings ((income-
861 - Performing or taking part in an unauthorized marriage-
890 - Failure to follow a medical directive and/or documented medical recommendations resulting in injury-))

Category D

517 - Committing an act that would constitute a misdemeanor and that is not otherwise included in these rules
551 - Providing false information to the hearing officer or in a disciplinary appeal
555 - Stealing property, possessing stolen property, or possessing another offender's property
559 - Gambling or possessing gambling paraphernalia
656 - Giving, receiving, or offering any person a bribe or anything of value for an unauthorized favor or service
662 - Soliciting goods or services for which the provider would expect payment, when the offender knows or should know that he/she lacks sufficient funds to cover the cost
706 - Giving false information when proposing a release plan
714 - Giving, selling, purchasing, borrowing, lending, trading, or accepting money or anything of value except through approved channels, the value of which is ten dollars or more
725 - Telephoning or sending written or electronic communication to any offender in a correctional facility, directly or indirectly, without prior written approval of the superintendent/community corrections supervisor/designee

728 - Possessing any sexually explicit material(s), as defined in WAC 137-48-020
740 - Committing fraud or embezzlement, or obtaining goods, services, money, or anything of value under false pretense
741 - Stealing food, the value of which is five dollars or more
742 - Establishing a pattern of creating false emergencies by feigning illness or injury
755 - Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is ten dollars or more
811 - Entering into an unauthorized contract
861 - Performing or taking part in an unauthorized marriage
890 - Failing to follow a medical directive and/or documented medical recommendations, resulting in injury

~~((1) In determining whether a #728 infraction or a #328 infraction pursuant to WAC 137-25-030 should be charged, the infraacting officer shall consider mitigating factors as defined in WAC 137-25-020.~~

~~(2) Attempts to commit infraction #611 or #635 are now separate infractions #612 and #636 for the Prison Rape Elimination Act (PREA) reporting purposes only and do not impact the definition in WAC 137-25-020 which includes "attempts.") (2) If contraband or another violation is discovered in an offender's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all offenders assigned responsibility for that area.~~

Chapter 137-28 WAC

DISCIPLINE—PRISONS(~~(—DISCIPLINE)~~)

AMENDATORY SECTION (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

WAC 137-28-140 Purpose. The rules in this chapter provide a standardized system to determine whether misconduct by an ~~((inmate of an adult correctional institution))~~ offender has occurred, and to provide a system that clearly links an offender's behavior and participation in available work, training, education ~~((and work programs)), or other programming~~ as determined through classification with the receipt or denial of earned ~~((early))~~ release time and other privileges as outlined in department policy.

The rules in this chapter shall not apply to proceedings of the indeterminate sentence review board.

The following rules set forth procedural guidelines. They do not create any procedural or substantive rights in any person, including any liberty interests in time credits, levels of custody, classification status, or other privileges. In accordance with Washington statutes, such matters are governed solely by the discretion of the department of corrections.

AMENDATORY SECTION (Amending WSR 13-18-002, filed 8/21/13, effective 9/21/13)

WAC 137-28-160 Definitions. ((~~*)~~) For the purposes of this chapter, the following ((~~words~~)) terms have the following meanings:

~~((Abusive sexual contact—An incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:~~

~~• Intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.~~

~~Adult correctional institution and institution—A facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.~~

~~Aggravated assault—An assault resulting in physical injury and requiring medical care (see definition of medical care).~~

~~Assault—A physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to weapons, body parts, food products or bodily secretions.~~

~~Attempted suicide—An unsuccessful attempt to kill oneself as determined by a medical or mental health professional.~~

~~Attempt—Putting forth an effort to commit any infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault.~~

~~Bodily harm—Physical pain or injury, illness, or impairment of physical condition.~~

~~Cell tag—If contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.~~

~~Conspiracy—An agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.~~

~~Deputy secretary—The deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.~~

~~Discovery—When a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.~~

~~Earned time—Means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.~~

~~Earned release time—Means the combined earned time and good conduct time credit an offender is eligible to earn off the minimum term established by the indeterminate sentence review board or the sentencing court.~~

~~Good conduct time credits—That portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.~~

~~Hearing officer—Staff member(s) designated by the superintendent to conduct disciplinary hearings.~~

~~Infraction—Commission of, attempt to commit, or conspiracy with another to commit any violation of prison rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.~~

~~Infraction review officer—Staff member(s) designated by the superintendent to review a serious infraction.~~

~~Lesser included offense—Any infraction that must necessarily have been committed in order to commit another infraction.~~

~~Medical care—Any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.~~

~~Mental health professional—An individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at effecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.~~

~~Mitigating factors—Factors to be considered by the infraacting officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.~~

~~Possession—Established when an item(s) is found on a person or in an area which is under the control of the individual(s) charged.~~

~~Promptly—To act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.~~

~~Secretary—The secretary of the Washington state department of corrections, or the secretary's designee.~~

~~Sexual harassment—Any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.~~

~~Sexually explicit—Materials consist of any item displaying, portraying, depicting, or describing:~~

~~(a) Nudity, which includes exposed/visible (in whole or part, including under or through translucent/thin materials providing intimate physical detail) genitals/genitalia, anus, and/or female/transgender breast nipple(s);~~

~~(b) A sex act(s) which includes, but is not limited to, genital-genital, oral-genital, anal-genital, or oral-anal contact/penetration, genital or anal contact/penetration with an inanimate object, masturbation, sadistic/masochistic abuse, bondage, bestiality, and/or bodily excretory behavior which appears to be sexual in nature;~~

~~(c) A participant(s) who appears to be nonconsenting, dominated, degraded, humiliated, or in a submissive role, and/or acting in a forceful, threatening, dominating, or violent manner which appears to be sexual in nature; and/or~~

~~(d) Minor(s), or models depicting minors, in a sexually suggestive setting/pose/attire.~~

~~Staff member — For purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.~~

~~Superintendent — Superintendent of an adult correctional institution or the superintendent's designee.~~

~~Working days — Monday through Friday, excluding weekends and holidays.)~~ (1) Attempting - Putting forth an effort to commit a violation.

(2) Business days - Monday through Friday, excluding holidays and days the facility is experiencing altered/modified operational status.

(3) Conspiring - Entering into an agreement with another person(s) to commit a violation.

(4) Facility - A correctional facility as defined in RCW 72.09.015.

(5) Hearing officer - A trained staff member designated by the superintendent to conduct disciplinary hearings processes, as well as review appeals of general violations.

(6) Infraction - A term designating the procedures and documents related to offender misconduct and the facility disciplinary process as a result of a rule violation.

(7) Infraction review officer - A trained staff member who assesses and evaluates the accuracy of the infraction packet, to include verification of the incident, appropriateness of the violation(s) charged, thoroughness of the information, and verification that supporting documents are included and that all evidence is collected and handled correctly (when applicable) before submittal to the hearing office.

(8) Lesser included offense - A less serious violation than the one charged, but one which the offender necessarily committed in carrying out the charged violation.

(9) Offender - An inmate as defined in RCW 72.09.015.

(10) Possessing - When an item(s) is found on an offender or in an offender's assigned area of responsibility.

(11) Promptly - To act as soon as reasonably possible, consistent with facility goals of safety, security, and rehabilitation.

(12) Staff member - A department of corrections employee, contract staff, or volunteer.

(13) Violation - The act of failing to comply with a rule enumerated in this chapter or chapter 137-25 WAC.

AMENDATORY SECTION (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

WAC 137-28-170 Supplementary rules. (1) The superintendent may promulgate local supplementary rules, policies, and procedures, including the creation of new sanctions.

(2) All new or supplemental sanctions shall be approved in writing by the ~~((deputy))~~ assistant secretary before being put into effect.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

WAC 137-28-180 Notification. (1) All ~~((inmates of an adult correctional institution))~~ offenders confined in a facility shall have access to policies and rules regarding:

(a) Their rights and responsibilities in disciplinary matters;

(b) Acts prohibited in the ~~((institution))~~ facility; and

(c) Disciplinary action that may be taken in the event of misconduct.

(2) All ~~((inmates))~~ offenders shall have access to a copy of the local disciplinary policies of the ~~((institution))~~ facility to which they are assigned.

(3) ~~((Inmates))~~ Offenders unable to read or understand English shall be provided access to a written or ~~((tape))~~ recorded translation of these rules in their accustomed language.

(4) ~~((Inmates))~~ Offenders should be provided access to changes to disciplinary policies or rules in advance of their effective date.

~~((Under normal circumstances, announcements of these changes should be posted at designated places for at least thirty days prior to their effective date or sent to the affected inmates.~~

~~((b))~~ Complete and up-to-date copies of these rules and all ~~((local))~~ facility disciplinary policies shall be available for offender access at each ~~((institution for inmate examination.~~

~~((e) Inmates shall be))~~ facility.

~~((b) Offenders are responsible ((to take steps necessary to inform)) for informing themselves of changes ((and posted updates.~~

~~((5) All infraction(s) should be heard at the facility where the infraction(s) occurred. If it is necessary to transfer an inmate to another facility prior to resolution of unheard infractions, his/her infraction(s) will be forwarded to the new facility for hearing))~~ to the rules and policies.

AMENDATORY SECTION (Amending WSR 98-04-086, filed 2/4/98, effective 3/7/98)

WAC 137-28-190 ((Reporting)) Referral to law enforcement ((authorities)). (1) The superintendent ~~((shall))~~ should report any felony under state or federal law committed in a facility to law enforcement ~~((authorities.~~

~~((2) When))~~ Any time an offender ~~((knowingly))~~ commits ~~((an additional))~~ a serious ~~((infraction))~~ violation after losing all potential earned ~~((early))~~ release time credits, the superintendent ~~((will))~~ should report ~~((that))~~ the offender to local law enforcement ~~((authorities))~~ for possible felony prosecution under RCW 9.94.070.

~~((3) If a violation has been reported to law enforcement authorities, inmates who have been charged with an infraction shall not be questioned about the incident outside of a formal disciplinary hearing or an administrative segregation hearing until after it has been determined that no prosecution will occur or until a finding of guilty is made.~~

~~((4) No provisions of these rules shall prevent the administrative segregation of any inmate.))~~ (2) The superintendent may report any misdemeanor under state or federal law committed in a facility to law enforcement.

(3) Nothing in this section shall prevent an offender's assignment to administrative segregation.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

WAC 137-28-200 Out-of-state ((inmates)) offenders.

(1) ((Inmates)) Offenders committed to the department of corrections who have been transferred to a prison in another state shall be subject to the disciplinary rules and procedures applicable to ((the prison to which they have been transferred)) that prison. That prison may, in its discretion, use any presumptive sanction guidelines currently in ((current)) effect in Washington state ((institutions)) facilities.

(2) ((Inmates)) Offenders committed ((from other jurisdictions)) to the ((control of the Washington)) department of corrections from other states shall be ((subjected)) subject to the disciplinary rules and procedures ((applicable to the)) currently in effect in the Washington state facility to which they are assigned. ((In addition:

(a) A summary of)

(3) Each state shall forward all serious infraction reports((- including sanctions, shall be forwarded)) and appeals to the originating ((jurisdiction.

(b) Loss of good time shall be handled in accordance with this policy. A copy of all infraction reports resulting in loss of good time shall be forwarded) state within seven days of the final action, and may include a recommendation that the offender return to the originating ((jurisdiction by the institution record office with a request for approval. The loss of good time shall be considered pending until confirmed or modified by the originating jurisdiction)) state.

AMENDATORY SECTION (Amending WSR 06-24-087, filed 12/4/06, effective 1/4/07)

WAC 137-28-210 Hearing officers. (1) Each hearing shall be conducted by a hearing officer((s) within the rank/ classification of lieutenant or above, or corrections specialist,) designated by the superintendent.

(2) ((The hearing officer(s) will receive training in the disciplinary process and in the identification of inmates who may be impaired in their ability to understand the hearing process and participate in their own defense.

(3)) Hearing officers may not ((function in that capacity)) preside over a hearing when they are related to the offender, witness, victim, or infracting officer, or have direct personal involvement in the infraction under consideration. ((Such officers must disqualify themselves by giving notice to the superintendent, who will select a replacement.

(4) Direct) For purposes of this section, direct personal involvement ((as that phrase is used in this section shall)) means knowledge or interest acquired through witnessing, investigating, or directly participating in the incident under consideration. This rule shall not preclude hearing officer participation where the hearing officer has acquired knowledge ((or interest indirectly or through review)) of the incident ((conducted)) as part of regular ((institutional)) facility responsibilities.

((5)) (3) Hearing officers may disqualify themselves or may be disqualified by the superintendent if ((actually))

biased for or against any ((inmate)) offender so that they cannot render a fair ((judgment)) and impartial decision in the hearing.

((6) Hearing officers must notify an infracted inmate if they are related to the infracting officer or the victim. The inmate may request another hearing officer or continue with the same hearing officer.)

AMENDATORY SECTION (Amending WSR 06-21-054, filed 10/13/06, effective 11/13/06)

WAC 137-28-220 General ((infractions)) violations.

(1) Any of the following types of behavior may constitute a general ((infraction:)) violation. Attempting or conspiring to commit one of the following violations, or aiding and abetting another to commit one of the following violations, shall be considered the same as committing the violation.

Unauthorized possession/theft

- 051 - ((Unauthorized possession of)) Possessing money, stamps, or other negotiable instruments without authorization, the total value of which is less than five dollars((-)
- 053 - ((Possession of)) Possessing anything not authorized for retention or receipt by an ((inmate)) offender and/or not issued to an ((inmate by regular institutional)) offender through approved channels(-)
- 255 - ((Misuse or waste of)) Misusing or wasting issued supplies, goods, services, or property, the replacement value of which is less than ten dollars(-)
- 310 - Pretending or failing to take prescribed medication ((that the inmate has accepted)) by concealing or retaining ((a single or daily dose:)) the medication
- 354 - ((Theft of)) Stealing food, the value of which is ((five dollars or)) less(-) than five dollars
- 356 - ((Possession of)) Possessing an unauthorized amount of ((otherwise authorized)) clothing, bedding, or issued supplies(-)

((Lending)) Lending/trading

- ((052 - Loaning of property for profit.)
- 351 - Giving, selling, purchasing, borrowing, lending, ((or)) trading, or accepting money or anything of value ((to, or accepting or purchasing money or anything of value from, another inmate or that inmate's friend(s) or family)) except through approved channels, the value of which is less than ten dollars(-)

Altering/destroying property

- 055 - ((Mutilating)) Damaging, altering, ((defacing)) or destroying any item ((valued at less than ten dollars and)) that is not the

offender's personal property, the value of
~~((the inmate-))~~ which is less than ten dollars

Disruptive behavior/lying

- 202 - ~~((Abusive))~~ Harassing, using abusive language, ((harassment)) or engaging in other offensive behavior directed to or in the presence of ~~((staff, visitors, inmates,))~~ another person(s) or ((other persons or groups-)) group(s)
- 203 - Lying to a staff member((-)
- 244 - ~~Unauthorized displays of sexual affection with another inmate(-))~~
- 353 - ~~((Disruptive))~~ Engaging in disruptive behavior((-)
- 355 - ~~((Horseplay,))~~ Roughhousing, or engaging in horseplay or any other unauthorized physical contact ~~((between inmates-))~~ with another offender(s)
- 357 - ~~((Unauthorized demonstration, practice))~~ Demonstrating, practicing, or ((use of)) using martial arts((-)) or other self-defense tactics

Failure to follow rules and orders

- ~~((402))~~ - ~~((Failure))~~ Failing to follow any oral/written orders, rules, or policies ((adopted by the institution and not specified within this chapter or in local disciplinary rules-)) not otherwise included in these rules
- ~~((103))~~ - Refusing or failing to obey an order, oral or written, of any staff member(-))
- 105 - Failing to perform a work, training, education, or other programming assignment as directed
- 210 - Out of bounds((-); Being in an area where the presence of the ~~((inmate))~~ offender is unauthorized((-)
- 214 - Interfering or failing to comply with count procedures((-)
- 251 - Smoking ~~((and possession of))~~ or possessing tobacco or related products/paraphernalia where prohibited((-)
- 301 - ~~((Failure to keep your person))~~ Failing to maintain one's clothing, personal hygiene, or ((your)) quarters in accordance with ((institution)) facility rules or policies((-)

Unauthorized communication/visitor contact

- 303 - ~~((Unauthorized use of))~~ Using the mail ((or)), telephone((-), or electronic communications without authorization

- 304 - ~~((Unwanted))~~ Conducting/participating in unwanted written ((and telephonic)), telephone, or electronic communications ((to)) with any person((-)
- 305 - ~~((Correspondence or))~~ Corresponding with or engaging in conduct with a visitor in violation of published or posted rules ~~((and))~~ or policies((-)
- ~~((309))~~ - ~~Unauthorized display of affection with a visitor(-))~~

Inappropriate use of equipment

- 212 - Using any equipment or machinery when not specifically authorized or contrary to instructions or safety standards((-)

Unexcused absence/feigning illness

- 104 - ~~((Unexcused absence))~~ Being absent from work or any assignment, scheduled meeting, appointment, or call out((-) without authorization
- 352 - Pretending to be ill or injured contrary to medical/mental health screening results((-)

Inappropriate sexual behavior

- 244 - Displaying sexual affection with another offender
- ~~((328))~~ - ~~Possession of any written, photographic or hand-drawn material that depicts a sexually explicit act as defined in WAC 137-28-160(-))~~
- 309 - Engaging in an unauthorized display of affection with a visitor

(2) ~~((In determining whether a #328 infraction or a #728 infraction pursuant to WAC 137-25-030 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-28-160-))~~ If contraband or another violation is discovered in an offender's assigned area of responsibility, such as within the confines or contents of a cell, the contraband or other violation shall be constructively attributed (i.e., cell tagged) to all offenders assigned responsibility for that area.

AMENDATORY SECTION (Amending WSR 09-01-195, filed 12/24/08, effective 1/24/09)

WAC 137-28-230 General infraction procedure. ~~((Infraction report-))~~ (1) In the event of a general ~~((infraction))~~ violation, a staff member may make an on-site adjustment. An on-site adjustment may consist of ~~((counseling))~~ counseling, warning, or reprimanding the ~~((inmate))~~ offender and/or ~~((causing))~~ directing the ~~((inmate))~~ offender to remove ~~((him))~~ himself/herself from the situation immediately. An action addressed through an on-site adjustment ~~((under this rule))~~ cannot be considered a general ~~((infraction))~~ violation for the purposes of determining whether a #657 serious ~~((infraction))~~ violation has occurred.

(2) In the event of a general ~~((infraction))~~ violation where a staff member does not make an on-site adjustment, the staff member ~~((may))~~ will prepare and submit an infraction report per department policy. The ~~((infraction report))~~ shall include:

- ~~((a))~~ Name, number and housing location of the offender;
- ~~((b))~~ A description of the incident;
- ~~((c))~~ The time and place of the incident;
- ~~((d))~~ The names of witnesses, victims, and other persons involved;
- ~~((e))~~ The specific rule(s) alleged to have been violated;
- ~~((f))~~ A description of any action taken and ~~((the))~~ staff member will attach copies of any ~~((relevant documentation or supplemental reports))~~;
- ~~((g))~~ Name and signature of reporting staff) supporting documents.

(3) The general infraction report shall be promptly submitted ~~((promptly))~~ for review to the supervisor ~~((or unit team))~~ designated by the superintendent ~~((to receive such reports. The))~~. Upon review, if the supervisor ~~((or unit team may))~~ determines the action meets the criteria of a serious violation, he/she may return the report to the reporting staff member to upgrade the general ~~((infraction))~~ violation to a serious ~~((infraction))~~ violation. If the ~~((infraction))~~ violation is upgraded, the ~~((supervisor or unit team shall))~~ reporting staff member will forward the serious infraction report to the ~~((hearing clerk for preparation for a hearing on the serious))~~ infraction review officer.

(4) ~~((The supervisor or unit team receiving))~~ If the action was appropriately charged as a general ~~((infraction report shall))~~ violation, the supervisor will decide whether the ~~((inmate))~~ offender is guilty or not guilty within five ~~((working))~~ business days of ~~((receipt of))~~ receiving the report~~((-))~~, unless an extension ~~((to the five days may be granted))~~ is approved in writing by the ~~((disciplinary))~~ hearing officer. ~~((This decision of))~~ The supervisor ~~((or unit team can be reached by scheduling))~~ will conduct an informal hearing ~~((with the inmate present))~~ at which ~~((the supervising employee or unit team))~~ he/she may allow witnesses and documentary evidence~~((- Upon finding that an inmate is guilty, the supervising employee or unit team may impose any appropriate sanction))~~ with the offender present.

AMENDATORY SECTION (Amending WSR 02-12-023, filed 5/28/02, effective 6/28/02)

WAC 137-28-240 General ~~((infractions))~~ violations—Sanctions. ~~((For being found guilty of any general infraction, one or more of the following sanctions may be imposed:))~~ (1) If the supervisor finds the offender not guilty of a general violation, disciplinary sanctions shall not be imposed on the offender for that violation. Records pertaining to the violation shall not be placed in the offender's file, but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the supervisor finds the offender guilty of any general violation, the supervisor may impose one or more of the following sanctions:

- (a) Reprimand or warning;

~~((2))~~ (b) Issuance of a written order to cease ~~((a))~~ the problematic behavior. The order will include a warning that if the identified behavior is repeated within a specified period (not to exceed one hundred eighty days), the ~~((inmate))~~ offender will be charged with ~~((violation of))~~ a serious violation ~~((WAC 137-28-260) #658-~~

~~((3))~~ #658 under WAC 137-25-030);

(c) Loss of a privilege or privileges as specified by the supervisor ~~((or unit team))~~ for a period not ~~((more than))~~ to exceed ten consecutive days on ~~((a))~~ the first offense, twenty consecutive days on ~~((a))~~ the second offense, and thirty consecutive days on ~~((a))~~ the third offense within a six-month period;

~~((4))~~ ~~((Confinement to))~~ (d) Evening cell/room ~~((or cell))~~ confinement, except for attendance at work or school assignments, religious services, or meals, or law library if ~~((a documented court deadline has been imposed))~~ approved for emergency/priority access per department policy, not to exceed ten consecutive evenings;

(e) Weekend and/or holiday cell/room confinement, except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period of one or more weekends, not to exceed four consecutive weekends per incident. For purposes of this rule, a "weekend" shall begin at the end of the offender's programming or work day Friday and terminate at the beginning of the offender's programming or work day Monday;

(f) Confinement to cell/room except for attendance at work or school assignments, religious services, or meals, or law library if approved for emergency/priority access per department policy, for a period not to exceed ten consecutive days;

~~((5))~~ (g) Up to one hundred twenty hours of extra work duty.

AMENDATORY SECTION (Amending WSR 06-21-054, filed 10/13/06, effective 11/13/06)

WAC 137-28-250 General infraction appeals. (1) ~~((The sanctions for a finding of))~~ If the supervisor finds the offender guilty of a general ~~((infraction))~~ violation, only the offender may ~~((be appealed by))~~ appeal the ~~((inmate))~~ decision and/or sanction(s) to ~~((the major))~~ a hearing officer ~~((of the institution))~~.

(a) The appeal must be in writing and must include the reason(s) why the ~~((inmate))~~ offender believes the action taken was incorrect and specify the desired relief.

(b) The appeal must be delivered to the hearing officer within ~~((twenty-four hours after the inmate receives))~~ two business days of receiving the notice ~~((of the action taken))~~.

(c) Failure to follow appeal procedures ~~((with))~~ shall be deemed a waiver of the appeal, however the hearing officer may consider appeals filed beyond the two business day period.

(2) ~~((Within))~~ The hearing officer will review and act on the appeal request within ten ~~((working))~~ business days ~~((after))~~ of receipt ~~((of the appeal,))~~ unless ~~((the time))~~ an extension is ~~((extended))~~ approved in writing by the superintendent~~((-))~~. The hearing officer ~~((will decide either to:~~

~~(a) Schedule a hearing on)) may affirm the decision and sanction(s), affirm the ((appeal;)) decision and reduce the sanction(s), or ((b) Affirm;)) dismiss/modify downward(, or reverse the finding of guilty without a hearing)) the decision and sanction(s).~~

~~(3) Once a decision ((of the hearing officer)) is made(;) on the ((inmate)) appeal, the offender shall be notified in writing within ((seventy-two hours)) three business days, unless ((the time period)) an extension is ((extended)) approved in writing by the superintendent.~~

~~(4) Sanctions ((are)) will not be stayed upon appeal.~~

AMENDATORY SECTION (Amending WSR 05-24-009 and 06-02-038, filed 11/28/05 and 12/28/05, effective 5/1/06)

WAC 137-28-260 Serious ((infractions)) violations. See WAC 137-25-030 for the list of serious ((infractions)) violations.

AMENDATORY SECTION (Amending WSR 09-01-195, filed 12/24/08, effective 1/24/09)

WAC 137-28-270 Serious infraction procedure. ((Infraction report.

~~(1) In the event of a) (1) When a staff member witnesses a serious violation or determines that a serious violation has occurred, he/she shall prepare and submit an infraction report per department policy. The staff member will attach to the report copies of any supporting documents, including a summary of any confidential information, which shall not identify the confidential source(s).~~

~~(2) The infraction review officer will review the serious infraction((, the staff member who discovers such violation shall prepare and submit an infraction report. The infraction report shall be submitted promptly upon discovery of the incident or upon completion of an investigation. The infraction report must include:~~

- ~~(a) Name, number and housing assignment of offender;~~
- ~~(b) A description of the incident;~~
- ~~(c) The time and place of the incident;~~
- ~~(d) The names of witnesses, victims, and other persons involved;~~
- ~~(e) The specific rule alleged to have been violated;~~
- ~~(f) A description of any action taken;~~
- ~~(g) A summary of any confidential information;~~
- ~~(h) Copies of any relevant documentation or supplemental reports. Confidential information and the identities of confidential informants shall not be included;~~
- ~~(i) Name and signature of reporting staff.~~

~~(2) The infraacting staff member may recommend action to be taken on the infraction to the hearing officer. This may include a recommendation that the inmate be referred for a mental health consultation.~~

~~(3) Serious infraction reports may be reviewed by)) report and any supporting documents and/or evidence. If the report is incomplete or the charge(s) is inappropriate, the infraction review officer ((who may:~~

~~(a) Approve)) will return the report ((and forward it)) to the ((hearing clerk;~~

~~(b) Require the report)) reporting staff member to be revised, rewritten, or reinvestigated ((by the reporting staff member to ensure that the alleged facts support the charges;~~

~~(c) Add, dismiss, delete or reduce the indicated WAC violations as appropriate, based upon the information and/or evidence provided by the reporting staff member and any mitigating factors;~~

~~(d) Recommend)). Otherwise, the infraction review officer will forward the report to the hearing clerk or designee to schedule a hearing.~~

~~The infraction review officer may recommend referral to a mental health professional as defined in department policy for consultation if there is a question whether:~~

~~((i)) (a) Mental illness contributed to the behavior that led to the ((infraction)) violation; or~~

~~((ii)) (b) The ((inmate's)) offender's mental health status may need to be monitored.~~

~~((4) If) (3) A negotiated hearing process ((is in place in the facility, the report may)) will be used for any violation specifically identified in department policy. The serious infraction report will be forwarded to the designated hearing((s)) officer per department policy.~~

AMENDATORY SECTION (Amending WSR 09-01-195, filed 12/24/08, effective 1/24/09)

WAC 137-28-280 Temporary prehearing ((confinement)) placement. (1) ((Before a hearing, an inmate)) An offender may be temporarily confined to his/her cell or ((demoted to a higher custody level or housing assignment)) placed in more restrictive housing, such as segregation, when it is reasonably believed that the ((inmate)) offender presents a ((risk to the)) security ((of the institution)) risk, a risk of escape, or a danger to ((themselves)) himself/herself or to others, or is in danger from others.

~~(2) ((Confinement decisions under this rule shall be made by the shift commander in writing. All)) Segregation placement decisions must be approved by the superintendent within ((one working day)) three business days of the confinement.~~

~~((3) Confinement imposed under this section)) (a) Placement may not be for more than three ((working)) business days, unless either the ((inmate)) offender or the ((institution, for good cause;)) facility requires additional time to prepare for the disciplinary hearing, or there is an administrative segregation hearing.~~

~~((4)) (b) If found guilty of the infraction and sanctioned to segregation, the offender shall receive credit against the sanction for time already served in segregation for that violation.~~

~~(3) An ((inmate)) offender confined ((under this section shall be subject to the same rules and restrictions as other inmates in the unit or status.~~

~~(5) An inmate confined under this rule)) to his/her cell or placed in more restrictive housing shall be afforded reasonable opportunities to prepare a defense to the charges against him/her.~~

~~((6) An inmate confined on prehearing confinement or restricted under this rule by administrative segregation place-~~

ment shall receive credit against the sanction for time served if found guilty of the infraction.

(7) If an inmate is on prehearing confinement and a sanction of further segregation or isolation is given and the inmate indicates he/she wishes to appeal, the inmate may remain on prehearing confinement status pending disposition of the appeal, unless released by the superintendent.)

NEW SECTION

WAC 137-28-285 Offender rights. (1) An offender charged with a violation(s) has the right to:

- (a) A fair and impartial hearing;
 - (b) Written notice of the alleged violation(s) and a summary of the supporting evidence at least twenty-four hours before the hearing;
 - (i) The notice shall include a statement of the rights listed in this section.
 - (ii) The offender may waive the twenty-four hour notice.
 - (c) Be present at the hearing or waive presence at the hearing;
 - (d) Request a department advisor and/or an interpreter to assist the offender in preparing for and participating in the hearing;
 - (e) Testify or remain silent;
 - (f) Call witnesses and present documentary evidence, though the hearing officer may exclude witnesses/evidence deemed irrelevant, duplicative, or unnecessary;
 - (g) Propose questions for the hearing officer to ask witnesses, although the hearing officer may exclude questions deemed irrelevant, duplicative, or unnecessary;
 - (h) Appeal the hearing officer's finding(s) and/or sanction(s) imposed to the superintendent within fifteen business days of the hearing officer's decision.
- (2) Offenders do not have the right to:
- (a) Cross-examine witnesses;
 - (b) Have the reporting staff member present at the hearing;
 - (c) Receive a polygraph or other supplemental tests;
 - (d) Examine physical evidence;
 - (e) Receive confidential information.

AMENDATORY SECTION (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

WAC 137-28-290 Preparations for hearing. (1) When possible, hearings will be held in the facility where the violation(s) occurred. If the offender is transferred to another facility before a hearing is conducted, the sending facility will provide the infraction report, along with any supporting documents, to the receiving facility.

(2) In preparation for the hearing, the hearing clerk or designee shall, at least twenty-four hours ~~((in advance of))~~ before the hearing:

- ~~((1))~~ (a) Provide copies of the infraction report ~~((to the inmate))~~ and nonconfidential supporting documents, including a summary of the supporting evidence, to the offender;
- ~~((2))~~ (b) Advise the ~~((inmate))~~ offender in writing ~~((=~~
 - ~~(a) Of his/her right to have a hearing;~~
 - ~~(b) That if he/she chooses not to testify at or attend the hearing, his/her silence may be used against him/her;~~

~~(e) To present written statements from other inmates, staff, or other persons only if those statements would be relevant to the infraction and have a tendency to demonstrate his/her innocence;~~

~~(d) To request that staff members, other inmates, and other persons be present as witnesses in his/her defense for the hearing if it is determined by the hearing officer that to do so would not be unduly hazardous to institutional safety or correctional goals. Limitations may be made by the hearing officer if the information to be presented by the witnesses is deemed to be irrelevant, duplicative, or unnecessary to the adequate presentation of the inmate's case;~~

~~(e) To have a staff advisor assist in preparation of the inmate's case when it is determined by appropriate staff that the inmate is unable to adequately represent him/herself on the basis of literacy, competence, or other disability;~~

~~(f) To have access to nonconfidential reports and records used by the hearing officer during the fact-finding stage. However, where reports and records contain information that might reasonably compromise the security or safety of the institution or its inmates, these reports and records shall be identified as confidential and withheld. A summary of the confidential information shall be provided to the inmate. This summary may be included in the infraction report.~~

~~(g) The inmate must establish that any requested witness has relevant and exculpatory evidence to present at the hearing. The inmate must list all intended witnesses on the notice of hearing. The hearing officer may, in his/her discretion, allow additional witnesses for good cause shown;~~

~~(3) Advise the inmate that he/she does not have a right:~~

~~(a) To cross-examine witnesses;~~

~~(b) To have the infraacting staff member present at the hearing;~~

~~(c) To a polygraph or other supplemental tests;~~

~~(4)) of the date, time, and location of the hearing and of the rights, restrictions, and responsibilities listed in this chapter;~~

~~(c) Obtain written ~~((acknowledgement))~~ acknowledgment of the ~~((inmate's))~~ offender's receipt of the ~~((information;~~~~

~~(5)) infraction report and any supporting documents;~~

~~(d) Determine ~~((from the inmate))~~ whether the ~~((inmate))~~ offender wishes to contest the allegation;~~

~~((6) Schedule the hearing within seven working days after discovery of the incident. If an inmate)) (c) Determine whether the offender needs a department advisor and/or an interpreter. If assigned, the department advisor and/or interpreter will remain in place throughout the hearing process, unless the offender declines assistance.~~

~~(3) If an offender is placed in prehearing confinement ~~((=~~ a) ~~in segregation, the hearing ~~((shall))~~ will be held within three ~~((working days after the day of placement))~~ business days of service of the infraction report and any supporting documents, unless the ~~((time is extended by the superintendent. If))~~ offender has waived twenty-four hour notice for the hearing or the hearing is continued in writing by the hearing officer. A staff member may be assigned to assist in obtaining witness statements.~~~~

If a hearing is continued, a determination shall be made in writing whether the ~~((inmate))~~ offender should remain ~~((on~~

~~prehearing confinement and the reasons for that confinement)) in segregation.~~

~~(4) For offenders not placed in segregation, the hearing will be held within five business days of service of the infraction report and any supporting documents.~~

NEW SECTION

WAC 137-28-295 Department advisors. (1) A department advisor may be appointed per department policy to help the offender prepare for and participate in the hearing. Before a department advisor is assigned, the following factors will be considered:

- (a) The offender's literacy;
- (b) The complexity of the issue(s);
- (c) The offender's overall ability to speak for himself/herself and adequately present his/her case;
- (d) The offender's ability to communicate in English;
- (e) Any disability that might impair the offender's ability to adequately defend himself/herself.

(2) The department advisor will be a staff member who is not involved in the observation or investigation of the infraction.

(3) The department advisor shall attend the hearing, in whole or in part, based on the offender's needs. He/she may attend in person or by telephone. He/she shall not present the offender's case, question witnesses, or make any other oral presentation, unless requested by the hearing officer.

(4) When a hearing is continued for the purpose of appointing a department advisor, an advisor shall be appointed immediately.

(5) Conversations between department advisors and offenders are neither confidential nor privileged.

AMENDATORY SECTION (Amending WSR 00-10-079, filed 5/2/00, effective 6/2/00)

WAC 137-28-300 Conduct of hearing. (1) The hearing officer shall ensure that the ~~((inmate))~~ offender's rights are protected throughout the hearing. The hearing officer shall ensure that the offender is capable of understanding the charge against him/her((-)) and the nature of the proceedings, and is able to adequately ((take part)) participate in the hearing. If there is reason to doubt the ((inmate's)) offender's understanding or ability, the hearing officer may order a continuance of the hearing in order to obtain additional information((- refer the inmate to a mental health staff member for assessment, appoint a mental health staff member to represent the inmate at the hearing, or request a staff advisor)).

(2) The ~~((inmate))~~ offender shall be present at all stages of the hearing, except during deliberations, examination of any physical evidence and/or confidential information, and any inquiry the hearing officer may make concerning the evidence/information presented, including the source(s) of confidential information.

