

WSR 16-17-003
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 4, 2016, 9:06 a.m., effective September 4, 2016]

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

Purpose: The 2015-2017 biennium budgets provided funding to develop eight community respite beds for adults with developmental disabilities for the provision of short-term community-based planned respite services across the state as an alternative to using respite services in an institutional setting. Additionally, the budget funded eight enhanced respite beds across the state for children for the purpose of providing families and caregivers a break and an opportunity for behavioral stabilization for children. Without these services some families may be unable to continue to care for their children in their own homes and out-of-home placements could be necessary.

Citation of Existing Rules Affected by this Order: Amending 2 [WAC 388-845-1610 and 388-845-1615].

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Other Authority: ESSB 6052.S.L.

Adopted under notice filed as WSR 16-10-021 on April 25, 2016.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 39, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 39, Amended 2, Repealed 0.

Date Adopted: July 28, 2016.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1610 Where can respite care be provided? (1) Respite care can be provided in the following location(~~(s)~~):

- (a) Individual's home or place of residence;
- (b) Relative's home;
- (c) Licensed children's foster home;
- (d) Licensed, contracted and DDA certified group home;
- (e) Licensed assisted living facility contracted as an adult residential center;
- (f) Adult residential rehabilitation center;

- (g) Licensed and contracted adult family home;
- (h) Children's licensed group home, licensed staffed residential home, or licensed childcare center;
- (i) Other community settings such as camp, senior center, or adult day care center(~~(-)~~); and
- (j) Certified overnight planned respite services home.
- (2) Additionally, your respite care provider may take you into the community while providing respite services.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1615 Who are qualified providers of respite care? Providers of respite care can be any of the following individuals or agencies contracted with DDA for respite care:

- (1) Individuals meeting the provider qualifications under chapter 388-825 WAC;
- (2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;
- (3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;
- (4) Licensed and contracted adult family homes;
- (5) Licensed and contracted adult residential care facilities;
- (6) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;
- (7) Licensed child care centers under chapter 170-295 WAC;
- (8) Licensed child day care centers under chapter 170-295 WAC;
- (9) Adult day care providers under chapter 388-71 WAC contracted with DDA;
- (10) Certified provider under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services; (~~(e)~~)
- (11) Certified overnight planned respite services providers under chapter 388-829R WAC; or
- (12) Other DDA contracted providers such as community center, senior center, parks and recreation, summer programs.

Chapter 388-829R WAC

OVERNIGHT PLANNED RESPITE SERVICES

NEW SECTION

WAC 388-829R-005 What definitions apply to this chapter? The following definitions apply to this chapter:

"Adult protective services" or "APS" means the investigative body designated by the aging and long term care support administration (ALTSA) to investigate suspected cases of abandonment, abuse, financial exploitation, and neglect as defined in chapter 74.34 RCW.

"Authorization" means DDA approval of funding for a service as identified in the individual support plan or evidence of payment for a service.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(5) and who the

administration has determined eligible to receive services under chapter 71A.16 RCW. When used in this section, "you" is interchangeable with client.

"DDA" or "the administration" means the developmental disabilities administration, an administration of the department of social and health services and its employees and authorized agents.

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse or registered domestic partner, natural, adoptive, or stepparent, grandparent, child, stepchild, sibling, stepsibling, uncle, aunt, first cousin, niece, or nephew.

"Mandatory reporter" means any person working with vulnerable adults required to report suspected incidents of abandonment, abuse, neglect, financial exploitation under chapter 74.34 RCW.

"NA-R" means nursing assistant-registered under chapter 18.88A RCW.

"NA-C" means nursing assistant-certified under chapter 18.88A RCW.

"Overnight planned respite services" means services that are intended to provide short-term intermittent relief for persons who live with the DDA client as the primary care provider and are either a family member who is paid or unpaid or a non-family member who is not paid. These services also provide the opportunity for the client to receive support, care, and engagement in the community.

"Overnight planned respite services provider," "service provider" and "provider" means a provider that is contracted to provide overnight planned respite services.

"Registered nurse delegation" means the process by which a registered nurse transfers the performance of selected nursing tasks to a NA-R or NA-C in selected situations as set forth in chapter 18.79 RCW and WAC 246-840-910 through 246-840-970).

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

NEW SECTION

WAC 388-829R-010 What is the purpose of this chapter? This chapter establishes rules for clients and providers regarding overnight planned respite services administered by DDA.

NEW SECTION

WAC 388-829R-015 What conditions must be met to be eligible to receive overnight planned respite services?

(1) Recipients of overnight planned respite services must meet the following conditions at a minimum:

(a) Have been determined eligible for DDA services per chapter 388-823 WAC;

(b) Be at least eighteen years of age; and

(c) Live at home with primary care providers who are paid or unpaid family members or non-family members who are not paid to provide care for you.

(2) The adult respite services committee will consider the following factors when reviewing requests for services:

(a) Whether the recipient's needs can be safely met in the respite setting;

(b) Whether there are available vacancies within ninety days of requested dates; and

(c) Whether the stay will reduce utilization of residential habilitation centers for respite.

NEW SECTION

WAC 388-829R-016 How do I access overnight planned respite services? (1) Your case resource manager will assist you with completing a brief application and ensure overnight planned respite services are included in your individual support plan.

(2) Upon approval for services, you will work with the provider to complete an individual respite services agreement that outlines agreed support needs and activities prior to your stay.

NEW SECTION

WAC 388-829R-017 Who are the qualified providers of overnight planned respite services? Qualified providers must be certified by and contracted with DDA to provide overnight planned respite.

NEW SECTION

WAC 388-829R-018 What are the time limitations of overnight planned respite services? Overnight planned respite services may not exceed fourteen days in a calendar year.

NEW SECTION

WAC 388-829R-020 What are the responsibilities of an overnight planned respite services provider? An overnight planned respite services provider must:

(1) Meet the requirements of this chapter and its contract;

(2) Deliver the service on the dates approved by the administration;

(3) Provide supports and services outlined in the individual respite services agreement;

(4) Provide adequate staff to administer the program and meet the needs of clients;

(5) Ensure that clients have immediate access to staff or the means to contact staff at all times; and

(6) Retain all records and other material related to the services contract for six years after expiration of the contract.

NEW SECTION

WAC 388-829R-025 What requirements must an agency meet to contract with DDA to provide overnight planned respite services? To be eligible to contract with

DDA to provide overnight planned respite services, an agency:

- (1) Must be certified by the DDA to perform the duties of overnight planned respite service;
- (2) Must be approved as a contractor by the department; and
- (3) Providing respite to more than one client per respite home is prohibited.

NEW SECTION

WAC 388-829R-030 Are the rules in chapter 388-113 and 388-825 regarding background checks applicable to providers of overnight planned respite services? Yes. The rules in chapter 388-113 and 388-825 regarding background checks are applicable to providers of overnight planned respite services.

NEW SECTION

WAC 388-829R-035 What will disqualify overnight planned respite services providers from working in a capacity that may involve access to individuals with a developmental disability? Criminal convictions and pending charges that disqualify overnight planned respite services providers and their employees and volunteers from working with individuals with a developmental disability are listed in chapter 388-113 WAC. Individuals employed by overnight planned respite services providers who receive a DSHS background check with disqualifying results are prohibited from any access to DDA clients.

NEW SECTION

WAC 388-829R-060 What are the minimum requirements for overnight planned respite services providers? Overnight planned respite services providers must at a minimum:

- (1) Have a high school diploma or GED equivalent, unless hired before September 1, 1991;
- (2) Be at least eighteen years of age when employed as a direct care staff, or at least twenty-one years of age when employed as an administrator;
- (3) Have a clear understanding of job responsibilities and knowledge of individual support plans and client needs;
- (4) Have a current background check as required by WAC 388-829R-030; and
- (5) Be able to:
 - (a) Read, understand, and provide services outlined in the individual support plan (ISP) and individual respite services agreement;
 - (b) Reasonably accommodate the client's individual preferences;
 - (c) Know the community resources, such as medical facilities, emergency resources, and recreational opportunities;
 - (d) Enable the client to keep in touch with family and friends in a way preferred by the client;
 - (e) Protect the client's financial interests;
 - (f) Fulfill reporting requirements as required in this chapter and the overnight planned respite services contract;

(g) Know how and when to contact the client's representative and case manager; and

(h) Successfully complete the training required in this chapter.

NEW SECTION

WAC 388-829R-065 What training requirements must overnight planned respite services staff meet? Overnight planned respite services provider staff must meet all training and certification requirements that apply to community residential service businesses in accordance with chapter 388-829 WAC. The provider must document that its staff has met these requirements and make this documentation available for DDA.

NEW SECTION

WAC 388-829R-070 What policies and procedures must overnight planned respite services providers have?

(1) Overnight planned respite services providers must develop and implement policies and procedures that address:

- (a) Client rights, including a client's right to file a complaint or suggestion without interference;
- (b) Reporting requirements for suspected abuse, neglect, financial exploitation, or abandonment;
- (c) Client protections when there have been allegations of abuse, neglect, financial exploitation, or abandonment;
- (d) Emergent situations that may pose a danger or risk to the client or others;
- (e) Response to a missing person and other client emergencies;
- (f) Emergency response plans for natural or other disasters;
- (g) Client access to medical, mental health, and law enforcement resources for clients;
- (h) Notification to client's legal representative or relatives in case of emergency;
- (i) Client grievances;
- (j) Appropriate response and supports for clients who engage in aggressive or assaultive behavior; and
- (k) All aspects of medication management including but not limited to:
 - (i) Supervision of medication;
 - (ii) Client refusal;
 - (iii) Services related to medications and treatments provided under the delegation of a registered nurse consistent with chapter 246-840 WAC;
 - (iv) The monitoring of a client who self-administers medication;
 - (v) Medication assistance for clients who need support; and
 - (vi) What the service provider will do in the event it becomes aware that a client is no longer safe to take his or her own medications.

(2) The service provider must train staff on its policies and procedures, maintain current written policies and procedures, and make them accessible to all staff and available to clients and legal representatives upon request.

NEW SECTION

WAC 388-829R-075 What are the requirements for an individual respite services agreement? (1) Overnight planned respite services providers must develop an individual respite services agreement with the client's paid or unpaid caregiver at least three business days prior to the client's placement.

(2) The individual respite services agreement must outline supports and services to be provided during the respite stay.

NEW SECTION

WAC 388-829R-080 What services and activities must be a part of overnight planned respite services? The overnight planned respite services provider must provide the following services and activities at no cost to the client:

- (1) Support staff available twenty-four hours per day for each day of the respite stay as determined in the individual respite services agreement to meet the client's needs as identified in the client's assessment;
- (2) A furnished home environment including a private, furnished bedroom for the respite client;
- (3) An accessible site for clients with physical disabilities;
- (4) Three nutritious meals and two snacks per day;
- (5) Bedding and towels;
- (6) Access to laundry facilities;
- (7) Access to a telephone for local calls;
- (8) Medication monitoring, assistance and administration as needed;
- (9) Instruction and support services identified in the client's individual respite services agreement;
- (10) Transportation as identified in the individual respite services agreement;
- (11) Supports for performing personal hygiene routines and activities of daily living as identified in the individual respite service agreement and individual support plan; and
- (12) Activities within the home and community as outlined in the individual respite services agreement.

NEW SECTION

WAC 388-829R-085 Are overnight planned respite providers responsible to transport a client? (1) The client and client's family are responsible for transportation to and from the respite services.

(2) The overnight planned respite services provider is responsible to ensure that the client's transportation needs are met during the respite stay as identified in the client's individual respite services agreement.

NEW SECTION

WAC 388-829R-090 What requirements must be met before an overnight planned respite provider transports a client? Before transporting a client, overnight planned respite services providers must:

- (1) Carry automobile insurance per chapter 46.30 RCW; and

- (2) Have a valid driver's license per chapter 46.20 RCW.

NEW SECTION

WAC 388-829R-110 What health care assistance must an overnight planned respite provide a client? The overnight planned respite services provider must provide the client the following health care assistance:

- (1) Observe the client for changes in health, take appropriate action, and respond to emergencies;
- (2) Manage medication assistance per chapter 246-888 WAC and administration per WAC 246-840-910 to 246-840-970 and DDA residential medication management requirements specified in the overnight planned respite services contract;
- (3) Assist the client with any medical treatment prescribed by health professionals that does not require registered nurse delegation or professionally licensed services;
- (4) Communicate directly with health professionals when needed; and
- (5) Provide a balanced, nutritional diet.

NEW SECTION

WAC 388-829R-115 How may an overnight planned respite services provider assist a client with medication?

(1) An overnight planned respite services provider may only provide medication assistance per chapter 246-888 WAC if the client meets the following criteria:

- (a) Is able to put the medication into his or her mouth, apply, or instill the medication; and
- (b) Is aware that he or she is receiving medication.

(2) An overnight planned respite services provider may provide specific medication assistance tasks as described under chapter 246-888 WAC as follows:

Medication Assistance Task	May an overnight planned respite services provider complete this task if the client meets both criteria in subsections (1)(a) and (b) of this section?
Remind or coach the client to take his or her medication.	Yes
Open the medication container.	Yes
Hand client the medication container.	Yes
Place medication in the client's hand.	Yes
Transfer medication from a container to another device for the purpose of an individual dose (e.g., pouring liquid medication from a	Yes

Medication Assistance Task	May an overnight planned respite services provider complete this task if the client meets both criteria in subsections (1)(a) and (b) of this section?
container to a calibrated spoon, medication cup or adaptive device.	
Alter a medication by crushing or mixing, or similar alterations.	Yes, if the client is aware that the medication has been altered or added to food or beverage. A pharmacist or other qualified practitioner must determine it is safe to alter a medication and this must be documented on the prescription container or in the client's record.
Handing the client a pre-filled insulin syringe.	Yes, but the client must be able to inject the insulin by him or herself.
Guide or assist client to apply or instill skin, nose, eye and ear preparations.	Yes, but hand-over-hand administration is not allowed.
Assistance with injectable or IV medication.	No, this is not allowed.
Hand-over-hand assistance with medication.	No, may only be done under nurse delegation.
Assistance with medication beyond the examples provided in this chart.	No, may only be done by a licensed professional within the scope of their license or under registered nurse delegation.

NEW SECTION

WAC 388-829R-120 What is required for an overnight planned respite services provider to administer medication and provide delegated nursing tasks? Before overnight planned respite services providers may administer medication or provide nursing tasks for their clients, they must meet one of the following requirements:

- (1) Be a registered nurse (RN) or licensed practical nurse (LPN); or
- (2) Be delegated to perform nursing care tasks by a registered nurse.

NEW SECTION

WAC 388-829R-125 What is required for an overnight planned respite services provider to perform nursing tasks under the registered nurse delegation program? In order to be delegated to perform nursing tasks, an overnight planned respite services provider must:

- (1) Receive client-specific training from the delegating registered nurse; and
- (2) Verify with the registered nurse delegator that it has complied with chapter 18.79 RCW and WAC 246-840-910 through 246-840-990 by providing the registered nurse delegator with proof of:
 - (a) A current NA-R or NA-C registration or certification as a home care aide (HCA-C) without restriction, or a certification showing completion of the "nurse delegation for nursing assistants" class; and
 - (b) A certification of completion of the "nurse delegation training: special focus on diabetes" class when the provider anticipates that the NA-R, NA-C or HCA-C may be administering insulin injections under nurse delegation; or a certification showing completion of "fundamentals of caregiving" if the overnight planned respite services provider is an NA-R.

NEW SECTION

WAC 388-829R-130 When is an overnight planned respite services provider not allowed to perform nursing tasks? (1) An overnight planned respite services provider is prohibited from performing delegated nursing tasks for a client if it has not complied with the requirements in WAC 388-829R-125.

- (2) An overnight planned respite services provider may not offer support to a client whose needs it is unable to meet.
- (3) If the overnight planned respite services provider is not eligible to perform nursing tasks, a legally authorized person such as an RN or LPN must perform the task.

NEW SECTION

WAC 388-829R-135 What records must the overnight planned respite services provider keep regarding registered nurse delegation? (1) The overnight planned respite services provider must keep the following records when participating in registered nurse delegation:

- (a) Written instructions for performing the delegated task from the delegating RN;
 - (b) The most recent six months of documentation showing that the task was performed; and
 - (c) Validation of nursing assistant registrations or certifications.
- (2) These records must be accessible to the delegating nurse at all times.

NEW SECTION

WAC 388-829R-140 Where must overnight planned respite services be provided? Overnight planned respite services providers must provide overnight planned respite services in a single person residence maintained and furnished by the provider.

NEW SECTION

WAC 388-829R-145 How must overnight planned respite services providers regulate the water temperature at their residence? (1) Overnight planned respite services

providers must regulate the water temperature at their residence as follows:

(a) Maintain the water temperature in the household between one hundred five degrees and one hundred twenty degrees Fahrenheit; and

(b) Check the water temperature at least every six months. The water temperature is best measured two hours after substantial hot water usage.

(2) The overnight planned respite services provider must document compliance with these requirements.

NEW SECTION

WAC 388-829R-150 What are the requirements for record entries? (1) The overnight planned respite services provider must make entries at the time of or immediately following the event and maintain both the original and corrected entries when an error in the record is made.

(2) Written entries must be legible, in ink, and signed and dated.

(3) Electronic record entries must identify the date of the entry and the person who made the entry by his or her unique user ID.

NEW SECTION

WAC 388-829R-155 Are client records considered confidential? The overnight planned respite services provider must consider all client information privileged and confidential.

(1) Any transfer or inspection of records to parties other than DSHS must be authorized by DDA or through a release of information form that:

(a) Includes a specific description of the records the client consents to be released; and

(b) Is signed by the client or the client's legal representative.

(2) A signed release of information is valid for up to one year and must be renewed annually from the signature date.

NEW SECTION

WAC 388-829R-160 How long must an overnight planned respite services provider keep client records? An overnight planned respite services provider must keep a client's records for a period of six years from the end of the client's respite stay.

NEW SECTION

WAC 388-829R-165 What must overnight planned respite services providers do to plan for and respond to emergencies? (1) The overnight planned respite services provider must develop an emergency response plan to address natural and other disasters.

(2) In an emergency, the overnight planned respite services provider must:

(a) Immediately call 911 if it is a life threatening emergency;

(b) Provide emergency services;

(c) Notify DDA and the client's legal representative; and

(d) Submit a written report to DDA as required by the DDA residential reporting requirements specified in the overnight planned respite services contract.

NEW SECTION

WAC 388-829R-170 What records must overnight planned respite services providers keep? Overnight planned respite services providers must keep the following information:

(1) Client's name and address;

(2) Name, address, and telephone number of the client's relative or legal representative;

(3) A copy of the most recent ISP;

(4) A copy of the individual respite services agreement;

(5) Nurse delegation records;

(6) Water temperature monitoring records;

(7) Staff training records;

(8) Staff time sheets specific to locations worked;

(9) Payment records;

(10) Dates and times of service;

(11) Progress notes and incident reports;

(12) Medication intake records;

(13) A list of the client's personal property upon arrival and departure; and

(14) A record of money or gift cards managed by the respite provider on behalf of the client during the respite stay.

NEW SECTION

WAC 388-829R-175 Are overnight respite services providers mandatory reporters? (1) Yes. Overnight respite services providers are mandatory reporters. They are required to report all instances of suspected abandonment, abuse, financial exploitation, or neglect of vulnerable adults as defined in chapter 74.34 RCW.

(2) Overnight respite services providers must comply with DDA's residential reporting requirements specified in their contract.

(3) Providers must retain a signed copy of the DDA policy on residential reporting requirements specified in their contract and submit a signed copy of the policy to DDA.

NEW SECTION

WAC 388-829R-180 How must overnight respite services providers report abuse and neglect? Overnight respite services providers must immediately report suspected abandonment, abuse, financial exploitation, or neglect of vulnerable adults to:

(1) Adult protective services using the DSHS toll free telephone number, 1-866-END-HARM or 1-866-363-4276;

(2) DDA in compliance with the DDA residential reporting requirements as specified in the overnight planned respite services contract; and

(3) Law enforcement agencies as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

NEW SECTION

WAC 388-829R-185 Who oversees, monitors, and evaluates overnight planned respite services? DDA oversees and monitors the overnight planned respite services provider. DDA will conduct an evaluation in the home where the respite is provided at least every twelve months.

NEW SECTION

WAC 388-829R-190 How often must DDA evaluate overnight planned respite services providers? (1) DDA must complete its initial evaluation within the first ninety days after the overnight planned respite services provider begins providing respite services.

(2) Following DDA's initial evaluation, it must evaluate the overnight planned respite services provider at least every twelve months.

(3) DDA may conduct additional reviews at its discretion.

NEW SECTION

WAC 388-829R-195 How must the overnight planned respite services provider participate in the evaluation process? The overnight planned respite services provider must participate in the evaluation process by:

(1) Allowing scheduled and unscheduled home visits by DDA staff and DDA contracted evaluators;

(2) Providing information and documentation as requested by DDA and DDA contracted evaluators; and

(3) Cooperating in setting up appointments with DDA and DDA contracted evaluators.

NEW SECTION

WAC 388-829R-200 What occurs during the review and evaluation process? During the review and evaluation process, DDA contracted evaluators will review compliance with this chapter and the DDA overnight planned respite services provider contract.

NEW SECTION

WAC 388-829R-205 What happens if the overnight planned respite services provider is found to be out of compliance? (1) If DDA finds in its evaluation that the overnight planned respite services provider is out of compliance with any part of this chapter or the DDA contract, the provider and DDA must develop a corrective action plan.

(2) The corrective action plan must:

(a) Outline methods for the provider to comply with the required corrections; and

(b) Provide a time frame for the provider to complete the corrective actions.

NEW SECTION

WAC 388-829R-210 When may DDA stop the authorization for payment or terminate a contract for the services of an overnight planned respite services provider? DDA may stop the authorization for payment or terminate a

contract for the services of an overnight planned respite services provider when:

(1) The provider demonstrates inadequate performance or inability to deliver quality care that jeopardizes the client's health, safety, or well-being;

(2) The provider does not complete the corrective actions within the agreed upon time frame;

(3) The provider fails to comply with the requirements of this chapter or the overnight planned respite services provider contract; or

(4) DDA has a reasonable, good faith belief that the client's health, safety, or well-being is at risk.

NEW SECTION

WAC 388-829R-215 May the overnight planned respite services provider request an administrative hearing to contest DDA's decision to stop payment or terminate its contract? No. The overnight planned respite services provider may not contest the decision to stop payment or termination of the contract by administrative hearing. A client may challenge DDA's decision to deny a provider of choice.

WSR 16-17-008**PERMANENT RULES****DEPARTMENT OF****FISH AND WILDLIFE**

[Order 16-201—Filed August 4, 2016, 1:26 p.m., effective September 4, 2016]

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

Purpose: Recreational salmon fishing rules based on North of Falcon recommendations change from year to year to reflect current resource availability and to achieve conservation goals. Amendments to Puget Sound recreational salmon fishing rules are needed to implement the agreed-upon changes.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-124; and amending WAC 220-55-220, 220-310-190, 220-56-195, 232-28-621, and 220-56-180.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047.

Adopted under notice filed as WSR 16-13-142 on June 22, 2016.

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 5, Repealed 1.

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

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

Date Adopted: August 2, 2016.

J. W. Unsworth
Director

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 16-18 issue of the Register.

WSR 16-17-009
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 4, 2016, 1:55 p.m., effective September 4, 2016]

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

Purpose: The department is amending chapters 388-823, 388-825, 388-828, 388-831 and 388-845 WAC, and creating new sections in chapter 388-845 WAC. The rule changes are related to the individual and family services (IFS) waiver, the community first choice (CFC) program, the client's choice for place of assessment, and overnight planned respite services.

Changes Related to the IFS Waiver: Once SSB 6387 of the 63rd legislature 2014 regular session was passed, developmental disabilities administration (DDA) worked on the new required IFS waiver while at the same time identifying and programming the necessary enhancements to the statewide comprehensive assessment reporting evaluation (CARE) assessment tool to incorporate the waiver into our daily work process. Our intent was to be ready to file the emergency rules and implement the system changes to CARE upon the waiver approval date given by Centers for Medicare and Medicaid Services (CMS). Once CMS approved our IFS waiver, we filed the CR-103E to make those changes to rule effective by emergency rules on June 1, 2015. This was a short period of time from when CMS approved the waiver to when the waiver would be effective. Although we had also filed the CR-102 and held the public hearing, we were unable to make those rules permanent through the regular rule-making process before additional changes were needed in some sections of chapter 388-845 WAC due to the CMS implementation date for the new CFC program.

Changes Related to the CFC Program: ESHB 2746 requires DSHS to refinance personal care services and establish a 1915(k) CFC program per §1915(k) of the Social Security Act. To that end, DSHS worked to develop a state plan amendment for implementation after CMS approval. This new program also required modifications to our statewide CARE assessment tool and updates to rules, some of which were the same sections in chapter 388-845 WAC that were effective via emergency rules but had not yet completed the permanent rule-making process.

Changes Related to Where the DDA Assessment and Reassessment is Administered: These changes more closely align our rules with 42 C.F.R. 441.540 (a)(3) to allow the individual to select a time and location for their convenience for assessments.

Changes Related to the Definition of Overnight Planned Respite Services: Rule changes to implement overnight planned respite services, as approved in ESSB 6052.S.L. of the 64th legislative 2015 3rd sp. sess., are being implemented by a different emergency rule filing. However, we are including the definition changes in this filing.

Citation of Existing Rules Affected by this Order: Amending WAC 388-823-0010 Definitions, 388-825-020 Definitions, 388-825-057 Am I eligible to receive paid services from DDD?, 388-825-0571 What services am I eligible to receive from DDD if I am under the age of eighteen, have been determined to meet DDD eligibility requirements, and I am in a dependency guardianship or foster care with children's administration?, 388-825-059 How will I know which paid services I will receive?, 388-825-068 What medicaid state plan services may DDD authorize?, 388-825-083 Is there a comprehensive list of waiver and state-only DDD services?, 388-825-305 What service providers are governed by the qualifications in these rules?, 388-825-310 What are the qualifications for providers?, 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, personal care services through the medicaid personal care program or the DDD HCBS Basic, Basic Plus, CIIBS, or Core waivers, or attendant care services?, 388-825-330 What is required for agencies to provide care in the home of a person with developmental disabilities?, 388-825-355 Are there any educational requirements for individuals providing respite care, attendant care, or personal care services?, 388-828-1020 What definitions apply to this chapter?, 388-828-1060 What is the purpose of the DDD assessment?, 388-828-1500 When does DDD conduct a reassessment?, 388-828-1520 Where is the DDD assessment and reassessment administered?, 388-828-1540 Who participates in your DDD assessment?, 388-828-8000 What is the purpose of the individual support plan (ISP) module?, 388-831-0065 What if I refuse to participate in the risk assessment?, 388-831-0160 What services may I receive if I refuse placement in the community protection program?, 388-845-0001 Definitions, 388-845-0015 What HCBS waivers are provided by the developmental disabilities administration (DDA)?, 388-845-0020 When were the HCBS waivers effective?, 388-845-0030 Do I meet criteria for HCBS waiver-funded services?, 388-845-0041 What is DDA's responsibility to provide my services under the DDA HCBS waivers administered by DDA?, 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled?, 388-845-0052 What is the process if I am already on a DDA HCBS waiver and request enrollment onto a different waiver DDA HCBS?, 388-845-0055 How do I remain eligible for the waiver?, 388-845-0060 Can my waiver enrollment be terminated?, 388-845-0100 What determines which waiver I am assigned to?, 388-845-0105 What criteria determine assignment to the community protection waiver?, 388-845-0110 Are there limitations to the waiver services I can receive?, 388-845-0111 Are there limitations regarding who

can provide services?, 388-845-0115 Does my waiver eligibility limit my access to DDA nonwaiver services?, 388-845-0200 What waiver services are available to me?, 388-845-0210 Basic Plus waiver services, 388-845-0215 Core waiver services, 388-845-0220 Community protection waiver services, 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services, 388-845-0415 What is assistive technology?, 388-845-0420 Who is a qualified provider of assistive technology?, 388-845-0425 Are there limits to the assistive technology I can receive?, 388-845-0505 Who is a qualified provider of behavior support and consultation?, 388-845-0510 Are there limits to the behavior support and consultation I can receive?, 388-845-0820 Are there limits to my use of emergency assistance?, 388-845-0900 What are environmental accessibility adaptations?, 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations?, 388-845-0910 What limitations apply to environmental accessibility adaptations?, 388-845-1015 Are there limits to the extended state plan services I can receive?, 388-845-1040 Are there limits to the individualized technical assistance services I can receive?, 388-845-1110 What are the limits of behavioral health crisis diversion bed services?, 388-845-1150 What are behavioral health stabilization services?, 388-845-1160 Are there limitations to the behavioral health stabilization services that I can receive?, 388-845-1170 What is nurse delegation?, 388-845-1180 Are there limitations to the nurse delegation services that I receive?, 388-845-1300 What are personal care services?, 388-845-1310 Are there limits to the personal care services I can receive?, 388-845-1410 Are there limits to the prevocational services I can receive?, 388-845-1600 What is respite care?, 388-845-1605 Who is eligible to receive respite care?, 388-845-1607 Can someone who lives with me be my respite provider?, 388-845-1620 Are there limits to the respite care I can receive?, 388-845-1660 Are there limitations to the sexual deviancy evaluations I can receive?, 388-845-1700 What is skilled nursing?, 388-845-1710 Are there limitations to the skilled nursing services I can receive?, 388-845-1800 What are specialized medical equipment and supplies?, 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies?, 388-845-1840 What is specialized nutrition and specialized clothing?, 388-845-1845 Who are qualified providers of specialized nutrition and specialized clothing?, 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing?, 388-845-1910 Are there limitations to the specialized psychiatric services I can receive?, 388-845-2000 What is staff/family consultation and training?, 388-845-2005 Who is a qualified provider of staff/family consultation and training?, 388-845-2010 Are there limitations to the staff/family consultation and training I can receive?, 388-845-2160 What is therapeutic equipment and supplies?, 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies?, 388-845-2210 Are there limitations to the transportation services I can receive?, 388-845-2260 What are vehicle modifications?, 388-845-2270 Are there limitations to my receipt of vehicle modification services?, 388-845-3000 What is the process for determining the services I need?, 388-845-3055 What is a waiver individual support plan (ISP)?, 388-845-3056 What if I need assistance to

understand my individual support plan?, 388-845-3060 When is my individual support plan effective?, 388-845-3061 Can a change in my individual support plan be effective before I sign it?, 388-845-3062 Who is required to sign or give verbal consent to the individual support plan?, 388-845-3063 Can my individual support plan be effective before the end of the month?, 388-845-3065 How long is my plan effective?, 388-845-3070 What happens if I do not sign or verbally consent to my individual support plan (ISP)?, 388-845-3075 What if my needs change? and 388-845-3085 What if my needs exceed what can be provided under the IFS, CIIBS, Core or Community Protection waiver?; and new WAC 388-845-0230 What is the scope of services for the individual and family services (IFS) waiver?, 388-845-0650 What are community engagement services?, 388-845-0655 Who are qualified providers of community engagement services?, 388-845-0660 Are there limitations to the community engagement services you can receive?, 388-845-1190 What is peer mentoring?, 388-845-1191 Who are qualified providers of peer mentoring?, 388-845-1192 What limitations are there for peer mentoring?, 388-845-1195 What is person-centered plan facilitation?, 388-845-1196 Who are qualified providers of person-centered plan facilitation?, 388-845-1197 What limitations are there for person-centered plan facilitation?, 388-845-1855 What is specialized clothing?, 388-845-1860 Who are qualified providers of specialized clothing?, 388-845-1865 Are there limitations to your receipt of specialized clothing?, 388-845-2130 What are supported parenting services?, 388-845-2135 Who are qualified providers of supported parenting services?, and 388-845-2140 Are there any limitations on your receipt of supported parenting services?

Statutory Authority for Adoption: SSB 6387 of the 63rd legislature, 2014 regular session for the IFS waiver, ESHB 2746 of the 63rd legislative 2014 regular session for the CFC waiver, and ESSB 6052.S.L. of the 64th legislative 2015 3rd sp. sess., for the definition of overnight planned respite services.

Other Authority: RCW 71A.12.030, 71A.12.120.

Adopted under notice filed as WSR 16-09-035 on April 14, 2016.

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 16, Amended 90, 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 16, Amended 90, Repealed 0.

Date Adopted: August 4, 2016.

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 16-18 issue of the Register.

WSR 16-17-017
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 16-200—Filed August 5, 2016, 1:57 p.m., effective September 5, 2016]

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

Purpose: The purpose of this rule change is to clarify Washington Administrative Code regarding recreational bottomfish and shellfish possession limits. These changes will make it clear that bottomfish and shellfish caught in the Pacific Ocean, and landed into a Washington port are subject to Washington personal use fishing regulations including possession limits. This change is particularly important for areas where management lines include ocean waters adjacent to both Oregon and Washington, where differential fishing regulations may be in place. Through the Pacific Fishery Management Council's biennial groundfish management process, specific management measures were developed through a public process that included stakeholder input, to regulate groundfish mortality to specific harvest limits for Washington state. Harvest limits and regulations are often different in each. Catch landed into Washington is attributed to Washington's harvest limits and if regulations allow for landings from a state (such as Oregon) with more liberal limits, Washington could be at risk for exceeding harvest levels that ensure that overharvest is not occurring.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-010 and 220-56-235.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Other Authority: C.F.R. Title 50, Part 660.

Adopted under notice filed as WSR 16-09-079 on April 18, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: August 5, 2016.

J. W. Unsworth
Director

AMENDATORY SECTION (Amending WSR 13-03-153, filed 1/23/13, effective 2/23/13)

WAC 220-20-010 General rules—Fish. (1) It is unlawful to take, fish for, possess or transport fish, shellfish, or fish or shellfish parts, in or from any waters or land within the jurisdiction of the state of Washington, or from the waters of the Pacific Ocean, except as provided by department rule. Specifically, persons delivering fish or shellfish caught in Pacific Ocean waters into Washington are subject to all Washington personal use fishing, possession, and licensing regulations.

(2) It is unlawful for any person who takes or possesses fish or shellfish taken from any of the waters or beaches of the Columbia River, the state of Washington, or the Pacific Ocean, for any purpose, to fail to submit the fish or shellfish for inspection by authorized department personnel. Violation of this subsection is punishable under RCW 77.15.360((g)) Unlawful interfering in department operations—Penalty.

(3) It is unlawful for the owner or operator of any fishing gear to refuse to submit to inspection of the gear in any manner specified by a fish and wildlife officer. Violation of this subsection is punishable under RCW 77.15.470.

(4) It is unlawful for any person to fish for fish or shellfish while in possession in the field of fish or shellfish that are in violation of the rules for the area fished. This subsection does not apply to vessels in transit. Violation of this subsection is punishable under RCW 77.15.380 or RCW 77.15.550, depending on the circumstances of the violation.

(5) It is unlawful to take, fish for, possess, injure, kill, or molest fish in any fishway, fish ladder, fish screen, holding pond, rearing pond, or other fish protective device, or to interfere with the proper operation of a fish protective device in any way. Violation of this subsection is punishable under RCW 77.15.370 or 77.15.380, depending on the circumstances of the violation.

(6) It is unlawful to take or possess any fish or shellfish smaller or larger than the minimum or maximum size limits or in excess of catch or possession limits prescribed by department rule. A person must immediately return to the water any fish or shellfish snagged, hooked, netted or gilled that do not conform to department size requirements or are in excess of catch or possession limits with the least possible injury to the fish or shellfish. Violation of this subsection is a misdemeanor punishable under RCW 77.15.380 or 77.15.550, depending on the circumstances of the violation.

(7) It is unlawful for any person or entity licensed by the department or bringing fish or shellfish into the state to fail to comply with the directions of authorized department personnel related to the collection of sampling data or material from fish or shellfish. It is also unlawful for any person or entity to fail to relinquish to the department, upon request, any part of a salmon or other fish containing coded-wire tags including, but not limited to, the snouts of salmon with clipped adipose fins.

(8) For the purposes of this section "delivery" means transportation by a private or commercial recreational fishing vessel. Delivery in Washington is complete when, within the state, the vessel anchors, moors, ties to a float or pier, or is placed or attempted to be placed on a boat trailer. Delivery is

also complete if the fish or shellfish are offloaded from the vessel within state waters.

AMENDATORY SECTION (Amending WSR 15-15-012, filed 7/2/15, effective 8/2/15)

WAC 220-56-235 Possession limits—Bottomfish. It is unlawful to fish for, retain, or possess sixgill, sevengill, or thresher sharks. It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use. The possession limit at any time may not exceed the equivalent of two daily limits in fresh, frozen or processed form. Unless otherwise provided, bottomfish fishing is open the entire year.

(1) Coastal (Catch Record Card Areas 1 through 4): Limit 12 fish total, except limit 10 fish total east of the Bonilla-Tatoosh line, of all species and species groups of bottomfish, which may include no more than:

(a) Lingcod: 2 fish. Minimum length is 22 inches in Catch Record Card Areas 1 through 4.