~~((3) The hearing officer may consider relevant evidence presented)) (a) If new evidence/information is introduced outside the hearing ((when not feasible to present that evidence within the hearing. The inmate shall be apprised of the content of that evidence and shall be allowed)), the offender will have an opportunity to rebut ((that)) the evidence/infor-~~

~~mation during the hearing. ((An inmate may waive his/her presence at a hearing. Failure without good cause))~~

~~(b) Unless excused, an offender's failure to attend a scheduled hearing ((may be deemed a waiver of personal attendance. An inmate may be removed from his/her disciplinary hearing and the hearing may be continued in the inmate's absence if the inmate's behavior disrupts the disciplinary hearing.~~

~~(4) Where institution staff members are witnesses against the inmate, a written statement from the staff member may)) will be considered ((by the)) his/her waiver of the right to be present at the hearing.~~

~~(3) An audio recording will be made of all hearings. A written record will also be made of all hearings.~~

~~(a) The record shall include:~~

~~(i) The name and DOC number of the offender;~~

~~(ii) The date, location, and time of the hearing;~~

~~(iii) The name of the hearing officer;~~

~~(iv) The alleged violation(s);~~

~~(v) The offender's plea(s) to the alleged violation(s);~~

~~(vi) The names of witnesses;~~

~~(vii) A summary of the statements of the offender and any witnesses, and information from any additional sources, including confidential sources;~~

~~(viii) A summary of any new evidence/information introduced outside the hearing;~~

~~(ix) A description of any physical evidence;~~

~~(x) The reasons for denying any witnesses;~~

~~(xi) Any witness statements requested by the offender or hearing officer ((instead of in-person testimony, except where)) that were not provided or were unavailable, if applicable;~~

~~(xii) Any witness questions proposed by the offender that the hearing officer did not ask and the reason(s) the questions were excluded (i.e., irrelevant, duplicative, or unnecessary);~~

~~(xiii) The hearing officer's decision, the sanction(s) imposed, and reasons.~~

~~(b) If the offender is found guilty, the hearing officer will ensure all related reports, recordings, and attachments become part of the offender's file.~~

~~(4) The hearing officer will ensure physical evidence is handled per department policy.~~

~~(5) If an offender's behavior disrupts the hearing, he/she may be removed and the hearing will continue on the record in the offender's absence.~~

~~(6) If the hearing officer determines that a witness's presence is necessary, the witness may participate by telephone or in person, at the hearing officer's discretion. If the hearing officer determines that ((the staff member's presence is necessary to an adequate understanding of the issues in the case.~~

~~(5)) participation would be unduly hazardous to facility safety or correctional goals, the witness will provide a written statement.~~

~~(7) The hearing officer has the authority to question all witnesses. The ((inmate)) offender may submit proposed questions to be asked of witnesses, but the hearing officer ((has discretion over the)) may exclude questions ((asked.~~

~~(6) The inmate shall be allowed to present witnesses in his/her defense and to present documentary evidence in his/~~

her defense when permitting him/her to do so will not be unduly hazardous to institutional safety or correctional goals. Testimony of witnesses from outside the facility will be submitted in writing.

(a) The hearing officer may deny the admission of evidence or testimony if the hearing officer determines that the testimony or evidence is) that are irrelevant, ((immaterial, unnecessarily)) duplicative ((of other information before the hearing officer, or otherwise found to be)), or unnecessary to the adequate presentation of the ((inmate's)) offender's case.

((b) The testimony of witnesses that is adverse to the inmate may be given in person, in writing, or by telephone.

(c) The hearing officer shall document on the written record the reasons for denial of in-person testimony that is requested in writing by the inmate.

~~(7) If the hearing officer determines that a source of information would be subject to risk of harm if his/her identity were disclosed, testimony of the)~~ (8) Information from a confidential source ((may)) will be introduced by the testimony of ((a) the staff member. ((The confidential testimony may be provided by the source or by the written and signed statement of the source. If the staff member to whom the source provided information is unavailable, the written statement of this staff member may be used)) who received the information.

(a) The hearing officer shall, out of the presence of ((all inmates)) the offender and off the record, ((identify the confidential source, and how the testifying staff member received)) review the confidential information((-

(b) The staff member presenting the information from a confidential source shall identify the source and the circumstances surrounding the receipt of the confidential information to the hearing officer, off the record. The hearing officer shall)) and make an independent determination regarding the reliability of the ((confidential)) source, the credibility of the information, and the necessity of not revealing the source ((of the confidential information)). In determining whether the ((confidential)) source is reliable and the ((confidential)) information is credible, the hearing officer should consider all relevant circumstances including, but not limited to:

(i) Evidence from other staff members that the confidential source has previously given reliable information;

(ii) Evidence that the confidential source had no apparent motive to fabricate information;

(iii) Evidence that the confidential source received no benefit from providing the information;

(iv) Whether the confidential source is giving first-hand information;

(v) Whether the confidential information is internally consistent and is consistent with other known facts; and

(vi) The existence of corroborating evidence.

(b) The hearing officer shall also determine whether safety concerns justify nondisclosure of the source of confidential information.

(c) The reliability and credibility determination and the need for confidentiality must be made on the record.

NEW SECTION

WAC 137-28-305 Continuances. (1) At any time during the disciplinary process, the hearing officer may continue the hearing:

(a) To appoint a department advisor;

(b) To obtain an interpreter;

(c) To obtain a witness(es) or witness statement(s);

(d) To obtain a replacement hearing officer;

(e) If the witness(es) is temporarily unavailable;

(f) If the offender is unavailable (e.g., on escape, court-ordered custody, in transit to a nondepartment facility, etc.);

(g) At the reasonable request of the offender;

(h) If the facility is experiencing altered/modified operational status;

(i) To determine restitution costs.

(2) Continuances shall be for no longer than necessary, and shall not exceed twenty business days, unless approved by the superintendent.

(3) Hearings for offenders on escape status, in court-ordered custody, in transit to a facility in another jurisdiction, or otherwise unavailable may be continued for not more than twenty business days after their return to department custody.

AMENDATORY SECTION (Amending WSR 06-21-054, filed 10/13/06, effective 11/13/06)

WAC 137-28-310 Decision of hearing officer. (1) ((A report of the hearing shall be made.

(a) The report shall include:

(i) The charge;

(ii) Names of witnesses;

(iii) Inmate plea(s);

(iv) Summary of the testimony and cross-examination;

(v) A description of the physical evidence used;

(vi) Reasons for denying witnesses or the fact that written witness statements were not returned to the hearing officer; and

(vii) The decisions and reasons.

(b) The written report shall be placed in the inmate's institutional file if he/she is found guilty.

(c) All reports and attachments shall be maintained by the clerk as part of the hearing officer's permanent records. A complete taped record of the hearing shall be taken but the tape shall not become a part of the inmate's file, and may be destroyed in accordance with the department's archive retention schedule unless the hearing officer becomes aware that an appeal or court proceeding is pending.

(2)) In reaching a decision ((on the guilt or innocence of the inmate)), the hearing officer ((must rely solely on evidence considered)) will consider only the evidence presented at the hearing((- However, during the dispositional stage of the hearing, other factors, such as the inmate's institutional file, prior conduct, mental status, and overall institution adjustment, may be considered.

(3) The hearing officer may not find an inmate guilty of committing a #328 or #728 infraction if the inmate possesses sexually explicit materials depicting only actual penetration and such sexually explicit material was screened and approved by a mail room staff member prior to delivery to the inmate. Nothing herein shall be construed to limit the ability

to remove such material from the inmate's possession and cell.

~~(4) The hearing officer shall consider mitigating factors in determining whether to reduce a #728 serious infraction to a #328 general infraction).~~

~~((5)) (2) The hearing officer is authorized to find an inmate guilty of a lesser included offense without issuing a new infraction report or conducting a new hearing.~~

~~((6)) (3) Where the evidence suggests an inmate is guilty of an offense not charged and which is not a lesser included offense to a charged offense, the hearing officer may recommend that new charges be filed to address such offenses. The inmate may waive the right to a separate hearing ((on the new charges and may allow the hearing officer to enter a finding of guilty or not guilty and impose sanctions.~~

~~(7) The inmate) and allow the hearing officer to conduct the hearing on the new charge.~~

~~(4) The offender shall be informed of the hearing officer's decision ((of the hearing officer)) in writing within three ((working) business days of the hearing, unless extended by the superintendent.~~

~~((8) The inmate) (5) The offender shall be informed of his/her right to appeal the hearing officer's decision ((of the hearing officer)) to the superintendent.~~

AMENDATORY SECTION (Amending WSR 09-01-195, filed 12/24/08, effective 1/24/09)

WAC 137-28-350 Sanctions—Authority to impose.

(1) If the hearing officer finds the offender not guilty of a violation, disciplinary sanctions shall not be imposed on the offender for that violation. Records pertaining to the violation shall not be placed in the offender's file, but may be retained for statistical, litigation, and recordkeeping purposes.

(2) If the hearing officer ((determines that an inmate is)) finds the offender guilty of a serious ((infraction, he/she)) violation, the hearing officer may impose one or more of the ((following)) sanctions listed in this section.

If the hearing officer determines that more than one violation occurred as a result of the same incident, he/she shall not impose sanctions for the separate violations, but shall consider them together and impose penalties based on the most serious violation in the group.

(3) Allowable sanctions for serious violations are as follows. The hearing officer may consider factors such as prior documented behavior, infraction history, mental status, and overall facility and program adjustment when determining an appropriate sanction(s):

(a) Any of the sanctions available for general ((infractions)) violations;

(b) Any of the sanctions available under ((DOC 320.150) department policy;

(c) Loss of a privilege or privileges as ((specified by the hearing officer)) outlined in department policy for a period not to exceed: Thirty consecutive days on ((a)) the first offense, ninety consecutive days on ((a)) the second offense, and one hundred eighty consecutive days on ((a)) the third offense(;) within a one-year period;

(d) ((Evening lockup or confinement to quarters for ten days;

~~(e) Weekend and/or holiday lockup or confinement to quarters for a period of one or more weekends but not to exceed twelve consecutive weekends per incident. For purposes of this rule, a "weekend" shall begin at the end of the Friday workday and terminate at the beginning of the Monday workday;~~

~~((f)) Confinement to ((quarters)) cell/room except for meals(;) (or with meals in cell(, with or without curtailment of job assignment)), attendance at work or school assignments, or religious services, or law library if approved for emergency/priority access per department policy, for a period not to exceed thirty consecutive days;~~

~~((g)) (e) Recommendation to the ((unit team/classification committee/assignment officer for reconsideration)) facility risk management team for review of custody classification ((or program change;~~

~~(h) Recommendations to the classification committee/classification officer for transfer to another institution when, as a result of the infraction committed, the inmate is unable to function in the institution of present confinement, or if other disciplinary methods have been attempted and failed));~~

~~((h)) (f) Confinement on segregation status for a period not to exceed thirty consecutive days;~~

~~((j) Confinement) (g) With assistant secretary approval, confinement on isolation status for a period not to exceed ten consecutive days(, however, where), Where a serious ((infraction)) violation occurs during a period of isolation ((imposed under this rule)), additional periods of isolation not to exceed ten consecutive days may be imposed. In situations where an ((inmate)) offender is in isolation for more than ten consecutive days, the ((director's)) assistant secretary's prior approval is required unless the ((inmate)) offender is released from isolation for at least seventy-two consecutive hours between the end of one isolation sanction and the beginning of another;~~

~~((k)) (h) Restitution per WAC 137-28-410;~~

~~((h)) (i) Recommendation to the superintendent that he/she ((not certify)) deny good conduct time credit ((for an inmate subject to the jurisdiction of the indeterminate sentence review board, pursuant to RCW 9.95.070 or that he/she approve the denial of good conduct time credit for those inmates not under the jurisdiction of the board)).~~

~~((i)) The recommendation will be consistent with guidelines established by the ((secretary of the)) department ((of corrections.~~

~~((i)) secretary. Any sanctions ((for loss of good conduct credits)) in excess of the guidelines ((established by the secretary of the department of corrections must have final approval by the deputy secretary.~~

~~((ii)) For inmates not under the board's jurisdiction, all awards of good conduct time shall be considered tentative and therefore all good conduct time credits earned or to be earned may be addressed under this rule;~~

~~(m) Recommendation to the indeterminate sentence review board for a disciplinary hearing or reconsideration of minimum term should occur only with infractions providing for actual time loss of twelve months or more and consistent with guidelines established by the department;~~

~~(n) Interruption of visitation between the offender and a specified individual(s) for a period of up to one hundred~~

eighty consecutive days when there has been an infraction for visit related behavior or behavior that presents a security or safety threat. In cases of multiple or very serious offenses, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s);

~~(e) Restrictions, interruption or termination of correspondence, and/or telephone privileges with specified individuals. Sanctions for offense(s) within any one-year period may not exceed: Up to) require assistant secretary approval.~~

~~(j) Suspension or termination of visitation, for certain violations as outlined in department policy, for a period not to exceed: Thirty consecutive days for the first offense, ninety consecutive days for the ((first)) second offense, and one hundred eighty consecutive days for the ((second offense and permanent loss for the)) third offense((- Termination of correspondence and/or telephone privileges may be permanent for the first offense if:~~

~~(i) The recipient so requests; or)) within a one-year period. In cases of multiple or very serious violations, recommendations may be made to the superintendent for extended or permanent loss of the privilege of visitation with a specified individual(s);~~

~~(k) Restriction, interruption, or termination of correspondence, telephone, and/or electronic communication for a period not to exceed: Thirty consecutive days for the first offense, ninety consecutive days for the second offense, and one hundred eighty consecutive days for the third offense in a one-year period. Termination of correspondence, telephone, and/or electronic communication may be permanent:~~

~~(i) At the recipient's request;~~

~~(ii) ((A)) At the request of the parent or guardian of the recipient, if the recipient is a minor or an ((incompetent)) incapacitated person((- so requests; or));~~

~~(iii) ((A felony was involved in the incident;)) If correspondence perpetuates criminal activity; or~~

~~(iv) If the contact violates a court order(;~~

~~(p) The sanction for infraction #557 and #810 shall be the loss of available earned release credits and other privileges as outlined in department policy. Progressively more severe sanctions will be utilized for subsequent infractions #557 and #810.~~

~~(q) The sanction for infraction #882 shall include a mandatory loss of telephone privileges, with the exception of legal calls, for sixty consecutive days for the first offense, ninety consecutive days for the second offense and one hundred eighty consecutive days for a third or subsequent offense within any one-year period.~~

~~(2) If the hearing officer determines that more than one infraction occurred as a result of the same incident, he/she shall not impose consecutive sanctions for the separate infractions but shall consider them together and impose penalties for the group of infractions.~~

~~(3) The hearing officer may suspend the execution of a disciplinary sanction for a fixed period of time, not to exceed three hundred sixty-five consecutive days, subject to the good behavior of the inmate or to meeting other conditions as specified by the hearing officer. If the subsequent behavior of the inmate is appropriate, the hearing officer may, at or before the end of the fixed period, cancel the sanction. A suspended~~

sanction may be imposed if the inmate has been found guilty of a general or serious infraction or of violating the conditions attached to the original suspension. A suspended sanction may be imposed by the hearing officer following notice to, and an in-person meeting with, the inmate)).

~~(1) Urinalysis or breath alcohol testing for a period not to exceed ninety days for drug or alcohol related violations.~~

~~(4) The hearing officer may review any decision he/she previously made and may modify downward any sanction previously imposed.~~

~~(5) In all cases, regardless of whether an appeal is ((taken)) requested, the superintendent may review and reduce a sanction imposed ((and may reduce its severity)). Once the superintendent has made a decision on the appeal, no modifications will be made by the hearing officer.~~

~~(6) Nothing in this section limits the superintendent's discretion to grant, deny, suspend, or revoke any privilege.~~

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

WAC 137-28-360 Sanctions and mental status. In determining an appropriate sanction, the hearing officer should consider the ((inmate's)) offender's mental health and his/her intellectual, emotional, and maturity levels and what effect a particular sanction might have on the ((inmate)) offender in light of such factors. The hearing officer may request the assistance of other department staff members, including mental health staff members, in determining appropriate sanctions.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

WAC 137-28-370 Sanctions—Limitations. ~~((1) No inmate shall be subject to discipline for violation of inmate conduct rules unless there has been reasonable advance notice to the inmate of the prohibited behavior unless the rule was adopted on an emergency basis.~~

~~(2) Lowering the quantity or nutritional value of food or deprivation of clothing, bedding, bed, or normal hygienic implements shall not be used as disciplinary sanctions.~~

~~(3) Corporal punishment or physical restraint shall not be used as disciplinary sanctions.~~

~~(4) An inmate placed in disciplinary segregation shall be:~~

~~(a) Confined to an environment with healthful temperatures in cells substantially similar to those used for general population;~~

~~(b) Provided reasonable opportunities for personal hygiene;~~

~~(c) Afforded correspondence, reading, and access to the courts in accordance with written policy and procedure;~~

~~(d) Provided daily opportunity for at least one hour of exercise unless staffing, space, institutional security, order and/or safety, or other similar circumstances make this unfeasible, in which cases the inmate shall be allowed as much exercise as is feasible in the judgment of staff. Any limitations of exercise shall be approved in advance by a staff member with the rank of lieutenant or higher; and~~

~~(e) Provided adequate medical treatment.~~

(5) An inmate placed in isolation shall be:

(a) Confined in an environment with healthful temperatures in cells substantially similar to those used for the general population;

(b) Provided reasonable opportunities for personal hygiene;

(c) Afforded correspondence, reading, and access to courts in accordance with written policy and procedure. Reading literature may be limited to educational, religious, legal, or program involvement material;

(d) Provided adequate medical treatment;

(e) Upon approval by the superintendent, released immediately to an appropriate setting when medical personnel recommend such release on medical or psychological grounds; and

(f) Have reasonable access to a counselor and religious staff member.) (1) No offender shall be infraacted for violation of offender conduct rules unless he/she has been provided reasonable advance notice of the prohibited behavior, unless the rule was adopted on an emergency basis.

(2) Disciplinary sanctions shall not include:

(a) Lowering the quantity or nutritional value of food;

(b) Corporal punishment or physical restraint;

(c) Confinement to an environment with unhealthful temperatures;

(d) Denial of adequate medical treatment.

AMENDATORY SECTION (Amending WSR 06-21-054, filed 10/13/06, effective 11/13/06)

WAC 137-28-380 ((Appeal to superintendent)) Serious infraction appeals. (1) ((An inmate or the inmate's staff advisor)) If the hearing officer finds the offender guilty of a serious violation, only the offender may appeal the decision ((of the hearing officer)) and/or sanction(s) to the superintendent ((by filing a written)).

(a) An appeal request ((for review with his/her reasons with the clerk)) cannot be filed when the offender has pled guilty to the violation.

(b) The appeal request must be in writing and must include the reason(s) why the offender believes the action taken was incorrect and specify the desired relief.

(c) The appeal request must be filed within fifteen business days((-exclusive of weekends and holidays, after)) of receiving the notice.

(d) Failure to follow appeal procedures shall be deemed a waiver of the ((decision of the hearing officer. The)) appeal, however the superintendent may consider appeals filed beyond the fifteen((-) business day period.

(2) The ((clerk shall promptly transmit the appeal and)) superintendent will review the hearing record ((to the superintendent.

(3) The superintendent shall)) and act on the appeal request within ten ((working)) business days of ((its)) receipt. The superintendent may affirm the decision ((of the hearing officer; reduce the charge to a lesser included offense; reduce a #728 serious infraction to a #328 general infraction based upon mitigating factors; reduce the severity of the sanctions imposed; vacate the judgment of the hearing officer; or)) and sanction(s), affirm the decision and reduce the sanction(s), or

dismiss/modify downward the decision and sanction(s). The superintendent may also reverse the decision and remand the matter for a new hearing((-Any)), in which case the sanction(s) imposed at the new hearing may not ((result in an increase in the severity of the sanctions)) be more severe than the sanction(s) originally imposed ((unless the inmate is charged with related or additional offenses)).

((4)) (3) The ((inmate)) offender shall be promptly notified ((promptly)) in writing of the superintendent's decision ((of the superintendent)).

((5)) (4) Sanctions ((are)) will not be stayed upon appeal.

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

WAC 137-28-390 Hearing officer reports to the indeterminate sentence review board. (1) When the hearing officer determines that an offender subject to the jurisdiction of the indeterminate sentence review board is guilty of a serious violation, the hearing officer may recommend to the superintendent that he/she not certify good conduct time credit for the offender pursuant to RCW 9.95.070.

The hearing officer's recommendation will be consistent with guidelines established by the department secretary. Any sanctions for loss of good conduct credits in excess of the guidelines require assistant secretary approval.

(2) Recommendation to the indeterminate sentence review board for a disciplinary hearing or reconsideration of minimum term should occur only with violations providing for actual time loss of twelve months or more and consistent with guidelines established by the department secretary.

(3) Whenever the hearing officer finds an ((inmate)) offender under the jurisdiction of the indeterminate sentence review board guilty of a serious ((infraction)) violation and recommends either loss of good conduct time credits or an increase in the ((inmate's)) offender's minimum term, the records office must inform the indeterminate sentence review board of ((that)) the hearing officer's decision and recommendation within ten days, or((-if an appeal is taken,)) within ten days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer. If the offender is within forty-five days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.

((2)) (4) In all other cases where ((a finding of guilty is made for)) an offender under the jurisdiction of the indeterminate sentence review board is found guilty of a serious ((infraction)) violation, the records office must inform the indeterminate sentence review board of ((that)) the hearing officer's decision within thirty days, or ((if an appeal is taken,)) within thirty days of the superintendent's decision if an appeal is granted. This report shall include a copy of the summary of the hearing prepared by the hearing officer ((reporter.

(3) Where an inmate is found guilty of a serious infraction)) If the offender is within forty-five days of an apparent release date, the indeterminate sentence review board shall be notified promptly with written notification to follow.

~~((4) This section shall apply only to inmates who are under the jurisdiction of the indeterminate sentence review board.))~~

AMENDATORY SECTION (Amending WSR 95-15-044, filed 7/13/95, effective 8/15/95)

WAC 137-28-410 Restitution. (1) If the hearing officer imposes restitution (~~(has been imposed)~~) as a sanction, (~~(a hearing officer shall determine the amount of restitution owed. A determination of)~~) the amount of restitution owed shall be (~~(made)~~) determined at the infraction hearing. However, the hearing officer may continue the hearing in order to secure additional evidence regarding restitution. If continued, the (~~(inmate)~~) offender shall be present at the continued/reconvened hearing.

(2) The amount of restitution (~~(normally shall)~~) will be the replacement value of the item, the cost of repair, and/or the cost of any unnecessary expense caused by the (~~(inmate's)~~) offender's misconduct.

(3) The (~~(inmate shall be given an opportunity to)~~) offender may appeal the amount of restitution within the time limits of this (~~(policy)~~) chapter. If under appeal, the amount of the restitution will be held in the (~~(inmate's)~~) offender's account, but funds will not be (~~(withdrawn from the inmate's account)~~) withdrawn/withheld until the superintendent has decided the appeal.

(4) Restitution funds may be collected in the following ways:

(a) The funds may be (~~(~~) withdrawn from the (~~(inmate's)~~) offender's account to make restitution, provided the (~~(inmate's)~~) offender's account (~~(shall)~~) is not (~~(be)~~) reduced to less than ten dollars; or

(b) Twenty percent of all funds being placed (~~(into)~~) in the (~~(inmate's)~~) offender's account may be taken until the restitution is paid in full.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 137-28-185	Creation or amendment of serious infractions.
WAC 137-28-330	Finding of not guilty.
WAC 137-28-340	Staff advisors.
WAC 137-28-420	Continuances.
WAC 137-28-430	Evidence.

WSR 15-20-020

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed September 25, 2015, 8:44 a.m., effective October 26, 2015]

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

Purpose: WAC 458-20-105 (Rule 105) Employees distinguished from persons engaging in and operating a busi-

ness, explains the conditions that serve to indicate whether persons are engaging in business or are employees.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-105 Employees distinguished from persons engaging in and operating a business.

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

Adopted under notice filed as WSR 15-16-115 on August 4, 2015.

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

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

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

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

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

Date Adopted: September 25, 2015.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 92-06-082, filed 3/4/92, effective 4/4/92)

WAC 458-20-105 Employees distinguished from persons engaging in and operating a business. (1) **Introduction.** The Revenue Act imposes taxes (~~(upon)~~) on persons engaged in taxable business (~~(but)~~) activity, which does not (~~(upon)~~) include persons acting solely in the capacity of employees. This rule states the conditions that serve to indicate whether a person is engaging in and operating a business or is an employee.

(2) **Right to control.** While no one factor definitely determines employee status, the most important consideration is the employer's right to control the employee. The right to control is not limited to controlling the result of the work to be accomplished, but includes controlling the details and means by which the work is accomplished. In cases of doubt about employee status (~~(at)~~) the pertinent facts (~~(should)~~) may be submitted to the department of revenue for a specific ruling.

(3) **Persons engaging in and operating a business.** A person operating a business is a business entity that is engaging in business. The term "engaging in business" (~~(means)~~) includes commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business. RCW 82.04.150. Engaging in business also includes the act of transferring, selling or otherwise dealing in real or personal property, or the rendition of services, for consideration except as an employee. The following conditions will serve

to indicate that a person is engaging in and operating a business.

If a person is:

(a) Holding oneself out to the public as engaging in business with respect to dealings in real or personal property, or in respect to the rendition of services;

(b) Entitled to receive the gross income of the business or any part thereof;

(c) Liable for business losses or the expense of conducting a business, even though such expenses may ultimately be reimbursed by a principal;

(d) Controlling and supervising others, and being personally liable for their payroll, as a part of engaging in business;

(e) Employing others to carry out duties and responsibilities related to the engaging in business and being personally liable for their pay;

(f) Filing a statement of business income and expenses (Schedule C) for federal income tax purposes;

(g) A party to a written contract, the intent of which establishes the person to be an independent contractor;

(h) Paid a gross amount for the work without deductions for employment taxes (such as Federal Insurance Contributions Act, Federal Unemployment Tax Act, and similar state taxes).

(4) **Employees.** The following conditions indicate that a person is an employee.

If the person:

(a) Receives compensation, which is fixed at a certain rate per day, week, month or year, or at a certain percentage of business obtained, payable in all events;

(b) Is employed to perform services in the affairs of another, subject to the other's control or right to control, and includes hired household employees that may cook, clean, provide nanny-care, or grounds maintenance;

(c) Has no liability for the expenses of maintaining an office or other place of business, or any other overhead expenses or for compensation of employees;

(d) Has no liability for losses or indebtedness incurred in the conduct of the business;

(e) Is generally entitled to fringe benefits normally associated with an employer-employee relationship, e.g., paid vacation, sick leave, insurance, and pension benefits;

(f) Is treated as an employee for federal tax purposes;

(g) Is paid a net amount after deductions for employment taxes, such as those identified in subsection (3)(h) of this ~~(section)~~ rule.

(5) **Full-time life insurance salespersons.** ~~(Chapter 275, Laws of 1991, effective July 1, 1991,)~~ RCW 82.04.360 provides that individuals performing services as full-time life insurance salespersons, as provided in section 3121 (d)(3) ~~((B))~~ (ii) of the Internal Revenue Code, will be considered employees. Treatment as an employee under this subsection (5) applies only to persons engaged in the full-time sale of life insurance. The status of other persons, including others listed in section 3121(d) of the Internal Revenue Code, will be determined according to the provisions of subsections (1) ~~((and (2)))~~ through (4) of this ~~(section (see WAC 458-20-164 for the proper tax treatment of insurance agents, brokers, and solicitors))~~ rule. For information on the taxability of

insurance producers, adjusters, title insurance agents, and surplus line brokers refer to WAC 458-20-164.

(6) **Operators of rented or owned equipment.** Persons who furnish equipment on a rental or other basis for a charge and who also furnish the equipment operators, are engaging in and operating a business and are not employees of their customers. Likewise, persons who furnish materials and the labor necessary to install or apply the materials, or produce something from the materials, are presumed to be engaging in and operating a business and not to be employees of their customers.

(7) **Casual laborers.** Persons regularly performing odd job carpentry, painting or paperhanging, plumbing, bricklaying, electrical work, cleaning, yard work, etc., for the public generally are presumed to be engaging in and operating a business. The burden of proof is ~~((upon))~~ on such persons to show otherwise. ~~((However,))~~ For tax registration and tax reporting requirements refer to WAC 458-20-101 ((and 458-20-104 for registration and reporting requirements for such activities)). Readers may also want to contact the Washington state employment security department or the Internal Revenue Service for additional information.

(8) **Corporations, joint ventures, or individuals acting as a unit.** A corporation, joint venture, partnership, limited liability corporation, or any other group of individuals acting as a unit, is not an employee.

(9) **Booth renters.** For purposes of the business and occupation tax a "booth renter," as defined in RCW ~~((18.16-020(19)))~~ 82.04.360, is considered ~~((engaged in))~~ to be engaging in and operating a business and not an employee.

(a) A "booth renter" is any person who:

~~((a))~~ (i) Performs cosmetology, barbering, esthetics, or manicuring services for which a license is required pursuant to chapter 18.16 RCW; and

~~((b))~~ (ii) Pays a fee for the use of salon or shop facilities and receives no compensation or other consideration from the owner of the salon or shop for the services performed.

~~((e))~~ See WAC 458-20-118 for the proper treatment (b) For the taxability of amounts received for the rental or licensing of real estate ~~((and))~~ refer to WAC 458-20-118. Refer to WAC 458-20-200 for the ((proper treatment)) taxability of amounts received for leased departments.

(10) **Personal chefs.** Personal chefs are engaging in and operating a business as independent contractors. They prepare meals for consumption at their clients' homes. Personal chefs typically serve multiple clients, working with the clients to create personalized meal plans based on the client's specific dietary requirements or requests. The meals may be prepared in the client's home or in a commercial kitchen and delivered to the client's home. Personal chefs may also prepare meals for social events, such as dinner parties, cocktail parties, engagement parties, weddings, or receptions.

WSR 15-20-028
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed September 25, 2015, 4:47 p.m., effective November 1, 2015]

Effective Date of Rule: November 1, 2015.

Purpose: Section 3.11 - the agency's practice for many years has been to adjust the maximum civil penalty amount as allowed by law. The proposed adjustment to the maximum civil penalty amount accounts for inflation, as authorized by RCW 70.94.431 and as determined by the state office of the economic and revenue forecast council. Without this adjustment, the maximum penalty amount would effectively decrease each year. The CPI for the Seattle/Tacoma/Bremerton area increased by 1.14 percent for the 2014 calendar year, which amounts to an increase of \$202 in the maximum civil penalty amount.

The amendment will not affect the way the agency determines actual civil penalty amounts in individual cases. This continues to be done following civil penalty worksheets previously approved by the board.

Section 3.25 - this section currently provides that whenever federal rules are referenced in agency regulations, the effective date of the federal regulations referred to is July 1, 2014. This provides certainty so that persons affected by the regulations and agency staff know which version of a federal regulation to reference. For many years, the agency's practice has been to update this date annually to stay current with federal regulations. Following this practice, the amendments change the reference date to July 1, 2015.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Sections 3.11 and 3.25.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 15-17-119 on August 19, 2015.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: September 24, 2015.

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 3.11 CIVIL PENALTIES

(a) Any person who violates any of the provisions of chapter 70.94 RCW or any of the rules or regulations in force pursuant thereto, may incur a civil penalty in an amount not to exceed \$((47,781.00)) 17,983.00, per day for each violation.

(b) Any person who fails to take action as specified by an order issued pursuant to chapter 70.94 RCW or Regulations I, II, and III of the Puget Sound Clean Air Agency shall be liable for a civil penalty of not more than \$((47,781.00)) 17,983.00, for each day of continued noncompliance.

(c) Within 30 days of the date of receipt of a Notice and Order of Civil Penalty, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. To be considered timely, a mitigation request must be actually received by the Agency, during regular office hours, within 30 days of the date of receipt of a Notice and Order of Civil Penalty. This time period shall be calculated by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or legal holiday, and then it is excluded and the next succeeding day that is not a Saturday, Sunday, or legal holiday is included. The date stamped by the Agency on the mitigation request is prima facie evidence of the date the Agency received the request.

(d) A mitigation request must contain the following:

(1) The name, mailing address, telephone number, and telefacsimile number (if available) of the party requesting mitigation;

(2) A copy of the Notice and Order of Civil Penalty involved;

(3) A short and plain statement showing the grounds upon which the party requesting mitigation considers such order to be unjust or unlawful;

(4) A clear and concise statement of facts upon which the party requesting mitigation relies to sustain his or her grounds for mitigation;

(5) The relief sought, including the specific nature and extent; and

(6) A statement that the party requesting mitigation has read the mitigation request and believes the contents to be true, followed by the party's signature.

The Control Officer shall remit or mitigate the penalty only upon a demonstration by the requestor of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(e) Any civil penalty may also be appealed to the Pollution Control Hearings Board pursuant to chapter 43.21B RCW and chapter 371-08 WAC. An appeal must be filed with the Hearings Board and served on the Agency within 30 days of the date of receipt of the Notice and Order of Civil Penalty or the notice of disposition on the application for relief from penalty.

(f) A civil penalty shall become due and payable on the later of:

(1) 30 days after receipt of the notice imposing the penalty;

(2) 30 days after receipt of the notice of disposition on application for relief from penalty, if such application is made; or

(3) 30 days after receipt of the notice of decision of the Hearings Board if the penalty is appealed.

(g) If the amount of the civil penalty is not paid to the Agency within 30 days after it becomes due and payable, the Agency may bring action to recover the penalty in King County Superior Court or in the superior court of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

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

(i) To secure the penalty incurred under this section, the Agency shall have a lien on any vessel used or operated in violation of Regulations I, II, and III which shall be enforced as provided in RCW 60.36.050.

AMENDATORY SECTION

REGULATION I, SECTION 3.25 FEDERAL REGULATION REFERENCE DATE

Whenever federal regulations are referenced in Regulation I, II, or III, the effective date shall be July 1, ~~((2014))~~ 2015.

WSR 15-20-029

PERMANENT RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed September 25, 2015, 4:48 p.m., effective November 1, 2015]

Effective Date of Rule: November 1, 2015.

Purpose: This is a nonproject action for a technical amendment for the registration program that is being proposed to extend exemptions for emergency generators that are powered by spark ignited engines. These exemptions are parallel to those already available for compression ignition (diesel) engine emergency generators.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 5.03.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 15-17-120 on August 19, 2015.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: September 24, 2015.