(b) Rockfish: 10 fish(~~(-Release all)~~) in aggregate except the possession limit for canary rockfish and yelloweye rockfish is 0. In Marine Area 4 east of the Bonilla-Tatoosh line: 6 fish. Only black or blue rockfish may be retained.

(c) Wolf-eel: 0 fish from Catch Record Card Area 4.

(d) Cabezon:

(i) Marine Areas 1 through 3: 2 fish.

(ii) Marine Area 4: 1 fish; the minimum size limit is 18 inches.

(2) Inner Puget Sound (Catch Record Card Areas 5 through 13):

(a) Catch Record Card Areas 5 and 6: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish in Marine Area 5 except	1 fish May 1 through September 30. Only black or blue rockfish may be retained.
----------------------------------	---

in Marine Area 5 west of Slip Point	3 fish. Only black or blue rockfish may be retained.
-------------------------------------	--

in Marine Area 6.	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Pollock	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pacific hake	2 fish

(b) Catch Record Card Area 7: 15 fish total for all species of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish

Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pollock	2 fish
Pacific hake	2 fish

(c) Catch Record Card Areas 8-1 through 11 and 13: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pacific hake	0 fish

(d) Catch Record Card Area 12: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	0 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	0 fish
Wolf-eel	0 fish
Cabezon	0 fish
Pacific hake	0 fish

(e) It is unlawful to possess lingcod taken by angling that are under 26 inches in length or over 36 inches in length. It is unlawful to possess lingcod taken by spear fishing that are over 36 inches in length.

(f) In Marine Areas 5 through 11 and 13, the minimum size limit for cabezon is 18 inches. All cabezon must be released in Catch Record Card Areas 5 through 11 and 13 from December 1 through April 30.

(g) In Catch Record Card Area 5, the daily limit for rockfish is the first legal rockfish caught, except that west of Slip Point, the daily limit for rockfish is the first three legal rockfish caught. Only black or blue rockfish may be retained. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

(h) In Catch Record Card Area 5, it is unlawful to take rockfish by spear fishing except when this area is open to spear fishing for lingcod.

WSR 16-17-028
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed August 8, 2016, 2:30 p.m., effective August 31, 2016]

Effective Date of Rule: August 31, 2016.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: This permanent rule becomes effective on August 31, 2016, which is eight days before the effective date otherwise established by RCW 34.05.380(2). This earlier effective date is necessary because the 2016-17 school year begins on September 1, 2016, and failing to have the permanent rule in place by September 1 will imminently peril the welfare of public school students and personnel by disrupting the uniformity of the statewide teacher and principal evaluation system and creating uncertainty regarding the applicability of the law in the new school year.

Purpose:

- Fix inconsistencies in titles and terminology, clarifying sections of the WAC that pertain to teachers and those that pertain to principals and assistant principals.
- Remove a redundant section and references to repealed sections of RCW.
- Clarify the definition of "observation" to include observing teacher duties that may take place outside the regular classroom.
- Revise the scoring process for the focused evaluation for teachers and principals/assistant principals, so that educators who achieve a proficient or distinguished rating on the summative comprehensive evaluation choose a challenging criterion for the focused evaluation process and pursue professional growth in that area, without fear of probation.

Citation of Existing Rules Affected by this Order: Repealing WAC 392-191A-200; and amending WAC 392-191A-030, 392-191A-070, 392-191A-080, 392-191A-090, 392-191A-100, 392-191A-110, 392-191A-120, 392-191A-130, 392-191A-160, 392-191A-170, 392-191A-180, and 392-191A-190.

Statutory Authority for Adoption: RCW 28A.405.100.

Adopted under notice filed as WSR 16-12-092 on May 31, 2016.

Changes Other than Editing from Proposed to Adopted Version:

- Removed two references to WAC that have been repealed (WAC 392-191A-030).
- Removed proposed language addition to allow teachers and principals to focus on an area of expertise (WAC 392-191A-120(2) and 392-191A-190(2)).
- Changed the word "determined" to "assigned" in WAC 392-191A-120(5) and 392-191A-190(5).
- Clarified the language that tells which evaluation is being considered in WAC 392-191A-120(5) and 392-191A-190(5).
- Added a subsection to WAC 392-191A-120 and 392-191A-190 that directs districts to implement the changes in those sections in the 2016-17 or 2017-18 school year.

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 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 13, Repealed 0.

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

Date Adopted: July 29, 2016.

Randy Dorn
 State Superintendent
 of Public Instruction

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-030 Definitions. The following definitions apply to the terms used in this chapter:

"Certificated classroom teacher" and "teacher" mean a certificated employee who provides academically focused instruction to students and holds one or more of the certificates pursuant to WAC 181-79A-140 (1) through (3) and (6)(a) through (e) and (g).

"Certificated principal," "principal" and "assistant principal" mean a person who is employed to supervise the operation and management of a school as provided by RCW 28A.400.100 and holds certificates pursuant to WAC 181-79A-140 (4)(a) or (6)(h).

"Certificated support personnel" and "certificate support person" mean a certificated employee who provides services to students and holds one or more of the educational staff associate certificates pursuant to WAC 181-79A-140(5).

"Evaluation" shall mean the ongoing process of identifying, gathering and using information to improve professional performance, assess total job effectiveness, and make personnel decisions.

"Evaluation criteria" means minimum evaluation criteria for classroom teachers specified in WAC (~~(392-191-006)~~) 392-191A-060, the minimum evaluation criteria for principals specified in WAC (~~(392-191-014)~~) 392-191A-150, and the minimum evaluation criteria for certificated support personnel specified in WAC 392-191-020 and 392-191A-210.

"Evidence" means observed practice, products or results of a certificated classroom (~~(teacher)~~) teacher's or certificated principal's work that demonstrates knowledge and skills of the educator with respect to the four-level rating system.

"Four-level rating system" means the continuum of performance that indicates the extent to which the criteria have been met or exceeded.

"Instructional framework" means one of the approved instructional frameworks adopted by the superintendent of

public instruction to support the four-level rating system pursuant to RCW 28A.405.100.

"Leadership framework" means one of the approved leadership frameworks adopted by the superintendent of public instruction to support the four-level rating system pursuant to RCW 28A.405.100.

"Observe" or "observation" means the gathering of evidence made through classroom or worksite visits, or other visits, work samples, or conversations that allow for the gathering of evidence of the performance of assigned duties for the purpose of examining evidence over time against the instructional or leadership framework rubrics pursuant to this section.

"Rubrics" or "rubric row" means the descriptions of practice used to capture evidence and data and classify teaching or leadership performance and student growth using the evaluation criteria and the four-level rating system.

"Scoring band" means the adopted range of scores used to determine the final summative score for a certificated classroom teacher or principal.

"Student growth" means the change in student achievement between two points in time.

"Student growth data" means relevant multiple measures that can include classroom-based, school-based, school district-based, and state-based tools.

"Summative performance ratings" means the four performance levels applied using the four-level rating system: Level 1 - Unsatisfactory; Level 2 - Basic; Level 3 - Proficient; Level 4 - Distinguished.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-070 Minimum procedural standards—Frequency of comprehensive evaluation for certificated classroom teachers. (1) School districts must observe all classroom teachers for the purposes of a comprehensive evaluation at least twice each school year in the performance of their assigned duties. School districts must observe all employees who are subject to a comprehensive evaluation for a period of no less than sixty minutes during each school year.

(2) School districts must observe new employees at least once for a total observation time of thirty minutes during the first ninety calendar days of the new employee's employment period.

(3) School districts must observe employees in the third year of provisional status at least three times in the performance of the employee. The total observation time for the school year must not be less than ninety minutes for such employees.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-080 Minimum procedural standards—Conduct of the comprehensive evaluation for certificated classroom teachers. The conduct of the evaluation of classroom teachers must include, at a minimum, the following:

(1) All eight teaching criteria must contribute to the overall summative evaluation and must be completed at least once every four years.

(2) The evaluation must include an assessment of the criteria using the instructional framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(3) The principal or his/her designee at the school to which the certificated employee is assigned must make observations and written comments pursuant to RCW 28A.405.100.

(4) The opportunity for the employee to attach written comments to his/her evaluation report.

(5) Criterion scores, including instructional and student growth rubrics, must be determined by an analysis of evidence.

(6) An overall summative score shall be derived by a calculation of all criterion scores and determining the final four-level rating based on the superintendent of public instruction's determined summative evaluation scoring band.

(7) Upon completion of the overall summative scoring process, the evaluator will combine only the student growth rubric scores to assess the certificated classroom teacher's student growth impact rating.

(8) The student growth impact rating will be determined by the superintendent of public instruction's student impact rating scoring band.

(9) A student growth score of "1" in any of the rubric rows will result in an overall low student growth impact rating.

(10) Evaluators must analyze the student growth score in light of the overall summative score and determine outcomes.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-090 Minimum procedural standards—Outcomes of the student growth rating for certificated classroom teachers. The following outcomes of the student growth impact rating analysis will apply:

(1) Certificated classroom teachers with preliminary rating of distinguished with low student growth rating will receive an overall proficient rating.

(2) Certificated classroom teachers with low student growth rating will engage, with their evaluator, in a student growth inquiry pursuant to WAC ((392-191-010)) 392-191A-100.

(3) Certificated classroom teachers with a preliminary rating of distinguished with average or high student growth rating will receive an overall distinguished rating and will be formally recognized and/or rewarded.

(4) The evaluations of certificated classroom teachers with a preliminary rating of unsatisfactory and high student growth rating will be reviewed by the evaluator's supervisor.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-100 Minimum procedural standards—Conduct of a student growth inquiry for certifi-

certificated classroom teachers. Within two months of receiving the low student growth score or at the beginning of the following school year, one or more of the following must be initiated by the evaluator:

- Examine student growth data in conjunction with other evidence including observation, artifacts and other student and teacher information based on appropriate classroom, school, school district and state-based tools and practices;
- Examine extenuating circumstances which may include one or more of the following: Goal setting process; content and expectations; student attendance; extent to which standards, curriculum and assessment are aligned;
- Schedule monthly conferences focused on improving student growth to include one or more of the following topics: Student growth goal revisions, refinement, and progress; best practices related to instruction areas in need of attention; best practices related to student growth data collection and interpretation;
- Create and implement a professional development plan to address student growth areas.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-110 Minimum procedural standards—Frequency of observation for focused evaluation for certificated classroom teachers. ~~((If the evaluation of the certificated classroom teacher includes an assessment of a criterion that requires observation the following shall apply:))~~ School districts must ~~((observe))~~ ensure that all classroom teachers are observed for the purposes of focused evaluation at least twice each school year in the performance of their assigned duties. As appropriate, the evaluation of the certificated classroom teacher may include the observation of duties that occur outside the classroom setting. School districts must ~~((observe))~~ ensure that all ~~((employees))~~ certificated classroom teachers who are subject to a focused evaluation are observed for a period of no less than sixty minutes during each school year.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-120 Minimum procedural standards—Conduct of the focused evaluation for certificated classroom teachers. The conduct of the evaluation of classroom teachers must include, at a minimum, the following:

- (1) One of the eight criterion for certificated classroom teachers must be assessed in every year that a comprehensive evaluation is not required.
- (2) The selected criterion must be approved by the teacher's evaluator and may have been identified in a previous comprehensive summative evaluation as benefiting from additional attention.
- (3) The evaluation must include an assessment of the criterion using the instructional framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.
- (4) The focused evaluation will include the student growth rubrics of the selected criterion. If criterion 3, 6 or 8

are selected, evaluators will use those student growth rubrics. If criterion 1, 2, 4, 5, or 7 is selected, evaluators will use criterion 3 or 6 student growth rubrics.

(5) A summative score is ~~((determined through the scoring of the instructional and student growth rubrics for the criterion selected))~~ assigned using the summative score from the most recent comprehensive evaluation. This score becomes the focused summative evaluation score for any of the subsequent years following the comprehensive summative evaluation in which the certificated classroom teacher is placed on a focused evaluation. Should a teacher provide evidence of exemplary practice on the chosen focused criterion, a level 4 (Distinguished) score may be awarded by the evaluator.

(6) Should an evaluator determine that a teacher on a focused evaluation should be moved to a comprehensive evaluation for that school year, the teacher must be informed of this decision in writing at any time on or before December 15th.

(7) Districts shall implement the changes described in subsections (5) and (6) in this section no later than the 2017-18 school year. The district has the option to implement beginning in either the 2016-17 or the 2017-18 school year.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-130 Minimum procedural standards—Procedures to be used in making evaluations for certificated classroom teachers. The following procedures must be used in making evaluations:

- (1) Following each observation, or series of observations, the principal or his/her designee must:
 - (a) Promptly document the results of the observation in writing; and
 - (b) Provide the employee with a copy of the written observation report within three days after such report is prepared.
- (2) Each classroom teacher will have the opportunity for a minimum of two confidential conferences during each school year with his/her principal or principal's designee either:
 - (a) Following receipt of the written evaluation results; or
 - (b) At a time mutually satisfactory to the participants.
- (3) The purpose of each such conference will be to provide additional evidence by either the evaluator or certificated classroom teacher to aid in the assessment of the certificated classroom teacher's professional performance against the instructional framework rubrics.
- (4) If other evaluators are used, additional procedures may be adopted pursuant to local policy.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-160 Minimum procedural standards—Conduct of the comprehensive evaluation for certificated principals and assistant principals. The conduct of the evaluation of principals and assistant principals must include, at a minimum, the following:

- (1) All eight principal criteria must contribute to the overall summative evaluation.

(2) The evaluation (~~(cycle)~~) must include an assessment of the criteria using the leadership framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(3) Criterion scores, including leadership and student growth rubrics, must be determined by an analysis of evidence.

(4) An overall summative score shall be derived by a calculation of all summative scores and determining the final four level rating based on the superintendent of public instruction's determined summative evaluation scoring band.

(5) Upon completion of the overall summative scoring process, the evaluator will combine only the student growth rubric scores to assess the certificated principal or assistant principal's student growth impact rating.

(6) The student growth impact rating will be determined by the superintendent of public instruction's student impact rating scoring band.

(7) A student growth score of "1" in any of the rubric rows will result in an overall low student growth impact rating.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-170 Minimum procedural standards—Outcomes of the ~~((comprehensive evaluation))~~ student growth rating for certificated principals and assistant principals. The following outcomes of the student growth impact rating analysis will apply:

(1) Certificated principals and assistant principals with preliminary rating of distinguished with low student growth rating will receive an overall proficient rating.

(2) Certificated principals and assistant principals with low student growth rating will engage, with their evaluator, in a student growth inquiry (~~(focusing on the specific areas of weak student impact))~~ pursuant to WAC 392-191A-180.

(3) Certificated principals and assistant principals with preliminary rating of distinguished with average or high student growth rating will receive an overall distinguished rating and will be formally recognized and/or rewarded.

(4) The evaluations of certificated principals and assistant principals with preliminary rating of unsatisfactory and high student growth rating will be reviewed by the evaluator's supervisor.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-180 Minimum procedural standards—Conduct of a student growth inquiry for certificated principals and assistant principals. Within two months of receiving the low student growth score or at the beginning of the following school year, one or more of the following must be initiated by the evaluator:

- Examine student growth data in conjunction with other evidence including observation, artifacts and other student and teacher information based on appropriate classroom, school, school district and state-based tools and practices;

- Examine extenuating circumstances which may include one or more of the following: Goal setting process; content and expectations; attendance; extent to which standards, curriculum and assessment are aligned;

- Schedule monthly conferences focused on improving student growth to include one or more of the following topics: Student growth goal revisions, refinement, and progress; best practices related to instruction areas in need of attention; best practices related to student growth data collection and interpretation;

- Create and implement a professional development plan to address student growth areas.

AMENDATORY SECTION (Amending WSR 13-05-009, filed 2/7/13, effective 3/10/13)

WAC 392-191A-190 Minimum procedural standards—Conduct of the focused evaluation for certificated principals and assistant principals. The conduct of the evaluation of principals or assistant principals must include, at a minimum, the following:

(1) One of the eight criterion for certificated principals or assistant principals must be assessed in every year that a comprehensive evaluation is not required.

(2) The selected criterion must be approved by the principal's evaluator and may have been identified in a previous comprehensive summative evaluation as benefiting from additional attention.

(3) The evaluation must include an assessment of the criterion using the leadership framework rubrics and the superintendent of public instruction's approved student growth rubrics. More than one measure of student growth data must be used in scoring the student growth rubrics.

(4) The focused evaluation will include the student growth rubrics selected by the principal or assistant principal and approved by the principal's evaluator. If criterion 3, 5, or 8 is selected, evaluators will use those student growth rubrics. If criterion 1, 2, 4, 6, or 7 is selected, evaluators will use criterion 3, 5, or 8 student growth rubrics.

(5) A summative score is (~~(determined through the scoring of the leadership and student growth rubrics for the criterion selected))~~ assigned using the summative score from the most recent comprehensive evaluation. This score becomes the focused summative evaluation score for any of the subsequent years following the comprehensive summative evaluation in which the certificated principal or assistant principal is placed on a focused evaluation. Should a principal or assistant principal provide evidence of exemplary practice on the chosen focused criterion, a level 4 (Distinguished) score may be awarded by the evaluator.

(6) Should an evaluator determine that a principal or assistant principal on a focused evaluation should be moved to a comprehensive evaluation for that school year, the principal or assistant principal must be informed of this decision in writing at any time on or before December 15th.

(7) Districts shall implement the changes described in subsections (5) and (6) in this section no later than the 2017-18 school year. A district has the option to implement beginning in either the 2016-17 or the 2017-18 school year.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 392-191A-200 Summative performance ratings—
Descriptors.

WSR 16-17-033**PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed August 9, 2016, 9:30 a.m., effective September 9, 2016]

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

Purpose: Three commercial bulb producers remain in Washington state. Therefore, the commission no longer meets the requirements of chapter 15.66 RCW, Washington state agricultural commodity commissions, particularly RCW 15.66.110(1), which requires the commission to be composed of not less than five members. This rule-making order repeals chapter 16-524 WAC, Tulip, iris, and narcissus bulbs, and terminates the Washington bulb commission.

Citation of Existing Rules Affected by this Order: Repealing 16-524-002, 16-524-003, 16-524-010, 16-524-020, 16-524-030, 16-524-040, 16-524-050, 16-524-060, 16-524-070, and 16-524-110.

Statutory Authority for Adoption: RCW 15.66.040 and 15.66.055.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 16-11-097 on May 18, 2016.

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: August 9, 2016.

Kirk Robinson
Deputy Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 16-524-002 Director's findings and decision
approving a marketing order.

WAC 16-524-003 Director's order making marketing
order effective.

WAC 16-524-010 Definitions.

WAC 16-524-020 Bulb commission.

WAC 16-524-030 Marketing order purposes.

WAC 16-524-040 Assessments and assessment funds.

WAC 16-524-050 Information reports.

WAC 16-524-060 Separability.

WAC 16-524-070 Effective time.

WAC 16-524-110 Producer's annual sales report—Form.

WSR 16-17-036**PERMANENT RULES****BOARD OF ACCOUNTANCY**

[Filed August 9, 2016, 12:03 p.m., effective September 9, 2016]

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

Purpose: WAC 4-30-060, rule making is needed:

Due to the passage of senate [house] bill ESHB 2433 on March 31, 2016;

To implement definitions of fiduciary duty and breach of fiduciary duty;

To add language to WAC 4-30-142 (5)(h) to include not issuing an asset distribution report not containing all of the disclosures outlined in RCW 11.96A.070 [(1)](b) under the description of discharging a trustee's duties in a negligent manner or breaching one's fiduciary duties.

Citation of Existing Rules Affected by this Order: Amending WAC 4-30-010, 4-30-034, 4-30-058, 4-30-090, 4-30-110, 4-30-112, 4-30-114, 4-30-130, 4-30-140, and 4-30-142.

Statutory Authority for Adoption: RCW 18.04.055.

Adopted under notice filed as WSR 16-13-109 on June 20, 2016.

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 10, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, 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 10, Repealed 0.

Date Adopted: August 9, 2016.

Charles E. Satterlund, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-010 Definitions. For purposes of these rules the following terms have the meanings indicated unless a different meaning is otherwise clearly provided in these rules:

(1) **"Act"** means the Public Accountancy Act codified as chapter 18.04 RCW.

(2) **"Active individual participant"** means an individual whose primary occupation is at the firm or affiliated entity's business. An individual whose primary source of income from the business entity is provided as a result of passive investment is not an active individual participant.

(3) **"Affiliated entity"** means any entity, entities or persons that directly or indirectly through one or more relationships influences or controls, is influenced or controlled by, or is under common influence or control with other entities or persons. This definition includes, but is not limited to, parents, subsidiaries, investors or investees, coinvestors, dual employment or management in joint ventures or brother-sister entities.

(4) **"Applicant"** means an individual who has applied:

(a) To take the national uniform CPA examination;

(b) For an initial individual license, an initial firm license, or initial registration as a resident nonlicensee owner;

(c) To renew an individual license, a CPA-Inactive certificate, a CPA firm license, or registration as a resident nonlicensee firm owner;

(d) To reinstate an individual license, a CPA-Inactive certificate, registration as a resident nonlicensee firm owner, or practice privileges.

(5) **"Attest"** means providing the following (~~financial statement~~) services:

(a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;

(b) Any review of a financial statement to be provided in accordance with the statements on standards for accounting and review services;

(c) Any (~~examination of prospective financial information~~) engagement to be performed in accordance with the statements on standards for attestation engagements; and

(d) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.

(6) **"Audit," "review,"** and **"compilation"** are terms reserved for use by licensees, as defined in subsection ~~((28))~~ (30) of this section.

(7) **"Board"** means the board of accountancy created by RCW 18.04.035.

(8) **"Breach of fiduciary responsibilities/duties"** means when a person who has a fiduciary responsibility or duty acts in a manner adverse or contrary to the interests of the person to whom they owe the fiduciary responsibility or duty. Such actions would include profiting from their relationship without the express informed consent of the beneficiary of the fiduciary relationship, or engaging in activities that represent a conflict of interest with the beneficiary of the fiduciary relationship.

(9) **"Certificate"** means a certificate as a CPA-Inactive issued in the state of Washington prior to July 1, 2001, as authorized by the act, unless otherwise defined in rule.

~~((9))~~ (10) **"Certificate holder"** means the holder of a valid CPA-Inactive certificate where the individual is not a licensee and is prohibited from practicing public accounting.

~~((10))~~ (11) **"Client"** means the person or entity that retains a licensee, as defined in subsection ~~((28))~~ (30) of this section, a CPA-Inactive certificate holder, a nonlicensee firm owner of a licensed firm, or an entity affiliated with a licensed firm to perform professional services through other than an employer/employee relationship.

~~((11))~~ (12) **"Commissions and referral fees"** are compensation arrangements where the primary contractual relationship for the product or service is not between the client and licensee, as defined in subsection ~~((28))~~ (30) of this section, CPA-Inactive certificate holder, nonlicensee firm owner of a licensed firm, or a person affiliated with a licensed firm; and

(a) Such persons are not primarily responsible to the client for the performance or reliability of the product or service; or

(b) Such persons add no significant value to the product or service; or

(c) A third party instead of the client pays the persons for the products or services.

~~((12))~~ (13) **"Compilation"** means providing a service to be performed in accordance with statements on standards for accounting and review services that is presenting in the form of financial statements, information that is the representation of management (owners) without undertaking to express any assurance on the statements.

~~((13))~~ (14) **"Contingent fees"** are fees established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service.

~~((14))~~ (15) **"CPA" or "certified public accountant"** means an individual holding a license to practice public accounting under chapter 18.04 RCW or recognized by the board in the state of Washington, including an individual exercising practice privileges pursuant to RCW 18.04.350(2).

~~((15))~~ (16) **"CPA-Inactive"** means an individual holding a CPA-Inactive certificate recognized in the state of Washington. An individual holding a CPA-Inactive certificate is prohibited from practicing public accounting and may only use the CPA-Inactive title if they are not offering accounting, tax, tax consulting, management advisory, or similar services to the public.

~~((16))~~ (17) **"CPE"** means continuing professional education.

~~((17))~~ (18) **"Fiduciary responsibility/duty"** means a relationship wherein one person agrees to act solely in another person's interests. Persons having such a relationship are fiduciaries and the persons to whom they owe the responsibility are principals. A person acting in a fiduciary capacity is held to a high standard of honesty and disclosure in regard to a principal. Examples of fiduciary relationships include those between broker and client, trustee and beneficiary, executors or administrators and the heirs of a decedent's estate, and an officer or director and the owners of the entity.

(19) **"Firm"** means a sole proprietorship, a corporation, or a partnership. "Firm" also means a limited liability com-

pany or partnership formed under chapters 25.15 and 18.100 RCW and a professional service corporation formed under chapters 23B.02 and 18.100 RCW.

~~((18))~~ (20) "Firm mobility" means an out-of-state firm that is not licensed by the board and meets the requirements of RCW 18.04.195 (1)(a)(iii)(A) through (D) exercising practice privileges in this state.

(21) "Generally accepted accounting principles" (GAAP) is an accounting term that encompasses the conventions, rules, and procedures necessary to define accepted accounting practice at a particular time. It includes not only broad guidelines of general application, but also detailed practices and procedures. Those conventions, rules, and procedures provide a standard by which to measure financial presentations.

~~((19))~~ (22) "Generally accepted auditing standards" (GAAS) are guidelines and procedures, promulgated by the AICPA, for conducting individual audits of historical financial statements.

~~((20))~~ (23) "Holding out" means any representation to the public by the use of restricted titles as set forth in RCW 18.04.345 by a person that the person holds a license or practice privileges under the act and that the person offers to perform any professional services to the public. "Holding out" shall not affect or limit a person not required to hold a license under the act from engaging in practices identified in RCW 18.04.350.

~~((21))~~ "Home office" is the location specified by the client as the address to which a service is directed.

~~((22))~~ (24) "Inactive" means the individual held a valid certificate on June 30, 2001, has not met the current requirements of licensure and has been granted CPA-Inactive certificate holder status through the renewal process established by the board. A CPA-Inactive may not practice public accounting nor may the individual use the CPA-Inactive title if they are offering accounting, tax, tax consulting, management advisory, or similar services to the public.

~~((23))~~ (25) "Individual" means a living, human being.

~~((24))~~ (26) "Independence" means an absence of relationships that impair a licensee's impartiality and objectivity in rendering professional services for which a report expressing assurance is prescribed by professional standards.

~~((25))~~ (27) "Interactive self-study program" means a CPE program that provides feedback throughout the course.

~~((26))~~ (28) "IRS" means Internal Revenue Service.

~~((27))~~ (29) "License" means a license to practice public accounting issued to an individual or a firm under the act or the act of another state.

~~((28))~~ (30) "Licensee" means an individual or firm holding a valid license to practice public accounting issued under the act, including out-of-state individuals exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b).

~~((29))~~ (31) "Manager" means a manager of a limited liability company licensed as a firm under the act.

~~((30))~~ (32) "NASBA" means the National Association of State Boards of Accountancy.

~~((31))~~ (33) "Nonlicensee firm owner" means an individual, not licensed in any state to practice public accounting, who holds an ownership interest in a firm permitted to practice public accounting in this state.

~~((32))~~ (34) "PCAOB" means Public Company Accounting Oversight Board.

~~((33))~~ (35) "Peer review" means a study, appraisal, or review of one or more aspects of the attest or compilation work of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed, including a peer review, or any internal review or inspection intended to comply with quality control policies and procedures, but not including the "quality assurance review" under subsection (38) of this section.

~~((34))~~ (36) "Person" means any individual, nongovernmental organization, or business entity regardless of legal form, including a sole proprietorship, firm, partnership, corporation, limited liability company, association, or not-for-profit organization, and including the sole proprietor, partners, members, and, as applied to corporations, the officers.

~~((35))~~ (37) "Practice privileges" are the rights granted by chapter 18.04 RCW to a person who:

(a) Has a principal place of business outside of Washington state;

(b) Is licensed to practice public accounting in another substantially equivalent state;

(c) Meets the statutory criteria for the exercise of privileges as set forth in RCW 18.04.350(2) for individuals or RCW 18.04.195 (1)(b) for firms;

(d) Exercises the right to practice public accounting in this state individually or on behalf of a firm;

(e) Is subject to the personal and subject matter jurisdiction and disciplinary authority of the board in this state;

(f) Must comply with the act and all board rules applicable to Washington state licensees to retain the privilege; and

(g) Consents to the appointment of the issuing state board of another state as agent for the service of process in any action or proceeding by this state's board against the certificate holder or licensee.

~~((36))~~ (38) "Principal place of business" means the office location designated by the licensee for purposes of substantial equivalency and reciprocity.

~~((37))~~ (39) "Public practice" or the "practice of public accounting" means performing or offering to perform by a person or firm holding itself out to the public as a licensee, or as an individual exercising practice privileges, for a client or potential client, one or more kinds of services involving the use of accounting or auditing skills, including the issuance of ~~((audit))~~ reports," ~~((review reports," or "compilation reports" on financial statements,))~~ or one or more kinds of management advisory, or consulting services, or the preparation of tax returns, or the furnishing of advice on tax matters. The "practice of public accounting" shall not include practices that are permitted under the provisions of RCW 18.04.350(10) by persons or firms not required to be licensed under the act.

~~((38))~~ (40) "Quality assurance review or QAR" is the process, established by and conducted at the direction of the board, to study, appraise, or review one or more aspects of

the audit, compilation, review, and other professional services for which a report expressing assurance is prescribed by professional standards of a licensee or licensed firm in the practice of public accounting, by a person or persons who hold licenses and who are not affiliated with the person or firm being reviewed.

~~((39))~~ (41) **"Reciprocity"** means board recognition of licenses, permits, certificates or other public accounting credentials of another jurisdiction that the board will rely upon in full or partial satisfaction of licensing requirements.

~~((40))~~ (42) **"Referral fees"** see definition of "commissions and referral fees" in subsection ~~((11))~~ (12) of this section.

~~((41))~~ **"Reports on financial statements"** means ~~any reports or opinions prepared by licensees, based on services performed in accordance with generally accepted auditing standards, standards for attestation engagements, or standards for accounting and review services, as to whether the presentation of information used for guidance in financial transactions or for accounting for or assessing the status or performance of an entity, whether public, private, or governmental, conforms with generally accepted accounting principles or an "other comprehensive bases of accounting," or the presentation and disclosure requirements of other professional standards. "Reports on financial statements" does not include services referenced in RCW 18.04.350(10) provided by persons not holding a license under the act.~~

~~(42))~~ (43) **"Report,"** when used with reference to any attest or compilation service, means an opinion, report, or other form of language that states or implies assurance as to the reliability of the attested information or compiled financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in the practice of public accounting. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or firm is involved in the practice of public accounting, or from the language of the report itself. "Report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the attested information or compiled financial statements referred to and/or special competence of the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence. "Report" does not include services referenced in RCW 18.04.350 (10) or (11) provided by persons not holding a license under this chapter as provided in RCW 18.04.350(14).

(44) **"Representing oneself"** means having a license, practice privilege, certificate or registration that entitles the holder to use the title "CPA," "CPA-Inactive," or be a non-licensee firm owner.

~~((43))~~ (45) **"Rules of professional conduct"** means rules adopted by the board to govern the conduct of licensees, as defined in subsection ~~((28))~~ (30) of this section, while representing themselves to others as licensees. These rules also govern the conduct of CPA-Inactive certificate holders,

nonlicensee firm owners, and persons exercising practice privileges pursuant to RCW 18.04.350(2).

~~((44))~~ (46) **"SEC"** means the Securities and Exchange Commission.

~~((45))~~ (47) **"Sole proprietorship"** means a legal form of organization owned by one person meeting the requirements of RCW 18.04.195.

~~((46))~~ (48) **"State"** includes the states and territories of the United States, including the District of Columbia, Puerto Rico, Guam, and the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands at such time as the board determines that the Commonwealth of the Northern Mariana Islands is issuing licenses under the substantially equivalent standards of RCW 18.04.350 (2)(a).

~~((47))~~ (49) **"Statements on auditing standards (SAS)"** are interpretations of the generally accepted auditing standards and are issued by the Auditing Standards Board of the AICPA. Licensees are required to adhere to these standards in the performance of audits of financial statements.

~~((48))~~ (50) **"Statements on standards for accounting and review services (SSARS)"** are standards, promulgated by the AICPA, to give guidance to licensees who are associated with the financial statements of nonpublic companies and issue compilation or review reports.

~~((49))~~ (51) **"Statements on standards for attestation engagements (SSAE)"** are guidelines, promulgated by the AICPA, for use by licensees in attesting to assertions involving matters other than historical financial statements and for which no other standards exist.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-034 Must I respond to inquiries from the board? Yes. All licensees, including out-of-state individuals exercising practice privileges in this state under RCW 18.04.350(2) and out-of-state firms permitted to offer or render certain professional services in this state under the conditions prescribed in RCW 18.04.195 (1)(a) and (b), CPA-Inactive certificate holders, nonlicensee firm owners, and applicants must respond, **in writing**, to board communications requesting a response. Your response must be made within **twenty days of the date** the board's communication is posted in the U.S. mail. Communications from the board to you are directed to the last address you furnished the board.

AMENDATORY SECTION (Amending WSR 12-10-085, filed 5/2/12, effective 6/2/12)

WAC 4-30-058 Does the board authorize the use of any other titles or designations? Yes. RCW 18.04.350 ~~((13))~~ (14), Practices not prohibited, authorizes the board to allow the use of other titles (designations) if the individual using the title or designation is authorized at the time of use by a nationally recognized entity sanctioning the use of board authorized titles or designations. Accordingly, the board authorizes the use of the following titles and designations:

(1) Designations or titles authorized by the American Institute of Certified Public Accountants (AICPA);

(2) Designations or titles authorized by the Accreditation Council for Accountancy and Taxation located in Alexandria, Virginia, or its successor:

- "Accredited Business Accountant" or "ABA";
- "Accredited Tax Preparer" or "ATP"; and
- "Accredited Tax Advisor" or "ATA."

(3) Designations or titles authorized by the Certified Financial Planner Board of Standards in Denver, Colorado, or its successor:

- "Certified Financial Planner" or "CFP."

These authorized designations relate to title use only, are not limited to individuals who have held or are holding a license or certificate under the act, and do not authorize these other designated individuals to use the title "certified public accountant" or "CPA," or "CPA-inactive."

The board further authorizes the use of the designation "CPA retired" in this state by those individuals who, upon notice to the board to retire a license, meet the following criteria:

- Has reached sixty years of age and holds an active license in good standing; or
- At any age, has held an active license in good standing, not suspended or revoked, to practice public accounting in any state for a combined period of not less than twenty years.

AMENDATORY SECTION (Amending WSR 11-07-070, filed 3/22/11, effective 4/22/11)

WAC 4-30-090 Must an out-of-state individual holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state? No. Out-of-state individuals holding valid licenses to practice public accounting issued by a substantially equivalent state, may hold out and practice within Washington state and/or provide public accounting services in person, by mail, telephone, or electronic means to clients residing in Washington state without notice or payment of a fee. An individual who qualifies for practice privileges under RCW 18.04.350(2), and who performs any attest service described in RCW 18.04.010(1) may only do so through a firm that has obtained a license under RCW 18.04.195 and 18.04.215 or that meets the requirements for an exception from the firm licensure requirements under RCW 18.04.195 (1)(a)(iii)(A) through (D) or (b).

As a condition of this privilege, the out-of-state individual is deemed to have consented to:

- (1) The personal and subject matter jurisdiction and disciplinary authority of this state's board;
- (2) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules contained in Title 4 WAC;
- (3) The appointment of the state board which issued the certificate or license as their agent upon whom process may be served in any action or proceeding by this state's board against the certificate holder or licensee;
- (4) ~~((Render the following services for a client with a home office in this state only through a firm that has obtained a license from this state (RCW 18.04.195, 18.04.205 and WAC 4-30-110):~~

~~(a) Any audit or other engagement to be performed in accordance with the statements on auditing standards;~~

~~(b) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements; and~~

~~(c) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards.~~

~~(5))~~ Not render any professional services in this state unless the out-of-state individual is licensed to render such services in the state of licensure upon which the privilege is contingent;

~~((6))~~ (5) Cease offering or performing professional services in this state, individually and/or on behalf of a firm, if the license from the state of the out-of-state individual's principal place of business is no longer valid; and

~~((7))~~ (6) Cease offering or performing specific professional services in this state, individually and/or on behalf of a firm, if the license from the state of the out-of-state individual's principal place of business is restricted from offering or performing such specific professional services.

AMENDATORY SECTION (Amending WSR 11-07-070, filed 3/22/11, effective 4/22/11)

WAC 4-30-110 What are the allowable legal forms of organization and ownership requirements for a CPA firm? (1) Permitted forms of organization. A CPA firm may be organized as:

- (a) A proprietorship;
- (b) A partnership;
- (c) A professional corporation (PC) or professional service corporation (PS);
- (d) A limited liability company (LLC);
- (e) A limited liability partnership (LLP); or
- (f) Any other form of legal entity authorized by Washington state statute for use by a CPA firm.