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 5.03 APPLICABILITY OF REGISTRATION PROGRAM

(a) The requirements of this article shall apply only to:

(1) Sources subject to a federal emission standard under:

(A) 40 CFR Part 60 (except Subparts B, S, BB, and AAA, ~~((and))~~ the provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines, and the provisions of Subpart JJJJ pertaining to owners and operators of emergency stationary spark ignited internal combustion engines);

(B) 40 CFR Part 61 (except Subparts B, H, I, K, Q, R, T, W, and the provisions of Subpart M pertaining to asbestos on roadways, asbestos demolition and renovation activities, and asbestos spraying);

(C) 40 CFR Part 62; or

(D) 40 CFR Part 63 (except Subpart LL, the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart BBBB pertaning to bulk gasoline plants, and Subparts WWWW, CCCCC, HHHHH, WWWW, XXXXX, YYYYY, and ZZZZ);

(2) Sources with a federally enforceable emission limitation established in order to avoid operating permit program applicability under Article 7 of this regulation;

(3) Sources with annual emissions:

(A) Greater than or equal to 2.50 tons of any single hazardous air pollutant (HAP);

(B) Greater than or equal to 6.25 tons of total hazardous air pollutants (HAP); or

(C) Greater than or equal to 25.0 tons of carbon monoxide (CO), nitrogen oxides (NO_x), particulate matter (PM_{2.5} or PM₁₀), sulfur oxides (SO_x), or volatile organic compounds (VOC);

(4) Sources subject to the following sections of Regulation I, II, or III:

(A) Refuse burning equipment subject to Section 9.05 of Regulation I (including crematories);

(B) Fuel burning equipment or refuse burning equipment burning oil that exceeds any limit in Section 9.08 of Regulation I and sources marketing oil to such sources;

(C) Fuel burning equipment subject to Section 9.09 of Regulation I with a rated heat input greater than or equal to 1 MMBtu/hr of any fuel other than natural gas, propane,

butane, or distillate oil, or greater than or equal to 10 MMBtu/hr of any fuel;

(D) Sources with spray-coating operations subject to Section 9.16 of Regulation I;

(E) Petroleum refineries subject to Section 2.03 of Regulation II;

(F) Gasoline loading terminals subject to Section 2.05 of Regulation II;

(G) Gasoline dispensing facilities subject to Section 2.07 of Regulation II;

(H) Volatile organic compound storage tanks subject to Section 3.02 of Regulation II;

(I) Can and paper coating facilities subject to Section 3.03 of Regulation II;

(J) Motor vehicle and mobile equipment coating operations subject to Section 3.04 of Regulation II;

(K) Flexographic and rotogravure printing facilities subject to Section 3.05 of Regulation II;

(L) Polyester, vinylester, gelcoat, and resin operations subject to Section 3.08 of Regulation II;

(M) Aerospace component coating operations subject to Section 3.09 of Regulation II;

(N) Crushing operations subject to Section 9.18; or

(O) Ethylene oxide sterilizers subject to Section 3.07 of Regulation III;

(5) Sources with any of the following gas or odor control equipment having a rated capacity of greater than or equal to 200 cfm (≥ 4 " diameter inlet):

(A) Activated carbon adsorption;

(B) Afterburner;

(C) Barometric condenser;

(D) Biofilter;

(E) Catalytic afterburner;

(F) Catalytic oxidizer;

(G) Chemical oxidation;

(H) Condenser;

(I) Dry sorbent injection;

(J) Flaring;

(K) Non-selective catalytic reduction;

(L) Refrigerated condenser;

(M) Selective catalytic reduction; or

(N) Wet scrubber;

(6) Sources with any of the following particulate control equipment having a rated capacity of greater than or equal to 2,000 cfm (≥ 10 " diameter inlet):

(A) Baghouse;

(B) Demister;

(C) Electrostatic precipitator;

(D) HEPA (high efficiency particulate air) filter;

(E) HVAF (high velocity air filter);

(F) Mat or panel filter;

(G) Mist eliminator;

(H) Multiple cyclones;

(I) Rotoclone;

(J) Screen;

(K) Venturi scrubber;

(L) Water curtain; or

(M) Wet electrostatic precipitator;

(7) Sources with a single cyclone having a rated capacity of greater than or equal to 20,000 cfm (≥ 27 " diameter inlet);

(8) Sources with any of the following equipment:

(A) Asphalt batch plants;

(B) Burn-off ovens;

(C) Coffee roasters;

(D) Commercial composting with raw materials from off-site;

(E) Commercial smokehouses with odor control equipment;

(F) Concrete batch plants (ready-mix concrete);

(G) Galvanizing;

(H) Iron or steel foundries;

(I) Microchip or printed circuit board manufacturing;

(J) Rendering plants;

(K) Rock crushers or concrete crushers;

(L) Sewage treatment plants with odor control equipment;

(M) Shipyards;

(N) Steel mills;

(O) Wood preserving lines or retorts; or

(P) Dry cleaners using perchloroethylene; and

(9) Sources with equipment (or control equipment) that has been determined by the Control Officer to warrant registration through review of a Notice of Construction application under Section 6.03(a) or a Notification under Section 6.03(b) of this regulation, due to the amount and nature of air contaminants produced, or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(b) The requirements of this article shall not apply to:

(1) Motor vehicles;

(2) Nonroad engines or nonroad vehicles as defined in Section 216 of the federal Clean Air Act;

(3) Sources that require an operating permit under Article 7 of this regulation;

(4) Solid fuel burning devices subject to Article 13 of this regulation; or

(5) Any source, including any listed in Sections 5.03 (a)(4) through 5.03 (a)(9) of this regulation, that has been determined through review by the Control Officer not to warrant registration, due to the amount and nature of air contaminants produced or the potential to contribute to air pollution, and with special reference to effects on health, economic and social factors, and physical effects on property.

(c) It shall be unlawful for any person to cause or allow the operation of any source subject to registration under this section, unless it meets all the requirements of Article 5 of this regulation.

(d) An exemption from new source review under Article 6 of this regulation shall not be construed as an exemption from registration under this article. In addition, an exemption from registration under this article shall not be construed as an exemption from any other provision of Regulation I, II, or III.

WSR 15-20-030
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed September 25, 2015, 4:48 p.m., effective November 1, 2015]

Effective Date of Rule: November 1, 2015.

Purpose: This is a nonproject action for a technical amendment for the notice of construction (NOC) program (specifically, the categorical exemption part of that section), that is being proposed to extend exemptions for emergency generators that are powered by spark ignited engines. These exemptions are parallel to those already available for compression ignition (diesel) engine emergency generators.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 6.03.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 15-17-121 on August 19, 2015.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: September 24, 2015.

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I, SECTION 6.03 NOTICE OF CONSTRUCTION

(a) It shall be unlawful for any person to cause or allow the establishment of a new source, or the replacement or substantial alteration of control equipment installed on an existing source, unless a "Notice of Construction application" has been filed and an "Order of Approval" has been issued by the Agency. The exemptions in Sections 6.03 (b) and (c) of this regulation shall not apply to:

(1) Any project that qualifies as construction, reconstruction, or modification of an affected facility within the meaning of 40 CFR Part 60 (New Source Performance Standards), except for Subpart AAA (New Residential Wood Heaters), Subpart BB (Kraft Pulp Mills), Subpart S (Primary Aluminum Reduction Plants), Subpart OOO (Nonmetallic Mineral Processing Plants), ~~(and)~~ Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines, and Subpart JJJJ pertaining to owners and operators of emergency stationary spark ignited

internal combustion engines; and for relocation of affected facilities under Subpart I (Hot Mix Asphalt Facilities) for which an Order of Approval has been previously issued by the Agency;

(2) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for Subpart B (Radon from Underground Uranium Mines), Subpart H (Emissions of Radionuclides other than Radon from Department of Energy Facilities), Subpart I (Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H), Subpart K (Radionuclides from Elemental Phosphorus Plants), Subpart Q (Radon from Department of Energy Facilities), Subpart R (Radon from Phosphogypsum Stacks), Subpart T (Radon from Disposal of Uranium Mill Tailings), Subpart W (Radon from Operating Mill Tailings), and for demolition and renovation projects subject to Subpart M (Asbestos);

(3) Any project that qualifies as a new source as defined under 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except for the provisions of Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, Subpart LL (Primary Aluminum Reduction Plants), the provisions of Subpart S (Pulp and Paper Industry) and Subpart MM (Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills) pertaining to kraft and sulfite pulp mills, the provisions of Subpart ZZZZ (Reciprocating Internal Combustion Engines) pertaining to emergency and limited-use stationary reciprocating internal combustion engines, Subpart DDDDD (Industrial, Commercial, and Institutional Boilers and Process Heaters), Subpart WWWW (Hospitals: Ethylene Oxide Sterilizers), Subpart CCCCC (Gasoline Dispensing Facilities), Subpart HHH (Paint Stripping and Miscellaneous Surface Coating Operations), Subpart WWWW (Plating and Polishing Operations), Subpart XXXXXX (Nine Metal Fabrication and Finishing Source Categories), Subpart YYYYYY (Ferrous Alloys Production Facilities), and Subpart ZZZZZZ (Aluminum, Copper, and Other Nonferrous Foundries);

(4) Any new major stationary source or major modification as defined under WAC 173-400-030; and

(5) Any stationary source previously exempted from review that is cited by the Agency for causing air pollution under Section 9.11 of this regulation.

(b) **Notifications.** A Notice of Construction application and Order of Approval are not required for the new sources identified in this section, provided that a complete notification is filed with the Agency. It shall be unlawful for any person to cause or allow establishment of a new source identified in this section unless a complete notification has been filed with the Agency:

Liquid Storage and Transfer

(1) Storage tanks used exclusively for:

(A) Gasoline dispensing and having a rated capacity of ≥1,001 gallons, PROVIDED THAT they are installed in accordance with the current California Air Resources Board Executive Orders;

(B) Organic liquids with a true vapor pressure of 2.2-4.0 psia and having a rated capacity of 20,000-39,999 gallons; or

(C) Organic liquids with a true vapor pressure of 0.5-0.75 psia and having a rated capacity $\geq 40,000$ gallons.

(2) Loading and unloading equipment used exclusively for the storage tanks exempted above, including gasoline dispensers at gasoline stations.

Relocation of Portable Batch Plants

(3) Relocation of the following portable facilities: asphalt batch plants, nonmetallic mineral processing plants, and concrete batch plants for which an Order of Approval has been previously issued by the Agency. *All the conditions in the previously issued Order of Approval remain in effect.*

Dry Cleaning

(4) Unvented, dry-to-dry, dry-cleaning system that uses perchloroethylene as the cleaning solvent and is equipped with emission control equipment to recover the cleaning solvent, PROVIDED THAT the system and installation comply with all requirements of 40 CFR 63, Subpart M (Dry Cleaning Facilities).

Printing

(5) Non-heatset, web offset presses and wholesale, sheet-fed offset presses (lithographic or letterpress) using exclusively soy-based or kerosene-like oil-based inks, fountain solutions with $\leq 6\%$ VOC by volume or $\leq 8.5\%$ if refrigerated to $< 60^\circ\text{F}$, and cleaning solvents with a vapor pressure $\leq 25\text{mm Hg}$ or a VOC content $\leq 30\%$ by volume.

Water Treatment

(6) Industrial and commercial wastewater evaporators (except flame impingement) used exclusively for wastewater generated on-site that meets all discharge limits for disposal into the local municipal sewer system (including metals, cyanide, fats/oils/grease, pH, flammable or explosive materials, organic compounds, hydrogen sulfide, solids, and food waste). *A letter from the local sewer district documenting compliance is required in order to use this exemption.*

Sanding Equipment

(7) Sanding equipment controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of $< 3.5:1$ (for reverse-air or manual cleaning) or $< 12:1$ (for pulse-jet cleaning).

Ventilation and Control Equipment

(8) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow of 2,000-5,000 cfm and an air-to-cloth ratio of $< 3.5:1$ (for mechanical or manual cleaning) or $< 12:1$ (for pulse-jet cleaning).

(9) Replacement of an existing paint spray booth that has previously received an Order of Approval, with like kind equipment and for spray coating operations that continue to operate consistent with the previously issued Order of Approval. *All the conditions in the previously issued Order of Approval remain in effect.*

Miscellaneous

(10) Any source not otherwise exempt under Section 6.03(c) of this regulation that has been determined through review of a Notice of Construction application by the Control Officer not to warrant an Order of Approval because it has a de minimis impact on air quality and does not pose a threat to human health or the environment.

Coffee Roasters

(11) Batch coffee roasters with a maximum rated capacity of 10 lbs per batch or less.

(c) **Exemptions.** A Notice of Construction application and Order of Approval are not required for the following new sources, provided that sufficient records are kept to document the exemption:

Combustion

(1) Fuel-burning equipment (except when combusting pollutants generated by a non-exempt source) having a rated capacity:

(A) < 10 million Btu per hour heat input burning exclusively distillate fuel oil, natural gas, propane, butane, biodiesel that meets ASTM D 6751 specifications (or any combination thereof);

(B) < 0.5 million Btu per hour heat output burning waste-derived fuel (including fuel oil not meeting the specifications in Section 9.08 of this regulation); or

(C) < 1 million Btu per hour heat input burning any other fuel.

(2) All stationary gas turbines with a rated heat input < 10 million Btu per hour.

(3) Stationary internal combustion engines having a rated capacity:

(A) < 50 horsepower output;

(B) Used solely for instructional purposes at research, teaching, or educational facilities; or

(C) Portable or standby units operated < 500 hours per year, PROVIDED THAT they are not operated at a facility with a power supply contract that offers a lower rate in exchange for the power supplier's ability to curtail energy consumption with prior notice.

(4) Relocation of portable, stationary internal combustion engines or gas turbines for which an Order of Approval has been previously issued by the Agency.

(5) All nonroad compression ignition engines subject to 40 CFR Part 89 and land-based nonroad compression engines subject to 40 CFR Part 1039.

Metallurgy

(6) Crucible furnaces, pot furnaces, or induction furnaces with a capacity $\leq 1,000$ pounds, PROVIDED THAT no sweating or distilling is conducted, and PROVIDED THAT only precious metals, or an alloy containing $> 50\%$ aluminum, magnesium, tin, zinc, or copper is melted.

(7) Crucible furnaces or pot furnaces with a capacity ≤ 450 cubic inches of any molten metal.

(8) Ladles used in pouring molten metals.

(9) Foundry sand-mold forming equipment.

(10) Shell core and shell-mold manufacturing machines.

(11) Molds used for the casting of metals.

(12) Die casting machines with a rated capacity $\leq 1,000$ pounds that are not used for copper alloys.

(13) Equipment used for heating metals immediately prior to forging, pressing, rolling, or drawing, if any combustion equipment is also exempt.

(14) Forming equipment used exclusively for forging, rolling, or drawing of metals, if any combustion equipment is also exempt.

(15) Heat treatment equipment used exclusively for metals, if any combustion equipment is also exempt.

(16) Equipment used exclusively for case hardening, carburizing, cyaniding, nitriding, carbonitriding, silicizing, or diffusion treating of metals, if any combustion equipment is also exempt.

(17) Atmosphere generators used in connection with metal heat-treating processes.

(18) Sintering equipment used exclusively for metals other than lead, PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

(19) Welding equipment, and thermal cutting of metals other than stainless steel. Exceptions or specific conditions that apply to these exemptions are identified as follows:

(A) Thermal cutting of stainless steel (defined as an alloy with a minimum chromium content of 10.5%, by weight) installed after November 1, 2013 shall not be exempt;

(B) Thermal cutting of stainless steel performed solely for plant maintenance activities shall be exempt;

(C) Thermal cutting of stainless steel refers to all thermal cutting technologies, including but not limited to, plasma arc, air carbon arc, laser, powder torch, and oxy-fuel technologies.

(20) Soldering or brazing, or equipment, including brazing ovens.

(21) Equipment used exclusively for surface preparation, passivation, deoxidation, and/or stripping that meets all of the following tank content criteria:

(A) ≤ 50 grams of VOC per liter;

(B) No acids other than boric, formic, acetic, phosphoric, sulfuric, or $\leq 12\%$ hydrochloric; and

(C) May contain alkaline oxidizing agents, hydrogen peroxide, salt solutions, sodium hydroxide, and water in any concentration.

Associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment are also exempt. (This exemption does not include anodizing, hard anodizing, chemical milling, circuit board etching using ammonia-based etchant, electrocleaning, or the stripping of chromium, except sulfuric acid and/or boric acid anodizing with a total bath concentration of $\leq 20\%$ by weight and using $\leq 10,000$ amp-hours per day, or phosphoric acid anodizing with a bath concentration of $\leq 15\%$ by weight of phosphoric acid and using $\leq 20,000$ amp-hours per day.)

(22) Equipment used exclusively for electrolytic plating (except the use of chromic and/or hydrochloric acid) or electrolytic stripping (except the use of chromic, hydrochloric, nitric, or sulfuric acid) of brass, bronze, copper, iron, tin, zinc, precious metals, and associated rinse tanks and waste storage tanks used exclusively to store the solutions drained from this equipment. Also, equipment used to electrolytically recover metals from spent or pretreated plating solutions that qualify for this exemption.

Ceramics and Glass

(23) Kilns used for firing ceramic-ware or artwork, if any combustion equipment is also exempt.

(24) Porcelain enameling furnaces, porcelain enameling drying ovens, vitreous enameling furnaces, or vitreous enameling drying ovens, if any combustion equipment is also exempt.

(25) Hand glass melting furnaces, electric furnaces, and pot furnaces with a capacity $\leq 1,000$ pounds of glass.

(26) Heat-treatment equipment used exclusively for glass, if any combustion equipment is also exempt.

(27) Sintering equipment used exclusively for glass PROVIDED THAT no coke or limestone is used, if any combustion equipment is also exempt.

Plastics and Rubber and Composites

(28) Equipment used exclusively for conveying and storing plastic pellets.

(29) Extrusion equipment used exclusively for extruding rubber or plastics where no organic plasticizer is present, or for pelletizing polystyrene foam scrap.

(30) Equipment used for extrusion, compression molding, and injection molding of plastics, PROVIDED THAT the VOC content of all mold release products or lubricants is $\leq 1\%$ by weight.

(31) Injection or blow-molding equipment for rubber or plastics, PROVIDED THAT no blowing agent other than compressed air, water, or carbon dioxide is used.

(32) Presses or molds used for curing, post-curing, or forming composite products and plastic products, PROVIDED THAT the blowing agent contains no VOC or chlorinated compounds.

(33) Presses or molds used for curing or forming rubber products and composite rubber products with a ram diameter ≤ 26 inches, PROVIDED THAT it is operated at $\leq 400^\circ\text{F}$.

(34) Ovens used exclusively for the curing or forming of plastics or composite products, where no foam-forming or expanding process is involved, if any combustion equipment is also exempt.

(35) Ovens used exclusively for the curing of vinyl plastisols by the closed-mold curing process, if any combustion equipment is also exempt.

(36) Equipment used exclusively for softening or annealing plastics, if any combustion equipment is also exempt.

(37) Hot wire cutting of expanded polystyrene foam and woven polyester film.

(38) Mixers, roll mills, and calenders for rubber or plastics where no material in powder form is added and no organic solvents, diluents, or thinners are used.

Material Working and Handling

(39) Equipment used for mechanical buffing (except tire buffers), polishing, carving, cutting, drilling, grinding, machining, planing, pressing, routing, sawing, stamping, or turning of wood, ceramic artwork, ceramic precision parts, leather, metals, plastics, rubber, fiberboard, masonry, glass, silicon, semiconductor wafers, carbon, graphite, or composites.

(40) Hand-held sanding equipment.

(41) Sanding equipment controlled by a fabric filter with an airflow of $< 2,000$ cfm.

(42) Equipment used exclusively for shredding of wood (e.g., tub grinders, hammermills, hoppers), or for extruding, pressing, handling, or storage of wood chips, sawdust, or wood shavings.

(43) Paper shredding and associated conveying systems and baling equipment.

(44) Hammermills used exclusively to process aluminum and/or tin cans.

(45) Tumblers used for the cleaning or deburring of metal products without abrasive blasting.

Abrasive Blasting

(46) Portable abrasive blasting equipment used at a temporary location to clean bridges, water towers, buildings, or similar structures, PROVIDED THAT any blasting with sand (or silica) is performed with $\geq 66\%$ by volume water.

(47) Portable vacuum blasting equipment using steel shot and vented to a fabric filter.

(48) Hydroblasting equipment using exclusively water as the abrasive.

(49) Abrasive blasting cabinets vented to a fabric filter, PROVIDED THAT the total internal volume of the cabinet is ≤ 100 cubic feet.

(50) Shot peening operations, PROVIDED THAT no surface material is removed.

Cleaning

(51) Solvent cleaning:

(A) Non-refillable, hand-held aerosol spray cans of solvent; or

(B) Closed-loop solvent recovery systems with refrigerated or water-cooled condensers used for recovery of waste solvent generated on-site.

(52) Steam-cleaning equipment.

(53) Unheated liquid solvent tanks used for cleaning or drying parts:

(A) With a solvent capacity ≤ 10 gallons and containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof;

(B) Using a solvent with a true vapor pressure ≤ 0.6 psi containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetrachloride, chloroform, 1,1,1-trichloroethane, trichloro-ethylene, or any combination thereof;

(C) With a remote reservoir and using a solvent containing $\leq 5\%$ by weight perchloroethylene, methylene chloride, carbon tetra-chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, or any combination thereof; or

(D) With a solvent capacity ≤ 2 gallons; or

(E) Using solutions with a Volatile Organic Compound (VOC) content of $\leq 1\%$ by weight and no identified Hazardous Air Pollutant (HAP), and are heated below the boiling point of the solution.

(54) Hand-wipe cleaning.

Coating, Resin, and Adhesive Application

(55) Powder-coating equipment.

(56) Portable coating equipment and pavement strippers used exclusively for the field application of architectural coatings and industrial maintenance coatings to stationary structures and their appurtenances or to pavements and curbs.

(57) High-volume low-pressure (HVLP) spray-coating equipment having a cup capacity ≤ 8 fluid ounces, PROVIDED THAT it is not used to coat > 9 square feet per day and is not used to coat motor vehicles or aerospace components.

(58) Airbrushes having a cup capacity ≤ 2 fluid ounces and an airflow of 0.5-2.0 cfm.

(59) Hand-held aerosol spray cans having a capacity of ≤ 1 quart of coating and hand-held brush and rollers for coating application.

(60) Spray-coating equipment used exclusively for application of automotive undercoating or bed liner materials with a flash point $> 100^\circ\text{F}$.

(61) Ovens associated with an exempt coating operation, if any combustion equipment is also exempt.

(62) Ovens associated with a coating operation that are used exclusively to accelerate evaporation, if any combustion equipment is also exempt. (Note: The coating operation is not necessarily exempt.)

(63) Radiation-curing equipment using ultraviolet or electron beam energy to initiate a chemical reaction forming a polymer network in a coating.

(64) Hand lay, brush, and roll-up resins equipment and operations.

(65) Equipment used exclusively for melting or applying of waxes or natural and synthetic resins.

(66) Hot-melt adhesive equipment.

(67) Any adhesive application equipment that exclusively uses materials containing $< 1\%$ VOC by weight and $< 0.1\%$ HAP.

(68) Equipment used exclusively for bonding of linings to brake shoes, where no organic solvents are used.

Printing

(69) Retail, sheet-fed, non-heatset offset presses (lithographic or letter-press).

(70) Presses using exclusively UV-curable inks.

(71) Presses using exclusively plastisols.

(72) Presses using exclusively water-based inks (< 1.5 lbs VOC per gallon, excluding water, or $< 10\%$ VOC by volume) and cleaning solvents without VOC.

(73) Presses used exclusively for making proofs.

(74) Electrostatic, ink jet, laser jet, and thermal printing equipment.

(75) Ovens used exclusively for exempt printing presses, if any combustion equipment is also exempt.

Photography

(76) Photographic process equipment by which an image is reproduced upon material sensitized by radiant energy, excluding equipment using perchloroethylene.

Liquid Storage and Transfer

(77) Storage tanks permanently attached to a motor vehicle.

(78) Storage tanks used exclusively for:

(A) Liquefied gases, including any tanks designed to operate in excess of 29.7 psia without emissions;

(B) Asphalt at a facility other than an asphalt roofing plant, asphalt processing plant, hot mix asphalt plants, or petroleum refinery;

(C) Any liquids (other than asphalt) that also have a rated capacity $\leq 1,000$ gallons;

(D) Organic liquids (other than gasoline or asphalt) that also have a rated capacity $< 20,000$ gallons;

(E) Organic liquids (other than asphalt) with a true vapor pressure < 2.2 psia (e.g., ASTM spec. fuel oils and lubricating oils) that also have a rated capacity $< 40,000$ gallons;

(F) Organic liquids (other than asphalt) with a true vapor pressure < 0.5 psia that also have a rated capacity $\geq 40,000$ gallons;

(G) Sulfuric acid or phosphoric acid with an acid strength $\leq 99\%$ by weight;

(H) Nitric acid with an acid strength $\leq 70\%$ by weight;

(I) Hydrochloric acid or hydrofluoric acid tanks with an acid strength $\leq 30\%$ by weight;

(J) Aqueous solutions of sodium hydroxide, sodium hypochlorite, or salts, PROVIDED THAT the surface of the solution contains $\leq 1\%$ VOC by weight;

(K) Liquid soaps, liquid detergents, vegetable oils, fatty acids, fatty esters, fatty alcohols, waxes, and wax emulsions;

(L) Tallow or edible animal fats intended for human consumption and of sufficient quality to be certifiable for United States markets;

(M) Water emulsion intermediates and products, including latex, with a VOC content $\leq 5\%$ by volume or a VOC composite partial pressure of ≤ 0.1 psi at 68°F; or

(N) Wine, beer, or other alcoholic beverages.

(79) Loading and unloading equipment used exclusively for the storage tanks exempted above.

(80) Loading and unloading equipment used exclusively for transferring liquids or compressed gases into containers having a rated capacity < 60 gallons, except equipment transferring $> 1,000$ gallons per day of liquid with a true vapor pressure > 0.5 psia.

(81) Equipment used exclusively for the packaging of sodium hypochlorite-based household cleaning or pool products.

Mixing

(82) Mixing equipment, PROVIDED THAT no material in powder form is added and the mixture contains $< 1\%$ VOC by weight.

(83) Equipment used exclusively for the mixing and blending of materials at ambient temperature to make water-based adhesives.

(84) Equipment used exclusively for the manufacture of water emulsions of waxes, greases, or oils.

(85) Equipment used exclusively for the mixing and packaging of lubricants or greases.

(86) Equipment used exclusively for manufacturing soap or detergent bars, including mixing tanks, roll mills, plodders, cutters, wrappers, where no heating, drying, or chemical reactions occur.

(87) Equipment used exclusively to mill or grind coatings and molding compounds in a paste form, PROVIDED THAT the solution contains $< 1\%$ VOC by weight.

(88) Batch mixers with a rated working capacity ≤ 55 gallons.

(89) Batch mixers used exclusively for paints, varnishes, lacquers, enamels, shellacs, printing inks, or sealers, PROVIDED THAT the mixer is equipped with a lid that contacts $\geq 90\%$ of the rim.

Water Treatment

(90) Oil/water separators, except those at petroleum refineries.

(91) Water cooling towers and water cooling ponds not used for evaporative cooling of process water, or not used for evaporative cooling of water from barometric jets or from barometric condensers, and in which no chromium compounds are contained.

(92) Equipment used exclusively to generate ozone and associated ozone destruction equipment for the treatment of cooling tower water or for water treatment processes.

(93) Municipal sewer systems, including wastewater treatment plants and lagoons, PROVIDED THAT they do not use

anaerobic digesters or chlorine sterilization. This exemption does not include sewage sludge incinerators.

(94) Soil and groundwater remediation projects involving < 15 pounds per year of benzene or vinyl chloride, < 500 pounds per year of perchloroethylene, and $< 1,000$ pounds per year of toxic air contaminants.

Landfills and Composting

(95) Passive aeration of soil, PROVIDED THAT the soil is not being used as a cover material at a landfill.

(96) Closed landfills that do not have an operating, active landfill gas collection system.

(97) Non-commercial composting.

Agriculture, Food, and Drugs

(98) Equipment used in agricultural operations, in the growing of crops, or the raising of fowl or animals.

(99) Insecticide, pesticide, or fertilizer spray equipment.

(100) Equipment used in retail establishments to dry, cook, fry, bake, or grill food for human consumption, including charbroilers, smokehouses, barbecue units, deep fat fryers, cocoa and nut roasters, but not including coffee roasters.

(101) Cooking kettles (other than deep frying equipment) and confection cookers where all the product in the kettle is edible and intended for human consumption.

(102) Bakery ovens with a total production of yeast leavened bread products $< 10,000$ pounds per operating day, if any combustion equipment is also exempt.

(103) Equipment used to dry, mill, grind, blend, or package $< 1,000$ tons per year of dry food products such as seeds, grains, corn, meal, flour, sugar, and starch.

(104) Equipment used to convey, transfer, clean, or separate $< 1,000$ tons per year of dry food products or waste from food production operations.

(105) Storage equipment or facilities containing dry food products that are not vented to the outside atmosphere, or that handle $< 1,000$ tons per year.

(106) Equipment used exclusively to grind, blend, package, or store tea, cocoa, spices, coffee, flavor, fragrance extraction, dried flowers, or spices, PROVIDED THAT no organic solvents are used in the process.

(107) Equipment used to convey or process materials in bakeries or used to produce noodles, macaroni, pasta, food mixes, and drink mixes where products are edible and intended for human consumption, PROVIDED THAT no organic solvents are used in the process. This exemption does not include storage bins located outside buildings.

(108) Brewing operations at facilities producing < 3 million gallons per year of beer.

(109) Fermentation tanks for wine (excluding tanks used for the commercial production of yeast for sale).

(110) Equipment used exclusively for tableting, or coating vitamins, herbs, or dietary supplements, PROVIDED THAT no organic solvents are used in the process.

(111) Equipment used exclusively for tableting or packaging pharmaceuticals and cosmetics, or coating pharmaceutical tablets, PROVIDED THAT no organic solvents are used.

Quarries, Nonmetallic Mineral Processing Plants, and Concrete and Asphalt Batch Plants

(112) Portable nonmetallic mineral processing plants.

(113) Fixed nonmetallic mineral processing plants.

(114) (Reserved).

(115) Mixers and other ancillary equipment at concrete batch plants (or aggregate product production facilities) with a rated capacity <15 cubic yards per hour.

(116) Concrete mixers with a rated working capacity of ≤1 cubic yard.

(117) Drilling or blasting (explosives detonation).

(118) Asphaltic concrete crushing/recycling equipment with a throughput <5,000 tons per year.

Construction

(119) Asphalt paving application.

(120) Asphalt (hot-tar) roofing application.

(121) Building construction or demolition, except that notification of demolitions is required under Section 4.03 of Regulation III.

Ventilation and Control Equipment

(122) Comfort air-conditioning systems, or ventilating systems (forced or natural draft), PROVIDED THAT they are not designed or used to control air contaminants generated by, or released from, sources subject to Notice of Construction.

(123) Refrigeration units, except those used as, or in conjunction with, air pollution control equipment.

(124) Refrigerant recovery and/or recycling units, excluding refrigerant reclaiming facilities.

(125) Emergency ventilation systems used exclusively to contain and control emissions resulting from the failure of a compressed gas storage system.

(126) Emergency ventilation systems used exclusively to scrub ammonia from refrigeration systems during process upsets or equipment breakdowns.

(127) Negative air machines equipped with HEPA filters used to control asbestos emissions from demolition/renovation activities.

(128) Portable control equipment used exclusively for storage tank degassing.

(129) Vacuum-cleaning systems used exclusively for industrial, commercial, or residential housekeeping purposes controlled by a fabric filter with an airflow <2,000 cfm.

(130) Control equipment used exclusively for sources that are exempt from Notice of Construction under Section 6.03(c) of this regulation.

(131) Routine maintenance, repair, or similar parts replacement of control equipment.

Testing and Research

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

Miscellaneous

(133) Single-family and duplex dwellings.

(134) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment, if any combustion equipment used to power such equipment is also exempt.

(135) Equipment, including dryers, used exclusively for dyeing, stripping, or bleaching of textiles where no organic solvents, diluents, or thinners are used, if any combustion equipment used to power such equipment is also exempt.

(136) Chemical vapor sterilization equipment where no ethylene oxide is used, and with a chamber volume of ≤2 cubic feet used by healthcare facilities.

(137) Ozone generators that produce <1 pound per day of ozone.

(138) Fire extinguishing equipment.

(d) Each Notice of Construction application and Section 6.03(b) notification shall be submitted on forms provided by the Agency and shall be accompanied by the appropriate fee as required by Section 6.04 of this regulation. Notice of Construction applications shall also include any additional information required to demonstrate that the requirements of this Article are met. Notice of Construction applications shall also include an environmental checklist or other documents demonstrating compliance with the State Environmental Policy Act.

WSR 15-20-031

PERMANENT RULES

PUGET SOUND

CLEAN AIR AGENCY

[Filed September 25, 2015, 4:49 p.m., effective November 1, 2015]

Effective Date of Rule: November 1, 2015.

Purpose: This is a nonproject action for a technical amendment to update a quality assurance (QA) requirement for new continuous opacity monitoring systems (COMS) from reference to an EPA publication to the EPA Code of Federal Regulations (C.F.R.). EPA has updated the QA requirements for COMS into their C.F.R.s and it is simpler to rely on that new EPA C.F.R. reference in Regulation I, Section 12.03 instead of an EPA publication.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 12.03.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 15-17-122 on August 19, 2015.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: September 24, 2015.

Craig Kenworthy
Executive Director

AMENDATORY SECTION**REGULATION I, SECTION 12.03 CONTINUOUS EMISSION MONITORING SYSTEMS**

(a) **Continuous Monitoring.** It shall be unlawful for any person to cause or allow the operation of any equipment required to have a continuous emission monitoring system unless the emissions are continuously monitored in accordance with the requirements of this section.

(b) **Data Recovery.** The owner or operator shall recover valid hourly monitoring data for at least 95% of the hours that the equipment (required to be monitored) is operated during each calendar month except for periods of monitoring system downtime, provided that the owner or operator demonstrates that the downtime was not a result of inadequate design, operation, or maintenance, or any other reasonably preventable condition, and any necessary repairs to the monitoring system are conducted in a timely manner.

(c) **Quality Assurance.** The owner or operator shall install a continuous emission monitoring system that meets the performance specification in 40 CFR Part 60, Appendix B in effect at the time of its installation, and shall operate this monitoring system in accordance with the quality assurance procedures in Appendix F of 40 CFR Part 60 in effect as of the federal regulation reference date listed in Section 3.25 of this regulation herein incorporated by reference (~~and the U.S. Environmental Protection Agency's "Recommended Quality Assurance Procedures for Opacity Continuous Monitoring Systems" (EPA 340/1-86-010))~~).

(d) **Data Recording.** Monitoring data commencing on the clock hour and containing at least 45 minutes of monitoring data shall be reduced to 1-hour averages. Monitoring data for opacity shall also be reduced to 6-minute averages. All monitoring data shall be included in these averages except for data collected during calibration drift tests and cylinder gas audits, and for data collected subsequent to a failed quality assurance test or audit.

(e) **Data Retention.** The owner or operator shall retain all monitoring data averages for at least 2 years, including copies of all reports submitted to the Agency and records of all repairs, adjustments, and maintenance performed on the monitoring system. All such data collected after October 1, 1998 shall be retained for at least 5 years.

(f) **Data Reporting.** The owner or operator shall submit a monthly report to the Agency within 30 days after the end of the month in which the data were recorded. This report shall include:

(1) The date, time period, magnitude (in the units of the standard) and cause of each emission that exceeded an applicable emission standard;

(2) The date and time of all actions taken to correct the problem, including any actions taken to minimize the emissions during the exceedance and any actions taken to prevent its recurrence;

(3) The number of hours that the equipment (required to be monitored) operated each month and the number of valid hours of monitoring data that the monitoring system recovered each month;

(4) The date, time period, and cause of each failure to meet the data recovery requirements of Section 12.03(b) and any actions taken to ensure adequate collection of such data;

(5) The date, time period, and cause of each failure to recover valid hourly monitoring data for at least 90% of the hours that the equipment (required to be monitored) was operated each day;

(6) The results of all cylinder gas audits conducted during the month; and

(7) A certification of truth, accuracy, and completeness signed by an authorized representative of the owner or operator.

(g) **Relative Accuracy Tests.** All relative accuracy tests shall be subject to the provisions of Section 3.07 of this regulation.

(h) **Exemptions.** The data recording and reporting requirements of Sections 12.03(d) and 12.03(f) shall not apply to continuous VOC monitoring systems required under Section 2.05 of Regulation II. Further, relative accuracy tests shall not be required of these monitoring systems and may be waived for any other monitoring system not otherwise subject to 40 CFR Part 60, Appendix F, provided that the owner or operator demonstrates to the Control Officer that the emissions are consistently below 10% of the applicable emission standard.

WSR 15-20-034**PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed September 28, 2015, 1:38 p.m., effective October 29, 2015]

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

Purpose: Under WAC 392-502-030, online providers - including public schools providing online courses and programs - must assure the office of superintendent of public instruction (OSPI) that their online programs are accredited through a designated accrediting organization. Requiring third party accreditation of online school programs imposes costs on public school districts, can be redundant, and is not consistent with OSPI's adoption of new online provider performance targets. The purpose of this permanent amendment to WAC 392-502-030 is to exempt district online school programs, single-district providers, and affiliate providers from the rule's accreditation requirement.