(2) What happens when a CPA firm alters its legal form? A mere change in the legal form of an existing firm constitutes a new firm for licensing purposes. Accordingly, the new entity must first obtain a CPA firm license from the board and then dissolve the former firm unless the owners desire to maintain more than one licensed firm. Affiliated entities using a restricted title or offering or performing restricted services are subject to board rules.

(3) What are the ownership requirements for a CPA firm?

- (a) All owners of a licensed CPA firm are required to:
 - (i) Fully comply with the provisions of chapter 18.04 RCW; and
 - (ii) Be subject to discipline by the board for violations of chapter 18.04 RCW and this board's rules contained in Title 4 WAC;
- (b) A simple majority of the ownership of the licensed firm in terms of financial interests and voting rights of all partners, owners, or shareholders must be:
 - (i) Licensees in this state or holders of a valid license to practice public accountancy issued by another state;
 - (ii) Entitled to practice public accounting in Washington state; and

(iii) Principally employed by the firm or actively engaged in its business.

(c) At least one general partner of a partnership, one shareholder of a corporation, and one member of a limited liability company must be a licensee.

(d) Each CPA proprietor, partner, shareholder or member who is either a resident or is entering the state and practicing public accountancy in this state must hold a valid Washington state license or practice privileges.

(e) A principal owner and any individual having authority over issuing reports (~~(on financial statements)~~) must be a licensee under the act or holder of a valid license to practice public accountancy issued by another state and must be entitled to practice public accounting in this state.

(f) A nonresident CPA owner must be licensed to practice public accountancy in at least one state.

(g) A nonlicensee owner must:

(i) Be an individual;

(ii) Meet the good character requirements of RCW 18.04.105 (1)(a);

(iii) Comply with the act and board rules; and

(iv) Be an active individual participant in the licensed firm or affiliated entities as these terms are defined in WAC 4-30-010; and

(h) A resident nonlicensee firm owner must meet the requirements of WAC 4-30-116 and register with the board concurrent with submission of the firm license application, or submission of an amendment to the firm license status, to the board.

(4) What are the requirements for the firm's main office and a branch office? A firm's main office located in this state must be under the direct supervision of a resident licensee.

A branch office is an office of a licensed CPA firm which is physically separated from the main office. A branch office operates under the license of the main office.

AMENDATORY SECTION (Amending WSR 11-07-070, filed 3/22/11, effective 4/22/11)

WAC 4-30-112 Must a firm holding a license from another state apply and obtain a Washington state license to hold out and practice in Washington state? (1) A firm license must be obtained from the board if any of the following criteria apply:

(a) The firm has an office in this state and performs attest or compilation services for clients in this state; or

(b) The firm has an office in this state and, by any means, represents the firm to the public that the firm is a firm of certified public accountants(~~(s)~~);

~~(c) The firm is licensed in another state and performs the following services for clients with a home office in this state:~~

~~(i) Any audit or other engagement to be performed in accordance with the statements on auditing standards;~~

~~(ii) Any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements; and~~

~~(iii) Any engagement to be performed in accordance with the public company accounting oversight board auditing standards).~~

(2) A firm license is not required for a firm that does not have an office in this state but offers or renders attest services described in RCW 18.04.025(1), and meets the requirements listed in RCW 18.04.195 (1)(a)(iii)(A) through (D).

(3) A firm license is not required to perform other professional services in this state, including compilation, review and other services for which reporting requirements are provided in professional standards, if the firm complies with the following:

(a) The firm performs such services through individuals with practice privileges under RCW 18.04.350(2) and WAC 4-30-090 or reciprocal license under RCW 18.04.180 and 18.04.183 and board rules;

(b) The firm is licensed to perform such services in the state in which the individuals with practice privileges have their principal place of business; and

(c) The firm meets the board's quality assurance program requirements, when applicable.

~~((3))~~ (4) As a condition of this privilege, ~~((the))~~ any nonresident firm meeting the requirement of subsection (2) or (3) of this section is deemed to have consented to:

(a) The personal and subject matter jurisdiction and disciplinary authority of this state's board;

(b) Comply with the Public Accountancy Act of this state, chapter 18.04 RCW, and this board's rules contained in Title 4 WAC;

(c) Cease offering or rendering professional services in this state through a specific individual or individuals if the license(s) of the individual(s) through whom the services are offered or rendered becomes invalid;

(d) Cease offering or rendering specific professional services in this state through an individual or individuals if the license(s) from the state(s) of the principal place of business of such individual(s) is restricted from offering or performing such specific professional services;

(e) The appointment of the state board which issued the firm license as their agent upon whom process may be served in any action or proceeding by this state's board against firm licensee;

(f) Not render those services described in subsection (1)(c) of this section for a client with a home office in this state unless the firm that has obtained a license from this state (RCW 18.04.195 and 18.04.295) and this section; and

(g) Not render any professional services in this state through out-of-state individual(s) who are not licensed to render such services by the state(s) in which the principal place of business of such individual(s) is (are) located.

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-114 How do I apply for and maintain a firm license? (1) **How does a firm apply for an initial firm license?** To apply for an initial firm license an owner, or designee, or, in the case of an out-of-state firm, that does not meet the requirements to operate under firm mobility per RCW 18.04.195 (1)(a)(iii)(A) through (D), and is required to be licensed ~~((under RCW 18.04.195 (1)(a)))~~ in this state, an individual qualified for practice privileges in this state under RCW 18.04.350(2) who has been authorized by the applicant

firm to make the application must submit the following information to the board:

- (a) The firm name;
- (b) Address and telephone number of the main office and any branch offices of the firm;
- (c) Name of the managing licensee of the main office located and maintained in this state;
- (d) Resident licensee owners' names;
- (e) Name(s) of all resident nonlicensee owners; and
- (f) Type of legal organization under which the firm operates.

The required information must be submitted to the board either by making application through the board's online application system or on a form provided by the board upon request. All requested information, documents and fees must be submitted to the board before the application will be evaluated.

Upon approval of the firm's application the firm's licensed status will be posted in the board's licensee data base and, therefore, made publicly available for confirmation. A hard copy of the firm license can be provided upon request.

The initial CPA firm license will expire on June 30th of the third calendar year following initial licensure.

(2) **How do I renew a CPA firm license?** To renew a CPA firm license an owner or designee or, in the case of an out-of-state firm (~~required to be licensed under RCW 18.04.195 (1)(a))~~ that does not meet the requirements to operate under firm mobility per RCW 18.04.195 (1)(a)(iii)(A) through (D), an individual qualified for practice privileges in this state under RCW 18.04.350(2) who has been authorized by the applicant firm to make the application, must submit the information described in subsection (1) of this section that is current at the date the renewal application is submitted to the board. A renewal application is not complete and cannot be processed until all required information, requested documents, and all fees are submitted to the board.

An individual authorized by the firm must provide the required information to the board either by making application through the board's online application system or on a form provided by the board upon request. All requested information, documents and fees must be submitted to the board before the application will be evaluated.

On the date the renewal application is approved, the firm's license will be included in the board's licensee data base and, therefore, made publicly available for confirmation. Confirmation of the renewed status can be provided upon request.

The CPA firm license will expire on June 30th of the third calendar year following the calendar year of renewal.

(3) **When and how must the firm notify the board of changes in the licensed firm?** An individual authorized by the firm must provide the board written notification and other documentation deemed necessary by the board within ninety days of any or all of the following occurrences:

- (a) Dissolution of the firm;
- (b) The occurrence of any event that would cause the firm to be in violation of RCW 18.04.195 or this section, including the retirement, lapse, revocation or suspension of the license of a sole proprietor or sole owner of another legal

form of organization, for example, a limited liability company (LLC) or professional service corporation (PS) owned by a single person, licensed by the board for the practice of public accounting, and holding out to the public for the practice of public accounting and/or offering or performing professional services restricted to licensees; or

(c) An event that requires an amendment to a firm license.

(4) **What events require a firm amendment?** An individual authorized by the firm must provide written notification to the board, by submitting the following information and the appropriate amendment fee, within ninety days of the following:

- (a) Admission or withdrawal of a resident licensee owner;
- (b) Any change in the name of the firm; or
- (c) Change in the resident managing licensee of the firm's main office in this state; or
- (d) Change in the resident managing licensee of any branch office of the firm.

(5) **How long do I have to correct noncompliance with licensure requirements due to a change in ownership or an owner's credentials?** The board must be notified in writing within ninety days of the first date the firm is not in compliance with the firm's licensure requirements due to changes in firm ownership and propose a time period in which the firm will achieve compliance. The board may grant a reasonable period of time for a firm to become compliant. The board may revoke, suspend, or impose conditions on the firm's license for failure to bring the firm into compliance within the approved time period.

AMENDATORY SECTION (Amending WSR 14-16-102, filed 8/5/14, effective 9/5/14)

WAC 4-30-130 What are the quality assurance review (QAR) requirements for licensed CPA firms? (1) **Purpose.** The Washington state board of accountancy is charged with protection of the public interest and ensuring the dependability of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental. The purpose of the QAR program is to monitor licensees' compliance with audit, compilation, review, and other attestation standards. If the board becomes aware that a firm's performance and/or reporting practices for audit, review, compilation, and other engagements covered by statements on standards for attestation engagements may not be in accordance with applicable professional standards, the board will take appropriate action to protect the public interest.

(2) **Peer review.** Generally, all firms licensed in Washington state offering and/or performing attest services as defined by WAC 4-30-010(5), compilation services, as defined by WAC 4-30-010(12), or other professional services for which a report expressing assurance is prescribed by professional standards, are required to participate in a board-approved peer review program as a condition of renewing each CPA firm license under RCW 18.04.215 and WAC 4-30-114. However, certain exemptions are listed in subsection

(11) of this section. Board-approved peer review programs include:

(a) The inspection processes of the Public Company Accounting Oversight Board (PCAOB);

(b) Peer review programs administered by the American Institute of CPAs (AICPA);

(c) Peer review programs administered by the Washington Society of CPAs (WSCPA); and

(d) Other programs recognized and approved by the board.

(3) **Enrollment in peer review:** A licensed firm must enroll in a board-approved peer review program **before** issuing a report for each of the following types of service or any other service the board determines:

(a) Compilation on historical financial statements;

(b) Review on historical financial statements;

(c) Audit report on financial statements, performance audit reports, or examination reports on internal controls for nonpublic enterprises;

(d) Other professional services subject to Statements on Standards for Attestation Engagements.

The schedule for the firm's peer review shall be established according to the peer review program's standards. The board does not require any licensee to become a member of any organization administering a peer review program.

(4) **Participation in peer review.** Every firm that is required to participate in a peer review program shall have a peer review in accordance with the peer review program standards.

(a) It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review date.

(b) Any firm that is dropped or terminated by a peer review program for any reason shall have twenty-one days to provide written notice to the board of such termination or drop and to request authorization from the board to enroll in another board-approved peer review program.

(c) In the event a firm is merged, otherwise combined, dissolved or separated, the peer review program shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(d) A firm choosing to change to another peer review program may do so only if there is not an open active peer review and if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews.

(5) **Reporting requirements.** Every firm must provide the following information, along with the appropriate fees, with every application for renewal of a firm license by April 30th of the renewal year:

(a) Certify whether the firm does or does not perform attest services or compilation services as defined by WAC 4-30-010 (5), (12), or other professional services for which a report expressing assurance is prescribed by professional standards in Washington state;

(b) If the firm is subject to the peer review requirements, provide the name of the approved peer review program in which the firm is enrolled, and the period covered by the firm's most recent peer review;

(c) Certify the result of the firm's most recent peer review.

Failure to timely submit complete information and the related fee by the April 30th due date can result in the assessment of late fees. The board may waive late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

(6) A firm must notify the board within thirty days of the date the peer reviewer or a team captain advises the firm that a grade of pass with deficiencies or fail will be recommended. The notification must include the details of any required corrective action plan being recommended by the peer reviewer or team captain, and the planned date (or time period within which) the firm would intend to complete such remedial action or actions if the proposed corrective action plan is approved by the appropriate peer review acceptance committee.

Notwithstanding any extensions of time by the peer review program administrator, failure by the firm to meet its planned schedule for completing its specific corrective action plan required by the peer review program and/or timely pay for the peer review services can result in board action.

(7) **Documents required.** A firm that has opted out of participating in the AICPA Facilitated State Board Access (FSBA) program shall provide to the board copies of the following documents related to the peer review report:

(a) Peer review report issued;

(b) Firm's letter of response, if any;

(c) Letter of acceptance from peer review program;

(d) Recommended action letter from the peer review program, if any;

(e) A letter from the firm to the board describing corrective actions taken by the firm that relate to recommendations of the peer review program;

(f) Other information the firm deems important for the board's understanding of the information submitted; and

(g) Other information the board deems important for the understanding of the information submitted.

(8) **Document retention.** RCW 18.04.390(4) and WAC 4-30-051(10) require a firm to retain audit and review records and documentation for a period of seven years after the firm concludes an audit or review of a client's financial statements.

(9) **Extensions.** The board may grant an extension of time for submission of the peer review report to the board. Extensions will be determined by the board on a case-by-case basis.

(10) **Verification.** The board may verify the certifications of peer review reports that firms provide.

(11) **Exemption from peer review.**

(a) Out-of-state firms that do not have a physical location in this state, but perform attest or compilation services in this state, and are otherwise qualified for practice privileges under RCW 18.04.195 (1)(a)(iii)(A) through (D) or (b) are not required to participate in the board's program if the out-of-state firm participates in a board-approved peer review program or similar program approved or sponsored by another state's board of accountancy.

(b) Firms that do not perform attest services as defined by WAC 4-30-010(5), compilation services, as defined by WAC 4-30-010(12), or other professional services for which

a report expressing assurance is prescribed by professional standards are not required to participate in a peer review program, and shall request exemption on each firm license renewal application.

(c) Firms that prepare financial statements **which do not require reports** under Statements on Standards for Accounting and Review Services (management use only compilation reports) and that perform no other attest or compilation services, are not required to participate in a peer review program; however, any such engagements performed by a firm that is otherwise required to participate in a peer review program shall be included in the selection of engagements subject to peer review.

(12) **Quality assurance oversight.**

(a) The board will:

(i) Annually appoint a compliance assurance oversight committee, and such other committees as the board, in its discretion deems necessary, to provide oversight of the administration of approved peer review programs in order to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with the minimum standards for performing and reporting on peer reviews;

(ii) Consider reports from the compliance assurance oversight committee;

(iii) Direct the evaluation of peer review reports and related documents submitted by firms;

(iv) Determine the appropriate action for firms that have unresolved matters relating to the peer review process or that have not complied with, or acted in disregard of the peer review requirements;

(v) Determine appropriate action for firms when issues with a peer review report may warrant further action; and

(vi) Take appropriate actions the board, in its discretion, deems appropriate to carry out the functions of the quality assurance review program and achieve the purpose of the peer review requirement.

(b) The **compliance assurance oversight committee** shall conduct oversight of approved peer review programs at least semiannually to provide reasonable assurance that such programs are in compliance with the minimum standards for performing and reporting on peer reviews.

(i) The compliance assurance oversight committee's oversight procedures may consist of, but are not limited to:

(A) Attending the peer review program's report acceptance body (RAB) meetings during consideration of peer review documents;

(B) Observing the peer review program administrator's internal review of program and quality control compliance;

(C) Observing the peer review program's review of the administrator's process.

(ii) The compliance oversight assurance committee shall report to the board any modifications to approved peer review programs and shall make recommendations regarding the continued approval of peer review programs.

(13) **Remedies.** The board will take appropriate action to protect the public's interest if the board determines through the peer review process or otherwise that a firm's performance and/or reporting practices are not or may not be in accordance with applicable professional standards, the firm does not comply with peer review program requirements, or

the firm does not comply with all or some of the reporting, remedial action, and/or fee payment requirements of subsection (5) of this section. The board's actions may include, but are not limited to:

(a) Require the firm to develop quality control procedures to provide reasonable assurance that similar occurrences will not occur in the future;

(b) Require any individual licensee who had responsibility for, or who substantially participated in the engagement(s), to successfully complete specific courses or types of continuing education as specified by the board;

(c) Require that the reviewed firm responsible for engagement(s) submit all or specified categories of its compilation or attest working papers and reports to a preissuance evaluation performed by a board-approved licensee in a manner and for a duration prescribed by the board. Prior to the firm issuing the reports on the engagements reviewed, the board-approved licensee shall submit to the board for board acceptance a report of the findings, including the nature and frequency of recommended actions to the firm. The cost of the board-approved preissuance evaluation will be at the firm's expense;

(d) Require the reviewed firm to engage a board-approved licensee to conduct a board-prescribed on-site field review of the firm's work product and practices or perform other investigative procedures to assess the degree or pervasiveness of nonconforming work product. The board-approved licensee engaged by the firm shall submit a report of the findings to the board within thirty days of the completion of the services. The cost of the board-prescribed on-site review or other board-prescribed procedures will be at the firm's expense; or

(e) Initiate an investigation pursuant to RCW 18.04.295, 18.04.305, and/or 18.04.320.

(f) Absent an investigation the specific rating of a single peer review report is not a sufficient basis to warrant disciplinary action.

(14) The board may solicit and review licensee reports and/or other information covered by the reports from clients, public agencies, banks, and other users of such information.

AMENDATORY SECTION (Amending WSR 11-07-070, filed 3/22/11, effective 4/22/11)

WAC 4-30-142 What are the bases for the board to impose discipline? RCW 18.04.055, 18.04.295, 18.04.305, and 18.04.350 authorize the board to revoke, suspend, refuse to issue, renew, or reinstate an individual or firm license, CPA-Inactive certificate, the right to exercise practice privileges in this state, or registration as a resident nonlicensee firm owner; impose a fine not to exceed thirty thousand dollars; recover investigative and legal costs; impose full restitution to injured parties; impose remedial sanctions; impose conditions precedent to renew; or prohibit a resident nonlicensee from holding an ownership interest in a firm licensed in this state for the specific acts listed below.

The following are specific examples of prohibited acts that constitute grounds for discipline under RCW 18.04.295, 18.04.305, and 18.04.350. The board does not intend this listing to be all inclusive.

(1) Fraud or deceit in applying for the CPA examination, obtaining a license, registering as a resident nonlicensee firm owner, or in any filings with the board.

(2) Fraud or deceit in renewing or requesting reinstatement of a license, CPA-Inactive certificate, registration as a resident nonlicensee firm owner.

(3) Cheating on the CPA exam.

(4) Making a false or misleading statement in support of another person's application or request to:

(a) Take the national uniform CPA examination;

(b) Obtain a license or registration required by the act or board;

(c) Reinstate or modify the terms of a revoked or suspended license, certificate, or registration as a resident nonlicensee firm owner in this state;

(d) Reinstate revoked or suspended practice privileges of an individual or firm licensed in another state.

(5) Dishonesty, fraud, or negligence while representing oneself as a licensee, CPA-Inactive certificate holder, or a resident nonlicensee firm owner including, but not limited to:

(a) Practicing public accounting in Washington state prior to obtaining a license required ~~((by))~~ per RCW 18.04.215 ((or)), obtaining a firm license as required by RCW 18.04.195, or without qualifying to operate under firm mobility;

(b) Offering or rendering public accounting services in this state by an out-of-state individual ~~((or firm))~~ not qualified for practice privileges under RCW ~~((18.04.195 or))~~ 18.04.350(2);

(c) Offering or rendering public accounting services in this state by an out-of-state firm not qualified for practice privileges under firm mobility per RCW 18.04.195.

~~((d))~~ (d) Making misleading, deceptive, or untrue representations;

~~((e))~~ (e) Engaging in acts of fiscal dishonesty;

~~((f))~~ (f) Purposefully, knowingly, or negligently failing to file a report or record, or filing a false report or record, required by local, state, or federal law;

~~((g))~~ (g) Unlawfully selling unregistered securities;

~~((h))~~ (h) Unlawfully acting as an unregistered securities salesperson or broker-dealer;

~~((i))~~ (i) Discharging a trustee's duties in a negligent manner or breaching one's fiduciary duties, acting in a manner not in compliance with chapter 11.96A RCW; or

~~((j))~~ (j) Withdrawing or liquidating, as fees earned, funds received by a licensee, CPA-Inactive certificate holder, or a resident nonlicensee firm owner from a client as a deposit or retainer when the client contests the amount of fees earned, until such time as the dispute is resolved.

(6) The following shall be prima facie evidence that a licensee, as defined in WAC 4-30-010, CPA-Inactive certificate holder, a nonlicensee firm owner, or the employees of such persons has engaged in dishonesty, fraud, or negligence while representing oneself as a licensee, as defined in WAC 4-30-010, CPA-Inactive certificate holder, a nonlicensee firm owner, or an employee of such persons:

(a) An order of a court of competent jurisdiction finding that the person or persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a

licensee, as defined in WAC 4-30-010, CPA-Inactive certificate holder, or a nonlicensee firm owner;

(b) An order of a federal, state, local or foreign jurisdiction regulatory body, or a PCAOB, finding that the licensee, as defined in WAC 4-30-010, CPA-Inactive certificate holder, or nonlicensee firm owner, or employee of such persons committed an act of negligence, fraud, or dishonesty or other act reflecting adversely on the person's fitness to represent himself, herself, or itself as a licensee, as defined in WAC 4-30-010, a CPA-Inactive certificate holder, or a nonlicensee firm owner;

(c) Cancellation, revocation, suspension, or refusal to renew the right to practice as a licensee, certificate holder, or a nonlicensee firm owner by any other state for any cause other than failure to pay a fee or to meet the requirements of continuing education in the other state; or

(d) Suspension or revocation of the right to practice before any state agency, federal agency, or the PCAOB.

(7) Sanctions and orders entered by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee, CPA-Inactive certificate holder, or nonlicensee firm owner;

(8) Any state or federal criminal conviction or commission of any act constituting a crime under the laws of this state, or of another state, or of the United States.

(9) A conflict of interest such as:

(a) Self dealing as a trustee, including, but not limited to:

(i) Investing trust funds in entities controlled by or related to the trustee;

(ii) Borrowing from trust funds, with or without disclosure; and

(iii) Employing persons related to the trustee or entities in which the trust has a beneficial interest to provide services to the trust (unless specifically authorized by the trust creation document).

(b) Borrowing funds from a client unless the client is in the business of making loans of the type obtained by the licensee, as defined in WAC 4-30-010, CPA-Inactive certificate holder, or nonlicensee firm owner and the loan terms are not more favorable than loans extended to other persons of similar credit worthiness.

(10) A violation of the Public Accountancy Act or failure to comply with a board rule contained in Title 4 WAC, by a licensee, defined in WAC 4-30-010, CPA-Inactive certificate holder, or employees of such persons of this state or a licensee of another substantially equivalent state qualified for practice privileges, including but not limited to:

(a) An out-of-state individual exercising the practice privileges authorized by RCW 18.04.350(2) when not qualified;

(b) Submission of an application for firm license on behalf of a firm licensed in another state ~~((and required to obtain a license))~~ that does not meet the firm mobility requirements under RCW 18.04.195 (1)(a)(iii)(A) through (D) by an out-of-state individual not qualified under RCW 18.04.350(2) or authorized by the firm to make such application;

(c) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to

cease offering or performing professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business is no longer valid;

(d) Failure of an out-of-state individual exercising the practice privileges authorized under RCW 18.04.350(2) to cease offering or performing specific professional services in this state, individually or on behalf of a firm, when the license from the state of the out-of-state individual's principal place of business has been restricted from performing those specific services;

(e) Failure of ~~((a))~~ an out-of-state firm ((not licensed)) operating under firm mobility per RCW 18.04.195 (1)(a)(iii), in this state to cease offering or performing professional services in this state through one or more out-of-state individuals whose license from the state of those individuals' principal place(s) of business is (are) no longer valid or is (are) otherwise restricted from performing the specific engagement services;

(f) Failure of a firm licensed in this state, or a firm operating under firm mobility to comply with the ownership requirements of RCW 18.04.195 within a reasonable time period, as determined by the board;

(g) Failure of a firm licensed in this state or another state to comply with the board's quality assurance program requirements, when applicable.

(11) Violation of one or more of the rules of professional conduct included in Title 4 WAC.

(12) Concealing another's violation of the Public Accountancy Act or board rules.

(13) Failure to cooperate with the board by failing to:

(a) Furnish any papers or documents requested or ordered to produce by the board;

(b) Furnish in writing a full and complete explanation related to a complaint as requested by the board;

(c) Respond to an inquiry of the board;

(d) Respond to subpoenas issued by the board, whether or not the recipient of the subpoena is the accused in the proceeding.

(14) Failure to comply with an order of the board.

(15) Adjudication of a licensee, as defined by WAC 4-30-010, CPA-Inactive certificate holder, or a nonlicensee firm owner as mentally incompetent is prima facie evidence that the person lacks the professional competence required by the rules of professional conduct.

(16) Failure of a licensee, as defined by WAC 4-30-010, CPA-Inactive certificate holder, nonlicensee firm owner, or out-of-state person exercising practice privileges authorized by RCW 18.04.195 and 18.04.350 to timely notify the board, in the manner prescribed by the board, of any of the following:

(a) A sanction, order, suspension, revocation, or modification of a license, certificate, permit or practice rights by the SEC, PCAOB, IRS, or another state board of accountancy for any cause other than failure to pay a professional license fee by the due date or failure to meet the continuing professional education requirements of another state board of accountancy;

(b) Charges filed by the SEC, IRS, PCAOB, another state board of accountancy, or a federal or state taxing, insur-

ance or securities regulatory body that the licensee, CPA-Inactive certificate holder, or nonlicensee firm owner committed a prohibited act that would be a violation of board ethical or technical standards;

(c) Sanctions or orders entered against such persons by a nongovernmental professionally related standard-setting body for violation of ethical or technical standards in the practice of public accounting by a licensee, CPA-Inactive certificate holder, or nonlicensee firm owner.

WSR 16-17-040
PERMANENT RULES
OFFICE OF THE
STATE TREASURER

[Filed August 9, 2016, 2:16 p.m., effective September 9, 2016]

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

Purpose: To amend and update the requirements, terms, and conditions for financial institutions to receive and hold public funds in accordance with the Public Deposit Protection Act, as last amended by chapter 2, Laws of 2016 1st sp. sess.

Citation of Existing Rules Affected by this Order: Repealing WAC 389-12-047, 389-12-200 through 389-12-990; and amending WAC 389-12-010 through 389-12-030, 389-12-040, 389-12-050 through 389-12-080, and 389-12-100 through 389-12-140.

Statutory Authority for Adoption: RCW 39.58.040.

Adopted under notice filed as WSR 16-14-069 on July 1, 2016.

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 14, Repealed 15.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 15.

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

Date Adopted: August 9, 2016.

Shad Pruitt
Deputy Treasurer

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-010 Promulgation. The public deposit protection commission, hereinafter referred to as the "commission," after due and proper notice, and pursuant to the provisions of chapter 193, Laws of 1969 1st ex. sess., as last amended by chapter ~~((9))~~ 2, Laws of ~~((2009))~~ 2016 1st sp.

sess., hereinafter referred to as the "act," hereby adopts and promulgates the following rules and regulations.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-020 Definitions. Unless the context requires otherwise:

((1) "Uninsured public deposits" means public deposits not backed by the full faith and credit of the United States government.

(2) "Depositor" means a state or local government with public funds on deposit with a public depository as defined in chapter 39.58 RCW.

(3) "Investment deposits" means time deposits, savings deposits, and money market deposit accounts of public funds available for investment as defined in Regulation D, Title 12 Code of Federal Regulations (C.F.R.) Part 204. "Investment deposits" also means certificates of deposit issued in accordance with the following conditions:

(a) The funds are initially invested in an authorized Washington state public depository;

(b) The public depository arranges for the investment of the funds in certificates of deposit issued by one or more federally insured banks or savings and loan associations wherever located, for the depositor;

(c) The full amount of the deposit, principal and interest, of each such certificate of deposit is insured by an agency of the federal government;

(d) The public depository acts as custodian for the depositor with respect to all such certificates of deposit issued for the depositor; and

(e) At the same time that funds are invested and the corresponding certificates of deposit are issued, the public depository receives an amount on deposit from other federally regulated financial institutions wherever located equal to or greater than the amount of funds initially invested by the depositor.

All such investment deposits invested in accordance with conditions (a) through (e) of this subsection shall not be subject to any additional security or collateral requirement.

(4) "Commission report" means a formal accounting rendered by all public depositories to the commission, which details pertinent information of each depository in a format supplied by the commission.

(5) "Commission report date" means the last day of each calendar quarter.

(6) "Commission report due date" means the commission report is due in the office of the commission no later than the date a depository's financial report is due to its federal regulatory authority.

(7) "Monthly report" means a report prepared by all public depositories to the commission, which details insured and uninsured public funds and other pertinent information of each depository in a format supplied by the commission.

(8) "Monthly report date" means the last day of each calendar month.

(9) "Monthly report due date" means the monthly report is due in the office of the commission no later than eight

working days after the monthly report date or other date as set by the commission.

(10) "Financial report" means the consolidated statement of condition and income required by the Federal Financial Institution Examination Council or the thrift financial report required by the Office of Thrift Supervision.

(11) "Date of loss" means the date on which a loss shall be deemed to have occurred within the meaning of the act, and shall be the first to happen of the following:

(a) The date of the taking of possession of the financial institution by a supervisory agency; or

(b) The date of the appointment of the receiver or conservator for a financial institution; or

(c) The date of the commencement of a voluntary liquidation proceeding for a financial institution; or

(d) The date of an order issued by a regulatory authority or a court of competent jurisdiction restraining a financial institution from making payments on deposit liabilities; or

(e) The date on which the commission declares that a financial institution no longer has the ability to repay public deposits in full.

(12) "Depository pledge agreement" means a written tripartite agreement, on a form supplied by the commission, wherein a financial institution, in compliance with the act and as a condition precedent to becoming or continuing to be a public depository, transfers and delivers securities which are eligible collateral to a corporate fiduciary under the exercise of its trust powers, to the federal reserve bank of San Francisco, the federal home loan bank of Seattle, or such other third party safekeeping agent approved by the commission, which agrees to safekeep such securities for the primary benefit of the commission under the terms and conditions of the agreement and for the purposes set forth by the act and the regulations of the commission. Such agreement shall be executed on behalf of the commission by the chairman, who shall be the state treasurer. Upon completion, the agreement shall be approved by the board of directors or loan committee of the financial institution. The agreement must be continuously, from the time of its execution, an official record of the financial institution. Copies of the meeting minutes which reflect this are to be provided to the commission.

(13) "Segregation of collateral" means the transfer and delivery of eligible securities by a public depository pursuant to a depository pledge agreement. A public depository must submit a written request to the commission to reduce the amount of securities pledged as collateral. The trustee holding the collateral shall not allow a reduction of securities without the prior written approval of the commission. When a public depository pledges eligible securities whose payments include a periodic principal reduction, the trustee shall advise the commission, on no less than a monthly basis, of the amounts of such principal payments as well as the new total value which result from the principal payments.

(14) "Net worth" of a public depository means the same as defined in RCW 39.58.010.

Net worth for public depositories headquartered outside Washington state may be adjusted by the commission to reflect the depositories' proportional net worth position in Washington state.

(15) "Corporate fiduciary" for the purposes of these rules means a financial institution as defined herein which is possessed of statutorily granted trust authority. Provided, That for the purposes of this definition such financial institution need not be located or doing business in the state of Washington.

(16) "Out-of state bank" for the purposes of these rules means a financial institution which has its principal place of business outside the state of Washington.

(17) "Alien bank" for the purposes of these rules means a financial institution organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.)) "Alien bank" for the purposes of these rules means a financial institution organized under the laws of a foreign country and having its principal place of business in that country, the majority of the beneficial ownership and control of which is vested in citizens of countries other than the United States of America.

"Commission report" means a formal accounting rendered by all public depositories to the commission, which details pertinent information of each public depository in a format supplied by the commission.

"Commission report date" means the last day of each calendar quarter.

"Commission report due date" means the commission report is due in the office of the commission no later than one business day after the date a public depository's financial report is due to its federal regulatory authority.

"Date of loss" means the date on which a loss shall be deemed to have occurred within the meaning of the act, and shall be the first to happen of the following:

- The date of the taking of possession of the financial institution by a supervisory agency;
- The date of the appointment of the receiver or conservator for a financial institution;
- The date of the commencement of a voluntary liquidation proceeding for a financial institution;
- The date of an order issued by a regulatory authority or a court of competent jurisdiction restraining a financial institution from making payments on deposit liabilities; or
- The date on which the commission declares that a financial institution no longer has the ability to repay public deposits in full.

"Depository pledge agreement" means the same as defined in RCW 39.58.010, on a form supplied by the commission, wherein a financial institution, in compliance with the act and as a condition precedent to becoming or continuing to be a public depository, transfers and delivers securities which are eligible collateral to a trustee approved by the commission, which agrees to safekeep such securities for the primary benefit of the commission under the terms and conditions of the agreement and for the purposes set forth by the act and the regulations of the commission. Such agreement shall be executed on behalf of the commission by the chairman. The agreement shall be approved by the board of directors or loan committee of the financial institution. Copies of the meeting minutes which reflect the approval are to be provided to the commission.

"Financial report" means the consolidated reports of condition and income required by the Federal Financial Institutions Examination Council.

"Monthly report" means a report prepared by all public depositories to the commission, which details insured and uninsured public deposits and other pertinent information of each public depository in a format supplied by the commission.

"Monthly report date" means the last day of each calendar month.

"Monthly report due date" means the monthly report is due in the office of the commission no later than eight business days after the monthly report date or other date as set by the commission.

"Net worth" of a public depository means the same as defined in RCW 39.58.010, except that net worth for public depositories with facilities outside Washington state may be adjusted by the commission to reflect the public depositories' proportional net worth position in Washington state.

"Out-of-state bank" for the purposes of these rules means a financial institution located outside the state of Washington.

"Segregation of collateral" means the transfer and delivery of eligible securities by a public depository to a trustee pursuant to a depository pledge agreement or delivery of a letter of credit to the commission.

"Uninsured public deposits" means public deposits not backed by the full faith and credit of the United States government.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-030 New public depositories. Any financial institution in the state of Washington eligible under the act, in order to become a public depository, must be approved by the commission and segregate collateral in the manner as set forth in chapter 39.58 RCW and these rules prior to the receipt of public deposits. Until such time as public depositories have submitted four consecutive commission reports to the commission as required by RCW 39.58.100, they shall at all times be required to pledge and segregate eligible ~~((securities)) collateral, valued ((at market value,))~~ in an amount equal to not less than ~~((10% of uninsured public funds on deposit in said depository,))~~ its maximum liability or such other sum or measure established by the commission by rule or ~~((noticed))~~ resolution.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-040 Computation and report of maximum liability. On each commission report date each public depository shall calculate its maximum liability in a format supplied by the commission. The commission report shall, in addition to other information required by the commission in its discretion, include the amount of insured and uninsured public deposits of Washington state and its political subdivisions for the most recent commission report date, the uninsured public deposits as shown on the four most recent commission reports (i.e., current report and three immediately preceding reports), the average of uninsured public deposits

for the four most recent commission report dates, and the public depository's maximum liability as defined in chapter 39.58 RCW.

The commission report shall be received in the office of the commission by the commission report due date, and shall also include schedules, as determined by the commission, from the public depository's most recent financial report to its federal regulatory authority. Any public depository failing to submit its commission report by the commission report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

At the end of each calendar quarter, the commission shall provide each public depository the amount constituting thirty percent of total public funds on deposit in Washington state for the preceding quarter. Public depositories shall use this amount to monitor their total public funds on deposit for the ensuing quarter, unless notified of a revised amount by the commission.

Upon ~~((written))~~ request from a public depository the commission may, for good cause shown, extend the commission report due date for commission reports for a period not to exceed five days.

If the maximum liability has increased from the previous commission report or if aggregate public deposits exceed the limitations prescribed in RCW 39.58.135, the public depository shall immediately increase its collateral and the commission shall be so notified.

Each public depository shall provide to the commission a copy of any changes, amendments, or alterations to the public depository's financial report as submitted to its federal regulatory authority which relate to ~~((a) deposits of states and political subdivision, and/or (b))~~ public funds on deposit and net worth.

A monthly report of insured and uninsured public ~~((funds))~~ deposits, and other pertinent information shall, in a format supplied by the commission, be submitted by each public depository to the commission no later than the monthly report date. If applicable, adjustments to the public depositories' last reported net worth and/or additional collateral being pledged shall be listed on the monthly report. The monthly report shall be submitted to the commission every month. Any public depository failing to submit its monthly report by the monthly report due date shall be subject to appropriate sanction as provided in chapter 39.58 RCW and WAC 389-12-100.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-050 Valuation. Securities pledged as collateral by a public depository ~~((shall be reported at par and))~~ will be valued at market value. Letters of credit pledged as collateral by a public depository will be valued at the maximum amount available to be drawn.