An emergency rule change put the change into effect in August, prior to the beginning of the 2015-16 school year. This rule-making order will make the amendment permanent.

Citation of Existing Rules Affected by this Order:
Amending WAC 392-502-030.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.250.020.

Adopted under notice filed as WSR 15-17-073 on August 17, 2015.

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

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 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: September 28, 2015.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 15-14-126, filed 7/1/15, effective 8/1/15)

WAC 392-502-030 Approval assurances, criteria, and performance targets. (1) This section sets forth the assurances, criteria, and performance targets that online providers must meet to be approved under this chapter.

(a) To be approved, online providers must provide the following assurances to the superintendent of public instruction:

(i) The online provider is accredited through an accrediting body as defined in WAC 392-502-010 and agrees to maintain accredited status for the duration of the approval period. Online providers may be candidates for accreditation at the time of application for approval provided that the provider earns full accreditation on the standard timeline. Online school programs, single-district providers, and affiliate providers are exempt from (a)(i) of this subsection.

(ii) Each course and program the online provider offers is aligned with at least eighty percent of the current applicable grade/subject area of Washington state standards. For courses with content that is not included in state standards, the online provider's courses are aligned with at least eighty percent of nationally accepted content standards set for the relevant subjects. Online providers must submit information to the superintendent regarding the standards alignment and the standards aligned.

(iii) All instruction delivered to Washington state students is delivered by Washington state certificated teachers who:

(A) Are assigned to instruct courses in a manner which meets the "highly qualified" definition under the No Child Left Behind Act and in a manner which meets the requirements set forth in chapter 181-82 WAC; and

(B) Are evaluated annually using the revised evaluative criteria and four-level rating system established in RCW 28A.405.100.

(iv) For online providers that offer high school courses, the courses offered by the online provider must be eligible for high school credit pursuant to WAC 180-51-050.

(v) All of the online provider's current and future courses in the applicable areas meet the credit/content requirements in chapter 392-410 WAC.

(vi) All advanced placement courses offered by the online provider have been approved in accordance with the college board advanced placement course audit. For advanced placement courses not yet offered at the time of application, the online provider must assure that those courses will be approved by the college board prior to offering those courses to students.

(vii) The online provider's data management systems ensure all student information remains confidential, as required by the Family Educational Rights and Privacy Act of 1974, as amended.

(viii) The online provider's web systems and content meet accessibility conformance levels specified in the list of approved provider assurances on the office of superintendent of public instruction's web site.

(ix) The online provider provides all information as directed or as requested by the office of superintendent of public instruction, the secretary for the department of education, and other federal officials for audit, program evaluation compliance, monitoring, and other purposes and to maintain all records for the current year and three previous years.

(x) The online provider informs the office of superintendent of public instruction in writing of any significant changes to the program including, but not limited to, changes in assurances, program description, fiscal status, or ownership.

(xi) The online provider upholds any pertinent federal or state laws, rules or regulations, in the delivery of the online courses or programs.

(xii) The online provider retains responsibility for the quality of courses, web systems, and content offered, regardless of any third-party contractual arrangements, partnerships or consortia, contributing to the content or delivery of the online courses or programs.

(xiii) The online school program complies with the state assessment requirements including, but not limited to, the requirements of chapter 28A.655 RCW and WAC 392-121-182, as applicable.

(xiv) All of the provider's current and future career and technical education (CTE) courses are aligned to Washington state CTE program standards and have been approved by the office of superintendent of public instruction's CTE office. CTE courses must be taught by a Washington certificated teacher who is also CTE-certificated in the subject area of the course.

(xv) The online provider agrees to abide by any additional assurances required by the superintendent of public instruction.

(xvi) The online school program agrees that all programs delivered as alternative learning experiences comply with the requirements of WAC 392-121-182. The online course provider agrees to disclose to OSPI the manner in which it supports the requirements of WAC 392-121-182 for online courses delivered outside of an online school program.

(xvii) Instructional materials used by online school programs in online courses or course work must be approved

pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(b) Multidistrict online providers must meet the following initial approval criteria by a preponderance of evidence submitted with the online provider's application:

(i) Course content and instructional design incorporating course goals and outcomes, materials and content organization, and student engagement.

(ii) Classroom management incorporating grading and privacy policies, internet etiquette, and expectations for communications.

(iii) Student assessment incorporating various types, frequent feedback, and appropriateness for the online learning environment.

(iv) Course evaluation and management incorporating strategies for obtaining feedback about the courses/programs and processes for quality assurance and updating content.

(v) Student support incorporating policies and systems to enhance the students' learning experience and their success.

(vi) School-based support incorporating strategies and systems to allow school-based staff to support student success.

(vii) Technology elements, requirements and support including descriptions and ease of navigation.

(viii) Staff development and support including training and online instructor performance reviews conducted on a planned and regularly scheduled basis.

(ix) Program management including timeliness and quality of teachers' responses to students, handling of fees, prompt distribution of materials and processing of enrollments, and handling fees and payments.

(x) The superintendent may require additional approval criteria pursuant to WAC 392-502-080.

(c) Beginning September 1, 2015, the online school program's course success rate must be greater than seventy percent. Programs with fewer than twenty online enrollments are not subject to this performance target.

(d) Beginning September 1, 2016, online school programs must meet or exceed each of the following annual performance targets:

(i) The online school program's percentage of students taking online math courses who meet standard on the state math assessments must be greater than forty percent. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online math course and taken the state math assessment.

(ii) The online school program's percentage of students taking online English language arts courses who meet standard on the state English language arts assessments must be greater than fifty percent. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online English language arts course and taken the state English language arts assessment.

(iii) The online school program's median math student growth percentile for students taking an online math course must be greater than the thirtieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online math course and have a math student growth percentile.

(iv) The online school program's median English language arts student growth percentile for students taking an online English language arts course must be greater than the fortieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online English language arts course and have an English language arts student growth percentile.

(e) Beginning September 1, 2015, online course providers' course success rate must be greater than seventy percent. Online providers must supply OSPI with student-level enrollment and performance information. Online course providers must also supply OSPI with a list of each district in the state that they served. An online course provider is not subject to this performance target if they have fewer than twenty online course enrollments.

(2) After review by the online learning advisory committee, the approval criteria with explanations and suggested supporting evidence will be posted on the superintendent of public instruction web site on or before the date the application is made available.

(3) Online provider's application will be reviewed by reviewers selected by the superintendent of public instruction for their experience and expertise. The reviewers will be provided orientations and training to review and score the online provider applications using the approval criteria and scoring protocols.

(4) Single-district provider online programs must incorporate the approval criteria developed by the superintendent of public instruction into the program design.

WSR 15-20-035

PERMANENT RULES

DEPARTMENT OF AGRICULTURE

[Filed September 28, 2015, 2:01 p.m., effective October 29, 2015]

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

Purpose: The department has a crucifer quarantine in place to protect parts of five counties in northwestern Washington, important brassica vegetable seed production areas, from the introduction of black leg and black rot pathogens. At the request of industry, the department is expanding the regulated area to include all counties in eastern Washington.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-301-500; and amending WAC 16-301-495, 16-301-505, 16-301-515, 16-301-520, 16-301-525, 16-301-530, 16-301-540, 16-301-545, 16-301-550, and 16-301-580.

Statutory Authority for Adoption: RCW 15.49.005, 17.24.041.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 15-16-008 on July 23, 2015.

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 2, Amended 10, Repealed 1.

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

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

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

Date Adopted: September 25, 2015.

Derek I. Sandison
Director

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-495 Definitions. Definitions for some terms in this chapter can be found in chapter 15.49 RCW and chapter 16-301 WAC. In addition, the following definitions apply to this chapter:

"Approved treatment methods" include hot water, hot chlorine or any other methods that can eliminate the presence of regulated pathogens.

"Crucifer" means all plants in the family Brassicaceae (also known as Cruciferae) and specifically includes all *Brassica* species, *Raphanus sativus* - Radish, *Sinapis alba* and other mustards.

"Crucifer production" means any planting of crucifer seed or seedlings for the purpose of producing seed, oil, commercial vegetables or cover crops.

"Crucifer seed" includes any part of a plant capable of propagation including, but not necessarily limited to, seeds, roots, and transplants.

"Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of the Washington state department of agriculture or the director's designee.

"Dormant seed" means viable true seed that displays a delay in or lack of germination when provided favorable germination conditions for the type of seed in question.

"Owner" means the person having legal ownership, possession or control over a regulated article covered by this chapter including, but not limited to, the owner, shipper, consignee, grower, seed dealer, landowner or their agent.

"Person" means any individual, partnership, association, corporation, or organized group of persons whether or not incorporated.

"Regulated area" means those geographic areas that are protected from the introduction of specified plant pests by the provisions of this quarantine.

"Regulated article" means, with the exception of the exemptions listed in WAC 16-301-525(4), all crucifer seed; seedlings; roots; transplants intended for seed production, oil production, commercial vegetable production or cover crop use; and crop residue remaining from the harvest of infected crucifer plants.

"Seed lot" means a designated quantity of seed that is uniquely identified by a lot number.

"Seed program" means the Washington state department of agriculture seed program.

"Trial ground" means a specific parcel of land approved by the director for experimental or limited production or increase of crucifer seed and for planting seed lots whose quantity of seed is insufficient to allow for pathological testing.

"True seed" means a mature fertilized ovule consisting of an embryo, with or without an external food reserve enclosed by a seed coat.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-505 Diseases regulated by this chapter.

(1) **"Regulated diseases"** means those bacterial and fungal diseases of crucifers listed in this section and any new variations or strains of these diseases.

(2) **"Regulated pathogens"** means those bacterial and fungal organisms identified as the ~~(causal)~~ causal agents for the diseases listed in this section.

(3) The following bacterial and fungal diseases of crucifers, and any new strains or variations of these diseases are regulated by this chapter:

Common Name	Scientific Name
Black leg of crucifers	<i>Phoma lingam</i>
Black rot	<i>Xanthomonas campestris</i> pv. <i>campestris</i>

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-515 Crucifer seed quarantine—Quarantined area.

(1) The quarantine area for the crucifer seed quarantine includes all Washington state counties except Adams, Asotin, Benton, Chelan, Clallam, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Island, Kittitas, Klickitat, Lewis, Lincoln, Okanogan, Pend Oreille, Skagit, Snohomish, ~~(and)~~ Spokane, Stevens, Walla Walla, Whatcom, Whitman, and Yakima counties.

(2) Regulated articles imported into Washington state must comply with the regulations of this chapter before transport into ~~(the)~~ a regulated area. No additional requirements apply within the quarantine area but all regulated articles transported into ~~(the)~~ a regulated area must comply with the regulations of this chapter.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-520 Crucifer seed quarantine—Regulated areas.

Two regulated areas are established for the crucifer quarantine, one in western Washington and one in eastern Washington. Each regulated area has specific requirements and prohibitions related to the regulated articles.

(1) The regulated area in western Washington for this crucifer seed quarantine includes Clallam, Island, Lewis, Skagit, Snohomish, and Whatcom counties.

(2) The regulated area in eastern Washington for this crucifer seed quarantine includes Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant,

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

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-525 Crucifer seed quarantine within the regulated areas—Exemptions. This crucifer quarantine does not apply to:

- (1) Experiments or trial grounds of the United States Department of Agriculture;
- (2) Experiments or trial grounds of a university such as but not limited to the University of Idaho or Washington State University research stations; or
- (3) Trial grounds of any person, firm or corporation that are approved by the director and established in accordance with WAC 16-301-550;
- (4) Shipments, movements, or transportation of:
 - (a) Prepackaged crucifer seed in packages of 1/2 ounce or less if the seeds are free of regulated diseases as required in WAC 16-301-530; or
 - (b) Vegetable seedlings offered for sale for home garden use in the regulated areas if the seedlings are free of regulated diseases as required in WAC 16-301-530.
- (5) Research, variety development, variety maintenance or other crucifer production where the entire crop cycle is confined within a building or greenhouse;
- (6) Seed lots with a maximum weight of five pounds that were in inventory prior to January 1, 2007.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-530 Planting crucifer seed in the western Washington regulated area—Requirements. (1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the western Washington regulated area.

(b) Any seed of a *Brassica* (~~(☉)~~), *Raphanus*, *Sinapis* species or any other genera in the *Brassicaceae* family planted or established in the western Washington regulated area whose primary use is for any nonvegetable use must be tested for the presence of dormant seed as required by WAC 16-301-510.

(2) Any person who plans to ship, move, or transport any crucifer seed intended for planting purposes into or within the western Washington regulated area must file a Notice of Intent/Quarantine Compliance form with the seed program before planting or offering the seed for sale.

(3) The Notice of Intent/Quarantine Compliance form filed with the seed program must be accompanied by a copy of the:

(a) Laboratory analysis or some other proof (such as a phytosanitary certificate based upon laboratory testing issued from the state or country of production) demonstrating that the lot is free of regulated diseases; and

(b) Seed analysis certificate(s) showing that the lot is free from dormant seed, if required under WAC 16-301-510.

(4) It is a violation of this chapter for any crucifer seed intended for seed production, oil production, commercial vegetable production or cover crop use to be offered for sale within or into the western Washington regulated area unless

accompanied by documentation verifying quarantine compliance.

(a) For small packages such as heat sealed envelopes and tins, quarantine compliance may be placed on a sales invoice or other documentation that is provided to the purchaser of seed. Language must be approved by the seed program.

(b) Larger containers must bear a label issued by the seed program indicating that the seed is in compliance with this chapter.

NEW SECTION

WAC 16-301-531 Planting crucifer seed in the eastern Washington regulated area—Requirements. (1)(a) It is a violation of this chapter to plant or establish crucifer seed that is infected with any regulated disease in the eastern Washington regulated area.

(b) Any seed of a *Brassica*, *Raphanus*, *Sinapis* species or any other genera in the *Brassicaceae* family to be planted in the eastern Washington regulated area must be laboratory tested and found to be free from black leg of crucifers (*Phoma lingam*).

(2) Any seed of a *Brassica*, *Raphanus*, *Sinapis* species or any other genera in the *Brassicaceae* family to be planted in the eastern Washington regulated area must be tagged with a tag issued by the department indicating that the seed has met the requirements of this chapter.

NEW SECTION

WAC 16-301-533 Requirements for planting crucifer seed in the eastern Washington regulated area. Any seed of a *Brassica*, *Raphanus*, *Sinapis* species or any other genera in the *Brassicaceae* family to be planted in the eastern Washington regulated area must be tagged with a tag issued by the department indicating that the seed has met the requirements of this chapter.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-540 Crucifer transplants grown in greenhouses in the regulated areas—Requirements. (1) All crucifer transplants produced in greenhouses in the regulated areas must be subjected to pest control procedures that reduce the presence of diseases or insects that may inhibit identifying regulated diseases.

(2) The interiors of greenhouses in the regulated areas used to produce crucifer transplants must be free of crucifer weeds.

(3) One hundred meter buffers, free of crucifer weeds, must surround all greenhouses in the regulated areas used to produce crucifer transplants.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-545 Crucifer seed lots that test positive for any regulated disease—Requirements. (1) If a crucifer seed lot tests positive for any regulated disease, the infected seed lot may be treated with an approved seed treatment.

(2) After treatment, the seed lot must be tested for the presence of regulated diseases using appropriate pathological testing methods.

(3) If the pathological testing yields negative test results, the seed lot will be considered in compliance with this chapter.

(4) It is a violation of this chapter to plant seed in the regulated areas that tests positive for any regulated disease subsequent to any approved treatment method.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-550 Planting seed in ((*) the western Washington regulated area—Protocols when certain documentation is unavailable. When no documentation exists verifying that a crucifer seed lot is free from regulated diseases, the following protocols must be followed before the seed is planted in the western Washington regulated area:

(1) A crucifer seed lot will be classified as a suspect seed lot if the seed lot lacks the documentation verifying that the lot complies with the crucifer seed quarantine requirements of this chapter.

(2) Suspect seed lots must:

(a) Not be offered for sale in the western Washington regulated area.

(b) Be treated by an approved treatment method.

(c) Be sown in a greenhouse and the seedlings must pass inspection by seed program inspectors before transplanting to the field.

(3) Any greenhouse operation used to grow crucifer seedlings for transplant must:

(a) Physically separate suspect seed lots from other crucifer production within that greenhouse.

(b) Monitor and document the location and identity of each suspect seed lot during production.

(4) It is a violation of this chapter for seedlings from a suspect seed lot to be topped, clipped, chopped or undergo any other treatment to toughen them or reduce their size.

(5) All seedlings from a suspect seed lot that exhibit symptoms of regulated diseases must be physically separated from asymptomatic transplants in that lot.

(6) Before shipping seedlings from a suspect seed lot, the seedlings must be inspected by seed program inspectors for the presence of regulated diseases.

(a) If no symptoms of regulated diseases are detected during this inspection, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the western Washington regulated area.

(b) If seedlings display symptoms of regulated diseases, laboratory testing for the diseases is mandatory.

(c) If seedlings from a suspect seed lot test negative for regulated pathogens after appropriate pathological testing, the suspect seed lot is considered in compliance with this chapter and may be sold and planted within the western Washington regulated area.

(d) If the presence of a regulated disease is confirmed by laboratory testing, all seedlings from a suspect seed lot may be subject to a quarantine order or destruction order under WAC 16-301-570.

(7) Any crucifer seed production fields, plant beds, or greenhouse production that will be planted with or receives production from suspect seed lots that are determined to be free from regulated diseases under subsection (6) of this section must be entered into the Washington state phytosanitary inspection program as required under WAC 16-301-235.

(8)(a) It is a violation of this chapter to plant seedlings from a suspect seed lot that tests positive for any regulated disease in the western Washington regulated area.

(b) Any suspect seed lot testing positive for any regulated disease may be subject to a quarantine order or a destruction order under WAC 16-301-570.

AMENDATORY SECTION (Amending WSR 14-20-050, filed 9/25/14, effective 10/26/14)

WAC 16-301-580 Diseased crucifer seeds and infected fields—Regulations. (1) When the director determines that a field is infected with a regulated pathogen and threatens to infect other fields, the director may issue a notice of destruction prescribing control measures or other requirements needed to prevent the infection of adjacent properties.

(2) Unless the crop is within two weeks of harvest, any crucifer crop within ~~((the))~~ a regulated area that is infected with a regulated pathogen may be subject to immediate destruction, in part or in total. The owner is responsible for the expenses incurred to destroy a diseased crucifer crop.

(3) The following requirements apply to crops that are within two weeks of harvest:

(a) Residues must be destroyed or incorporated into the ground immediately after harvest;

(b) Harvested seed must be isolated from other seed lots until it is treated with hot water and/or chlorine seed treatments;

(c) Harvest equipment must be steam cleaned before entering any other fields; and

(d) WSDA personnel in consultation with WSU extension personnel must monitor these postharvest activities.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-301-500 Crucifer articles regulated by this chapter.

WSR 15-20-041

PERMANENT RULES

DEPARTMENT OF COMMERCE

[Filed September 29, 2015, 10:57 a.m., effective October 30, 2015]

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

Purpose: To adopt a new WAC chapter to implement commerce's role in the voluntary stewardship program, as directed by RCW 36.70A.735(3).

The rule (chapter 365-191 WAC) provides the framework for local government to submit development regulations protecting critical areas in areas use[d] for agriculture

for commerce certification. It also provides a framework for local governments to submit a watershed work plan to commerce for approval.

Statutory Authority for Adoption: RCW 36.70A.735(3) and 36.70A.190.

Adopted under notice filed as WSR 15-12-042 on May 27, 2015.

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 12, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: September 1, 2015.

Dan McConnan
for Brian Bonlender
Director

Chapter 365-191 WAC

VOLUNTARY STEWARDSHIP PROGRAM APPROVAL PROCEDURES

PART ONE

GENERAL CONSIDERATION

NEW SECTION

WAC 365-191-010 Purpose and authority. (1) Chapter 360, Laws of 2011 establishes the voluntary stewardship program as an alternative approach for counties to protect critical areas on agricultural lands. The voluntary stewardship program is not limited to designated agricultural lands of long-term commercial significance. The program is administered by the conservation commission.

(2) A county that chooses to participate in the program is required to develop work plans to protect critical areas while maintaining the viability of agriculture through voluntary, incentive-based measures.

(3) If a watershed is subject to RCW 36.70A.735(2) then a county is given eighteen months to take one of four actions.

(4) The purpose of this chapter is to adopt rules to implement procedures for two of those four options: Department approval of a watershed work plan under RCW 36.70A.735 (1)(a); and department certification of development regulations under RCW 36.70A.735 (1)(c).

(5) This chapter is established pursuant to RCW 36.70A.735(3).

NEW SECTION

WAC 365-191-020 Definitions of terms as used in this chapter. (1) "Agricultural activities" means all agricultural uses and practices as defined in RCW 90.58.065.

(2) "Commission" means the state conservation commission as defined in RCW 89.08.030.

(3) "Department" means the department of commerce.

(4) "Director" means the executive director of the state conservation commission.

(5) "Enhance" or "enhancement" means to improve the processes, structure, and functions existing, as of July 22, 2011, of ecosystems and habitats associated with critical areas.

(6) "Protect" or "protecting" means to prevent the degradation of functions and values existing as of July 22, 2011.

PART TWO

WATERSHED WORK PLAN SUBMITTAL

NEW SECTION

WAC 365-191-200 County duties if a work plan is not approved, fails, or is unfunded. If a watershed work plan falls under RCW 36.70A.735(2), and the county chooses to develop, adopt, and implement a watershed work plan as described in RCW 36.70A.735 (1)(a), then the county will fall under one of these scenarios:

(1) Work plan not approved by commission: This section applies if the director did not approve a work plan submitted by the county.

(2) Work plan goals and benchmarks have not been met: This section applies if, within five years after receipt of funding, the watershed group finds that goals and benchmarks have not been met, and the director does not approve an adaptive management plan submitted by the county to meet the goals and benchmarks.

(3) Adequate funding not received by county or state agencies with responsibilities: The commission has determined under RCW 36.70A.740 that the county, department, commission, or departments of agriculture, ecology, or fish and wildlife have not received adequate funding to implement a program in the watershed; or

(4) Adequate funding not received by the watershed: The commission has determined under RCW 36.70A.740 that the watershed has not received adequate funding to implement the program.

NEW SECTION

WAC 365-191-210 County submittal requirements.

(1) If a work plan is not approved by the director, then the county must submit the following information to the department:

(a) The work plan and any supporting documentation submitted to the commission;

(b) The revised work plan and a description of how the county has addressed any deficiencies or issues cited by the commission;

(c) Evidence of adequate public notice;

(d) Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process;

(e) Adopted resolutions of the county legislative body, if any; and

(f) Meeting minutes and public testimony for those meetings.

(2) Work plan goals and benchmarks not met:

(a) The approved work plan, including the goals and benchmarks;

(b) The adaptive management plan and any supporting documents submitted to the commission;

(c) A revised work plan, adaptive management plan, and a description of how the county has addressed any deficiencies or issues cited by the commission;

(d) Evidence of adequate public notice;

(e) Copies of all public, agency and tribal comments received, including a record of names and addresses of interested parties involved in the local government review process;

(f) Adopted resolutions of the county legislative body, if any; and

(g) Meeting minutes and public testimony for those meetings.

(3) Adequate funding not received by county or state agencies with responsibilities:

(a) The approved work plan and any supporting documentation submitted to the commission; and

(b) Determination by the commission that county or state agencies with responsibilities have not received adequate funding.

(4) The commission has determined that the watershed has not received adequate funding to implement the plan:

(a) The approved work plan and any other supporting documentation submitted to the commission; and

(b) Determination from the commission that adequate funding for the watershed is not available.

NEW SECTION

WAC 365-191-220 Process and criteria for department to review a county's watershed work plan. (1) A county choosing to develop, adopt, and implement a watershed work plan under RCW 36.70A.735 (1)(a) shall notify the department not less than one hundred twenty days prior to its submittal of their intent and which of the four scenarios under RCW 36.70A.735(2) it falls under.

(2) Prior to submitting the information as specified in WAC 365-191-210 to the department, the county shall conduct a public process consistent with locally adopted procedures.

(3) The department shall provide notice of the county submittal as follows:

(a) *Washington State Register*;

(b) Agency e-mail distribution list;

(c) Agency web site; and

(d) Commission.

(4) The department shall consult with the departments of agriculture, ecology, and fish and wildlife, the commission,

and other relevant state agencies before approving or disapproving the proposed work plan. Thirty days will be provided to these agencies for review and comment.

(5) The department shall notify the county and parties providing written comment of its decision.

(6) The department's decision document shall include written findings and conclusions and shall specify the date in which the sixty-day appeal period commences.

(7) Criteria for review:

(a) Whether the watershed work plan is consistent with the elements of RCW 36.70A.720(1);

(b) Whether the submittal will protect critical areas while maintaining and enhancing the viability of agriculture in the watershed; and

(c) Whether the consulted state agencies believe the submittal will address (a) and (b) of this subsection.

NEW SECTION

WAC 365-191-230 Appeals. (1) The department's decision is subject to appeal under RCW 36.70A.280 to the growth management hearings board.

(2) The sixty-day appeal of a petition for review of the department's decision must be filed with the growth management hearings board within sixty days of publication in the *Washington State Register*.

(3) Only those parties with standing under RCW 36.70A.280(2) may appeal the department's decision.

PART THREE

DEVELOPMENT REGULATION SUBMITTAL

NEW SECTION

WAC 365-191-300 Local process to review and if necessary revise development regulations to be certified by the department as protective of critical areas in areas used for agricultural activities. (1) A county choosing to adopt development regulations under RCW 36.70A.735 (1)(c) must notify the department in writing of its intent to submit existing or amended regulations for certification prior to initiating the regulation adoption process. Early notice is encouraged and will allow for consultation with the department and other agencies. Reviewing agencies shall coordinate between each other and with counties to ensure a common understanding of issues and options to address concerns.

(2) Prior to submitting development regulations to the department for certification, a county must conduct a public process consistent with locally adopted procedures.

(3) A county may submit draft regulations to the department for precertification. Precertification means submittal of draft regulations to the department for review and a nonbinding determination whether the draft regulations could be certified or, if not, what changes would be necessary. The department will review the draft regulations and provide a written opinion whether the regulations meet the criteria specified in WAC 365-191-330.

(a) Precertification is offered to identify significant issues prior to submittal to the department for formal certification.

(b) Prior to making its precertification determination, the department must consult reviewing state agencies, including the departments of agriculture, ecology, fish and wildlife, and the commission, as specified in RCW 36.70A.735 (1)(c).

(c) Precertification does not guarantee the outcome of the final department certification decision.

NEW SECTION

WAC 365-191-310 Submittal of proposed regulations to the department for certification. (1) The department will provide a checklist of materials that must be included with the submittal of proposed regulations for certification. The checklist will not create new or additional requirements beyond the provisions of this chapter. At a minimum, the submittal must include the entire public record of the county development regulation adoption process, including:

- (a) Proposed regulations;
- (b) Evidence of adequate public notice;
- (c) Evidence of compliance with chapter 43.21C RCW, (SEPA);
- (d) Copies of all public written comments received, including a record of names and addresses of interested parties involved in the local government review process;
- (e) Planning commission findings and recommendations;
- (f) Adopted resolutions, if any, of the county legislative body; and
- (g) Meeting minutes and public testimony.

(2) Counties are encouraged to forward proposed regulations that have been reviewed and recommended by the planning commission, with subsequent review by the county legislative body. The county legislative body should review the planning commission recommendation and, by a vote of the county legislative body, must forward proposed regulations to the department for certification. A county should not forward regulations that have been formally adopted.

(3) The department will review the submittal and make a determination of completeness. The county will be notified in writing of incomplete submittals, with direction from the department concerning missing or inadequate materials. Once the department issues a determination of completeness, it has ninety days to either approve or deny certification.

NEW SECTION

WAC 365-191-320 Department process for certification of development regulations. (1) After making a determination of completeness, the department will notify reviewing agencies listed in WAC 365-191-300 (3)(b) of the county's submittal and the time frame for their formal review and comment.

(2) Reviewing agencies shall have thirty days to review and comment on the proposed regulations.

(3) The department shall provide notice of the county's request for certification as follows:

- (a) *Washington State Register*;
- (b) The department e-mail distribution list;
- (c) The department web site;
- (d) Local conservation districts.

(4) The department must notify the county and parties providing written comment of its certification decision.

(5) The department's certification decision document must include written findings and conclusions and the date in which the sixty-day appeal period commences.

(6) For compliance with RCW 36.70A.735 (1)(c), a county is encouraged to promptly adopt regulations certified by the department by ordinance, without substantial changes.

NEW SECTION

WAC 365-191-330 Review criteria. (1) The scope of the department's review shall be limited to a review of existing or proposed development regulations submitted for certification and whether the regulations address the protection of critical areas in areas used for agricultural activities.

(2) Counties may consider Clallam, Clark, King, or Whatcom county's critical area regulation, in effect on July 1, 2011, as example regulations that protect critical areas in areas used for agricultural activities. Counties may also consider development regulations of another local government as long as those regulations have been upheld by a growth management hearings board or court after July 1, 2011.

(3) Regulations shall support the continuation of existing and ongoing agricultural operations.

NEW SECTION

WAC 365-191-340 Procedures for amending development regulations after department certification. After initial certification under WAC 365-191-050, the department has no authority to certify future amendments proposed by counties.

NEW SECTION

WAC 365-191-350 Appeals. (1) The department's decision is subject to appeal under RCW 36.70A.280 to the growth management hearings board.

(2) The sixty-day appeal period shall commence upon the date the department's decision is published in the *Washington State Register*.

(3) Only those parties with standing under RCW 36.70A.280(2) may appeal the department's certification decision.

WSR 15-20-042

PERMANENT RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2015-02—Filed September 29, 2015, 1:48 p.m., effective September 29, 2015, 1:48 p.m.]

Effective Date of Rule: Immediately upon filing.

Reason: The United States Department of Health and Human Services (HHS) is requiring states to finish updating their essential health benefits rules by autumn. The office of the insurance commissioner (OIC) implemented an emergency rule (R 2015-01) in May to designate a base-bench-

mark plan, but that rule has recently expired and needs replacement to keep the state in compliance with HHS regulations.

Purpose: HHS decided to extend the base-benchmark approach for establishing essential health benefit coverage levels through at least plan year 2017. As part of this process, HHS required each state to identify a new base-benchmark plan and to update its essential health benefits rule, which applies to fully-insured small group and individual health plans.

To comply with these requirements, OIC identified a new base-benchmark plan in May 2015 through emergency rule making.

This rule finalizes the new base-benchmark plan selection and makes necessary changes to the essential health benefits rule to bring the rule into compliance with changes that have occurred since the OIC originally adopted it in 2013. These changes include but are not limited to:

- Adding language that says that health plans must cover medically necessary services for transgender individuals;
- Updating the definition of "habilitative services" to more closely fit the new federal definition; and
- Adding language that says that health plans must know and comply with the federal guidance related to the essential health benefits, such as the ACA FAQs that are jointly issued by HHS, the United States Department of Labor and the United States Department of the Treasury.

To implement these changes, OIC amended WAC 284-43-865, 284-43-877, 284-43-878, 284-43-879, and 284-43-880, adding language stating that these WAC expire on December 31, 2016. OIC created new sections WAC 284-43-8651, 284-43-8771, 284-43-8781, 284-43-8791 and 284-43-8801 that will apply to plans that have an effective date on or after January 1, 2017.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-865, 284-43-877, 284-43-878, 284-43-879, and 284-43-880.

Statutory Authority for Adoption: RCW 48.21.241, 48.21.320, 48.44.460, 48.44.341, 48.46.291, 48.46.530, and 48.43.715.

Adopted under notice filed as WSR 15-16-122 on August 5, 2015.

Changes Other than Editing from Proposed to Adopted Version:

- In WAC 284-43-8781 (5)(b)(ii), the agency deleted the reference to the DSM-IV, replacing it with a reference to the most recent version of the diagnostic and statistical manual of mental disorders (DSM); and deleted the reference to gender identity disorder, replacing it with a reference to gender dysphoria;
- In WAC 284-43-8781 (5)(c), the agency deleted the words "a home health setting in;"
- In WAC 284-43-8781 (9)(d), the agency added "In accordance with Section 2713 of the Public Health Service Act (PHS Act) and its implementing regulations relating to coverage of preventive services, the base-benchmark plan does not impose cost-sharing requirements with respect to the preventive services listed in

this section under (b)(i) to (iv) that are provided in-network."

A final cost-benefit analysis is available by contacting Bianca Stoner, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 725-3535, 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 5, Amended 5, 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 5, Amended 5, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 5, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 29, 2015.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 12-19-099, filed 9/19/12, effective 10/20/12)

WAC 284-43-865 Essential health benefits package benchmark reference plan. A not grandfathered individual or small group health benefit plan offered, issued, amended or renewed on or after January 1, 2014, must, at a minimum, include coverage for essential health benefits. "Essential health benefits" means all of the following:

(1) The benefits and services covered by health care service contractor Regence (~~(Blue Shield)) BlueShield~~ as the *Innova* small group plan policy form, policy form number WW0711CCONMS, and certificate form number WW0112 BINNS, offered during the first quarter of 2012. The SERFF filing number is RGWA-127372701.

(2) The services and items covered by a health benefit plan that are within the categories identified in Section 1302(b) of PPACA including, but not limited to, ambulatory patient services, emergency services, hospitalization, maternity and newborn care, mental health and substance use disorder services, including behavioral health treatment, prescription drugs, rehabilitative and habilitative services and devices, laboratory services, preventive and wellness services and chronic disease management, and pediatric services, including oral and vision care, and as supplemented by the commissioner or required by the secretary of the U.S. Department of Health and Human Services.

(3) Mandated benefits pursuant to Title 48 RCW enacted before December 31, 2011.

(4) This section expires on December 31, 2016.

NEW SECTION

WAC 284-43-8651 Essential health benefits package benchmark reference plan. A nongrandfathered individual or small group health benefit plan offered, issued, amended or renewed on or after January 1, 2017, must, at a minimum, include coverage for essential health benefits. "Essential health benefits" means all of the following:

(1) The benefits and services covered by health care service contractor Regence BlueShield as the *Regence Direct Gold* + small group plan, policy form number WW0114 CCONMSD and certificate form number WW0114BP-PO1SD, offered during the first quarter of 2014. The SERFF form filing number is RGWA-128968362.

(2) The services and items covered by a health benefit plan that are within the categories identified in Section 1302(b) of PPACA including, but not limited to:

- (a) Ambulatory patient services;
- (b) Emergency services;
- (c) Hospitalization;
- (d) Maternity and newborn care;
- (e) Mental health and substance use disorder services, including behavioral health treatment;
- (f) Prescription drugs;
- (g) Rehabilitative and habilitative services and devices;
- (h) Laboratory services;
- (i) Preventive and wellness services and chronic disease management;
- (j) Pediatric services, including oral and vision care; and
- (k) Other services as supplemented by the commissioner or required by the secretary of the U.S. Department of Health and Human Services.

(3) Mandated benefits pursuant to Title 48 RCW enacted before December 31, 2011.

(4) This section applies to health plans that have an effective date of January 1, 2017, or later.

AMENDATORY SECTION (Amending WSR 14-06-069, filed 3/3/14, effective 4/3/14)

WAC 284-43-877 Plan design. (1) A nongrandfathered individual or small group health benefit plan offered, issued, or renewed, on or after January 1, 2014, must provide coverage that is substantially equal to the EHB-benchmark plan, as described in WAC 284-43-878, 284-43-879, and 284-43-880.

(a) For plans offered, issued, or renewed for a plan or policy year beginning on or after January 1, 2014, until December 31, 2016, an issuer must offer the EHB-benchmark plan without substituting benefits for the benefits specifically identified in the EHB-benchmark plan.

(b) For plan or policy years beginning on or after January 1, 2017, an issuer may substitute benefits to the extent that the actuarial value of the benefits in the category to which the substituted benefit is classified remains substantially equal to the EHB-benchmark plan.