~~((Market))~~ Value shall be computed as of the date of segregation or the last preceding commission report date, whichever is later. When the commission report is submitted, each public depository shall ~~((provide))~~ certify, in a format supplied by the commission, a current listing of ~~((those securi-~~

~~ties))~~ collateral pledged and their current ~~((par and market))~~ value as of the commission report date.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-060 Deposit or withdrawal of collateral. A public depository must submit a request to the commission to reduce the amount of collateral pledged. Except for the exchange or substitution of securities having ~~((a like))~~ an equal or greater market value, the trustee shall not permit the withdrawal of any security without advance ~~((written))~~ approval of the commission.

The trustee, under a depository pledge agreement, shall inform the commission whenever ~~((assets))~~ securities are delivered to or released by the trustee by ~~((mailing))~~ providing to the commission, within twenty-four hours following such deposit or withdrawal, a copy of the transaction receipt ~~((signed by the party that accepted delivery of such assets)).~~

When a public depository pledges eligible securities whose payments include periodic principal reduction, the trustee shall advise the commission, on no less than a monthly basis, of the amounts of such principal payments as well as the new total value which result from the principal payments.

No costs, fees and expenses incidental to the functioning of the depository pledge agreement shall be a charge against the commission or its interest in the securities pledged.

Each public depository shall at all times maintain eligible collateral segregated and pledged ~~((with its trustee))~~ having a value at least equal to its maximum liability as defined in the act or such other sum or measure set by the commission and under these rules and regulations. Compliance with the foregoing requirement shall be the public depository's responsibility regardless of the frequency and form of reports required by the commission.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-065 Aggregate deposit limitations. (1) Whenever the public funds on deposit in a public depository exceed the limits set forth in RCW 39.58.135, such public depository shall immediately:

~~((1))~~ (a) Notify the commission; and
~~((2-Provide))~~ (b) Pledge additional collateral, if necessary, to provide one hundred percent collateralization of such excess deposits.

(2) When a public depository's net worth position is reduced, such public depository shall determine if any treasurer's or state treasurer's funds on deposit exceed the revised net worth. If any such excess deposits exist, the public depository shall immediately notify the commission and provide the commission with a detailed accounting of deposits. The public depository shall also advise the commission of its intent to:

~~((1))~~ (a) Provide one hundred percent collateralization of the excess deposits; or

~~((2))~~ (b) Allow the treasurer to withdraw such deposits in accordance with RCW 39.58.130.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-071 Minimum standards for the financial condition of public depositaries. Notwithstanding any other provisions of chapter 39.58 RCW and chapter 389-12 WAC, a public depositary shall be classified into capital categories as provided under regulations implementing section 38 of the Federal Deposit Insurance Act (FDIA) issued by the federal regulatory authority for that public depositary. If a public depositary is categorized as undercapitalized for purposes of section 38 of the FDIA, the public depositary shall pledge ~~((securities as))~~ collateral, valued ~~((at current market value,))~~ in a total amount at least equal to one hundred percent of its uninsured public deposits, or take other actions as determined by the commission; however, the commission may, at any time, in its discretion, require a public depositary to pledge additional collateral after consultation with the appropriate regulatory authorities.

The collateral pledged under this section shall not be less than the maximum liability as required in RCW ~~((39.58.050(1)))~~ 39.58.010, but may include collateral required by RCW 39.58.130, 39.58.135, and WAC 389-12-065.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-075 Collateral level to be maintained. Whenever a public depositary must pledge ~~((securities as))~~ collateral in accordance with RCW 39.58.130, 39.58.135, WAC 389-12-065, and 389-12-071, the public depositary must monitor its uninsured public ~~((funds on))~~ deposits on a daily basis and maintain ~~((securities,))~~ collateral valued ~~((at current market value,))~~ accordingly.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-080 Maximum deposit limitation. In determining the maximum deposit limitation of any ~~((financial institution))~~ public depositary, a treasurer or state treasurer, unless advised to the contrary by the commission, may assume that each public depositary's net worth has remained unchanged from that stated in the most recently rendered commission report.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-100 Violations—Sanction. If a public depositary fails to comply with any of these rules, or of any of the provisions of the act, or any policies of the commission, the commission may at its option deny or revoke the authority of such public depositary to act as ~~((a public depositary))~~ such, or otherwise suspend such public depositary from receiving or holding public deposits until such time as the public depositary complies with the commission's rules and policies.

AMENDATORY SECTION (Amending Order 1, filed 2/9/70)

WAC 389-12-120 Administration. The ~~((Washington public deposit protection))~~ commission shall be administered through the office of the Washington State Treasurer, ~~((Legislative Building,))~~ Olympia, Washington.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-130 Financial institution mergers. Within thirty calendar days of any merger, take over, or acquisition of a public depositary, the acquiring financial institution must: (1) Be a public depositary, or (2) become a public depositary as provided for in WAC 389-12-030, or (3) notify the commission of its intent not to become a public depositary. A financial institution electing not to become a public depositary must work with the commission, treasurers, and the state treasurer to orderly discharge public deposits.

The maximum liability of a public depositary under chapter 39.58 RCW shall not be altered or diminished by any merger, take over, or acquisition. Such liability shall be assumed by agreement or operation of law by the successor entity or resulting financial institution and no ~~((assets subject to a depositary pledge agreement))~~ pledged collateral shall be released by the commission or the trustee until such assumed liability is extinguished or evidenced ((by the deposit of assets pursuant to the depositary pledge agreement of)) through the segregation of collateral by the successor entity or resulting financial institution.

AMENDATORY SECTION (Amending WSR 09-16-010, filed 7/23/09, effective 8/23/09)

WAC 389-12-140 Demand deposit account with financial institution located outside the state of Washington. A treasurer or state treasurer may, as provided in chapter 39.58 RCW, with the approval of the commission, establish a demand deposit account with an out-of-state bank or an alien bank. Prior to establishing such account, a treasurer or state treasurer shall submit, in writing, for review by the commission, the following information: (1) Detailed information setting forth the justification for such account, projected cash flows, and other benefits which will accrue to the public entity through the establishment of such account; (2) period of time such account will be in use; (3) reasons such account cannot be established with a public depositary; (4) name and location of financial institution or alien bank and name and telephone number of contact person at financial institution or alien bank; (5) extent of deposit insurance provided by financial institution or alien bank; (6) most recent fiscal year end and quarterly financial report, if any, provided to regulatory agency and/or shareholders by financial institution or alien bank; (7) proposed method of ensuring safety of deposits if not fully covered by deposit insurance, and (8) such other information as the commission reasonably may require.

The account shall not be established until it ~~((shall have))~~ has been authorized by a resolution of the commission or action authorized by the chair, setting forth the terms and

conditions for such account. A copy of such resolution will be forwarded to the public entity and the state auditor.

Accounts authorized under this section are not considered to be protected against loss by the Public Deposit Protection Act.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 389-12-047	Computation of maximum liability—Transition.
WAC 389-12-200	Purpose.
WAC 389-12-210	Definitions.
WAC 389-12-220	Description of the Washington public deposit protection commission.
WAC 389-12-230	Operations and procedures.
WAC 389-12-240	Public records available.
WAC 389-12-250	Public records officer.
WAC 389-12-270	Requests for public records.
WAC 389-12-280	Inspection and copying.
WAC 389-12-290	Exemptions.
WAC 389-12-300	Review of denials of public records requests.
WAC 389-12-310	Records index.
WAC 389-12-320	Request for commission's decisions and other matters—Procedure.
WAC 389-12-330	Adoption of form.
WAC 389-12-990	Appendix A—Form—Request for public records.

WSR 16-17-047

PERMANENT RULES DEPARTMENT OF

RETIREMENT SYSTEMS

[Filed August 11, 2016, 1:39 p.m., effective September 11, 2016]

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

Purpose: Retiree return to work, these amendments will update retiree return to work rules, providing better clarification and bringing them into alignment with statutes.

Citation of Existing Rules Affected by this Order: Amending WAC 415-02-030, 415-106-700, 415-108-710, 415-110-710, and 415-112-525.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 16-14-105 on July 5, 2016.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 5, Repealed 0.

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

Date Adopted: August 10, 2016.

Marcie Frost
Director

AMENDATORY SECTION (Amending WSR 16-08-008, filed 3/24/16, effective 4/24/16)

WAC 415-02-030 Definitions. This section contains definitions of words and phrases commonly used in the department of retirement systems' rules. It also serves as a directory for finding definitions within the RCW and WAC.

(1) **Accumulated contributions** means the sum of all contributions paid into a member's defined benefit account, including interest.

(2) **Appeal** means the proceeding through which a party obtains review of a department action in an adjudicative proceeding conducted under chapter 34.05 RCW (the Administrative Procedure Act) and chapter 415-08 WAC (the department's appeal rules).

(3) **Average final compensation** is defined in RCW 41.32.010(30) (TRS); RCW 41.35.010(14) (SERS); RCW 41.40.010(17) (PERS); and RCW 41.37.010(14) (PSERS).

(4) **Average final salary** for WSPRS is defined in RCW 43.43.120(15).

(5) **Cafeteria plan** means a "qualified" employee benefit program under IRC section 125, such as certain health and welfare plans.

(6) **Calendar month.**

(a) Refers to one of the twelve named months of the year, extending from the first day of the named month through the last day. For example: January 1st through January 31st is a calendar month. February 1st through February 29th is a calendar month in a leap year. March 13th through April 12th is *not* a calendar month.

(b) Exception: For the purpose of administering the break in employment required by RCW 41.32.570, 41.32.802, 41.32.862, 41.35.060, 41.37.050 and 41.40.037 for retirees returning to work, one calendar month means thirty consecutive calendar days. For example: Kim's retirement date is August 1st. August 31st would be the earliest Kim could return to work and meet the requirement for a one calendar month break in employment.

(7) **Compensation earnable or earnable compensation** definitions can be found in RCW 41.32.010(10) and 41.32.345 (TRS); RCW 41.35.010(6) (SERS); RCW 41.37.010(6) (PSERS); and RCW 41.40.010(8) (PERS).

(8) **Contribution rate** is:

(a) For employees: The fraction (percent) of compensation a member contributes to a retirement system each month.

(b) For employers: The fraction (percent) of payroll a member's employer contributes to a retirement system each month. Contribution rates vary for the different systems and plans.

(9) **Deferred compensation** refers to the amount of the participant's compensation, which the participant voluntarily defers from earnings before taxes to a deferred compensation program.

(10) **Defined benefit plan** is a pension plan in which a lifetime retirement allowance is available, based on the member's service credit and compensation.

(11) **Defined contribution plan** is a plan in which part of members' or participants' earnings are deferred into investment accounts in which tax is deferred until funds are withdrawn. The benefit is based on the contributions and the amount of return from the investment of the contributions. Members or participants receive the full market rate of return minus expenses. There is no guaranteed rate of return and the value of an account will increase or decrease based upon market fluctuations.

(12) **Department** means the department of retirement systems.

(13) **Director** means the director of the department of retirement systems.

(14) **Employee** means a worker who performs labor or services for a retirement systems employer under the control and direction of the employer as determined under WAC 415-02-110(2). An employee may be eligible to participate as a member of one of the state-administered retirement systems according to eligibility requirements specified under the applicable retirement system.

(15) **Employer** is defined in RCW 41.26.030(2) (LEOFF), 41.32.010(11) (TRS), 41.34.020(5) (Plan 3), 41.35.010(4) (SERS), 41.37.010(4) (PSERS) and 41.40.-010(4) (PERS).

(16) **Ex-spouse** refers to a person who is a party to a "dissolution order" as defined in RCW 41.50.500(3).

(17) **Final average salary for LEOFF** is defined in RCW 41.26.030(12).

(18) **HERPs mean higher education retirement plans described in chapter 28B.10 RCW, which are non-DRS retirement plans offered by institutions of higher education, such as, but not limited to, University of Washington retirement plan (UWRP) and Western Washington University retirement plan (WWURP).**

(19) **Independent contractor** means a contract worker who is not under the direction or control of the employer as determined under WAC 415-02-110 (2) and (3).

~~((19))~~ (20) **IRC** means the Federal Internal Revenue Code of 1986, as subsequently amended.

~~((20))~~ (21) **Indexed retirement allowance** means a defined benefit retirement allowance from an indexed retirement plan, payable to a member who separates after having completed at least twenty service credit years, that is increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

~~((21))~~ (22) **Indexed retirement plan** means one of the following retirement plans, which are administered by the department of retirement systems and provide an indexed retirement allowance: Law Enforcement Officers' and Firefighters Retirement System Plan 2 (RCW 41.26.530), Public Employees' Retirement System Plan 3 (RCW 41.40.790), School Employees' Retirement System Plan 3 (RCW 41.35.620), and Teachers' Retirement System Plan 3 (RCW 41.32.840).

~~((22))~~ (23) **JRF** means the judges' retirement fund created by chapter 2.12 RCW.

~~((23))~~ (24) **JRS** means the Washington judicial retirement system created by chapter 2.10 RCW.

~~((24))~~ (25) **LEOFF** means the Washington law enforcement officers' and firefighters' retirement system created by chapter 41.26 RCW.

~~((25))~~ (26) **Member** means a person who is included in the membership of one of the retirement systems created by chapters 2.10, 2.12, 41.26, 41.32, 41.34, 41.35, 41.37, 41.40, or 43.43 RCW.

~~((26))~~ (27) **Normal retirement** means qualifying for retirement based on the standard age and service credit requirements as specified in RCW 2.10.100 (JRS), 2.12.020 (JRF), 41.26.090 (LEOFF Plan 1), 41.26.430(1) (LEOFF Plan 2), 41.32.470 (TRS Plan 1), 41.32.765(1) (TRS Plan 2), 41.32.875(1) (TRS Plan 3), 41.35.420(1) (SERS Plan 2), 41.35.680(1) (SERS Plan 3), 41.37.210(1) (PSERS), 41.40.180 (PERS Plan 1), 41.40.630(1) (PERS Plan 2), 41.40.820(1) (PERS Plan 3), or 43.43.250 (WSPRS).

(28) **Participant** means an eligible employee who participates in a deferred compensation plan.

~~((27))~~ (29) **Participation agreement** means an agreement that an eligible employee signs to become a participant in a deferred compensation plan.

~~((28))~~ (30) **Pension plan** is a plan that provides a life-long post retirement payment of benefits to employees.

~~((29))~~ (31) **PERS** means the Washington public employees' retirement system created by chapter 41.40 RCW.

~~((30))~~ (32) **Petition** means the method by which a party requests a review of an administrative determination prior to an appeal to the director. The department's petitions examiner performs the review under chapter 415-04 WAC.

~~((31))~~ (33) **Plan 1** means the retirement plans in existence prior to the enactment of chapters 293, 294 and 295, Laws of 1977 ex. sess.

~~((32))~~ (34) **Plan 2** means the retirement plans established by chapters 293, 294 and 295, Laws of 1977 ex. sess., chapter 341, Laws of 1998, and chapter 329, Laws of 2001.

~~((33))~~ (35) **Plan 3** means the retirement plans established by chapter 239, Laws of 1995, chapter 341, Laws of 1998, and chapter 247, Laws of 2000.

~~((34))~~ (36) **Plan year** is the twelve-month period that begins on January 1st and ends on December 31st of the same calendar year.

~~((35))~~ (37) **Portability** is the ability to use membership in more than one Washington state retirement system in order to qualify for retirement benefits. See chapters 41.54 RCW and 415-113 WAC.

~~((36))~~ (38) **PSERS** means the Washington public safety employees' retirement system created by chapter 41.37 RCW.

~~((37))~~ (39) **Public record** is defined in RCW 42.17-020(41).

~~((38))~~ (40) **Restoration** is the process of restoring a member's service credit for prior periods.

~~((39))~~ (41) **Retirement system employer - See "employer."**

~~((40))~~ (42) **Rollover** means a distribution that is paid to or from an eligible retirement plan within the statutory time limit allowed.

~~((41))~~ (43) **Separation date** is the date a member ends employment in a position eligible for retirement ~~((or disability benefit coverage))~~.

~~((42))~~ (44) **SERS** means the Washington school employees' retirement system created by chapter 41.35 RCW.

~~((43))~~ (45) **Split account** is the account the department establishes for a member or retiree's ex-spouse.

~~((44))~~ (46) **Surviving spouse** refers to a person who was married to the member at the time of the member's death and who is receiving or is eligible to receive a survivor benefit.

~~((45))~~ (47) **Survivor beneficiary** means a person designated by the member to receive a monthly benefit allowance after the member dies.

~~((46))~~ (48) **Survivor benefit** is a feature of a retirement plan that provides continuing payments to a ~~((beneficiary))~~ designee after the death of a member or retiree.

~~((47))~~ (49) **TRS** means the Washington state teachers' retirement system created by chapter 41.32 RCW.

~~((48))~~ (50) **The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA)** is the federal law that requires employers to reemploy and preserve job security, pension and welfare benefits for qualified employees who engage in military service.

~~((49))~~ (51) **WSPRS** means the Washington state patrol retirement system created by chapter 43.43 RCW.

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-700 ~~((As a PSERS retiree, how will my retirement allowance be affected if I return to employment?))~~ What are the return to work rules for PSERS? (1) How soon can I return to work after I retire without impacting my PSERS retirement benefit? You may ~~((work as many hours as you choose and continue to receive))~~ begin working immediately after you retire without impacting your PSERS retirement ~~((allowance))~~ benefit if:

(a) You ~~((return))~~ go to work ~~((as an employee))~~ for a private employer;

(b) You ~~((return to work as a bona fide))~~ are an independent contractor as defined in WAC 415-02-110;

(c) Your only employment is as an elected official ~~((of a city or town))~~ and you are not a PERS member; or

(d) You work in an ineligible position~~((; or~~

(e) ~~You are a retiree returning as an active member of a higher education retirement plan).~~

(2) If you return to work in a **PERS, SERS, or TRS Plan 2 or Plan 3, or LEOFF Plan 2 eligible position**, your retirement ~~((allowance))~~ benefit will be affected as follows:

(a) If you retire and then return to work ~~((within))~~ sooner than thirty consecutive calendar days from your accrual date (effective retirement date)~~((;~~

~~((i))~~, your monthly retirement ~~((allowance))~~ benefit will be reduced ~~((by five and one-half percent for every eight hours you work during that month. This reduction will be applied each month))~~ in accordance with RCW 41.37.050(1) until you remain absent ~~((from such employment for thirty))~~ for at least thirty consecutive calendar days.

~~((ii))~~ ~~The reduction provided in (a)(i) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any reduction over one hundred percent will be applied to the allowance you are eligible to receive in subsequent months. See RCW 41.37.050(1).)~~

(b) If you ~~((return to work after))~~ retire and remain absent at least thirty consecutive calendar days ~~((have elapsed))~~ from your accrual date, you may work ~~((for))~~ up to eight hundred sixty-seven hours each calendar year before your retirement ~~((allowance))~~ benefit is suspended.