(c) "Substantially equal" means that:

(i) The scope and level of benefits offered within each essential health benefit category supports a determination by the commissioner that the benefit is a meaningful health benefit;

(ii) The aggregate actuarial value of the benefits across all essential health benefit categories does not vary more than a de minimis amount from the aggregate actuarial value of the EHB-benchmark base plan; and

(iii) Within each essential health benefit category, the actuarial value of the category must not vary more than a de minimis amount from the actuarial value of the category for the EHB-benchmark plan.

(2) An issuer must classify covered services to an essential health benefits category consistent with WAC 284-43-878, 284-43-879, and 284-43-880 for purposes of determining actuarial value. An issuer may not use classification of services to an essential health benefits category for purposes of determining actuarial value as the basis for denying coverage under a health benefit plan.

(3) The base-benchmark plan does not specifically list all types of services, settings and supplies that can be classified to each essential health benefits category. The base-benchmark plan design does not specifically list each covered service, supply or treatment. Coverage for benefits not specifically identified as covered or excluded is determined based on medical necessity. An issuer may use this plan design, provided that each of the essential health benefit categories is specifically covered in a manner substantially equal to the EHB-benchmark plan.

(4) An issuer is not required to exclude services that are specifically excluded by the base-benchmark plan. If an issuer elects to cover a benefit excluded in the base-benchmark plan, the issuer must not include the benefit in its essential health benefits package for purposes of determining actuarial value. A health benefit plan must not exclude a benefit that is specifically included in the base-benchmark plan.

(5) An issuer must not apply visit limitations or limit the scope of the benefit category based on the type of provider delivering the service, other than requiring that the service must be within the provider's scope of license for purposes of coverage. This obligation does not require an issuer to contract with any willing provider, nor is an issuer restricted from establishing reasonable requirements for credentialing of, and access to, providers within its network.

(6) Telemedicine or telehealth services are considered provider-type services, and not a benefit for purposes of the essential health benefits package.

(7) Consistent with state and federal law, a health benefit plan must not contain an exclusion that unreasonably restricts access to medically necessary services for populations with special needs including, but not limited to, a chronic condition caused by illness or injury, either acquired or congenital.

(8) Unless an age based reference limitation is specifically included in the base-benchmark plan or a supplemental base-benchmark plan for a category set forth in WAC 284-43-878, 284-43-879, or 284-443-880, an issuer's scope of coverage for those categories of benefits must cover both pediatric and adult populations.

(9) A health benefit plan must not be offered if the commissioner determines that:

(a) It creates a risk of biased selection based on health status;

(b) The benefits within an essential health benefit category are limited so that the coverage for the category is not a meaningful health benefit; or

(c) The benefit has a discriminatory effect in practice, outcome or purpose in relation to age, present or predicted disability, and expected length of life, degree of medical dependency, quality of life or other health conditions, race, gender, national origin, sexual orientation and gender identity or in the application of Section 511 of Public Law 110-343 (the federal Mental Health Parity and Addiction Equity Act of 2008).

(10) An issuer must not impose annual or lifetime dollar limits on an essential health benefit, other than those permitted as reference based limitations pursuant to WAC 284-43-878, 284-43-879, and 284-43-880.

(11) This section expires on December 31, 2016.

NEW SECTION

WAC 284-43-8771 Plan design. (1) A nongrandfathered individual or small group health benefit plan offered, issued, or renewed, on or after January 1, 2017, must provide coverage that is substantially equal to the EHB-benchmark plan, as described in WAC 284-43-8781, 284-43-8791, and 284-43-8801.

(a) For plans offered, issued, or renewed for a plan or policy year beginning on or after January 1, 2017, an issuer must offer the EHB-benchmark plan without substituting benefits for the benefits specifically identified in the EHB-benchmark plan.

(b) "Substantially equal" means that:

(i) The scope and level of benefits offered within each essential health benefit category supports a determination by the commissioner that the benefit is a meaningful health benefit;

(ii) The aggregate actuarial value of the benefits across all essential health benefit categories does not vary more than a de minimis amount from the aggregate actuarial value of the EHB-benchmark base plan; and

(iii) Within each essential health benefit category, the actuarial value of the category must not vary more than a de minimis amount from the actuarial value of the category for the EHB-benchmark plan.

(2) An issuer must classify covered services to an essential health benefits category consistent with WAC 284-43-8781, 284-43-8791, and 284-43-8801 for purposes of determining actuarial value. An issuer may not use classification of services to an essential health benefits category for purposes of determining actuarial value as the basis for denying coverage under a health benefit plan.

(3) The base-benchmark plan does not specifically list all types of services, settings and supplies that can be classified to each essential health benefits category. The base-benchmark plan design does not specifically list each covered service, supply or treatment. Coverage for benefits not specifically identified as covered or excluded is determined based on medical necessity. An issuer may use this plan design, provided that each of the essential health benefit categories is specifically covered in a manner substantially equal to the EHB-benchmark plan.

(4) An issuer is not required to exclude services that are specifically excluded by the base-benchmark plan. If an issuer elects to cover a benefit excluded in the base-benchmark plan, the issuer must not include the benefit in its essential health benefits package for purposes of determining actuarial value. A health benefit plan must not exclude a benefit that is specifically included in the base-benchmark plan.

(5) An issuer must not apply visit limitations or limit the scope of the benefit category based on the type of provider delivering the service, other than requiring that the service must be within the provider's scope of license for purposes of coverage. This obligation does not require an issuer to contract with any willing provider, nor is an issuer restricted from establishing reasonable requirements for credentialing of and access to providers within its network.

(6) Telemedicine or telehealth services are considered a method of accessing services, and are not a separate benefit for purposes of the essential health benefits package. Issuers must provide essential health benefits consistent with the requirements of (add RCW citation for SSB 5175 when it becomes available).

(7) Consistent with state and federal law, a health benefit plan must not contain an exclusion that unreasonably restricts access to medically necessary services for populations with special needs including, but not limited to, a chronic condition caused by illness or injury, either acquired or congenital.

(8) Benefits under each category set forth in WAC 284-43-8781, 284-43-8791, or 284-43-8801 must be covered for both pediatric and adult populations unless:

(a) A benefit is specifically limited to a particular age group in the base-benchmark plan and such limitation is consistent with state and federal law; or

(b) The category of essential health benefits is specifically stated to be applicable only to the pediatric population, such as pediatric oral services.

(9) A health benefit plan must not be offered if the commissioner determines that:

(a) It creates a risk of biased selection based on health status;

(b) The benefits within an essential health benefit category are limited so that the coverage for the category is not a meaningful health benefit; or

(c) The benefit has a discriminatory effect in practice, outcome or purpose in relation to age, present or predicted disability, and expected length of life, degree of medical dependency, quality of life or other health conditions, race, gender, national origin, sexual orientation and gender identity or in the application of Section 511 of Public Law 110-343 (the federal Mental Health Parity and Addiction Equity Act of 2008).

(10) An issuer must not impose annual or lifetime dollar limits on an essential health benefit, other than those permitted under WAC 284-43-8781, 284-43-8791, and 284-43-8801.

(11) This section applies to health plans that have an effective date of January 1, 2017, or later.

AMENDATORY SECTION (Amending WSR 14-15-012, filed 7/3/14, effective 7/3/14)

WAC 284-43-878 Essential health benefit categories.

(1) A health benefit plan must cover "ambulatory patient services." For purposes of determining a plan's actuarial value, an issuer must classify as ambulatory patient services medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

- (i) Home and outpatient dialysis services;
- (ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;
- (iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;
- (iv) Urgent care center visits, including provider services, facility costs and supplies;
- (v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, and surgical supplies and facility costs;
- (vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and
- (vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value for this category.

- (i) Infertility treatment and reversal of voluntary sterilization;
- (ii) Routine foot care for those that are not diabetic;
- (iii) Coverage of dental services following injury to sound natural teeth, but not excluding services or appliances necessary for or resulting from medical treatment if the service is:
 - (A) Emergency in nature; or
 - (B) Requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease. Oral surgery related to trauma and injury must be covered.
- (iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;
- (v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;
- (vi) Nonskilled care and help with activities of daily living;
- (vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them, other than for cochlear implants, which are covered, and for hear-

ing screening tests required under the preventive services category, unless coverage for these services and devices are required as part of, and classified to, another essential health benefits category;

(viii) Obesity or weight reduction or control other than covered nutritional counseling.

(c) The base-benchmark plan establishes specific limitations on services classified to the ambulatory patient services category that conflict with state or federal law as of January 1, 2014. The base-benchmark plan limits nutritional counseling to three visits per lifetime, if the benefit is not associated with diabetes management. This lifetime limitation for nutritional counseling is not part of the state EHB-benchmark plan. An issuer may limit this service based on medical necessity, and may establish an additional reasonable visit limitation requirement for nutritional counseling for medical conditions when supported by evidence based medical criteria.

(d) The base-benchmark plan's visit limitations on services in this category include:

- (i) Ten spinal manipulation services per calendar year without referral;
 - (ii) Twelve acupuncture services per calendar year without referral;
 - (iii) Fourteen days' respite care on either an inpatient or outpatient basis for hospice patients, per lifetime;
 - (iv) One hundred thirty visits per calendar year for home health care.
- (e) State benefit requirements classified to this category are:
- (i) Chiropractic care (RCW 48.44.310);
 - (ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530);
 - (iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services." For purposes of determining a plan's actuarial value, an issuer must classify care and services related to an emergency medical condition to the emergency medical services category, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as emergency services:

- (i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;
- (ii) Emergency room and department-based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;
- (iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical care category.

(c) The base-benchmark base plan does not establish specific limitations on services classified to the emergency

medical services category that conflict with state or federal law as of January 1, 2014.

(d) The base-benchmark plan does not establish visit limitations on services in this category.

(e) State benefit requirements classified to this category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization." For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations;

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value:

(i) Hospitalization where mental illness is the primary diagnosis to the extent that it is classified under the mental health and substance use disorder benefits category;

(ii) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(iii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly; and

(C) Sexual reassignment treatment and surgery;

(iv) Reversal of sterilizations;

(v) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2014. The base-benchmark plan allows for a transplant waiting

period. This waiting period is not part of the state EHB-benchmark plan.

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. This benefit may be classified to this category for determining actuarial value or to the rehabilitation services category, but not to both.

(e) State benefit requirements classified to this category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy which resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530);

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn" services. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery, and to newborn children, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy. Termination of pregnancy may be included in an issuer's essential health benefits package, but nothing in this section requires an issuer to offer the benefit, consistent with 42 U.S.C. 18023 (b)(a)(A)(i) and 45 C.F.R. 156.115.

(b) A health benefit plan may, but is not required to, include the following service as part of the EHB-benchmark package. Genetic testing of the child's father is specifically excluded by the base-benchmark plan, and should not be included in determining actuarial value.

(c) The base-benchmark plan establishes specific limitations on services classified to the maternity and newborn category that conflict with state or federal law as of January 1, 2014. The state EHB-benchmark plan requirements for these services are:

(i) Maternity coverage for dependent daughters must be included in the EHB-benchmark plan on the same basis that the coverage is included for other enrollees;

(ii) Newborns delivered of dependent daughters must be covered to the same extent, and on the same basis, as newborns delivered to the other enrollees under the plan.

(d) The base-benchmark plan's limitations on services in this category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(e) State benefit requirements classified to this category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the post-natal coverage for the mother, for no less than three weeks (RCW 48.43.115);

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment." For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, including behavioral health treatment for those conditions, in a substantially equal manner to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential and outpatient mental health and substance use disorder treatment, including partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to include, the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value.

(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;

(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the DSM-IV, or for "V code" diagnoses except for medically necessary services for parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or

younger, and bereavement for children five years of age or younger, unless this exclusion is preempted by federal law;

(ii) Not medically necessary court-ordered mental health treatment.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2014. The state EHB-benchmark plan requirements for these services are:

(i) Coverage for eating disorder treatment must be covered when associated with a diagnosis of a DSM categorized mental health condition;

(ii) Chemical detoxification coverage must not be uniformly limited to thirty days. Medical necessity, utilization review and criteria consistent with federal law may be applied by an issuer in designing coverage for this benefit;

(iii) Mental health services and substance use disorder treatment must be delivered in a home health setting on parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include: Court ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355);

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.-292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services." For purposes of determining a plan's actuarial value, an issuer must classify as prescription drug services the medically necessary prescribed drugs, medication and drug therapies, in a manner substantially equal to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (f) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA approved contraceptive methods, and prescription based sterilization procedures for women with reproductive capacity;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order;

(v) Medical foods to treat inborn errors of metabolism.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value for this category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan establishes specific limitations on services classified to the prescription drug services category that conflict with state or federal law as of January 1, 2014. The EHB-benchmark plan requirements for these services are:

(i) Preauthorized tobacco cessation products must be covered consistent with state and federal law;

(ii) Medication prescribed as part of a clinical trial, which is not the subject of the trial, must be covered in a manner consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include:

(i) Prescriptions for self-administrable injectable medication are limited to thirty day supplies at a time, other than insulin, which may be offered with more than a thirty day supply. This limitation is a floor, and an issuer may permit supplies greater than thirty days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(e) State benefit requirements classified to this category include:

(i) Medical foods to treat phenylketonuria (RCW 48.44.440, 48.46.510, 48.20.520, and 48.21.300);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241).

(f) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(7) A health benefit plan must cover "rehabilitative and habilitative services."

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled, in a manner substantially equal to the base-benchmark plan.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) In-patient rehabilitation facility and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatuses used to support, align or correct deformities or to improve the function of moving parts;

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. These services are specifically excluded by the base-benchmark plan, and should not be included in establishing actuarial value:

(i) Off the shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(d) **Supplementation:** The base-benchmark plan does not cover certain federally required services under this category. A health benefit plan must cover habilitative services, but these services are not specifically covered in the base-benchmark plan. Therefore, this category is supplemented. The state EHB-benchmark plan requirements for habilitative services are:

(i) For purposes of determining actuarial value and complying with the requirements of this section, the issuer must classify as habilitative services and provide coverage for the range of medically necessary health care services and health care devices designed to assist an individual in partially or fully developing, keeping or learning age appropriate skills and functioning within the individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness.

(ii) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with those for rehabilitative services. A health benefit plan may include reference based limitations only if the limitations

take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age, and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(iii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all of the services in a plan of treatment are provided by a public or government program.

(iv) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(v) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(vi) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vii) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in this category include:

(i) In-patient rehabilitation facility and professional services delivered in those facilities are limited to thirty service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limitation of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services." For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X ray, MRI, CAT scan and PET scans, in a manner substantially equal to the base-benchmark plan.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X ray, MRI, CAT scan, PET scan, and ultrasound imaging;

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. An enrollee's not medically indicated procurement and storage of personal blood supplies provided by a member of the enrollee's family is specifically excluded by the base-benchmark plan, and should not be included by an issuer in establishing a health benefit plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management." For purposes of determining a plan's actuarial value, an issuer must classify as preventative and wellness services, including chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic, services that assist in the multidisciplinary management and treatment of chronic diseases, services of particular preventive or early identification of disease or illness of value to specific populations, such as women, children and seniors, in a manner substantially equal to the base-benchmark plan.

(a) A health benefit plan must include the following services as preventive and wellness services:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii) Screening and tests with A and B recommendations by the U.S. Preventive Services Task Force for prevention and chronic care, for recommendations issued on or before the applicable plan year;

(iii) Services, tests and screening contained in the U.S. Health Resources and Services Administration Bright Futures guidelines as set forth by the American Academy of Pediatricians;

(iv) Services, tests, screening and supplies recommended in the U.S. Health Resources and Services Administration women's preventive and wellness services guidelines;

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(b) The base-benchmark plan does not exclude any services that could reasonably be classified to this category.

(c) The base-benchmark plan does not apply any limitations or scope restrictions that conflict with state or federal law as of January 1, 2014.

(d) The base-benchmark plan does not establish visit limitations on services in this category.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275);

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.-227, 48.44.327, and 48.46.277).

(10) State benefit requirements that are limited to those receiving pediatric services, but that are classified to other categories for purposes of determining actuarial value, are:

(a) Neurodevelopmental therapy to age six, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories;

(b) Congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.-250). This state benefit requirement may be classified to hospitalization, ambulatory patient services or maternity and newborn categories.

(11) This section expires on December 31, 2016.

NEW SECTION

WAC 284-43-8781 Essential health benefit categories. (1) A health benefit plan must cover "ambulatory patient services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as "ambulatory patient services" those medically necessary services delivered to enrollees in settings other than a hospital or skilled nursing facility, which are generally recognized and accepted for diagnostic or therapeutic purposes to treat illness or injury.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as ambulatory patient services:

(i) Home and outpatient dialysis services;

(ii) Hospice and home health care, including skilled nursing care as an alternative to hospitalization consistent with WAC 284-44-500, 284-46-500, and 284-96-500;

(iii) Provider office visits and treatments, and associated supplies and services, including therapeutic injections and related supplies;

(iv) Urgent care center visits, including provider services, facility costs and supplies;

(v) Ambulatory surgical center professional services, including anesthesiology, professional surgical services, surgical supplies and facility costs;

(vi) Diagnostic procedures including colonoscopies, cardiovascular testing, pulmonary function studies and neurology/neuromuscular procedures; and

(vii) Provider contraceptive services and supplies including, but not limited to, vasectomy, tubal ligation and insertion or extraction of FDA-approved contraceptive devices.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the ambulatory category:

(i) Infertility treatment and reversal of voluntary sterilization;

(ii) Routine foot care for those that are not diabetic;

(iii) Coverage of dental services following injury to sound natural teeth. However, health plans must cover oral surgery related to trauma and injury. Therefore, a plan may not exclude services or appliances necessary for or resulting from medical treatment if the service is either emergency in nature or requires extraction of teeth to prepare the jaw for radiation treatments of neoplastic disease;

(iv) Private duty nursing for hospice care and home health care, to the extent consistent with state and federal law;

(v) Adult dental care and orthodontia delivered by a dentist or in a dentist's office;

(vi) Nonskilled care and help with activities of daily living;

(vii) Hearing care, routine hearing examinations, programs or treatment for hearing loss including, but not limited to, externally worn or surgically implanted hearing aids, and the surgery and services necessary to implant them. However, plans must cover cochlear implants and hearing screening tests that are required under the preventive services category, unless coverage for these services and devices are required as part of and classified to another essential health benefits category; and

(viii) Obesity or weight reduction or control other than covered nutritional counseling.

(c) The base-benchmark plan's visit limitations on services in the ambulatory patient services category include:

(i) Ten spinal manipulation services per calendar year without referral;

(ii) Twelve acupuncture services per calendar year without referral;

(iii) Fourteen days respite care on either an inpatient or outpatient basis for hospice patients, per lifetime; and

(iv) One hundred thirty visits per calendar year for home health care.

(d) State benefit requirements classified to the ambulatory patient services category are:

(i) Chiropractic care (RCW 48.44.310);

(ii) TMJ disorder treatment (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iii) Diabetes-related care and supplies (RCW 48.20.391, 48.21.143, 48.44.315, and 48.46.272).

(2) A health benefit plan must cover "emergency medical services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuar-

ial value, an issuer must classify as emergency medical services the care and services related to an emergency medical condition.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as emergency services:

(i) Ambulance transportation to an emergency room and treatment provided as part of the ambulance service;

(ii) Emergency room and department based services, supplies and treatment, including professional charges, facility costs, and outpatient charges for patient observation and medical screening exams required to stabilize a patient experiencing an emergency medical condition;

(iii) Prescription medications associated with an emergency medical condition, including those purchased in a foreign country.

(b) The base-benchmark plan does not specifically exclude services classified to the emergency medical services category.

(c) The base-benchmark plan does not establish visit limitations on services in the emergency medical services category.

(d) State benefit requirements classified to the emergency medical services category include services necessary to screen and stabilize a covered person (RCW 48.43.093).

(3) A health benefit plan must cover "hospitalization" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as hospitalization services the medically necessary services delivered in a hospital or skilled nursing setting including, but not limited to, professional services, facility fees, supplies, laboratory, therapy or other types of services delivered on an inpatient basis.

(a) A health benefit plan must include the following services which are specifically covered by the base-benchmark plan and classify them as hospitalization services:

(i) Hospital visits, facility costs, provider and staff services and treatments delivered during an inpatient hospital stay, including inpatient pharmacy services;

(ii) Skilled nursing facility costs, including professional services and pharmacy services and prescriptions filled in the skilled nursing facility pharmacy;

(iii) Transplant services, supplies and treatment for donors and recipients, including the transplant or donor facility fees performed in either a hospital setting or outpatient setting;

(iv) Dialysis services delivered in a hospital;

(v) Artificial organ transplants based on an issuer's medical guidelines and manufacturer recommendations; and

(vi) Respite care services delivered on an inpatient basis in a hospital or skilled nursing facility.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer should not include the following benefits in establishing actuarial value for the hospitalization category:

(i) Hospitalization where mental illness is the primary diagnosis to the extent that it is classified under the mental health and substance use disorder benefits category;

(ii) Cosmetic or reconstructive services and supplies except in the treatment of a congenital anomaly, to restore a physical bodily function lost as a result of injury or illness, or related to breast reconstruction following a medically necessary mastectomy;

(iii) The following types of surgery:

(A) Bariatric surgery and supplies;

(B) Orthognathic surgery and supplies unless due to temporomandibular joint disorder or injury, sleep apnea or congenital anomaly.

(iv) Reversal of sterilizations; and

(v) Surgical procedures to correct refractive errors, astigmatism or reversals or revisions of surgical procedures which alter the refractive character of the eye.

(c) The base-benchmark plan establishes specific limitations on services classified to the hospitalization category that conflict with state or federal law as of January 1, 2017, and should not be included in essential health benefit plans:

(i) The base-benchmark plan allows a waiting period for transplant services; and

(ii) The base-benchmark plan excludes coverage for sexual reassignment treatment, surgery, or counseling services. Health plans must cover such services consistent with 42 U.S.C. 18116, Section 1557, RCW 48.30.300 and 49.60.040.

(d) The base-benchmark plan's visit limitations on services in the hospitalization category include:

(i) Sixty inpatient days per calendar year for illness, injury or physical disability in a skilled nursing facility;

(ii) Thirty inpatient rehabilitation service days per calendar year. For purposes of determining actuarial value, this benefit may be classified to the hospitalization category or to the rehabilitation services category, but not to both.

(e) State benefit requirements classified to the hospitalization category are:

(i) General anesthesia and facility charges for dental procedures for those who would be at risk if the service were performed elsewhere and without anesthesia (RCW 48.43.185);

(ii) Reconstructive breast surgery resulting from a mastectomy that resulted from disease, illness or injury (RCW 48.20.395, 48.21.230, 48.44.330, and 48.46.280);

(iii) Coverage for treatment of temporomandibular joint disorder (RCW 48.21.320, 48.44.460, and 48.46.530); and

(iv) Coverage at a long-term care facility following hospitalization (RCW 48.43.125).

(4) A health benefit plan must cover "maternity and newborn services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as maternity and newborn services the medically necessary care and services delivered to women during pregnancy and in relation to delivery and recovery from delivery and to newborn children.

(a) A health benefit plan must cover the following services which are specifically covered by the base-benchmark plan and classify them as maternity and newborn services:

(i) In utero treatment for the fetus;

(ii) Vaginal or cesarean childbirth delivery in a hospital or birthing center, including facility fees;

(iii) Nursery services and supplies for newborns, including newly adopted children;

(iv) Infertility diagnosis;

(v) Prenatal and postnatal care and services, including screening;

(vi) Complications of pregnancy such as, but not limited to, fetal distress, gestational diabetes, and toxemia; and

(vii) Termination of pregnancy. Termination of pregnancy may be included in an issuer's essential health benefits package, but nothing in this section requires an issuer to offer the benefit, consistent with 42 U.S.C. 18023 (b)(a)(A)(i) and 45 C.F.R. 156.115.

(b) A health benefit plan may, but is not required to, include genetic testing of the child's father as part of the EHB-benchmark package. The base-benchmark plan specifically excludes this service. If an issuer covers this benefit, the issuer may not include this benefit in establishing actuarial value for the maternity and newborn category.

(c) The base-benchmark plan's limitations on services in the maternity and newborn services category include coverage of home birth by a midwife or nurse midwife only for low risk pregnancy.

(d) State benefit requirements classified to the maternity and newborn services category include:

(i) Maternity services that include diagnosis of pregnancy, prenatal care, delivery, care for complications of pregnancy, physician services, and hospital services (RCW 48.43.041);

(ii) Newborn coverage that is not less than the postnatal coverage for the mother, for no less than three weeks (RCW 48.43.115); and

(iii) Prenatal diagnosis of congenital disorders by screening/diagnostic procedures if medically necessary (RCW 48.20.430, 48.21.244, 48.44.344, and 48.46.375).

(5) A health benefit plan must cover "mental health and substance use disorder services, including behavioral health treatment" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as mental health and substance use disorder services, including behavioral health treatment, the medically necessary care, treatment and services for mental health conditions and substance use disorders categorized in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, including behavioral health treatment for those conditions.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as mental health and substance use disorder services, including behavioral health treatment:

(i) Inpatient, residential, and outpatient mental health and substance use disorder treatment, including diagnosis, partial hospital programs or inpatient services;

(ii) Chemical dependency detoxification;

(iii) Behavioral treatment for a DSM category diagnosis;

(iv) Services provided by a licensed behavioral health provider for a covered diagnosis in a skilled nursing facility;

(v) Prescription medication including medications prescribed during an inpatient and residential course of treatment;

(vi) Acupuncture treatment visits without application of the visit limitation requirements, when provided for chemical dependency.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes these benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the category of mental health and substance use disorder services including behavioral health treatment:

(i) Counseling in the absence of illness, other than family counseling when the patient is a child or adolescent with a covered diagnosis and the family counseling is part of the treatment for mental health services;

(ii) Mental health treatment for diagnostic codes 302 through 302.9 in the most recent version of the *Diagnostic and Statistical Manual of Mental Disorders (DSM)*, or for "V code" diagnoses except for medically necessary services for parent-child relational problems for children five years of age or younger, neglect or abuse of a child for children five years of age or younger, bereavement for children five years of age or younger, and gender dysphoria consistent with 42 U.S.C. 18116, Section 1557, RCW 48.30.300 and 49.60.040, unless this exclusion is preempted by federal law; and

(iii) Court-ordered mental health treatment which is not medically necessary.

(c) The base-benchmark plan establishes specific limitations on services classified to the mental health and substance abuse disorder services category that conflict with state or federal law as of January 1, 2017. The state EHB-benchmark plan requirements for these services are: The base-benchmark plan does not provide coverage for mental health services and substance use disorder treatment delivered in a home health setting in parity with medical surgical benefits consistent with state and federal law. Health plans must cover mental health services and substance use disorder treatment that is delivered in parity with medical surgical benefits, consistent with state and federal law.

(d) The base-benchmark plan's visit limitations on services in this category include court-ordered treatment only when medically necessary.

(e) State benefit requirements classified to this category include:

(i) Mental health services (RCW 48.20.580, 48.21.241, 48.44.341, and 48.46.285);

(ii) Chemical dependency detoxification services (RCW 48.21.180, 48.44.240, 48.44.245, 48.46.350, and 48.46.355); and

(iii) Services delivered pursuant to involuntary commitment proceedings (RCW 48.21.242, 48.44.342, and 48.46.-292).

(f) The Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Public Law 110-343) (MHPAEA) applies to a health benefit plan subject to this section. Coverage of mental health and substance use disorder services, along with any scope and duration limits imposed on the benefits, must comply with the MHPAEA, and all rules, regulations and guidance issued pursuant to Section 2726 of the federal Public Health Service Act (42 U.S.C. Sec. 300gg-26) including where state law is silent, or where federal law preempts state law.

(6) A health benefit plan must cover "prescription drug services" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as prescription drug services medically necessary prescribed drugs, medication and drug therapies.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as prescription drug services:

(i) Drugs and medications both generic and brand name, including self-administrable prescription medications, consistent with the requirements of (b) through (e) of this subsection;

(ii) Prescribed medical supplies, including diabetic supplies that are not otherwise covered as durable medical equipment under the rehabilitative and habilitative services category, including test strips, glucagon emergency kits, insulin and insulin syringes;

(iii) All FDA-approved contraceptive methods, and prescription-based sterilization procedures for women with reproductive capacity;

(iv) Certain preventive medications including, but not limited to, aspirin, fluoride, and iron, and medications for tobacco use cessation, according to, and as recommended by, the United States Preventive Services Task Force, when obtained with a prescription order; and

(v) Medical foods to treat inborn errors of metabolism in accordance with RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services for the prescription drug services category. If an issuer includes these services, the issuer may not include the following benefits in establishing actuarial value for the prescription drug services category:

(i) Insulin pumps and their supplies, which are classified to and covered under the rehabilitation and habilitation services category; and

(ii) Weight loss drugs.

(c) The base-benchmark plan's visit limitations on services in the prescription drug services category include:

(i) Prescriptions for self-administrable injectable medication are limited to thirty day supplies at a time, other than insulin, which may be offered with more than a thirty day supply. This limitation is a floor, and an issuer may permit supplies greater than thirty days as part of its health benefit plan;

(ii) Teaching doses of self-administrable injectable medications are limited to three doses per medication per lifetime.

(d) State benefit requirements classified to the prescription drug services category include:

(i) Medical foods to treat inborn errors of metabolism (RCW 48.44.440, 48.46.510, 48.20.520, 48.21.300, and 48.43.176);

(ii) Diabetes supplies ordered by the physician (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143). Inclusion of this benefit requirement does not bar issuer variation in diabetic supply manufacturers under its drug formulary;

(iii) Mental health prescription drugs to the extent not covered under the hospitalization or skilled nursing facility services, or mental health and substance use disorders categories (RCW 48.44.341, 48.46.291, 48.20.580, and 48.21.241);

(e) An issuer's formulary is part of the prescription drug services category. The formulary filed with the commissioner must be substantially equal to the base-benchmark plan formulary, both as to U.S. Pharmacopoeia therapeutic category and classes covered and number of drugs in each class. If the base-benchmark plan formulary does not cover at least one drug in a category or class, an issuer must include at least one drug in the uncovered category or class.

(i) An issuer must file its formulary quarterly, following the filing instructions defined by the insurance commissioner in WAC 284-44A-040, 284-46A-050, and 284-58-025.

(ii) An issuer's formulary does not have to be substantially equal to the base-benchmark plan formulary in terms of formulary placement.

(7) A health benefit plan must cover "rehabilitative and habilitative services" in a manner substantially equal to the base-benchmark plan.

(a) For purposes of determining a plan's actuarial value, an issuer must classify as rehabilitative services the medically necessary services that help a person keep, restore or improve skills and function for daily living that have been lost or impaired because a person was sick, hurt or disabled.

(b) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as rehabilitative services:

(i) Cochlear implants;

(ii) Inpatient rehabilitation facilities and professional services delivered in those facilities;

(iii) Outpatient physical therapy, occupational therapy and speech therapy for rehabilitative purposes;

(iv) Braces, splints, prostheses, orthopedic appliances and orthotic devices, supplies or apparatus used to support, align or correct deformities or to improve the function of moving parts; and

(v) Durable medical equipment and mobility enhancing equipment used to serve a medical purpose, including sales tax.

(c) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes these services. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing actuarial value for the rehabilitative and habilitative services category:

(i) Off-the-shelf shoe inserts and orthopedic shoes;

(ii) Exercise equipment for medically necessary conditions;

(iii) Durable medical equipment that serves solely as a comfort or convenience item; and

(iv) Hearing aids other than cochlear implants.

(d) For purposes of determining a plan's actuarial value, an issuer must classify as habilitative services the range of medically necessary health care services and health care devices designed to assist a person to keep, learn or improve skills and functioning for daily living. Examples include services for a child who isn't walking or talking at the expected

age, or services to assist with keeping or learning skills and functioning within an individual's environment, or to compensate for a person's progressive physical, cognitive, and emotional illness. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient or outpatient settings.

(i) As a minimum level of coverage, an issuer must establish limitations on habilitative services on parity with those for rehabilitative services. A health benefit plan may include such limitations only if the limitations take into account the unique needs of the individual and target measurable, and specific treatment goals appropriate for the person's age and physical and mental condition. When habilitative services are delivered to treat a mental health diagnosis categorized in the most recent version of the DSM, the mental health parity requirements apply and supersede any rehabilitative services parity limitations permitted by this subsection.

(ii) A health benefit plan must not limit an enrollee's access to covered services on the basis that some, but not all, of the services in a plan of treatment are provided by a public or government program.

(iii) An issuer may establish utilization review guidelines and practice guidelines for habilitative services that are recognized by the medical community as efficacious. The guidelines must not require a return to a prior level of function.

(iv) Habilitative health care devices may be limited to those that require FDA approval and a prescription to dispense the device.

(v) Consistent with the standards in this subsection, speech therapy, occupational therapy, physical therapy, and aural therapy are habilitative services. Day habilitation services designed to provide training, structured activities and specialized assistance to adults, chore services to assist with basic needs, vocational or custodial services are not classified as habilitative services.

(vi) An issuer must not exclude coverage for habilitative services received at a school-based health care center unless the habilitative services and devices are delivered pursuant to federal Individuals with Disabilities Education Act of 2004 (IDEA) requirements and included in an individual educational plan (IEP).

(e) The base-benchmark plan's visit limitations on services in the rehabilitative and habilitative services category include:

(i) Inpatient rehabilitation facilities and professional services delivered in those facilities are limited to thirty service days per calendar year; and

(ii) Outpatient physical therapy, occupational therapy and speech therapy are limited to twenty-five outpatient visits per calendar year, on a combined basis, for rehabilitative purposes.

(f) State benefit requirements classified to this category include:

(i) State sales tax for durable medical equipment; and

(ii) Coverage of diabetic supplies and equipment (RCW 48.44.315, 48.46.272, 48.20.391, and 48.21.143).

(g) An issuer must not classify services to the rehabilitative services category if the classification results in a limita-

tion of coverage for therapy that is medically necessary for an enrollee's treatment for cancer, chronic pulmonary or respiratory disease, cardiac disease or other similar chronic conditions or diseases. For purposes of this subsection, an issuer must establish limitations on the number of visits and coverage of the rehabilitation therapy consistent with its medical necessity and utilization review guidelines for medical/surgical benefits. Examples of these are, but are not limited to, breast cancer rehabilitation therapy, respiratory therapy, and cardiac rehabilitation therapy. Such services may be classified to the ambulatory patient or hospitalization services categories for purposes of determining actuarial value.

(8) A health plan must cover "laboratory services" in a manner substantially equal to the base-benchmark plan. For purposes of determining actuarial value, an issuer must classify as laboratory services the medically necessary laboratory services and testing, including those performed by a licensed provider to determine differential diagnoses, conditions, outcomes and treatment, and including blood and blood services, storage and procurement, and ultrasound, X ray, MRI, CAT scan and PET scans.

(a) A health benefit plan must include the following services, which are specifically covered by the base-benchmark plan, and classify them as laboratory services:

(i) Laboratory services, supplies and tests, including genetic testing;

(ii) Radiology services, including X ray, MRI, CAT scan, PET scan, and ultrasound imaging; and

(iii) Blood, blood products, and blood storage, including the services and supplies of a blood bank.

(b) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes procurement and storage of personal blood supplies provided by a member of the enrollee's family when this service is not medically indicated. If an issuer includes this benefit in a health plan, the issuer may not include this benefit in establishing the health plan's actuarial value.

(9) A health plan must cover "preventive and wellness services, including chronic disease management" in a manner substantially equal to the base-benchmark plan. For purposes of determining a plan's actuarial value, an issuer must classify as preventive and wellness services, including chronic disease management, the services that identify or prevent the onset or worsening of disease or disease conditions, illness or injury, often asymptomatic; services that assist in the multidisciplinary management and treatment of chronic diseases; and services of particular preventative or early identification of disease or illness of value to specific populations, such as women, children and seniors.

(a) If a plan does not have in its network a provider who can perform the particular service, then the plan must cover the item or service when performed by an out-of-network provider and must not impose cost-sharing with respect to the item or service. In addition, a health plan must not limit sex-specific recommended preventive services based on an individual's sex assigned at birth, gender identity or recorded gender. If a provider determines that a sex-specific recommended preventive service is medically appropriate for an individual, and the individual otherwise satisfies the cover-

age requirements, the plan must provide coverage without cost-sharing.

(b) A health benefit plan must include the following services as preventive and wellness services, including chronic disease management:

(i) Immunizations recommended by the Centers for Disease Control's Advisory Committee on Immunization Practices;

(ii)(A) Screening and tests for which the U.S. Preventive Services Task Force for Prevention and Chronic Care have issued A and B recommendations on or before the applicable plan year.

(B) To the extent not specified in a recommendation or guideline, a plan may rely on the relevant evidence base and reasonable medical management techniques, based on necessity or appropriateness, to determine the frequency, method, treatment, or setting for the provision of a recommended preventive health service;

(iii) Services, tests and screening contained in the U.S. Health Resources and Services Administration ("HRSA") Bright Futures guidelines as set forth by the American Academy of Pediatricians; and

(iv) Services, tests, screening and supplies recommended in the HRSA women's preventive and wellness services guidelines:

(A) If the plan covers children under the age of nineteen, or covers dependent children age nineteen or over who are on the plan pursuant to RCW 48.44.200, 48.44.210, or 48.46.320, the plan must provide the child with the full range of recommended preventive services suggested under HRSA guidelines for the child's age group without cost-sharing. Services provided in this regard may be combined in one visit as medically appropriate or may be spread over more than one visit, without incurring cost-sharing, as medically appropriate; and

(B) A plan may use reasonable medical management techniques to determine the frequency, method, treatment or setting for a recommended preventive service, including providing multiple prevention and screening services at a single visit or across multiple visits.

(v) Chronic disease management services, which typically include, but are not limited to, a treatment plan with regular monitoring, coordination of care between multiple providers and settings, medication management, evidence-based care, measuring care quality and outcomes, and support for patient self-management through education or tools; and

(vi) Wellness services.

(c) The base-benchmark plan does not specifically exclude any services that could reasonably be classified to this category.

(d) The base-benchmark plan does not establish visit limitations on services in this category. In accordance with Section 2713 of the Public Health Service Act (PHS Act) and its implementing regulations relating to coverage of preventive services, the base-benchmark plan does not impose cost-sharing requirements with respect to the preventive services listed under (b)(i) through (iv) of this subsection that are provided in-network.

(e) State benefit requirements classified in this category are:

(i) Colorectal cancer screening as set forth in RCW 48.43.043;

(ii) Mammogram services, both diagnostic and screening (RCW 48.21.225, 48.44.325, and 48.46.275); and

(iii) Prostate cancer screening (RCW 48.20.392, 48.21.227, 48.44.327, and 48.46.277).

(10) Some state benefit requirements are limited to those receiving pediatric services, but are classified to other categories for purposes of determining actuarial value.

(a) These benefits include:

(i) Neurodevelopmental therapy, consisting of physical, occupational and speech therapy and maintenance to restore or improve function based on developmental delay, which cannot be combined with rehabilitative services for the same condition (RCW 48.44.450, 48.46.520, and 48.21.310). This state benefit requirement may be classified to ambulatory patient services or mental health and substance abuse disorder including behavioral health categories; and

(ii) Treatment of congenital anomalies in newborn and dependent children (RCW 48.20.430, 48.21.155, 48.44.212, and 48.46.250). This state benefit requirement may be classified to hospitalization, ambulatory patient services or maternity and newborn categories.

(b) The base-benchmark plan contains limitations or scope restrictions that conflict with state or federal law as of January 1, 2017. Specifically, the plan covers outpatient neurodevelopmental therapy services only for persons age six and under. Health plans must cover medically necessary neurodevelopmental therapy for any DSM diagnosis without blanket exclusions.

(11) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(12) This section applies to health plans that have an effective date of January 1, 2017, or later.

AMENDATORY SECTION (Amending WSR 14-09-080, filed 4/18/14, effective 5/19/14)

WAC 284-43-879 Essential health benefit category—Pediatric oral services. A health benefit plan must include "pediatric dental benefits" in its essential health benefits package. Pediatric dental benefits means coverage for the oral services listed in subsection (3) of this section, delivered to those under age nineteen.

(1) For benefit years beginning January 1, 2015, a health benefit plan must include pediatric dental benefits as an embedded set of benefits, or through a combination of a health benefit plan and a stand-alone dental plan that includes pediatric dental benefits certified as a qualified dental plan. For a health benefit plan certified by the health benefit exchange as a qualified health plan, this requirement is met if a stand-alone dental plan meeting the requirements of subsection (3) of this section is offered in the health benefit exchange for that benefit year.

(2) The requirements of WAC 284-43-878 and 284-43-880 are not applicable to the stand-alone dental plan. A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The supplemental base-benchmark plan specifically excludes oral implants, and an issuer should not include benefits for oral implants in establishing a plan's actuarial value.

(3) **Supplementation:** The base-benchmark plan covers pediatric services for the categories set forth in WAC 284-43-878, but does not cover pediatric oral services. Because the base-benchmark plan does not cover pediatric oral benefits, the state EHB-benchmark plan requirements are supplemented for pediatric oral benefits. The Washington state CHIP plan is designated as the supplemental base-benchmark plan for pediatric dental benefits. A health plan issuer must offer coverage for and classify the following pediatric oral services as pediatric dental benefits in a manner substantially equal to the supplemental base-benchmark plan:

- (a) Diagnostic services;
 - (b) Preventive care;
 - (c) Restorative care;
 - (d) Oral surgery and reconstruction to the extent not covered under the hospitalization benefit;
 - (e) Endodontic treatment;
 - (f) Periodontics;
 - (g) Crown and fixed bridge;
 - (h) Removable prosthetics; and
 - (i) Medically necessary orthodontia.
- (4) The supplemental base-benchmark plan's visit limitations on services in this category are:
- (a) Diagnostic exams once every six months, beginning before one year of age;
 - (b) Bitewing X ray once a year;
 - (c) Panoramic X rays once every three years;
 - (d) Prophylaxis every six months beginning at age six months;
 - (e) Fluoride three times in a twelve-month period for ages six and under; two times in a twelve-month period for ages seven and older; three times in a twelve-month period during orthodontic treatment; sealant once every three years for occlusal surfaces only; oral hygiene instruction two times in twelve months for ages eight and under if not billed on the same day as a prophylaxis treatment;
 - (f) Every two years for the same restoration (fillings);
 - (g) Frenulectomy or frenuloplasty covered for ages six and under without prior authorization;
 - (h) Root canals on baby primary posterior teeth only;
 - (i) Root canals on permanent anterior, bicuspid and molar teeth, excluding teeth 1, 16, 17 and 32;
 - (j) Periodontal scaling and root planing once per quadrant in a two-year period for ages thirteen and older, with prior authorization;
 - (k) Periodontal maintenance once per quadrant in a twelve-month period for ages thirteen and older, with prior authorization;
 - (l) Stainless steel crowns for primary anterior teeth once every three years; if age thirteen and older with prior authorization;
 - (m) Stainless steel crowns for permanent posterior teeth once every three years;

(n) Metal/porcelain crowns and porcelain crowns on anterior teeth only, with prior authorization;

(o) Space maintainers for missing primary molars A, B, I, J, K, L, S, and T;

(p) One resin based partial denture, if provided at least three years after the seat date;

(q) One complete denture upper and lower, and one replacement denture per lifetime after at least five years from the seat date;

(r) Rebasement and relining of complete or partial dentures once in a three-year period, if performed at least six months from the seat date.

(5) This section expires on December 31, 2016.

NEW SECTION

WAC 284-43-8791 Essential health benefit category—Pediatric oral services. A health benefit plan must include "pediatric dental benefits" in its essential health benefits package. Pediatric dental benefits means coverage for the oral services listed in subsection (3) of this section, delivered to those under age nineteen. Plans must provide this coverage for enrollees until at least the end of the month in which the enrollee turns age nineteen.

(1) For benefit years beginning January 1, 2017, a health benefit plan must include pediatric dental benefits as an embedded set of benefits, or through a combination of a health benefit plan and a stand-alone dental plan that includes pediatric dental benefits certified as a qualified dental plan. For a health benefit plan certified by the health benefit exchange as a qualified health plan, this requirement is met if a stand-alone dental plan meeting the requirements of subsection (4) of this section is offered in the health benefit exchange for that benefit year.

(2) The requirements of WAC 284-43-8781 and 284-43-8801 are not applicable to the stand-alone dental plan.

(3) A health benefit plan may, but is not required to, include the following services as part of the EHB-benchmark package. The base-benchmark plan specifically excludes oral implants, and an issuer should not include benefits for oral implants in establishing a plan's actuarial value.

(4) The base-benchmark plan covers pediatric services for the categories set forth in WAC 284-43-8781 and covers pediatric oral services. The designated base-benchmark plan for pediatric dental benefits consists of the benefits and services covered by health care service contractor Regence BlueShield as the *Regence Direct Gold* small group plan policy form, policy form number WW0114CCONMSD, and certificate form number WW0114BPPO1SD, offered during the first quarter of 2014 (SERFF filing number RGWA-128968362). A health plan issuer must offer coverage for and classify the following pediatric oral services as pediatric dental benefits in a manner substantially equal to the base-benchmark plan:

- (a) Diagnostic services;
- (b) Preventive care;
- (c) Restorative care;
- (d) Oral surgery and reconstruction to the extent not covered under the hospitalization benefit;

(e) Endodontic treatment, not including indirect pulp capping;

(f) Periodontics;

(g) Crown and fixed bridge;

(h) Removable prosthetics; and

(i) Medically necessary orthodontia.

(5) The base-benchmark plan's visit limitations on services in this category are:

(a) Diagnostic exams once every six months, beginning before one year of age, plus limited oral evaluations when necessary to evaluate for a specific dental problem or oral health complaint, dental emergency or referral for other treatment;

(b) Limited visual oral assessments or screenings, limited to two per member per calendar year, not performed in conjunction with other clinical oral evaluation services;

(c) Two sets of bitewing X rays once a year for a total of four bitewing X rays per year;

(d) Cephalometric films, limited to once in a two-year period;

(e) Panoramic X rays once every three years;

(f) Occlusal intraoral X rays, limited to once in a two-year period;

(g) Periapical X rays not included in a complete series for diagnosis in conjunction with definitive treatment;

(h) Prophylaxis every six months beginning at age six months;

(i) Fluoride three times in a twelve-month period for ages six and under; two times in a twelve-month period for ages seven and older; and three times in a twelve-month period during orthodontic treatment;

(j) Sealant once every three years for permanent bicuspids and molars only;

(k) Oral hygiene instruction two times in twelve months for ages eight and under if not billed on the same day as a prophylaxis treatment;

(l) Restorations (fillings) on the same tooth every two years;

(m) Frenulectomy or frenuloplasty covered for ages six and under without prior authorization;

(n) Root canals on baby primary posterior teeth only;

(o) Root canals on permanent anterior, bicuspid and molar teeth, excluding teeth 1, 16, 17, and 32;

(p) Periodontal scaling and root planing once per quadrant in a two-year period for ages thirteen and older;

(q) Periodontal maintenance once per quadrant in a twelve-month period for ages thirteen and older;

(r) Stainless steel crowns for primary anterior teeth once every three years, if age thirteen and older;

(s) Stainless steel crowns for permanent posterior teeth once every three years;

(t) Installation of space maintainers (fixed unilateral or fixed bilateral) for members twelve years of age or under, including:

(i) Recementation of space maintainers;

(ii) Removal of space maintainers; and

(iii) Replacement space maintainers when dentally appropriate.

(u) One resin-based partial denture, if provided at least three years after the seat date;

(v) One complete denture upper and lower, and one replacement denture per lifetime after at least five years from the seat date;

(w) Rebasing and relining of complete or partial dentures once in a three-year period, if performed at least six months from the seat date.

(6) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(7) This section applies to health plans that have an effective date of January 1, 2017, or later.

AMENDATORY SECTION (Amending WSR 14-23-092, filed 11/19/14, effective 12/20/14)

WAC 284-43-880 Pediatric vision services. A health benefit plan must include "pediatric vision services" in its essential health benefits package. The base-benchmark plan covers pediatric services for the categories set forth in WAC 284-43-878 (1) through (9), but does not include pediatric vision services. Pediatric vision services are vision services delivered to enrollees under age nineteen.

(1) A health benefit plan must cover pediatric vision services as an embedded set of services.

(2) **Supplementation:** The state EHB-benchmark plan requirements for pediatric vision benefits must be offered at a substantially equal level and classified consistent with the designated supplemental base-benchmark plan for pediatric vision services, the Federal Employees Vision Plan with the largest enrollment and published by the U.S. Department of Health and Human Services at www.cciioo.cms.gov on July 2, 2012.

(a) The vision services included in the pediatric vision services category are:

(i) Routine vision screening; and

(ii) A comprehensive eye exam for children, including dilation as professionally indicated and with refraction every calendar year;

(iii) One pair of prescription lenses or contacts every calendar year, including polycarbonate lenses and scratch resistant coating. Lenses may include single vision, conventional lined bifocal or conventional lined trifocal, or lenticular lenses;

(iv) One pair of frames every calendar year. An issuer may establish networks or tiers of frames within their plan design as long as there is a base set of frames to choose from available without cost sharing;

(v) Contact lenses covered once every calendar year in lieu of the lenses and frame benefits. Issuers must apply this limitation based on the manner in which the lenses must be dispensed. If disposable lenses are prescribed, a sufficient number and amount for one calendar year's equivalent must be covered. The benefit includes the evaluation, fitting and follow-up care relating to contact lenses. If determined to be medically necessary, contact lenses must be covered in lieu

of eyeglasses at a minimum for the treatment of the following conditions: Keratoconus, pathological myopia, aphakia, anisometropia, aniseikonia, aniridia, corneal disorders, post-traumatic disorders, and irregular astigmatism;

(vi) Low vision optical devices including low vision services, training and instruction to maximize remaining usable vision as follows:

(A) One comprehensive low vision evaluation every five years;

(B) High power spectacles, magnifiers and telescopes as medically necessary, with reasonable limitations permitted; and

(C) Follow-up care of four visits in any five year period, with prior approval.

(b) The pediatric vision supplemental base-benchmark specifically excludes, and issuer must not include in its actuarial value for the category:

(i) Visual therapy, which is otherwise covered under the medical/surgical benefits of the plan;

(ii) Two pairs of glasses may not be ordered in lieu of bifocals;

(iii) Medical treatment of eye disease or injury, which is otherwise covered under the medical/surgical benefits of the plan;

(iv) Nonprescription (Plano) lenses; and

(v) Prosthetic devices and services, which are otherwise covered under the rehabilitative and habilitative benefit category.

(3) This section expires on December 31, 2016.

NEW SECTION

WAC 284-43-8801 Pediatric vision services. A health benefit plan must include "pediatric vision services" in its essential health benefits package. The designated base-benchmark plan for pediatric vision benefits consists of the benefits and services covered by health care service contractor Regence BlueShield as the *Regence Direct Gold* small group plan policy form, policy form number WW0114CCO-NMSD, and certificate form number WW0114BPPO1SD, offered during the first quarter of 2014 (SERFF filing number RGWA-128968362).

(1) A health benefit plan must cover pediatric vision services as an embedded set of services.

(2) For the purpose of determining a plan's actuarial value, an issuer must classify as pediatric vision services the following vision services delivered to enrollees until at least the end of the month in which enrollees turn age nineteen:

(a) Routine vision screening;

(b) A comprehensive eye exam for children, including dilation as professionally indicated and with refraction every calendar year;

(c) One pair of prescription lenses or contacts every calendar year, including polycarbonate lenses and scratch resistant coating. Lenses may include single vision, conventional lined bifocal or conventional lined trifocal, or lenticular lenses;

(d) One pair of frames every calendar year. An issuer may establish networks or tiers of frames within their plan

design as long as there is a base set of frames to choose from available without cost-sharing;

(e) Contact lenses covered once every calendar year in lieu of the lenses and frame benefits. Issuers must apply this limitation based on the manner in which the lenses must be dispensed. If disposable lenses are prescribed, a sufficient number and amount for one calendar year's equivalent must be covered. The benefit includes the evaluation, fitting and follow-up care relating to contact lenses. If determined to be medically necessary, contact lenses must be covered in lieu of eyeglasses at a minimum for the treatment of the following conditions: Keratoconus, pathological myopia, aphakia, anisometropia, aniseikonia, aniridia, corneal disorders, post-traumatic disorders, and irregular astigmatism;

(f) Low vision optical devices including low vision services, training and instruction to maximize remaining usable vision as follows:

(i) One comprehensive low vision evaluation every five years;

(ii) High power spectacles, magnifiers and telescopes as medically necessary, with reasonable limitations permitted; and

(iii) Follow-up care of four visits in any five-year period, with prior approval.

(3) The base-benchmark plan specifically excludes the following benefits. If an issuer includes the following benefits in a health plan, the issuer may not include these benefits in establishing the plan's actuarial value for the pediatric vision services category:

(a) Visual therapy, which is otherwise covered under the medical/surgical benefits of the plan; and

(b) Ordering two pairs of glasses in lieu of bifocals.

(4) Issuers must know and apply relevant guidance, clarifications and expectations issued by federal governmental agencies regarding essential health benefits. Such clarifications may include, but are not limited to, Affordable Care Act implementation and frequently asked questions jointly issued by the U.S. Department of Health and Human Services, the U.S. Department of Labor and the U.S. Department of the Treasury.

(5) This section applies to health plans that have an effective date of January 1, 2017, or later.

WSR 15-20-045

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed September 29, 2015, 2:44 p.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: Chapter 388-829 WAC is a new chapter related to training for supported living businesses and their staff, and will be a separate chapter of developmental disability administration (DDA) rules. These new rules will help reduce confusion between the various requirements contained in chapter 388-112 WAC related to residential long-term care and the requirements for supported living businesses and their staff.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120, chapter 74.39A RCW.

Adopted under notice filed as WSR 15-11-072 on May 19, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-829-0001, added RCW 74.39A.009 to definition of community residential services businesses.

WAC 388-829-0005, changed sentence to "DDA group homes must follow certification requirements described in chapter 388-112 WAC."

WAC 388-829-0010, updated definition of long-term care worker.

WAC 388-829-0015, added additional table information to clarify working in cross settings.

WAC 388-829-0030, included staff who already took DD specialty.

WAC 388-829-0040, removed CEs conversation.

WAC 388-829-0045, changed title.

WAC 388-829-0050, combined time designation for LTCW O and S into a five hour course.

WAC 388-829-0055, added handwashing to safety as this is a safety issue and not an orientation issue.

WAC 388-829-0060, added clarification of time restraint.

WAC 388-829-0080, removed duplicate subsection (e).

WAC 388-829-0100, removed reference to O and S.

WAC 388-829-0105, added body mechanics, infection control, BBP, HIV/AIDS.

WAC 388-829-0145, added title.

WAC 388-829-0150, clarified certificates needed for certification.

WAC 388-829-0200, added subsection (3) to clarify.

WAC 388-829-0235, added curricula.

WAC 388-829-0250, changed "approved" to "authorized."

WAC 388-829-0300, redefined peer coaching in definitions section but added RCW reference.

WAC 388-829-0385, added agency orientation.

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 51, 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 51, Amended 0, Repealed 0.

Date Adopted: September 24, 2015.

Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-21 issue of the Register.

WSR 15-20-049

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed September 30, 2015, 2:39 p.m., effective October 31, 2015]

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

Purpose: Chapter 246-834 WAC, Midwives, the adopted rules provide a bridge program to licensure for midwives who have completed national certification as a certified professional midwife (CPM) but don't meet all of the requirements for a Washington credential. The rule will streamline and expedite the application process for those that did not graduate from an approved midwifery program.

Citation of Existing Rules Affected by this Order: Amending WAC 246-834-060, 246-834-220, 246-834-230, and 246-834-240.

Statutory Authority for Adoption: RCW 18.50.065, 18.50.135, 18.50.040.

Adopted under notice filed as WSR 15-10-063 on May 1, 2015.

Changes Other than Editing from Proposed to Adopted Version: **Significant Changes:**

WAC 246-834-060 Initial application requirements.

(3): The following sentence was removed, "An application for a midwife license must be received at least forty-five days prior to the Washington state specific component examination." There is no need to repeat this as it is already in statute.

WAC 246-834-066 CPM licensure requirements.

(1)(e): Regarding the department allowing exceptions to the required documentation of births, the term "must" was replaced with "may." It now states, "The department may approve exceptions to the required documentation in this subsection." This change was made so that it didn't sound like the department must accept any exception to the documentation. Rather, the department may approve exceptions.

WAC 246-834-068 Trainee permit for CPM licensure program.

(4): Changed the term "would" to "may" in the following sentence, "The department may deny, modify, or revoke a CPM trainee permit at any time if the department determines that patient safety, health or welfare may be in jeopardy or the trainee fails to comply with the requirements of this section." The adopted language better reflects the department's ability to take action if there was the potential for injury to the public.

WAC 246-834-220 Midwifery-in-training program, credit towards educational requirements for licensure.

(1)(b): Regarding getting a passing grade on transcripts, "in each academic course" was added to the end of the sentence. The sentence now states, "The applicant must have received a grade of "C" or better in each academic course." The adopted language clarifies the intent that the applicant cannot have an overall passing grade or GPA, rather they have to have passed each class with at least a "C."

(1)(c): Regarding submitting a prospectus to the department. The sentence read "Submitting to the department a prospectus described in subsection (2) of this section to gain permission to undertake an MIT program." The last part of the sentence was struck because just the act of submitting a prospectus does not allow them to gain permission to undertake

the MIT program. The sentence now ends with "... described in subsection (2) of this section."

(4): The term "components" was changed to "the activities" in the following sentence, "Upon department approval of the MIT application and prospectus, the department will issue a trainee permit which enables the trainee to work under the supervision of a preceptor to perform the activities in subsection" The term "activities" is more inclusive than the use of the term "components."

(6)(b): The words "in each category" was [were] added to the following sentence, "At least fifteen of the fifty care exams in each category must occur after the MIT trainee permit is issued." This helps to clarify that an applicant cannot count postpartum care exams towards prenatal care exams. Also, the proposed requirement that required the signature or initials of the qualified attendant at the birth was changed to "qualified attendant at the care exam" The propose[d] language was incorrect.

WAC 246-834-240 Trainee permit for midwife-in-training program.

(3): The proposed rule language was rewritten. The proposed rule stated, "Permits will be issued yearly for the duration of the trainee's midwife-in-training program, not to exceed five years." The language was changed to reflect that the MIT trainee must renew their permit annually, as opposed to it being renewed automatically. The adopted rule now reads, "The MIT trainee may renew their permit annually for the duration of the MIT program, not to exceed five years."

(4): Changed the term "would" to "may" in the following sentence, "The department may deny, modify, or revoke a[n] MIT trainee permit at any time if the department determines that patient safety, health or welfare may be in jeopardy or the trainee fails to comply with the requirements of this section." The adopted rule better reflects the department's ability to take action if there was the potential for injury to the public.

Editorial Changes:

WAC 246-834-066 Certified professional midwife licensure requirements.

One sentence has minor editing changes such as changing the tense of a word.

WAC 246-834-067 Preceptor for certified professional midwife licensure program.

One sentence has minor editing changes such as changing the tense of a word or adding clarifying language.

WAC 246-834-068 Trainee permit for certified professional midwife licensure program.

Throughout the section clarification was made to the term "trainee permit." The acronym "CPM" was inserted (CPM trainee permit) to add clarification to the type of permit being referred to, so as not to confuse with other trainee permits available.

WAC 246-834-220 Midwife-in-training program, credit towards educational requirements for licensure.

(5): The sentence read, "A preceptor may not supervise more than two midwives-in-training simultaneously." The term midwives-in-training was taken out and "MIT trainees" was used in order to remain consistent through the section.

In a few parts of the section, the term "applicant" was changed to "MIT trainee" for clarification purposes. After the

applicant is approved for the program, they are considered an "MIT trainee."

One sentence has minor editing changes such as changing the tense of a word or adding clarifying language.

WAC 246-834-230 Midwife-in-training preceptor qualifications.

A couple sentences have minor editing changes such as changing the tense of a word or adding clarifying language.

WAC 246-834-240 Trainee permit for Midwife-in-training program.

A couple sentences have minor editing changes such as changing the tense of a word or adding clarifying language.

A final cost-benefit analysis is available by contacting Kathy Weed, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4883, fax (360) 236-2901, e-mail kathy.weed@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 3, 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 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 4, Repealed 0.

Date Adopted: September 30, 2015.

Dennis E. Worsham

Deputy Secretary

for John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 99-03-064, filed 1/18/99, effective 2/18/99)

WAC 246-834-060 Initial application requirements for licensure as a midwife. ~~((This rule provides the requirements for application for a midwife license.~~

~~(1) All applicants must submit a Washington state application for licensure, along with the applicable fees specified in WAC 246-830-990 and additional documentation as specified below. Applications must be received fifty-six days prior to the examination.~~

~~(2)) (1) An applicant((s must)) for a midwife license shall submit to the department the following ((documenta-tion)):~~

~~(a) ((Transcripts sent directly from an approved school which indicate the applicant has received a certificate or diploma in midwifery. Those applicants applying under WAC 246-834-220 will be exempted from this requirement.~~

~~(b) One current passport type photograph, signed and dated across the bottom of the photo or on the back.~~

~~(c) Proof of high school graduation or passing the general educational development test.~~

~~(d)) Initial application on forms provided by the department.~~

~~(b) Fees required in WAC 246-834-990.~~

~~(c) Proof of high school graduation, or its equivalent.~~

~~(d) Proof of at least three years of midwifery training, per RCW 18.50.040 (2)(a), unless the applicant qualifies for a reduced academic period.~~

~~(e) A current plan for consultation, emergency transfer and transport.~~

~~((e) Verification)) (f) Proof of completion of seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~((f) Applicants with disabilities who wish to request special accommodations must do so when submitting their application.~~

~~(g) Applicants who have passed the NARM examination within the past two years must have verification of the examination results sent directly from NARM to the department.~~

~~(3) It is the applicant's responsibility to complete an application for the NARM examination and submit the application along with the NARM examination fee directly to NARM. A NARM application and instructions will be provided in the state application packet sent to the applicant.))~~

~~(g) Proof of successful completion of the midwifery jurisprudence exam, as offered by the department.~~

~~(2) In addition to the requirements in subsection (1) of this section, an applicant for a midwife license shall also:~~

~~(a) Have transcripts sent directly to the department from the applicant's midwifery school demonstrating that the applicant has received a certificate or diploma in midwifery. Those applicants applying under WAC 246-834-066 or 246-834-220 may be exempted from this requirement.~~

~~(b) Have verification of passing the North American Registry of Midwives (NARM) examination. Results must be sent directly to the department from NARM.~~

~~(3) Once all application requirements in this section are met, and additional requirements in WAC 246-834-066 or 246-834-220 if applicable, the department will schedule the applicant for the Washington state specific component exam.~~

NEW SECTION

WAC 246-834-066 Certified professional midwife (CPM) licensure requirements. An applicant who holds a current North American Registry of Midwives (NARM) certified professional midwife (CPM) certification may apply for a Washington state midwife license by completing all requirements in this section.

(1) To be eligible for a midwife license an applicant holding a CPM shall:

(a) Complete all application requirements for licensure in WAC 246-834-060.

(b) Ensure that proof of the CPM certification is sent to the department directly from NARM.

(c) Submit to the department documentation of attendance at one hundred births of which:

(i) At least thirty births where the applicant was the primary attendant under supervision of a qualified attendant;

(ii) At least twenty births where the applicant directly assisted;

(ii) At least fifty births that the applicant observed in addition to births counted in (c)(i) and (ii) of this subsection; and

(iv) Documentation for (c)(i) through (iii) of this subsection must include at least the date, client identifier, the applicant's role at each birth, and the signature or initials of the qualified attendant at the birth of either: A licensed midwife, a CPM preceptor, a certified nurse midwife, or a practitioner licensed by their state or jurisdiction to provide maternity care. The applicant shall submit to the department the name and contact information of each signatory, if available. The department may approve exceptions to the required documentation in this subsection.

(d) Submit to the department documentation of prenatal care examinations of fifty women and early postpartum care examinations of fifty women. The same women need not be seen for both examinations. Documentation must include at least the date, client identifier, and the signature or initials of the qualified attendant at the care examination of either: A licensed midwife, a CPM preceptor, a certified nurse midwife, or a practitioner licensed by their state or jurisdiction to provide maternity care. The applicant must submit to the department the name and contact information of each signatory, if available. The department may approve exceptions to the required documentation in this subsection.

(e) Demonstrate competency in the use and administration of legend drugs and devices described in RCW 18.50.115 and WAC 246-834-250. The applicant shall submit documentation of competency to the department on a department supplied form. A licensed health care professional who, within his or her scope of practice, is qualified to use and administer legend drugs and devices described in RCW 18.50.115 and WAC 246-834-250 must sign the form.

(f) Successfully complete courses on epidemiology and obstetric pharmacology from:

(i) An institution that is accredited by an agency recognized by the Council for Higher Education Accreditation (CHEA) and included in their data base of institutions on programs accredited by recognized United States accrediting organizations;

(ii) An institution that is accredited by an agency recognized by the United States Department of Education (USDOE) and included in their data base of accredited post-secondary institutions and programs; or

(iii) A curriculum or program approved by the department.

(2) Applicants applying under this section who have a current CPM but do not meet all of the requirements listed in subsection (1)(c) through (f) of this section may apply to the department for a trainee permit under WAC 246-834-068. The trainee permit authorizes the applicant to complete subsection (1)(c) through (e) of this section, under the supervision of a preceptor as described in WAC 246-834-067.

NEW SECTION

WAC 246-834-067 Preceptor for certified professional midwife (CPM) licensure program. This section defines the role of a preceptor as used in WAC 246-834-066. A certified professional midwife (CPM) applicant for licen-

sure as a midwife may use more than one preceptor to meet the requirements for licensure under WAC 246-834-066.

(1) A preceptor for clinical requirements including observed, managed, and assisted births, and prenatal and postpartum examinations must:

(a) Have a current Washington state license as a midwife under chapter 18.50 RCW, physician under chapter 18.71 RCW, osteopathic physician under chapter 18.57 RCW, or certified nurse midwife under chapter 18.79 RCW; and

(b) Have actively practiced obstetrics for at least three consecutive years or attended at least one hundred fifty births.

(2) A preceptor for legend drugs and devices must have a current Washington state credential and be, within his or her scope of practice, qualified to use and administer legend drugs and devices described in RCW 18.50.115 and WAC 246-834-250.

NEW SECTION

WAC 246-834-068 Trainee permit for certified professional midwife (CPM) licensure program. (1) The department may issue a trainee permit to a certified professional midwife (CPM) who has submitted an initial application to the department accompanied by a nonrefundable fee as specified in WAC 246-834-990.

(2) The CPM trainee permit authorizes the CPM to complete the licensure requirements outlined in WAC 246-834-066 (1)(c) through (e).

(3) A CPM trainee permit expires one year from the date of issuance. The department may extend the permit upon request to accommodate extenuating circumstances.

(4) The department may deny, modify or revoke a CPM trainee permit at any time if the department determines that patient safety, health or welfare may be in jeopardy or the trainee fails to comply with the requirements of this section.

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

WAC 246-834-220 Midwife-in-training program, credit toward educational requirements for licensure. (1) Applicants not meeting the minimum requirements (~~set forth~~) in WAC 246-834-060 may apply to the department for (~~licensure by submitting the following~~):

~~(a) A completed, notarized application on a form provided by the department accompanied by a nonrefundable fee as specified in WAC 308-115-405;~~

~~(b) Credit for academic courses;~~

~~(i) Certification by an accrediting body, which has been approved by the department, of completed academic and continuing education courses as required in RCW 18.50.040 (2)(b) for which the applicant has received a grade of "C" or better. A certified copy of the courses taken and grades or scores achieved shall be submitted by the accrediting body directly to the department; or~~

~~(ii) Completion of challenge examinations approved by the department with a minimum score of 75% for any academic subject required in RCW 18.50.040 (2)(b). Challenge examinations shall be administered a minimum of twice a year. An applicant for challenge examination must file a~~

~~completed application for each examination along with the required fee with the department at least 45 days prior to the examination.~~

~~(e) A prospectus for permission to undertake a midwife-in-training program. Such a program shall be on such terms as the department finds necessary to assure that the applicant meets the minimum statutory requirements for licensure set forth in RCW 18.50.040, and shall include, but not be limited to the following:~~

~~(i) The program shall be under the guidance and supervision of a preceptor, and shall be conducted for a period of not more than five years;~~

~~(ii) The program shall be designed to provide for individual learning experiences and instruction based upon the applicant's academic background, training, and experience;~~

~~(iii) The prospectus for the program shall be submitted on an approved form, signed by the preceptor, and approved by the department prior to the commencement of the program. Any changes in the program shall be reported within thirty days in writing to the department, and the department may withdraw the approval given, or alter the conditions under which approval was originally given, if the department finds that the program as originally submitted and approved has not been or is not being followed.) the midwife-in-training (MIT) program by:~~

(a) Submitting to the department a completed MIT application with a nonrefundable MIT program application fee as specified in WAC 246-834-990.

(b) Ensuring that transcripts are submitted directly to the department from the applicant's school for any academic courses taken that are required in RCW 18.50.040 (2)(b). The school must be certified by an accrediting body and approved by the department. The applicant must have received a grade of "C" or better in each academic course.

(c) Submitting to the department a prospectus described in subsection (2) of this section. A proposed preceptor qualified under WAC 246-834-230 shall sign the prospectus. The department, in consultation with a licensed midwife sitting on the midwifery advisory committee (MAC), must approve the prospectus prior to the applicant beginning the program.

(2) The (~~midwife in training program~~) MIT prospectus must include (~~the following components~~):

(a) A plan for completion of required academic subjects required in RCW 18.50.040 (2)(b);

(b) Planned reading and (~~written~~) writing assignments;

(c) (~~A project including at least one problem-solving component to be submitted in writing. The problem-solving component should include the definition of an acknowledged problem, the method of approach to the problem, the listing of possible alternatives, the actions taken, evaluation, and final recommendations to improve care given;~~

(d) Other planned learning experiences including acquisition of knowledge about other health and welfare agencies in the community;

(e) A quarterly written report, on an approved form, submitted to the department by the trainee, which shall include a detailed outline of progress toward meeting the objectives of the prospectus during the reporting period;

(f) The program must provide for a broad range of experience with a close working relationship between preceptor

and the trainee. Toward that end, as a general rule, no program will be approved which would result in an individual preceptor supervising more than two midwives in training simultaneously. Exception to this rule may be granted by the department in unusual circumstances;

(g) The department may, in an individual case, require additional approved education, based upon assessment of the individual applicant's background, training and experience.

(3) Upon approval of the application, a trainee permit will be issued which enables the trainee to practice under the supervision of a preceptor. The permit shall expire within one year of issuance and may be extended as provided by rule.

(4) The trainee shall provide documentation of care given as follows:

(a) Records of no more than thirty-five women to whom the trainee has given care in each of the prenatal, intrapartum, and early postpartum periods, although the same women need not have been seen through all three periods. These records must contain affidavits from the clients certifying that the care was given. If a client is unavailable to sign an affidavit, an affidavit from a preceptor or a certified copy of the birth certificate may be substituted. The care may have been given prior to the beginning of the midwife in-training program or during the trainee period;

(b) After being issued a trainee permit, the trainee must manage care in the prenatal, intrapartum, and early postpartum period of fifteen women under the supervision of the preceptor. These women shall be in addition to the women whose records were used to meet the conditions of (a) of this subsection. The preceptor shall submit, on approved forms, completed check-lists of skills and experiences when this requirement has been met;

(c) Evidence, on an approved form, of observing fifty deliveries in addition to those specified in (b) of this subsection. The deliveries may have been observed prior to the beginning of the midwife in-training program or may be observed during the trainee period.

(5) Upon satisfactory completion of subsections (1)(a) through (4)(c) of this section, the trainee is eligible to apply for the examination. A project including at least one problem-solving component relating to the practice of midwifery. The project must be in writing and must include:

- (i) A definition of an acknowledged problem;
- (ii) A method of approach to the problem;
- (iii) A listing of possible alternatives;
- (iv) Actions taken;
- (v) Evaluation; and
- (vi) Final recommendations to improve care given.

(d) Acquisition of knowledge about other health and welfare agencies in the community.

(3) The department may, on an individual basis, require additional education, based upon assessment of the applicant's background, training, and experience.

(4) Upon department approval of the MIT application and prospectus, the department will issue an MIT trainee permit which enables the trainee to work under the supervision of a preceptor to perform the activities in subsection (6)(a) and (b) of this section.

(a) The MIT trainee shall report any changes to the approved prospectus in writing to the department within thirty days of the change.

(b) If the MIT trainee makes changes to the prospectus, the department and a designated MAC member must reevaluate the proposal and determine whether to approve the revised prospectus. Nothing in this section shall be construed to limit the department's regulatory authority under chapter 18.130 RCW.

(5) A preceptor may not supervise more than two MIT trainees simultaneously. An exception may be granted by the department in extraordinary circumstances.

Reporting Requirements

(6) The MIT trainee shall provide documentation of supervised care as follows:

(a) Documentation of attendance at one hundred births:

(i) At least thirty births where the trainee was the primary attendant. At least fifteen of the thirty births must occur after the trainee permit is issued.

(ii) At least twenty births where the trainee directly assisted.

(iii) At least fifty births that the applicant observed in addition to births counted in (a)(i) and (ii) of this subsection. The observed births may have been observed prior to or during the trainee's MIT program.

(iv) Documentation for (a)(i) through (iii) of this subsection must include at least the date, client identifier, applicant's role at birth, and the signature or initials of the qualified attendant at the birth of either: A midwife licensed under chapter 18.50 RCW, a physician licensed under chapter 18.71 RCW, an osteopathic physician licensed under chapter 18.57 RCW, or a certified nurse midwife licensed under chapter 18.79 RCW. The MIT trainee shall provide to the department the name and contact information of each signatory, if available.

(b) Documentation of prenatal care examinations for fifty women and early postpartum care examinations for fifty women. The same women need not be seen for both examinations. At least fifteen of the fifty care exams in each category must occur after the MIT permit is issued. Documentation must include at least the date, client identifier, and the signature or initials of the qualified attendant at the care examination of either: A midwife licensed under chapter 18.50 RCW, a physician licensed under chapter 18.71 RCW, an osteopathic physician licensed under chapter 18.57 RCW, or a certified nurse midwife licensed under chapter 18.79 RCW. The MIT trainee shall provide to the department the name and contact information of each signatory, if available.

(c) A quarterly written report, which must include a detailed outline of progress toward meeting the objectives of the prospectus during the reporting period.

(7) The department in consultation with a designated member of the MAC will determine whether the MIT trainee has successfully completed the prospectus components described in subsection (2) of this section and the prenatal, intrapartum, and postpartum care components in subsection (6)(a) and (b) of this section. If the department makes the determination of successful completion, the MIT trainee is eligible to apply for licensure.

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

WAC 246-834-230 ((Preceptor for)) Midwife-in-training (MIT) program—Preceptor qualifications. (1) In reviewing a proposed ((midwife-in-training)) MIT program, the department shall use the following criteria ((in-assessing)) to assess the qualifications and ((determining)) determine the responsibilities of ((the)) a preceptor required in WAC 246-834-220:

(a) Qualifications ((of)) to be a preceptor:

(i) ((The preceptor shall have)) Hold an active license without restriction or conditions as a midwife under chapter 18.50 RCW, a certified nurse midwife under chapter 18.79 RCW, a physician under chapter 18.71 RCW, or an osteopathic physician under chapter 18.57 RCW;

(ii) Actively practiced at least three consecutive years or attended at least one hundred fifty births;

(iii) Demonstrated ((the)) ability and skill to provide safe, quality care((;

((ii) The preceptor shall have)); and

(iv) Demonstrated continued interest in professional development beyond the requirements of basic licensure((;

((iii) The preceptor shall participate in and successfully complete any preceptor workshop or other training deemed necessary by the department; and;

((iv) The preceptor shall be licensed in the state of Washington. Exception to this rule may be granted by the department in unusual circumstances)).

(b) Responsibilities of ((the)) a preceptor:

(i) ((The preceptor shall)) Monitor the educational activities of the trainee and ((shall)) have at least one conference with the MIT trainee quarterly to discuss progress((;);

(ii) ((The preceptor shall)) Submit quarterly progress reports ((on approved forms)) to the department((; and;);

(iii) ((The preceptor shall)) Maintain and submit ((the checklists)), at the department's request, documentation of the total number of births as specified in WAC 246-834-220 ((4(b)) (6).

(2) The department may disqualify an approved preceptor if the preceptor fails to meet or fulfill the qualifications and responsibilities under subsection (1) of this section.

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

WAC 246-834-240 Trainee permit for midwife-in-training program. (1) A trainee permit for a midwife-in-training (MIT) may be issued to any individual who has:

(a) ((Been approved for a midwife-in-training program; and;

((b)) Filed a completed MIT application accompanied by a nonrefundable fee as specified in WAC 246-834-990; and

(b) Been approved for the MIT program.

(2) The MIT trainee permit authorizes individuals to manage care as required in WAC 246-834-220 ((4(b)) (6).

(3) ((Permits will be issued yearly for the duration of the trainee's midwife-in-training program)) The MIT trainee may renew their permit annually for the duration of the MIT program, not to exceed five years.

(4) The department may deny, modify or revoke an MIT trainee permit at any time if the department determines that patient safety, health or welfare may be in jeopardy or the trainee fails to comply with the requirements of this section.

WSR 15-20-050

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed September 30, 2015, 2:52 p.m., effective January 1, 2016]

Effective Date of Rule: January 1, 2016.

Purpose: WAC 246-918-990 Physician assistants fees and renewal cycle, the adopted rule establishes renewal and late renewal penalties for the new retired active license category for allopathic physician assistants that the medical quality assurance commission has recently implemented. It also adds a late penalty for the active license renewal, which is consistent with other health profession credentials, and makes clarifications.

Citation of Existing Rules Affected by this Order: Amending WAC 246-918-990.

Statutory Authority for Adoption: RCW 18.130.250, 43.70.250, 18.130.186, 43.70.280.

Adopted under notice filed as WSR 15-12-022 on May 22, 2015.

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

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

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

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

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

Date Adopted: August 7, 2015.

Dennis E. Worsham

Deputy Secretary

for John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 12-19-088, filed 9/18/12, effective 11/1/12)

WAC 246-918-990 Physician assistants fees and renewal cycle. (1) Licenses must be renewed every two years on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2.

(2) The applicant or licensee must pay the following nonrefundable fees:

Title of Fee	Fee
Physician assistants:	
Application (annual)*	\$116.00
<u>Active license renewal</u>	
Two-year renewal*	202.00
<u>Late renewal fee</u>	<u>50.00</u>
Expired license reissuance	50.00
<u>Retired active license renewal</u>	
Two-year renewal**	<u>135.00</u>
<u>Late renewal fee</u>	<u>35.00</u>
Duplicate license	15.00

* ((The application or renewal fee)) Includes the Washington physician health program surcharge (RCW 18.71A.020(3)) assessed at \$50.00 per year, and the University of Washington (UW) HEAL-WA web portal access fee (RCW 43.70.110) assessed at \$16.00 per year.

** Includes the Washington physician health program surcharge assessed at \$50.00 per year.

WSR 15-20-054
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
 [Filed September 30, 2015, 4:42 p.m., effective October 31, 2015]

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

Purpose: The department is amending WAC 388-106-0010 to clarify the definitions of eating and set-up help in response to recent board of appeals decisions, add new definitions related to modified adjusted gross income (MAGI) eligibility group and clarify existing definitions related to long-term care services, clarify the definition of informal support in response to decisions from the health care authority board of appeals, and amend existing definitions to include enhanced services facilities.

The department is also amending WAC 388-106-0130 in response to decisions from the health care authority board of appeals.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010 and 388-106-0130.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 15-09-100 on April 20, 2015.

Changes Other than Editing from Proposed to Adopted Version: Clarified the definition of "activities of daily living (ADL)" in WAC 388-106-0010 by adding examples of activities that are not considered part of the activity of eating.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: September 24, 2015.

Katherine I. Vasquez
 Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-21 issue of the Register.

WSR 15-20-057
PERMANENT RULES
HEALTH CARE AUTHORITY
 (Washington Apple Health)

[Filed October 1, 2015, 11:55 a.m., effective November 1, 2015]

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

Purpose: Revisions to these sections are necessary to:

(1) Strike the last sentence in WAC 182-531-0950(7) regarding immunizations given in a health department. This change aligns with national correct coding initiative (NCCI) edits.

(2) Add coverage for unattended sleep studies in WAC 182-531-1500.

Citation of Existing Rules Affected by this Order: Amending WAC 182-531-0950, 182-531-1500, and 182-552-0400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-17-124 on August 19, 2015.

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

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: October 1, 2015.

Wendy Barcus
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-041, filed 1/12/15, effective 2/12/15)

WAC 182-531-0950 Office and other outpatient physician-related services. (l) The medicaid agency pays eligible providers for the following:

(a) Two calls per month for routine medical conditions for a client residing in a nursing facility; and

(b) One call per noninstitutionalized client, per day, for an individual physician, except for valid call-backs to the emergency room per WAC 182-531-0500.

(2) The provider must provide justification based on medical necessity at the time of billing for visits in excess of subsection (l) of this section and follow the requirements in WAC 182-501-0169.

(3) See the agency's physician-related services billing instructions for procedures that are included in the office call and that cannot be billed separately.

(4) Using selected diagnosis codes, the agency reimburses the provider at the appropriate level of physician office call for history and physical procedures in conjunction with dental surgery services performed in an outpatient setting.

(5) The agency may reimburse providers for injection procedures and/or injectable drug products only when:

(a) The injectable drug is administered during an office visit; and

(b) The injectable drug used is from office stock and which was purchased by the provider from a pharmacy, drug manufacturer, or drug wholesaler.

(6) The agency does not reimburse a prescribing provider for a drug when a pharmacist dispenses the drug.

(7) The agency does not reimburse the prescribing provider for an immunization when the immunization material is received from the department of health; the agency does reimburse an administrative fee. ~~((If the immunization is given in a health department and is the only service provided, the agency reimburses a minimum E&M service.))~~

(8) The agency reimburses immunizations at **estimated acquisition costs (EAC)** when the immunizations are not part of the vaccine for children program. The agency reimburses a separate administration fee for these immunizations. Covered immunizations are listed in the fee schedule. Refer to WAC 182-531-0150 (1)(r) for vaccines recommended or required for the sole purpose of international travel.

(9) The agency reimburses therapeutic and diagnostic injections subject to certain limitations as follows:

(a) The agency does not pay separately for the administration of intra-arterial and intravenous therapeutic or diagnostic injections provided in conjunction with intravenous infusion therapy services. The agency does pay separately for the administration of these injections when they are provided on the same day as an E&M service. The agency does not pay separately an administrative fee for injectables when both E&M and infusion therapy services are provided on the same day. The agency reimburses separately for the drug(s).

(b) The agency does not pay separately for subcutaneous or intramuscular administration of antibiotic injections provided on the same day as an E&M service. If the injection is the only service provided, the agency pays an administrative fee. The agency reimburses separately for the drug.

(c) The agency reimburses injectable drugs at **acquisition cost**. The provider must document the name, strength, and dosage of the drug and retain that information in the client's file. The provider must provide an invoice when requested by the agency. This subsection does not apply to drugs used for chemotherapy; see subsection (11) in this section for chemotherapy drugs.

(d) The provider must submit a manufacturer's invoice to document the name, strength, and dosage on the claim form when billing the agency for the following drugs:

(i) Classified drugs where the billed charge to the agency is over one thousand, one hundred dollars; and

(ii) Unclassified drugs where the billed charge to the agency is over one hundred dollars. This does not apply to unclassified antineoplastic drugs.

(10) The agency reimburses allergen immunotherapy only as follows:

(a) Antigen/antigen preparation codes are reimbursed per dose.

(b) When a single client is expected to use all the doses in a multiple dose vial, the provider may bill the total number of doses in the vial at the time the first dose from the vial is used. When remaining doses of a multiple dose vial are injected at subsequent times, the agency reimburses the injection service (administration fee) only.

(c) When a multiple dose vial is used for more than one client, the provider must bill the total number of doses provided to each client out of the multiple dose vial.

(d) The agency covers the antigen, the antigen preparation, and an administration fee.

(e) The agency reimburses a provider separately for an E&M service if there is a diagnosis for conditions unrelated to allergen immunotherapy.

(f) The agency reimburses for **RAST** testing when the physician has written documentation in the client's record indicating that previous skin testing failed and was negative.

(11) The agency reimburses for chemotherapy drugs:

(a) Administered in the physician's office only when:

(i) The physician personally supervises the E&M services furnished by office medical staff; and

(ii) The medical record reflects the physician's active participation in or management of course of treatment.

(b) At established maximum allowable fees that are based on the medicare pricing method for calculating the estimated acquisition cost (EAC), or maximum allowable cost (MAC) when generics are available;

(c) For unclassified antineoplastic drugs, the provider must submit the following information on the claim form:

(i) The name of the drug used;

(ii) The dosage and strength used; and

(iii) The national drug code (NDC).

(12) Notwithstanding the provisions of this section, the agency reserves the option of determining drug pricing for any particular drug based on the best evidence available to the agency, or other good and sufficient reasons (e.g., fairness/equity, budget), regarding the actual cost, after discounts and promotions, paid by typical providers nationally or in Washington state.

(13) The agency may request an invoice as necessary.

AMENDATORY SECTION (Amending WSR 13-07-029, filed 3/13/13, effective 4/13/13)

WAC 182-531-1500 Sleep studies. (1) Purpose. For the purposes of this section, sleep studies include polysomnography (PSG), unattended home sleep test (HST), and multiple sleep latency testing (MSLT). The medicaid agency covers attended, full-channel, PSG (~~(and)~~), MSLT, and HSTs when:

- (a) Ordered by the client's physician;
- (b) Performed ~~((in))~~ by an agency-designated center of excellence (COE) that is an independent diagnostic testing facility, sleep laboratory, or outpatient hospital; and
- (c) Results are used to:
 - (i) Establish a diagnosis of narcolepsy or sleep apnea; or
 - (ii) Evaluate a client's response to therapy, such as continuous positive airway pressure (CPAP).

(2) Definitions. The following definitions, those found in chapter 182-500 WAC, and definitions found in other sections of this chapter, apply to this section:

(a) "American Academy of Sleep Medicine" or "AASM" - The only professional society dedicated exclusively to the medical subspecialty of sleep medicine. AASM sets standards and promotes excellence in health care, education, and research. Members specialize in studying, diagnosing, and treating disorders of sleep and daytime alertness such as insomnia, narcolepsy, and obstructive sleep apnea.

(b) "Continuous positive airway pressure" or "CPAP" - See WAC 182-552-0005.

(c) "Core provider agreement" or "CPA" - The basic contract the agency holds with providers serving medical assistance clients.

(d) "Multiple sleep latency test" or "MSLT" - A sleep disorder diagnostic tool used to measure the time elapsed from the start of a daytime nap period to the first signs of sleep, called sleep latency. The MSLT is used extensively to test for narcolepsy, to distinguish between physical tiredness and true excessive daytime sleepiness, or to assess whether treatments for breathing disorders are working.

(e) "Obstructive sleep apnea" or "OSA" - See WAC 182-552-0005.

(f) "Polysomnogram" - The test results from a polysomnography.

(g) "Polysomnography" - A multiparametric test that electronically transmits and records specific physical activities while a person sleeps. The recordings become data that are analyzed by a qualified sleep specialist to determine whether or not a person has a sleep disorder.

(h) "PSG" - The abbreviation for both "polysomnography" and "polysomnogram."

(i) "Registered polysomnographic technologist" or "RPSGT" - A sleep technologist credentialed by the board of registered polysomnographic technologists to assist sleep specialists in the clinical assessment, physiological monitoring and testing, diagnosis, management, and prevention of sleep-related disorders with the use of various diagnostic and therapeutic tools. These tools include, but are not limited to, polysomnograph, positive airway pressure devices, oximeter, capnograph, actigraph, nocturnal oxygen, screening devices, and questionnaires. To become certified as a registered polysomnographic technologist, a sleep technologist must have the necessary clinical experience, hold CPR certification or

its equivalent, adhere to the board of registered polysomnographic technologists standards of conduct, and pass the registered polysomnographic technologist examination for polysomnographic technologists.

(3) Client eligibility. Clients in the following agency programs are eligible to receive sleep studies as described in this section:

- (a) Categorically needy (CN);
- (b) Apple health for kids and other children's medical assistance programs as defined in WAC 182-505-0210;
- (c) Medical care services as described in WAC 182-508-0005 (within Washington state or border areas only);
- (d) Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) (within Washington state or border areas only); and

(e) Medically needy (MN) only when the client is either:

- (i) Twenty years of age or younger and referred by a screening provider under the early and periodic screening, diagnosis, and treatment program as described in chapter 182-534 WAC; or
- (ii) Receiving home health care services as described in chapter 182-551 WAC, subchapter II.

(4) Provider requirements. To be paid for providing sleep studies as described in this section to eligible clients, the facility must:

(a) Be a sleep study COE. Refer to subsection (5) of this section for information on becoming an agency-approved sleep study COE;

(b) Be currently accredited by AASM and continuously meet the accreditation standards of AASM;

(c) Have at least one physician on staff who is board certified in sleep medicine; and

(d) Have at least one registered polysomnographic technologist (RPSGT) in the sleep lab when studies are being performed.

(5) Documentation.

(a) To become an agency-approved COE, a sleep center must send the following documentation to the Health Care Authority, c/o Provider Enrollment, P.O. Box 45510, Olympia, WA 98504-5510:

(i) A completed CPA; and

(ii) Copies of the following:

(A) The sleep center's current accreditation certificate by AASM;

(B) Either of the following certifications for at least one physician on staff:

(I) Current certification in sleep medicine by the American Board of Sleep Medicine (ABSM); or

(II) Current subspecialty certification in sleep medicine by a member of the American Board of Medical Specialties (ABMS); and

(C) The certification of an RPSGT who is employed by the sleep center.

(b) Sleep centers must request reaccreditation from AASM in time to avoid expiration of COE status with the agency.

(c) At least one physician on staff at the sleep center must be board certified in sleep medicine. If the only physician on staff who is board certified in sleep medicine resigns, the sleep center must ensure another physician on staff at the

sleep center obtains board certification or another board-certified physician is hired. The sleep center must then send provider enrollment a copy of the physician's board certification.

(d) If a certified medical director leaves a COE, the COE status does not transfer with the medical director to another sleep center.

(e) The COE must maintain a record of the physician's order for the sleep study.

(6) Coverage.

(a) The agency covers only medically necessary sleep studies. The need for the sleep study must be confirmed by medical evidence (e.g., physician examination and laboratory tests).

(b) For clients age twenty-one (~~(years of age)~~) and older, the agency covers:

(i) An unattended home sleep test (HST) as follows:

(A) Using one of the following HST devices:

(I) Type II home sleep monitoring device;

(II) Type III home sleep monitoring device; or

(III) Type IV home sleep monitoring device that measures at least three channels.

(B) To confirm obstructive sleep apnea (OSA) in an individual with signs or symptoms consistent with OSA (e.g., loud snoring, awakening with gasping or choking, excessive daytime sleepiness, observed cessation of breathing during sleep, etc.).

(ii) Full-night, in-laboratory PSG for either of the following:

(A) Confirmation of obstructive sleep apnea (OSA) in an individual with signs or symptoms consistent with OSA (e.g., loud snoring, awakening with gasping or choking, excessive daytime sleepiness, observed cessation of breathing during sleep, etc.); or

(B) Titration of positive airway pressure therapy when initial PSG confirms the diagnosis of OSA, and positive airway pressure is ordered; or

~~((ii))~~ (iii) Split-night, in-laboratory PSG in which the initial diagnostic portion of the PSG is followed by positive airway pressure titration when the PSG meets either of the following criteria:

(A) The apnea-hypopnea index (AHI) or respiratory disturbance index (RDI) is greater than or equal to fifteen events per hour (~~(with a minimum of thirty events)~~); or

(B) The AHI or RDI is greater than or equal to five and less than or equal to fourteen events per hour (~~(with a minimum of ten events)~~) with documentation of either of the following:

(I) Excessive daytime sleepiness, impaired cognition, mood disorders, or insomnia; or

(II) Hypertension, ischemic heart disease, or history of stroke.

(c) For clients (~~(younger than twenty one years of)~~) age twenty and younger, the agency considers any of the following indications as medically necessary criteria for a sleep study:

(i) OSA suspected based on clinical assessment;

(ii) Obesity, Trisomy 21, craniofacial abnormalities, neuromuscular disorders, sickle cell disease, or mucopolysaccharidosis (MPS), prior to adenotonsillectomy in a child;

(iii) Residual symptoms of OSA following mild preoperative OSA;

(iv) Residual symptoms of OSA in a child with preoperative evidence of moderate to severe OSA, obesity, craniofacial anomalies that obstruct the upper airway, or neurologic disorder following adenotonsillectomy;

(v) Titration of positive airway pressure in a child with OSA;

(vi) Suspected congenital central alveolar hypoventilation syndrome or sleep related hypoventilation due to neuromuscular disorder or chest wall deformities;

(vii) Primary apnea of infancy;

(viii) Evidence of a sleep-related breathing disorder in an infant who has experienced an apparent life threatening event;

(ix) Child being considered for adenotonsillectomy to treat OSA; or

(x) Clinical suspicion of an accompanying sleep-related breathing disorder in a child with chronic asthma, cystic fibrosis, pulmonary hypertension, bronchopulmonary dysplasia, or chest wall abnormality.

(7) Noncoverage. The agency does not cover sleep studies:

(a) (~~(When the sleep study is an unattended home study;~~ ~~(b))~~) When documentation for a repeat study does not indicate medical necessity (e.g., no new clinical documentation indicating the need for a repeat study); or

~~((c))~~ (b) For the following indications, except when an underlying physiology exists (e.g., loud snoring, awakening with gasping or choking, excessive daytime sleepiness, observed cessation of breathing during sleep, etc.):

(i) Chronic insomnia; and

(ii) Snoring.

AMENDATORY SECTION (Amending WSR 12-14-022, filed 6/25/12, effective 8/1/12)

WAC 182-552-0400 Respiratory care—Continuous positive airway pressure (CPAP) device and supplies. (1) The medicaid agency covers, without prior authorization, one continuous positive airway pressure (CPAP) device including related supplies, per client, every five years. The CPAP device must have a data card and the client must meet the following clinical criteria:

(a) The client is diagnosed with obstructive sleep apnea (OSA) using a clinical evaluation and a positive attended polysomnogram (PSG) performed in a sleep laboratory (~~(Unattended home sleep studies do not meet the medicaid agency's clinical criteria for reimbursement))~~ or an unattended home sleep test; and

(b) For clients (~~(thirteen years of)~~) age twenty-one and older:

(i) The client's polysomnogram or home sleep test demonstrates an apnea-hypopnea index (AHI) or respiratory disturbance index (RDI) greater than or equal to fifteen events per hour (~~(with a minimum of thirty events)~~); or

(ii) The client's polysomnogram or home sleep test demonstrates the AHI or RDI is greater than or equal to five and less than or equal to fourteen events per hour (~~(with a minimum of ten events)~~) with clinical documentation of:

(A) Excessive daytime sleepiness, impaired cognition, mood disorders, or insomnia; or

(B) Hypertension, ischemic heart disease, or history of stroke.

(c) For clients (~~twelve years of~~) age twenty and younger, the clinical criteria is considered met when there is a documented diagnosis of OSA and polysomnography demonstrates an apnea index (AI) or AHI equal to or greater than one and:

(i) Adenotonsillectomy has been unsuccessful in relieving OSA; or

(ii) Adenotonsillar tissue is minimal; or

(iii) Adenotonsillectomy is inappropriate based on OSA being attributable to another underlying cause (e.g., craniofacial anomaly, obesity) or adenotonsillectomy is contraindicated; or

(iv) Family does not wish to pursue surgical intervention.

(2) If a client meets the criteria in subsection (1) of this section but a CPAP device has been tried and proven ineffective, the medicaid agency will cover a bi-level respiratory assist device (RAD) without the back-up rate. Ineffective, in this case, is defined as documented failure to meet therapeutic goals using a CPAP during the titration portion of a facility-based study or during home use despite optimal therapy (i.e., proper mask selection and fitting and appropriate pressure setting).

(3) The AHI is calculated on the average number of events per hour. If the AHI is calculated based on less than two hours of sleep, the total number of recorded events used to calculate the AHI must be at least the number of events that would have been required in a two-hour period (i.e., must reach greater than or equal to thirty events without symptoms or greater than or equal to ten events with symptoms). The medicaid agency pays for an initial three-month rental period for CPAP devices.

(4) The medicaid agency purchases a CPAP device after the three-month rental period when the following documentation of clinical benefit is recorded in the client's file:

(a) A face-to-face clinical reevaluation of the client by the authorized prescriber which documents that symptoms of obstructive sleep apnea are improved; and

(b) A review of objective evidence by the authorized prescriber of the client's adherence to use of the CPAP device. Adherence is defined as use of the CPAP device greater than or equal to four hours per night on seventy percent of nights during a consecutive thirty-day period anytime during the first three months of initial usage.

(5) The medicaid agency does not pay for a CPAP device when the client is diagnosed with upper airway resistance syndrome (UARS).

(6) The medicaid agency pays for the purchase of a heated humidifier for a CPAP device, once every five years from the date the item was deemed purchased, per client.

(7) Replacement of CPAP device.

(a) The medicaid agency requires prior authorization for the replacement of a CPAP device if the client has had the device for less than five years.

(b) After five years, the client must have a face-to-face evaluation with the treating authorized prescriber that docu-

ments that the client continues to use and benefit from the device. The medicaid agency does not require a new PSG (sleep test), trial period, or prior authorization.

(c) Replacement supplies - The medicaid agency pays for replacement supplies for a CPAP device as follows:

(i) Full face mask, limit one every six months;

(ii) Face mask interface for full face mask, limit one every three months;

(iii) Nasal interface (mask or cannula type), with or without head strap, limit one every six months;

(iv) Cushion for use on nasal mask interface, limit one every three months;

(v) Pillow for use on nasal cannula type interface, limit one pair every three months;

(vi) Headgear, chin strap, and tubing with or without integrated heating element, limit one every six months;

(vii) Filters - Disposable, limit two every thirty days;

(viii) Filters - Nondisposable, limit one every six months; and

(ix) Water chamber for humidifier, limit one every six months.

(d) Prior authorization is required if the client does not meet the clinical criteria in this section or if the medicaid agency has purchased a bi-level respiratory assist device for the client within the last five years.

WSR 15-20-058

PERMANENT RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed October 1, 2015, 12:25 p.m., effective November 1, 2015]

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

Purpose: Amends WAC 181-79A-231 providing clarity to the issuance and use of substitute teaching certificates.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-231.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 15-13-015 on June 5, 2015.

Changes Other than Editing from Proposed to Adopted Version: Emergency certificates for educational service associates are no longer to be issued.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: September 18, 2015.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 10-16-124, filed 8/3/10, effective 9/3/10)

WAC 181-79A-231 Limited certificates. Notwithstanding other requirements prescribed in this chapter for eligibility for certification in the state of Washington, the following certificates shall be issued under specific circumstances set forth below for limited service:

(1) Conditional certificate.

(a) The purpose of the conditional certificate is to assist local school districts, approved private schools, and educational service districts in meeting the state's educational goals by giving them flexibility in hiring decisions based on shortages or the opportunity to secure the services of unusually talented individuals. The professional educator standards board encourages in all cases the hiring of fully certificated individuals and understands that districts will employ individuals with conditional certificates only after careful review of all other options. The professional educator standards board asks districts when reviewing such individuals for employment to consider, in particular, previous experience the individual has had working with children.

(b) Conditional certificates are issued upon application by the local school district, approved private school, or educational service district superintendent to persons who meet the age, good moral character, and personal fitness requirements of WAC 181-79A-150 (1) and (2), if one of the following conditions is verified:

(i) The applicant is highly qualified and experienced in the subject matter to be taught and has unusual distinction or exceptional talent which is able to be demonstrated through public records of accomplishments and/or awards; or

(ii) No person with regular teacher certification in the endorsement area is available as verified by the district or educational service district superintendent or approved private school administrator, or circumstances warrant consideration of issuance of a conditional certificate.

(c) In addition, conditional certificates are issued to persons in the following categories only if no person with regular certification is available:

(i) The applicant qualifies to instruct in the traffic safety program as paraprofessionals pursuant to WAC 392-153-020 (2) and (3); or

(ii) The applicant is assigned instructional responsibility for intramural/interscholastic activities which are part of the district or approved private school approved program; or

(iii) The applicant possesses a state of Washington license for a registered nurse: Provided, That the district will

be responsible for orienting and preparing individuals for their assignment as described in (e)(iii) of this subsection; or

(iv) The applicant has completed a bachelor's degree or higher from a regionally accredited college/university. All speech-language pathologists or audiologists providing services under a current and valid conditional certificate issued as of June 30, 2003, will be fully qualified consistent with WAC 181-79A-223 by the year 2010. First conditional certificates, issued to speech-language pathologists or audiologists after June 30, 2003, which are valid for up to two years, may be reissued once for up to two years, if the individual provides evidence that he/she is enrolled in and completing satisfactory progress in a master's degree program resulting in the initial ESA school speech-language pathologists or audiologist certificate.

(v) The applicant for a conditional teaching certificate in special education shall hold a bachelor's degree or higher from a regionally accredited college/university.

(vi) The issuance of a conditional certificate to a special education teacher after July 1, 2003, is contingent upon the individual being enrolled in an approved teacher preparation program resulting in a residency teacher certificate endorsed in special education. The conditional certificate is valid for up to two years and may be reissued once for one year upon verification by the college/university that the individual is completing satisfactory progress in the residency teacher certificate program.

(vii) An individual with full certification and endorsed in special education shall be assigned as a mentor to the special education teacher serving on a conditional certificate for the duration of the conditional certificate.

(d) The educational service district or local district superintendent or administrator of an approved private school will verify that the following criteria have been met when requesting the conditional certificate:

(i) The district or educational service district superintendent or approved private school administrator has indicated the basis on which he/she has determined that the individual is competent for the assignment;

(ii) The individual is being certificated for a specific assignment and responsibility in a specified activity/field;

(e) When requesting the conditional certificate for persons who provide classroom instruction, the educational service district superintendent or local district superintendent or approved private school administrator will verify that the following additional criteria will be met:

(i) After specific inclusion on the agenda, the school board or educational service district board has authorized submission of the application.

(ii) The individual will be delegated primary responsibility for planning, conducting, and evaluating instructional activities with the direct assistance of a school district or approved private school mentor and will not be serving in a paraprofessional role which would not require certification;

(iii) Personnel so certificated will be oriented and prepared for the specific assignment by the employing district or approved private school. A written plan of assistance will be developed, in cooperation with the person to be employed within twenty working days from the commencement of the assignment. In addition, prior to service the person will be

apprised of any legal liability, the responsibilities of a professional educator, the lines of authority, and the duration of the assignment;

(iv) Within the first sixty working days, personnel so certificated will complete sixty clock hours (six quarter hours or four semester hours) of course work in pedagogy and child/adolescent development appropriate to the assigned grade level(s) as approved by the employing school district or approved private school.

(f) The certificate is valid for two years or less, as evidenced by the expiration date which is printed on the certificate, and only for the activity specified. The certificate may be reissued for two years and for two-year intervals thereafter upon application by the employing local school district, approved private school, or educational service district and upon completion of sixty clock hours (six quarter hours or four semester hours) of course work since the issuance of the most recent certificate. The requesting local school district, approved private school, or educational service district shall verify that the sixty clock hours taken for the reissuance of the certificate shall be designed to support the participant's professional growth and enhance the participant's instructional knowledge or skills to better assist students meeting the state learning goals and/or essential academic learning requirements.

(2) Substitute certificate.

(a) The substitute certificate entitles the holder to act as substitute during the absence of the regularly certificated staff member for a period not to exceed (~~thirty consecutive school~~) one hundred eighty days during the school year in any one assignment. Districts or approved private schools employing a teacher holding a substitute certificate in any one assignment for more than thirty days must within twenty days develop a plan of professional learning for the individual that is appropriate to the assignment and designed to support their professional growth and enhance instructional knowledge and skills to meet district needs and better assist students in meeting the state learning goals. This certificate may be issued to:

(i) Teachers, educational staff associates or administrators whose state of regular Washington certificates have expired; or

(ii) Persons who have completed state approved preparation programs and baccalaureate degrees at regionally accredited colleges and universities for certificates; or

(iii) Persons applying as out-of-state applicants who qualify for certification pursuant to WAC 181-79A-257 (1)(c) and (d).

(b) The substitute certificate is valid for life.

(3) Emergency certification.

(a) Emergency certification for specific positions may be issued upon the recommendation of school district and educational service district superintendents or approved private school administrators to persons who hold the appropriate degree and have substantially completed a program of preparation in accordance with Washington requirements for certification: Provided, That a qualified person who holds regular certification is not available or that the position is essential and circumstances warrant consideration of issuance of an emergency certificate: Provided further, That a candidate for

emergency certification as a school counselor, school psychologist, or social worker shall be the best qualified of the candidates for the position as verified by the employing school district and shall have completed all course work for the required master's degree with the exception of the internship: Provided further, That a candidate for emergency certification as a school psychologist shall be enrolled in an approved school psychologist preparation program and shall be participating in the required internship.

(b) The emergency certificate is valid for one year or less, as evidenced by the expiration date which is printed on the certificate.

(4) Emergency substitute certification.

(a) If the district or approved private school has exhausted or reasonably anticipates it will exhaust its list of qualified substitutes who are willing to serve as substitutes, the superintendent of public instruction may issue emergency substitute certificates to persons not fully qualified under subsection (2) of this section for use in a particular school district or approved private school once the list of otherwise qualified substitutes has been exhausted.

(b) Such emergency substitute certificates shall be valid for three years or less, as evidenced by the expiration date which is printed on the certificate.

(c) To ensure that related services personnel deliver special education services in their respective discipline or profession, the office of superintendent of public instruction may not issue emergency substitute certificates for individuals to serve in an educational staff associate role in accordance with 34 C.F.R. Part 300.156 (b)(2)(ii).

(5) Nonimmigrant alien exchange teacher. Applicants for certification as a nonimmigrant alien exchange teacher must qualify pursuant to WAC 181-79A-270 and be eligible to serve as a teacher in the elementary or secondary schools of the country of residence.

(6) Intern substitute teacher certificate.

(a) School districts and approved private schools may request intern substitute teacher certificates for persons enrolled in student teaching/internships to serve as substitute teachers in the absence of the classroom teacher.

(b) The supervising college or university must approve the candidate for the intern substitute teacher certificate.

(c) Such certificated substitutes may be called at the discretion of the school district or approved private school to serve as a substitute teacher only in the classroom(s) to which the individual is assigned as a student teacher/intern.

(d) The intern substitute teacher certificate is valid for one year, or less, as evidenced by the expiration date which is printed on the certificate.

(7) Transitional certificate.

(a) An individual whose continuing or residency certificate has expired according to WAC 181-85-040 or 181-79A-251 may be issued a transitional certificate to be employed on a conditional basis upon request by a school district, approved private school, or educational service district superintendent. The holder of the transitional certificate must successfully complete the external assessment established by the professional educator standards board within two years of the date the holder was issued the transitional certificate in order to continue to be employed: Provided, five years has elapsed

since the final renewal expired and the teacher registers and passes the professional certificate assessment within the two years under WAC 181-79A-251. The transitional certificate expiration date shall not be calculated under professional educator standards board policy WAC 181-79A-117.

(b) No individual whose continuing certificate has been suspended or revoked shall be eligible to be employed under this section.

(c) School districts, approved private schools, and educational service districts are strongly encouraged to develop with the holder of a transitional certificate a plan of assistance to be sure the holder completes the necessary continuing certificate reinstatement requirements under WAC 181-85-130 within the two-year conditional employment period specified under (a) of this subsection if the holder is to continue to be employed.

(d) The transitional certificate is not renewable and may not be reissued.

(8) Provisional alternative administrative certificate.

(a) This certificate shall be issued to individuals admitted to the professional educator standards board alternative route to principal certification pilot program.

(b) The certificate is valid for one year from date of issue.

(c) A comprehensive assessment of the intern's performance by school officials and program faculty and a recommendation that the person be issued a residency principal certificate upon successful completion of the program.

WSR 15-20-059

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed October 1, 2015, 12:34 p.m., effective November 1, 2015]

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

Purpose: Amends WAC 181-79A-221 and 181-79A-251, and creates new sections WAC 181-79A-2510, 181-79A-2511 and 181-79A-2512, to separate and clarify the residency and professional requirements for teachers, principals, administrators, school counselors and psychologists. Provides exceptions for educators taking national board assessments during NBTS hiatus.

Citation of Existing Rules Affected by this Order: Amending WAC 181-79A-221 and 181-79A-251.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 15-16-129 on August 5, 2015.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 252, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 3, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 18, 2015.

David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-24-057, filed 11/25/14, effective 12/26/14)

WAC 181-79A-221 Academic and experience requirements for certification—School counselors and school psychologists. Candidates for school counselor and school psychologist certification shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-226: Provided, That it shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the required master's degree and has satisfactorily completed a comprehensive examination required in such master's degree program. This examination shall be an examination of a regionally accredited institution of higher education or the National Counselor Examination (NCE) of the National Board of Certified Counselors (NBCC) or, in the case of school psychologists, hold the NCSP accreditation from the National Association of School Psychologists (NASP): Provided, That if any candidate has been awarded a master's degree without a comprehensive examination, the candidate, as a condition for certification, shall successfully complete the Praxis II exam in the appropriate role.

(1) School counselor.

(a) Residency.

(i) The candidate shall hold a master's degree with a major in counseling.

(ii) The candidate shall have successfully completed a comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a passing score on the Praxis II guidance and counseling examination.

(b) ~~((Continuing-~~

~~(i) The candidate shall hold a valid initial or residency school psychologist certificate, an approved master's degree with a major in counseling, and shall have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by a college or university with a state approved school psychologist program or one hundred fifty clock hours of study, which meet the state continuing education clock~~

hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. Such study shall:

(A) Be based on the school psychologist performance domains included in WAC 181-78A-270 (5)(a);

(B) Be taken subsequent to the issuance of the initial or residency school psychologist certificate; and

(C) Be determined in consultation with and approved by the candidate's employer or the administrator of a state approved school psychologist preparation program.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(e)) Professional. A professional certificate can be earned in one of the following ways:

(i) An individual who has successfully completed an approved professional certificate program shall be deemed to meet the requirement for professional certification.

(ii) An individual who holds a school counseling certificate issued by the National Board for Professional Teaching Standards (NBPTS) shall be deemed to have met the requirement for completion of a professional certificate program, in recognition that NBPTS certification is issued only to individuals who have demonstrated highly advanced skills as a school counselor.

(c) Beginning with certificates first issued or renewed after July 1, 2015, continuing and professional certificates for school counselors include a requirement for suicide prevention training per RCW 28A.410.226.

(2) School psychologist.

(a) Residency.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) The candidate shall have successfully completed a comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a passing score on the Praxis II school psychology examination.

(b) Continuing.

(i) The candidate shall hold a valid initial or residency school psychologist certificate, a master's degree with a major or specialization in school psychology, and have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by a college or university with a state approved school psychologist program or one hundred fifty clock hours of study, which meet the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. The study shall:

(A) Be based on the school psychologist performance domains included in WAC 181-78A-270 (5)(a);

(B) Be taken subsequent to the issuance of the initial or residency school psychologist certificate; and

(C) Be determined in consultation with and approved by the candidate's employer or the administrator of a state approved school psychologist preparation program.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the ((~~respective~~)) role of school psychologist with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

~~((iii) The candidates must demonstrate their respective knowledge and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.))~~

(c) Professional. ~~((The candidate shall have completed an approved professional certificate program: Provided, That))~~ An individual who holds an NCSP certificate issued by the National Association of School Psychologists (NASP) shall be deemed to have met the requirement for ((completion of a) professional ((certificate program)) certification, in recognition that NCSP certification is issued only to individuals who have demonstrated highly advanced skills as a school psychologist.

~~((d))~~ (d) Beginning with certificates first issued or renewed after July 1, 2015, continuing and/or professional certificates for school ((counselors and school)) psychologists include a requirement for suicide prevention training per RCW 28A.410.226.

AMENDATORY SECTION (Amending WSR 14-24-057, filed 11/25/14, effective 12/26/14)

WAC 181-79A-251 Teacher residency and professional certification—Renewal and reinstatement.
~~((Renewal and reinstatement.))~~

(1) ~~((Residency certificate.))~~ Residency certificates shall be renewed under one of the following options:

(a) ~~((Teachers-~~

~~((-)))~~ Individuals who hold, or have held, residency certificates have the following options for renewal past the first three-year certificate:

~~((A-Candidates))~~ (i) Individuals who have attempted and failed the professional certificate assessment are eligible for a two-year renewal;

~~((B-Candidates))~~ (ii) Individuals who have not been employed or employed less than full-time as a teacher during the dated, three-year residency certificate may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio or they will complete assessment for National Board for Professional Teaching Standards ~~((or they))~~. Individuals not employed as a teacher may permit their certificate to lapse until such time they register for the professional certificate assessment, or the National Board Certification;

~~((C-Candidates))~~ (iii) Individuals whose three-year residency certificate has lapsed may receive a two-year renewal by submitting an affidavit to the certification office confirm-

ing that they will register and submit a uniform assessment portfolio for the professional certificate assessment or assessment for National Board for Professional Teaching Standards: Provided, That teachers holding certificates expiring in 2014, 2015, or 2016 who have completed the available sections for the National Board Teacher Certificate may receive an additional two-year renewal in 2016 or 2017 to complete the assessment.

~~((ii))~~ (b) A residency certificate expires after the first renewal if the candidate has not registered for and submitted a portfolio assessment prior to June 30th of the expiration year, to achieve the professional certificate, Provided: When the first two-year renewal on residency certificates expires, teachers have ~~((two))~~ three renewal options:

~~((A) Teachers)~~ (i) Individuals who were employed but failed the professional certification assessment, may receive a second two-year renewal;

~~((B) Teachers)~~ (ii) Individuals who were unemployed or employed less than full-time as a teacher during the first two-year renewal may permit their certificate to lapse ~~((and receive a))~~. Upon contracting to return to a teacher role, individuals may apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certification assessment.

~~((C))~~ (iii) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to ~~((renew the residency certificate for two years in lieu of))~~ apply for a final, second two-year renewal by submitting an affidavit to the certification office confirming that they will complete and submit their scores from the assessment for National Board for Professional Teaching Standards or register and submit the Washington uniform assessment portfolio as per this section, WAC 181-79A-251.

~~((iii) Teachers)~~ (c) Individuals who hold expired residency certificates may be reinstated by having a district request, under WAC 181-79A-231, a transitional certification not less than five years following the final residency expiration: Provided, That the teacher registers and passes the ~~((professional certification assessment))~~ Washington uniform assessment portfolio as per this section, WAC 181-79A-206 or assessment for National Board for Professional Teaching Standards within two years of issuance of the transitional certificate.

~~((iv) Teachers that))~~ (d) Individuals who hold a dated residency certificate prior to September 2011 that have expiration dates past September 2011 are subject to the same renewal options as described in (a)(ii) and (iii) of this subsection.

~~((b) Principals/program administrators may renew their residency certificate in one of the following ways:~~

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who are not in the role of principal or program administrator may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of one hundred fifty continuing education credit hours, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

~~(c) School counselors and school psychologists may renew their residency certificate in one of the following ways:~~

(i) Individuals who hold, or have held, a residency certificate who are not in the role of school counselor or school psychologist may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of one hundred fifty continuing education hours, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(ii) An individual school psychologist who is applying for the National Certificate for School Psychologist (NCSP) may apply for a one-time two-year renewal with verification of NCSP submission. Individuals with expiring certificates in 2014, 2015, 2016, or 2017 may apply for a second two-year renewal with verification of NCSP submission.

(iii) An individual school counselor who completes a national board certification from the National Board of Professional Teaching Standards (NBPTS) assessment but does not earn national board certification may use that completed assessment to renew the residency certificate one time for two years.

(iv) School psychologists with residency certificates dated to expire June 30, 2013, 2014, 2015, 2016, or 2017 may apply until June 30, 2016, for a two-year extension. These individuals may apply for a second two-year extension until June 30, 2018.)

(2) Teacher professional certificate.

(a) ~~((Teachers:~~

(i) A valid professional certificate may be renewed for additional five-year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC or by completing the professional growth plan as defined in WAC 181-79A-030. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours: Provided, That professional certificates issued under rules prior to September 1, 2014, retain the option of clock hours or professional growth plans for renewal. Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal. The professional growth plans must document formalized learn-

ing opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207. Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.)) A valid professional teacher certificate issued prior to September 1, 2014, may be renewed for additional five-year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC or by completing four professional growth plans as defined in WAC 181-79A-030.

(b) Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal.

(c) Renewal of the professional certificate.

(i) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(ii) Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(iii) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207.

(iv) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, technology, engineering, and mathematics instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education endorsements. Certificates being renewed starting in 2019 must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics. This requirement is for all professional teacher certificate holders regardless of date of issuance of the first professional certificate.

(v) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(vi) Provided, any educator holding a professional certificate which requires completion of four PGP's in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit

hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by this section. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.

(vii) For educators holding multiple certificates in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(viii) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

(d) An expired professional certificate issued under rules in effect prior to September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to ((either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in WAC 392-121-262.

(ii) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education endorsements. Certificates being renewed starting in 2019 must demonstrate completion of at least fifteen continuing education credit hours, or at least one goal from an annual professional growth plan, with an emphasis on the integration of science, technology, engineering and mathematics. This requirement is for all professional teacher certificate holders regardless of date of issuance of the first professional certificate.

((iii)) one of the three standards: Effective instruction, professional contributions or professional development.

(e) Individuals not in the role ((as)) of a teacher in a public school or approved private school holding a professional

teaching certificate may have their professional certificate renewed for a five-year period by the completion of:

~~((A)) (i)~~ Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based (~~leadership~~) standards as defined in WAC ~~((181-78A-540)) 181-79A-207~~; or

~~((B)) (ii)~~ One hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-79A-207; or

~~((C)) (iii)~~ Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal. ~~((The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207. Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours; or~~

~~(D) Teachers addressed in this section are also subject to (a)(ii) of this subsection.~~

~~(iv) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.~~

~~(b) Principals/program administrators.~~

~~(i) A professional certificate may be renewed for additional five-year periods for individuals in the role as a principal, assistant principal or program administrator in a public school or approved private school by:~~

~~(A) Completion of four professional growth plans developed annually since the certificate was issued, in collaboration with the professional growth team as defined in WAC 181-79A-030, that documents formalized learning opportunities and professional development activities that relate to the six standards and "career level" benchmarks defined in WAC 181-78A-540(1). Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.~~

~~(B) Documented evidence of results of the professional growth plan on student learning.~~

~~(C) As per RCW 28A.405.278 beginning September 1, 2016, all professional administrator certificates must complete continuing education on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of professional administrator certificates including requiring knowledge and competencies in~~

~~teacher and principal evaluation systems as an aspect of professional growth plans (PGPs) used for certificate renewal.~~

~~(ii) Individuals not in the role as a principal, assistant principal, or program administrator in a public school or approved private school may have their professional certificate renewed for a five-year period by the completion of:~~

~~(A) Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-540(1) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or~~

~~(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(1); or~~

~~(C) Completion of four professional growth plans developed annually since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2). Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours; or~~

~~(D) Principals, assistant principals, or program administrators addressed in this section are also subject to subsection (b)(i)(C) of this section.~~

~~(e) School counselors and school psychologists.~~

~~(i) For certificates issued under rules in effect prior to September 1, 2014, a valid professional certificate may be renewed for additional five-year periods by:~~

~~(A) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9); or~~

~~(B) Completion of four professional growth plans that are developed annually since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030, and that documents formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.~~

~~(ii) Beginning September 1, 2014, a valid professional certificate may be renewed for additional five-year periods for individuals in the role as a school counselor or school psychologist in a public school, approved private school, or in a state agency which provides educational services to students by completion of four professional growth plans developed annually since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-~~

030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours:

(iii) Individuals not in the role as a school counselor or school psychologist in a public school or approved private school may have their professional certificate renewed for an additional five-year period by:

(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or

(C) Completion of four annual professional growth plans developed since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(iv) Provided, That a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater; or

(v) Provided, That a school psychologist professional certificate may be renewed based on the possession of a valid national certified school psychology certificate issued by the national association of school psychologists at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national certified school psychology certificate, whichever is greater.

(d) Provided, any educator holding a professional certificate in (a), (b), or (c) of this subsection, which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by (a)(ii)(C), (b)(ii)(A), and (c)(ii) of this subsection. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section

within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.

(e) For educators holding multiple certificates in (a), (b), or (c) of this subsection, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(f) The one time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

(g) After July 1, 2015, professional certificates for school counselors or psychologists, in addition to the requirements in this chapter, must attend training in suicide prevention as per RCW 28A.410.226 for renewal of their certificate.)

NEW SECTION

WAC 181-79A-2510 Principal and program administrator residency and professional certification—Renewal and reinstatement. (1) Principals/program administrators may renew their residency certificate in one of the following ways:

(a) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional educator standards board approved professional certificate program pursuant to WAC 181-78A-507 and 181-79A-145 may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(b) Individuals who hold, or have held, residency certificates who are not in the role of principal or program administrator may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of one hundred fifty continuing education credit hours, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(2) Professional certificate. A professional certificate may be renewed for additional five-year periods for individuals in the role as a principal, assistant principal, or program administrator in a public school or approved private school by completion of four professional growth plans developed annually since the certificate was issued, in collaboration with the professional growth team as defined in WAC 181-79A-030.

(a) Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(b) Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(c) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(1).

(d) As per RCW 28A.405.278 beginning September 1, 2016, all professional administrator certificates must complete continuing education on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of professional administrator certificates including requiring knowledge and competencies in teacher and principal evaluation systems as an aspect of professional growth plans (PGPs) used for certificate renewal.

(e) Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application: Provided, That this section is no longer in effect after June 30, 2020.

(f) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(g) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

NEW SECTION

WAC 181-79A-2511 School counselor residency and professional certification—Renewal and reinstatement.

(1) School counselors may renew their residency certificate in one of the following ways:

(a) Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the residency certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(b) An individual school counselor who completes or intends to complete a National Board of Professional Teaching Standards (NBPTS) school counselor assessment but does not earn National Board Certification may use that completed assessment, or an affidavit of intention to complete, in order to renew the residency certificate one time for two years.

(c) Individuals who hold, or have held, a residency certificate who are not in the role of school counselor may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of one hundred fifty continuing education hours, directly related to the current performance-based standards as defined in WAC 181-78A-270(4) since the issuance of the residency certificate.

(2) Professional.

(a) For certificates issued under rules in effect prior to September 1, 2014, a valid professional certificate may be renewed for additional five-year periods by:

(i) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-270(4); or

(ii) Completion of four professional growth plans that are developed annually since the certificate was issued.

(b) Beginning September 1, 2014, a valid professional certificate may be renewed for additional five-year periods for individuals in the role of a school counselor by completion of four professional growth plans developed annually since the certificate was issued.

(c) Renewal of the professional certificate.

(i) Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(ii) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2).

(iii) Provided, That a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(iv) Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by this chapter. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application: Provided, That this section is no longer in effect after June 30, 2020.

(v) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator,

or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(vi) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

(vii) After July 1, 2015, professional certificates for school counselors, in addition to the requirements in this chapter, must attend professional educator standards board approved training in suicide prevention as per RCW 28A.410.226 for renewal of their certificate.

(d) Individuals not in the role of a school counselor may have their professional certificate renewed for an additional five-year period by:

(i) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(ii) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or

(iii) Completion of four annual professional growth plans developed since the certificate was issued.

NEW SECTION

WAC 181-79A-2512 School psychologist residency and professional certification—Renewal and reinstatement. (1) School psychologists may renew their residency certificate in one of the following ways:

(a) An individual school psychologist who is applying for the National Certificate for School Psychologist (NCSP) may apply for a one-time two-year renewal with verification of NCSP submission: Provided, That individuals with expiring certificates in 2014, 2015, 2016, or 2017 may apply for a second two-year renewal with verification of NCSP submission.

(b) An individual who holds, or has held, a residency certificate who is not in the role of school psychologist may have their residency certificate renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of one hundred fifty continuing education hours, directly related to the current performance-based standards as defined in WAC 181-78A-270(5) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(c) School psychologists with residency certificates dated to expire June 30, 2013, 2014, 2015, 2016, or 2017, may apply until June 30, 2016, for a two-year extension. These individuals may apply for a second two-year extension until June 30, 2018.

(2) Professional.

(a) For certificates issued under rules in effect prior to September 1, 2014, a valid professional certificate may be renewed for additional five-year periods by:

(i) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or

(ii) Completion of four professional growth plans that are developed annually since the certificate was issued.

(b) Beginning September 1, 2014, a valid professional certificate may be renewed for additional five-year periods for individuals in the role of a school psychologist by completion of four professional growth plans developed annually since the certificate was issued.

(c) Renewal of the professional certificate.

(i) Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(ii) The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2).

(iii) Provided, That a school psychologist professional certificate may be renewed based on the possession of a valid nationally certified school psychologist certificate issued by the National Association of School Psychologists at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the nationally certified school psychologist certificate, whichever is greater.

(iv) Provided, any educator holding a professional certificate which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.

(v) For educators holding multiple certificates as described in WAC 181-79A-251, 181-79A-2510, 181-79A-2511, or 181-79A-2512 of this chapter, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(vi) The one-time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

(vii) After July 1, 2015, professional certificates for school psychologists, in addition to the requirements in this chapter, must attend professional educator standards board approved training in suicide prevention as per RCW 28A.410.226 for renewal of their certificate.

(d) Individuals not in the role of a school psychologist may have their professional certificate renewed for an additional five-year period by:

(i) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(ii) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or

(iii) Completion of four annual professional growth plans developed since the certificate was issued.

WSR 15-20-063

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed October 1, 2015, 4:25 p.m., effective November 1, 2015]

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

Purpose: This rule expands the use of telemedicine for Washington apple health clients.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-17-123 on August 19, 2015.

Changes Other than Editing from Proposed to Adopted Version: Added "neurodevelopmental centers" to list of approved originating sites in subsection (3).

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

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

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

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

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

Date Adopted: October 1, 2015.

Wendy Barcus
Rules Coordinator

NEW SECTION

WAC 182-531-1730 Telemedicine. (1) Telemedicine is when a health care practitioner uses HIPAA-compliant, interactive, real-time audio and video telecommunications (including web-based applications) or store and forward technology to deliver covered services that are within his or her scope of practice to a client at a site other than the site where the provider is located. If the service is provided through store and forward technology, there must be an associated office visit between the client and the referring health care provider.

(2) The medicaid agency does not cover the following services as telemedicine:

(a) E-mail, audio only telephone, and facsimile transmissions;

(b) Installation or maintenance of any telecommunication devices or systems; and

(c) Purchase, rental, or repair of telemedicine equipment.

(3) **Originating site.** An originating site is the physical location of the client at the time the health care service is provided. Approved originating sites are:

(a) Clinics;

(b) Community mental health/chemical dependency settings;

(c) Dental offices;

(d) Federally qualified health centers;

(e) Home or any location determined appropriate by the individual receiving the service;

(f) Hospitals - Inpatient and outpatient;

(g) Neurodevelopmental centers;

(h) Physician or other health professional's office;

(i) Rural health clinics;

(j) Schools; and

(k) Skilled nursing facilities.

(4) **Distant site.** A distant site is the physical location of the health care professional providing the health care service.

(5) The agency pays an additional facility fee per completed transmission to either the originating site or the distant site, as specified in the agency's program-specific billing instructions.

(6) If a health care professional performs a separately identifiable service for the client on the same day as the telemedicine service, documentation for both services must be clearly and separately identified in the client's medical record.

(7) Billing procedures for telemedicine can be found in the agency's program-specific billing instructions.

WSR 15-20-096

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 15-01—Filed October 6, 2015, 9:42 a.m., effective November 6, 2015]

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

Purpose: The department of ecology revised Appendix III of WAC 173-351-990 to include two hazardous organic constituents: 2,3,7,8-Tetrachlorodibenzo-p-dioxin - [CAS

1746-01-6] and alpha, alpha-Dimethylphenethylamine [CAS 122-09-8]. This revision is necessary to be consistent with federal rules in 40 C.F.R. Part 258. Operators of municipal solid waste landfills must meet federal program requirements. Revising our rule eliminates possible noncompliance for facilities that inadvertently omit the two additional constituents required to be monitored under federal rules. It also clarifies monitoring requirements for local jurisdictional health authorities that have the lead for issuing and enforcing solid waste permits. These revisions will enable ecology to obtain full approval of our municipal solid waste program from the United States Environmental Protection Agency (EPA).

Reviser's note: The brackets and enclosed material in the text above occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Citation of Existing Rules Affected by this Order:
Amending WAC 173-351-990.

Statutory Authority for Adoption: RCW 70.95.060(1) and 70.95.260(6).

Adopted under notice filed as WSR 15-15-108 on July 16, 2015.

A final cost-benefit analysis is available by contacting Kirsten Miller, P.O. Box 47600, Olympia, WA, 98504-7600, phone (360) 407-6707, fax (360) 407-6102, e-mail kirsten.miller@ecy.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 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 1, Repealed 0.

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

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

Date Adopted: October 1, 2015.

Maia D. Bellon
Director

AMENDATORY SECTION (Amending WSR 12-23-009, filed 11/8/12, effective 12/9/12)

WAC 173-351-990 Appendices.

APPENDIX I

Appendix I - Constituents for Detection Monitoring

	COMMON NAME ¹	CAS RN ²
Inorganic Constituents		
1)	Antimony	(Total)
2)	Arsenic	(Total)
3)	Barium	(Total)

	COMMON NAME ¹	CAS RN ²
Inorganic Constituents		
4)	Beryllium	(Total)
5)	Cadmium	(Total)
6)	Chromium	(Total)
7)	Cobalt	(Total)
8)	Copper	(Total)
9)	Lead	(Total)
10)	Nickel	(Total)
11)	Selenium	(Total)
12)	Silver	(Total)
13)	Thallium	(Total)
14)	Vanadium	(Total)
15)	Zinc	(Total)
16)	Nitrate	
Organic Constituents		
17)	Acetone	67-64-1
18)	Acrylonitrile	107-13-1
19)	Benzene	71-43-2
20)	Bromochloromethane	74-97-5
21)	Bromodichloromethane	75-27-4
22)	Bromoform; Tribromomethane	75-25-2
23)	Carbon disulfide	75-15-0
24)	Carbon tetrachloride	56-23-5
25)	Chlorobenzene	108-90-7
26)	Chloroethane; Ethyl chloride	75-00-3
27)	Chloroform; Trichloromethane	67-66-3
28)	Dibromochloromethane; Chlorodibromomethane	124-48-1
29)	1,2-Dibromo-3-chloropropane; DBCP	96-12-8
30)	1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
31)	o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
32)	p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
33)	trans-1,4-Dichloro-2-butene	110-57-6
34)	1,1-Dichloroethane; Ethylidene chloride	75-34-3
35)	1,2-Dichloroethane; Ethylene dichloride	107-06-2
36)	1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
37)	cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2

	COMMON NAME ¹	CAS RN ²
Inorganic Constituents		
38)	trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
39)	1,2-Dichloropropane; Propylene dichloride	78-87-5
40)	cis-1,3-Dichloropropene	10061-01-5
41)	trans-1,3-Dichloropropene	10061-02-6
42)	Ethylbenzene	100-41-4
43)	2-Hexanone; Methyl butyl ketone	591-78-6
44)	Methyl bromide; Bromomethane	74-83-9
45)	Methyl chloride; Chloromethane	74-87-3
46)	Methylene bromide; Dibromomethane	74-95-3
47)	Methylene chloride; Dichloromethane	75-09-2
48)	Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
49)	Methyl iodide; Iodomethane	74-88-4
50)	4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
51)	Styrene	100-42-5
52)	1,1,1,2-Tetrachloroethane	630-20-6
53)	1,1,2,2-Tetrachloroethane	79-34-5
54)	Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
55)	Toluene	108-88-3
56)	1,1,1-Trichloroethane; Methyl chloroform	71-55-6
57)	1,1,2-Trichloroethane	79-00-5
58)	Trichloroethylene; Trichloroethene	79-01-6

	COMMON NAME ¹	CAS RN ²
Inorganic Constituents		
59)	Trichlorofluoromethane; CFC-11	75-69-4
60)	1,2,3-Trichloropropane	96-18-4
61)	Vinyl acetate	108-05-4
62)	vinyl chloride	75-01-4
63)	Xylenes	1330-20-7

¹ Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.
² Chemical Abstracts Service registry number.

**APPENDIX II
GROUNDWATER QUALITY PARAMETERS**

Field Parameters

- pH
- specific conductance
- temperature
- static water level

Geochemical Indicator Parameters

- | | |
|---------------------------------|-------------------------------------|
| Calcium (Ca) | Sodium (Na) |
| Bicarbonate (HCO ₃) | Chloride (Cl) |
| Magnesium (Mg) | Potassium (K) |
| Sulfate (SO ₄) | Alkalinity (as Ca CO ₃) |
| Total suspended solids (TSS) | Iron (Fe) (Dissolved) |
| | Manganese (Mn) (Dissolved) |

Leachate Indicators

- Ammonia (NH₃-N)
- Total Organic Carbon (TOC)
- Total Dissolved Solids (TDS)

**APPENDIX III
List of Hazardous Inorganic and Organic Constituents.**

Common Name ¹	CAS RN ²	Chemical abstracts service index name ³
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-
Acenaphthylene	208-96-8	Acenaphthylene
Acetone	67-64-1	2-Propanone
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile
Acetophenone	98-86-2	Ethanone, 1-phenyl-
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-
Acrolein	107-02-8	2-Propenal
Acrylonitrile	107-13-1	2-Propenenitrile
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5α,8α,8aβ)-
Allyl chloride	107-05-1	1-Propene, 3-chloro-

Common Name ¹	CAS RN ²	Chemical abstracts service index name ³
4-Aminobiphenyl	92-67-1	[1,1 1 -Biphenyl]-4-amine
Anthracene	120-12-7	Anthracene
Antimony	(Total)	Antimony
Arsenic	(Total)	Arsenic
Barium	(Total)	Barium
Benzene	71-43-2	Benzene
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene
Benzyl alcohol	100-51-6	Benzenemethanol
Beryllium	(Total)	Beryllium
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 β ,4 α ,5 β ,6 β)-
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 β ,3 α ,4 β ,5 α ,6 β)-
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 α ,4 β ,5 α ,6 β)-
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1 α ,2 α ,3 β ,4 α ,5 α ,6 β)-
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1 1 -[methylenebis(oxy)]bis[2-chloro-
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4	Ethane, 1,1 1 -oxybis[2-chloro-
Bis-(2-chloro-1-methylethyl) ether; 2,2 1 -	108-60-1	Propane, 2,2 1 -oxybis[1-chloro-
Dichlorodiisopropyl ether; DCIP, See note 4		
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenyl-methyl ester
Cadmium	(Total)	Cadmium
Carbon disulfide	75-15-0	Carbon disulfide
Carbon tetrachloride	56-23-5	Methane, tetrachloro-
Chlordane	See Note 5	4,7-Methano-1H-indene, 1,2,4,5, 6,7,8,8-octachloro-2,3,3a,4,7, 7a-hexahydro-
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-
Chlorobenzene	108-90-7	Benzene, chloro-
Chlorobenzilate	510-15-6	Benzenoacetic acid, 4-chloro- α -(4-chlorophenyl)- α -hydroxy-, ethyl ester
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-

Common Name ¹	CAS RN ²	Chemical abstracts service index name ³
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-
2-Chlorophenol	95-57-8	Phenol, 2-chloro-
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-
Chromium	(Total)	Chromium
Chrysene	218-01-9	Chrysene
Cobalt	(Total)	Cobalt
Copper	(Total)	Copper
m-Cresol; 3-methylphenol	108-39-4	Phenol, 3-methyl-
o-Cresol; 2-methylphenol	95-48-7	Phenol, 2-methyl-
p-Cresol; 4-methylphenol	106-44-5	Phenol, 4-methyl-
Cyanide	57-12-5	Cyanide
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-
4,4'-DDD	72-54-8	Benzene 1,1 1 -(2,2-dichloroethylidene)bis[4-chloro-
4,4'-DDE	72-55-9	Benzene, 1,1 1 -(dichloroethenylylidene)bis[4-chloro-
4,4'-DDT	50-29-3	Benzene, 1,1 1 -(2,2,2-trichloroethylidene)bis[4-chloro-
Diallate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-,S-(2,3-dichloro-2-propenyl) ester
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene
Dibenzofuran	132-64-9	Dibenzofuran
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4	Ethane, 1,2-dibromo-
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-Dichloro-
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-
3,3'-Dichlorobenzidine	91-94-1	[1,1 1 -Biphenyl]-4,4 1 -diamine, 3,3 1 -dichloro-
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-
Dichlorodifluoromethane; CFC 12;	75-71-8	Methane, dichlorodifluoro-
1,1-Dichloroethane; Ethyldiene chloride	75-34-3	Ethane, 1,1-dichloro-
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,1-dichloro-
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-, (Z)-
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5	Ethene, 1,2-dichloro-, (E)-

Common Name ¹	CAS RN ²	Chemical abstracts service index name ³
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-
1,2-Dichloropropane; Propylene dichloride	78-87-5	Propane, 1,2-dichloro-
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexa, chloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1 α ,2 β ,2 α ,3 β ,6 β , 6 α ,7 β ,7 α)-
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester
0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester
Dimethoate	60-51-5	Phosphorodithioic acid, 0,0-dimethyl S-[2-(methylamino)-2-oxoethyl] ester
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-
3,3'-Dimethylbenzidine	119-93-7	[1,1 1 -Biphenyl]-4,4 1 -diamine, 3,3 1 -dimethyl-
<u>alpha, alpha-Dimethylphenethylamine</u>	<u>122-09-8</u>	<u>Benzeneethanamine, α,α-dimethyl-</u>
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-
4,6-Dinitro-o-cresol 4,6-Dinitro-2-methylphenol	534-52-1	Phenol, 2-methyl-4,6-dinitro
2,4-Dinitrophenol;	51-28-5	Phenol, 2,4-dinitro-
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester
Diphenylamine	122-39-4	Benzenamine, N-phenyl-
Disulfoton	298-04-4	Phosphorodithioic acid, 0,0-diethyl S-[2-(ethylthio)ethyl] ester
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexa-chloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexa-chloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide, (3 α ,5 α , 6 β ,9 β ,9 α)-
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexa-chloro-1,5,5a,6,9,9a-hexahydro-,3-3-dioxide
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1 α , 2 β ,2 α ,3 α ,6 α , 6 β ,7 β ,7 α)-

Common Name ¹	CAS RN ²	Chemical abstracts service index name ³
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1 α ,2 β , 2a β ,4 β ,4a β ,5 β ,6a β ,6b β ,7R*)-
Ethylbenzene	100-41-4	Benzene, ethyl-
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester
Famphur	52-85-7	Phosphorothioic acid, 0-[4-[(dimethylamino)sulfonyl]phenyl] 0,0-dimethyl ester
Fluoranthene	206-44-0	Fluoranthene
Fluorene	86-73-7	9H-Fluorene
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6, 7,8,8-heptachloro-3a,4,7,7a-tetrahydro-
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1 $\alpha\alpha$, 1b β , 2 α , 5 α , 5a β , 6 β , 6a α)
Hexachlorobenzene	118-74-1	Benzene, hexachloro-
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5, 5-hexachloro-
Hexachloroethane	67-72-1	Ethane, hexachloro-
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno(1,2,3-cd)pyrene
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene, 1, 2,3,4,10,10-hexachloro-1,4,4a, 5,8,8a hexahydro- (1 α ,4 α ,4a β , 5 β ,8 β ,8a β)-
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1, 1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-
Lead	(Total)	Lead
Mercury	(Total)	Mercury
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-
Methapyrilene	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N 1 -2-pyridinyl-N1/2-thienylmethyl)-
Methoxychlor	72-43-5	Benzene,1,1 1 -(2,2,2, trichloroethylidene)bis[4-methoxy-
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-

Common Name ¹	CAS RN ²	Chemical abstracts service index name ³
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, 0,0-dimethyl
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-
Naphthalene	91-20-3	Naphthalene
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione
1-Naphthylamine	134-32-7	1-Naphthalenamine
2-Naphthylamine	91-59-8	2-Naphthalenamine
Nickel	(Total)	Nickel
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-
m-Nitroaniline; 3-Nitroaniline	99-09-2	Benzenamine, 3-nitro-
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro
Nitrobenzene	98-95-3	Benzene, nitro-
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine	621-64-7	1-Propanamine, N-nitroso-N-propyl-
N-Nitrosomethylethylamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-
Parathion	56-38-2	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester
Pentachlorobenzene	608-93-5	Benzene, pentachloro-
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-
Pentachlorophenol	87-86-5	Phenol, pentachloro-
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenyl)
Phenanthrene	85-01-8	Phenanthrene
Phenol	108-95-2	Phenol
p-Phenylenediamine	106-50-3	1,4-Benzenediamine
Phorate	298-02-2	Phosphorodithioic acid, 0,0-diethyl S-[(ethylthio)methyl] ester
Polychlorinated biphenyls; PCBs; Aroclors	See Note 6	1,1'-Biphenyl, chloro derivatives
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile
Pyrene	129-00-0	Pyrene
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-
Selenium	(Total)	Selenium
Silver	(Total)	Silver

Common Name ¹	CAS RN ²	Chemical abstracts service index name ³
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-
Styrene	100-42-5	Benzene, ethenyl-
Sulfide	18496-25-8	Sulfide
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-
<u>2,3,7,8-TCDD; 2,3,7,8-Tetrachlorodibenzo-p-dioxin</u>	<u>1746-01-6</u>	<u>Dibenzo[b,e][1,4]dioxin, 2,3,7,8-tetrachloro-</u>
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-
Thallium	(Total)	Thallium
Tin	(Total)	Tin
Toluene	108-88-3	Benzene, methyl-
o-Toluidine	95-53-4	Benzenamine, 2-methyl-
Toxaphene	See Note 7	Toxaphene
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-
0,0,0-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, 0,0,0-triethylester
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-
Vanadium	(Total)	Vanadium
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-
Xylene (total)	See Note 8	Benzene, dimethyl-
Zinc	(Total)	Zinc

Notes:

- 1 Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.
- 2 Chemical Abstracts Service registry number. Where "Total" is entered, all species in the groundwater that contain this element are included.
- 3 CAS index are those used in the 9th Collective Index.
- 4 This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2"-oxybis[2-chloro- (CAS RN 39638-32-9).
- 5 Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6).
- 6 Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5).
- 7 Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.
- 8 Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7).

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.