(3) If you return to work in an eligible **PSERS position**, your retirement ~~((allowance))~~ benefit will be affected as follows:

(a) If you ~~((return to an eligible PSERS position and))~~ elect to reenter membership, your retirement ~~((allowance))~~ benefit will be suspended. ~~((If you make this election))~~ When you rehire, your retirement ~~((allowance))~~ benefit will be recalculated pursuant to WAC 415-106-710 ~~((when you rehire))~~.

(b) If you return to an eligible PSERS position within thirty consecutive days of your accrual date (effective retirement date) and do not reenter membership, your monthly retirement ~~((allowance))~~ benefit will be reduced by five and one-half percent for every eight hours you work during that month. This reduction will be applied each month until you remain absent ~~((from such employment))~~ for thirty consecutive calendar days. The reduction will accrue for a maximum of one hundred sixty hours per month. Any reduction over one hundred percent will be applied to the ~~((allowance))~~ benefit you are eligible to receive in subsequent months. See RCW 41.37.050(1).

(c) If you return to an eligible PSERS position after being absent for thirty consecutive calendar days ~~((of))~~ from your accrual date (effective retirement date) and do not reenter membership, your retirement ~~((allowance))~~ benefit will be suspended until you separate from PSERS employment.

(4) If you return to work after retirement from PSERS and another DRS retirement system, see WAC 415-113-300 to determine the effect of returning to work.

(5) What hours are counted toward the limit((s))?

(a) ~~((Hours that count))~~ Counted toward the eight hundred sixty-seven hour limit((s are: (i)): All compensated hours that ~~((you work))~~ are worked in an eligible position ~~((for any employer whose))~~ covered by a DRS or higher education retirement plan ~~((is administered by the department;~~

~~((i))~~ Used), including the use of earned sick leave ~~((and))~~, vacation days~~((;~~

~~(iii) Paid holidays; and~~

~~(iv) Compensatory time, whether you use the time or cash it out), paid holidays, compensatory time, and cashouts of compensatory time.~~

~~(b) Not counted toward the hour limit(s): Cashouts of unused sick and vacation leave (you cash out).~~

~~((5)) (6) What happens if I work (over) more than the annual eight hundred sixty-seven hour limit? (The department will:~~

~~(a) Suspend your retirement allowance on the day following the day)~~

~~(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the hour limit (and prorate your payment for that month).~~

~~(b) (Restart) Your retirement (allowance) benefit will be restarted beginning the next calendar year (January) or the day after you terminate all eligible employment identified in subsection (2) of this section, whichever occurs first.~~

~~(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the (hour) work limit and received a retirement (allowance) benefit. See RCW 41.50.130.~~

(7) Terms used.

(a) Accrual date - RCW 41.37.240.

(b) PSERS: Public safety employees' retirement system.

(c) Eligible position - RCW 41.37.010(10); WAC 415-106-100.

(d) Ineligible position - RCW 41.37.010(17).

(e) Membership - RCW 41.37.020.

(f) Month - Calendar month as defined in WAC 415-02-030.

AMENDATORY SECTION (Amending WSR 04-04-037, filed 1/29/04, effective 3/1/04)

WAC 415-108-710 What are the ((PERS retiree)) return to work rules for PERS Plan 1, Plan 2, and Plan 3?

(1) How soon can I return to work after I retire without impacting my PERS retirement benefit?

~~(a) ((There is no required waiting period to return to work)) You may begin working immediately after you retire without impacting your PERS retirement benefit if:~~

~~(i) You go to work for a private employer;~~

~~(ii) You are ((a bona fide)) an independent contractor as defined in WAC 415-02-110;~~

~~(iii) Your only employment is as an elected official ((of a city or town)) and you end your PERS membership under RCW 41.40.023 (3)(b); or~~

~~(iv) You are a PERS Plan 1 retiree elected to office or appointed to office by the governor.~~

~~(b) If you retire and then return to work sooner than thirty consecutive calendar days from your accrual date (effective retirement date), your monthly retirement ((allowance)) benefit will be reduced in accordance with RCW 41.40.037(1) until you ((separate)) remain absent for at least thirty consecutive calendar days.~~

~~(c) If you ((wait)) retire and remain absent at least thirty consecutive calendar days from your accrual date, you may return to work in any position (eligible((s)) or ineligible((s temporary, etc.))), for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your PERS retirement benefit until you reach your applicable hour limit.~~

~~(2) What is the annual hour limit? ((After you meet the thirty day waiting period)) Except as provided in subsection (5) of this section regarding the 2008 early retirement factors (ERFs), after being absent at least thirty consecutive calendar days as described in subsection (1)(c) of this section, ((there are different)) your annual hour limit((s that apply to you)) will be based on ((what kind of)) the position you return to((s the system from which you retired, and when you retired)).~~

~~(a) No limit. You may work as many hours as you want without affecting your retirement ((allowance)) benefit if you work:~~

~~(i) In ((an ineligible)) a position((s~~

~~(ii) As a retiree returning as an active member of a) that is not eligible for membership in a DRS or higher education retirement plan;~~

~~((iii) As a bona fide) (ii) As an independent contractor;~~

~~((iv)) (iii) For a private employer;~~

~~((v)) (iv) If you end your PERS membership as an elected official ((of a city or town)) under RCW 41.40.023 (3)(b); or~~

~~((vi)) (v) As a PERS Plan 1 retiree elected to office or appointed to office by the governor.~~

~~(b) ((Fifteen hundred hour limit. You may work up to fifteen hundred hours in an eligible position as defined in RCW 41.32.010(37), 41.35.010(22), or 41.40.010(25), or as a firefighter or law enforcement officer, as defined in RCW 41.26.030 (3) and (4), in a calendar year subject to the nineteen hundred hour cumulative limit described in subsection (3) of this section before your retirement allowance is suspended if:~~

~~(i) You are a PERS Plan 1 retiree who retired prior to August 1, 2003; or~~

~~(ii) You are a PERS Plan 1 retiree who retired on or after August 1, 2003, you waited at least ninety consecutive calendar days from your accrual date, and you met the additional conditions described in RCW 41.40.037 (2)(b).~~

~~((s)) Eight hundred sixty-seven-hour limit. You may work up to eight hundred sixty-seven hours in ((an eligible position as defined in RCW 41.32.010(37), 41.35.010(22), or 41.40.010(25), or as a firefighter or law enforcement officer, as defined in RCW 41.26.030 (3) and (4), in)) a calendar year, in a position that is eligible for membership in a DRS or a public institution of higher education retirement plan, before your retirement allowance is suspended ((if:~~

~~(i) You are a PERS Plan 1 retiree who retired on or after August 1, 2003, and you do not meet the additional conditions described in RCW 41.40.037 (2)(b) or you have exceeded the nineteen hundred hour cumulative limit described in subsection (3) of this section; or~~

(ii) You are a PERS Plan 2 or 3 retiree and return to work in an eligible position as defined in RCW 41.32.010(37), 41.35.010(22), or 41.40.010(25), or as a firefighter or law enforcement officer, as defined in RCW 41.26.030 (3) and (4).

(d) If you are retired from PERS and another DRS retirement system, refer to the table below to determine the effect of returning to work:

Dual System Combination	Return to Work System	Outcome
PERS Plan 1 and LEOFF Plan 2	PERS	Your LEOFF Plan 2 benefit would be suspended and you could work up to the PERS Plan 1 limit (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.
	TRS	Your LEOFF Plan 2 benefit would be suspended and you could work up to the PERS Plan 1 limit (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.
	LEOFF Plan 2	Your LEOFF Plan 2 benefit would be suspended and you would be mandated back into LEOFF Plan 2 membership. Your PERS benefit would be suspended until you terminate from LEOFF Plan 2.
	WSPRS	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your PERS and LEOFF Plan 2 benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member of WSPRS. Your LEOFF Plan 2 benefit is suspended and you can work up to the PERS Plan 1 limit (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.
PERS Plan 1 and TRS Plan 1	PERS	If the position is at any educational institution in Washington state, then the TRS Plan 1 limits apply which allow you to work up to fifteen hundred hours during the fiscal year before your PERS and TRS benefits would be suspended. The one exception is if you return to work at a higher education employer and choose to join another retirement system (e.g., TIAA-CREF). In that case, the PERS Plan 1 rules would apply. By definition, the position is ineligible in PERS and therefore you can work unlimited hours without your PERS and TRS benefits being suspended. If the position is not at an educational institution in Washington state, the TRS Plan 1 limits would apply and you can work unlimited hours without your PERS and TRS benefits being suspended.
	TRS	The TRS Plan 1 limits would apply and you can work up to fifteen hundred hours during the fiscal year before your PERS and TRS benefits would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF Plan 2 and your PERS and TRS benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2. The TRS Plan 1 limits would apply and you can work unlimited hours without your PERS and TRS benefits being suspended.

Dual System Combination	Return to Work System	Outcome
	WSPRS	<p>If you have less than fifteen years of service credit in either system you are retired from, then you are mandated into membership in WSPRS and your PERS and TRS benefits are suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS. The TRS Plan 1 limits would apply and you can work unlimited hours without your PERS and TRS benefits being suspended.</p>
PERS Plan 1 and TRS Plan 2 or 3	PERS	You can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
	TRS	You can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
	LEOFF Plan 2	<p>If you have less than fifteen years of service credit in either system you are retired from, then you are mandated into membership in LEOFF Plan 2 and your PERS and TRS benefits are suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.</p>
	WSPRS	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and both your PERS and TRS benefits would be suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member WSPRS and you can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.</p>
PERS Plan 1 and WSPRS	PERS	Your WSPRS benefit would not be suspended and you can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.
	TRS	Your WSPRS benefit would not be suspended and you can work up to the PERS 1 Plan limits (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.
	LEOFF Plan 2	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF. Your WSPRS benefit would not be suspended and your PERS benefit would be immediately be suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2. Your WSPRS benefit would not be suspended and you can work up to the PERS Plan 1 limits (subsection (2)(a), (b) and (c) of this section) during the calendar year in an eligible position before your PERS benefit would be suspended.</p>
	WSPRS	Your WSPRS benefit would be suspended and you would be mandated back into membership.

Dual System Combination	Return to Work System	Outcome
		Your PERS benefit would be suspended until you terminate from WSPRS.
PERS Plan 2 or 3 and LEOFF Plan 2	SERS	Your LEOFF Plan 2 benefit would be suspended and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
	PERS	Your LEOFF Plan 2 benefit would be suspended and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
	TRS	Your LEOFF Plan 2 benefit would be suspended and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
	LEOFF	Your LEOFF Plan 2 benefit would be suspended and you are mandated back into LEOFF Plan 2 membership. Your PERS benefit would be suspended until you terminate from LEOFF Plan 2.
	WSPRS	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your PERS and LEOFF Plan 2 benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS. Your LEOFF Plan 2 benefit is suspended and you can work up to eight hundred sixty seven hours during the calendar year before your PERS benefit would be suspended.
PERS Plan 2 or 3 and SERS Plan 2 or 3	SERS	You can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and PERS benefits would be suspended.
	PERS	You can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and PERS benefits would be suspended.
	TRS	You can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and PERS benefits would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your SERS and PERS benefits are suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and PERS benefits would be suspended.
	WSPRS	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your SERS and PERS benefits would be suspended. If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and PERS benefits would be suspended.

Dual System Combination	Return to Work System	Outcome
<p>PERS Plan 2 or 3 and TRS Plan 1</p>	SERS	<p>You can work up to fifteen hundred hours during the fiscal year in an eligible position before your PERS and TRS benefits would be suspended.</p>
	PERS	<p>If the position is at any educational institution in Washington state you can work up to fifteen hundred hours during the fiscal year before your PERS and TRS benefits would be suspended.</p> <p>If the position is not at an educational institution in Washington state, you can work unlimited hours without your PERS and TRS benefits being suspended.</p>
	TRS	<p>You can work up to fifteen hundred hours during the fiscal year in an eligible position before your PERS and TRS benefits would be suspended.</p>
	LEOFF Plan 2	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your PERS and TRS benefits are suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work unlimited hours without your PERS and TRS benefits being suspended.</p>
	WSPRS	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your PERS and TRS benefits would be suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work unlimited hours without your PERS and TRS benefits being suspended.</p>
<p>PERS Plan 2 or 3 and TRS Plan 2 or 3</p>	SERS	<p>You can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.</p>
	PERS	<p>You can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.</p>
	TRS	<p>You can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.</p>
	LEOFF Plan 2	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your PERS and TRS benefits are suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.</p>
	WSPRS	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your PERS and TRS benefits would be suspended.</p>

Dual System Combination	Return to Work System	Outcome
		If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS and TRS benefits would be suspended.
PERS Plan 2 or 3 and WSPRS	SERS	Your WSPRS benefit would not be suspended and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
	PERS	Your WSPRS benefit would not be suspended and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
PERS Plan 2 or 3 and WSPRS	TRS	Your WSPRS benefit would not be suspended and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS benefit would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF. Your PERS benefit is suspended but your WSPRS benefit would not be suspended. If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2. You can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your PERS benefit would be suspended. Your WSPRS benefit would not be suspended.
	WSPRS	Your WSPRS benefit would be suspended and you are mandated back into membership. Your PERS benefit would be suspended until you terminate from WSPRS.

~~(3) What is the nineteen hundred hour cumulative hour limit?~~

~~(a) This limit is applicable only to PERS Plan 1 retirees. It puts a lifetime limit on the number of hours that can be worked in an eligible position while still receiving a retirement allowance. This limit applies to all retirements in PERS Plan 1. Any hours reported by your employer as worked over eight hundred sixty seven up to fifteen hundred in a calendar year while receiving a retirement allowance are counted toward the cumulative limit. Hours accumulated toward your lifetime post retirement employment limit from a previous retirement will continue to be counted in your new retirement.~~

~~(b) DRS will send out statements annually to any PERS Plan 1 retiree who accumulated any hours toward the nineteen hundred hour cumulative limit in the preceding calendar year. The statement will show the hours you have worked in the calendar year and the total hours you have worked since your retirement date. If there has been no activity in the calendar year, DRS will not issue a statement, even if there is an accumulated total from previous calendar years. See also WAC 415-02-130).~~

~~((4)) (3) What hours ((are counted)) count toward the limit((s))?~~

~~(a) Counted toward the eight hundred sixty-seven-hour limit((s)): All compensated hours that are worked ((for~~

~~any DRS-covered employer)) in an eligible position covered by a DRS or higher education retirement plan, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.~~

~~(b) Not counted toward the hour limit((s)): Cashouts of unused sick and vacation leave.~~

~~((5)) (4) What happens if I work ((over)) more than the annual ((or cumulative)) eight hundred sixty-seven-hour limit?~~

~~(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement ((allowance)) benefit for the month in which you exceed the ((applicable)) hour limit. ((The suspension of your retirement allowance will be effective the day after the day in which you exceeded the applicable hour limit.~~

~~(b) If your retirement allowance is suspended for exceeding the nineteen hundred hour cumulative work limit, all subsequent calendar years will be subject to the eight hundred sixty-seven hour annual limit.~~

~~((c)) (b) Your retirement ((allowance)) benefit will be restarted beginning the next calendar year (January) or the day after you terminate all eligible ((DRS-covered)) employment, whichever occurs first.~~

~~((d)) (c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the work limit~~

and received a retirement (~~(allowance)~~) benefit. See RCW 41.50.130.

(5) What if I am a PERS Plan 2 or Plan 3 member and retired using the 2008 early retirement factors (ERFs)?

(a) If you retire using the 2008 ERFs and then return to work before age sixty-five:

(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.

(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.

(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.

(6) Can I return to PERS membership?

(a) If you (~~(are a PERS retiree)~~) retire from PERS, you have the option to return to membership if you are employed by a PERS employer and meet the eligibility criteria. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.40.023(12).

(b) If you reenter PERS membership and later choose to retire again, DRS will recalculate your retirement (~~(allowance)~~) benefit under the applicable statutes and regulations. See WAC 415-108-830. You will be subject to the return to work rules in place at the time of your retirement. (~~(If you are a PERS Plan 1 member you will also be entitled to a new nineteen hundred hour cumulative hour limit. You will be subject to the return to work rules, including the nineteen hundred hour lifetime limit described in subsection (3) of this section, in place at the time of your retirement.)~~)

(c) If you are a retiree from another retirement system (~~(that)~~) administered by DRS (~~(administers)~~), you may choose to enter PERS membership if you are eligible. See WAC 415-108-725. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.40.270 and 41.40.023.

(7) What if I retired from PERS and another DRS retirement system?

(a) If you retired from PERS using the 2008 ERFs and another DRS retirement system, and are under age sixty-five:

(i) Your PERS retirement benefit will be impacted as described in subsection (5) of this section.

(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.

(b) If you retired from PERS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.

Note: You may have a choice of returning to membership. See the following WAC sections for more information: WAC 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

(8) Terms used.

(a) 2008 Early retirement factors (ERFs) - RCW 41.40.-630 (3)(b) for PERS Plan 2 or RCW 41.40.820 (3)(b) for PERS Plan 3.

(b) Accrual date - RCW 41.40.193, 41.40.680, 41.40.-801.

(~~(b)~~) Acronyms used:

(i) LEOFF: Law enforcement officers' and firefighters' retirement system.

(ii) PERS: Public employees' retirement system.

(iii) SERS: School employees' retirement system.

(iv) TRS: Teachers' retirement system.

(v) WSPRS: Washington state patrol retirement system.

(e) Calendar day - WAC 415-02-030.)

(d) Elected official - WAC 415-108-550.
(e) Eligible position - RCW 41.40.010(~~(25)~~); WAC 415-108-680 through 415-108-700.

(~~(e)~~) (f) Ineligible position - RCW 41.40.010(~~(26)~~).

(~~(f)~~) Law enforcement officer - RCW 41.26.030(3-))

(g) Month - Calendar month as defined in WAC 415-02-030.

(h) Public institution of higher education - RCW 28B.10.400.

(i) Membership - RCW 41.40.023.

AMENDATORY SECTION (Amending WSR 04-04-037, filed 1/29/04, effective 3/1/04)

WAC 415-110-710 What are the (~~(SERS retiree)~~) return to work rules for SERS Plan 2 and Plan 3? (1) How soon can I return to work after I retire without impacting my SERS retirement benefit?

(a) (~~(There is no required waiting period to return to work if)~~) You may begin working immediately after you retire without impacting your SERS retirement benefit if:

(i) You go to work for a private employer;

(ii) You are (~~(a bona fide)~~) an independent contractor as defined in WAC 415-02-110; or

(iii) Your only employment is as an elected official (~~(of a city or town)~~) and you end your SERS membership under RCW 41.35.030 (2)(b).

(b) If you retire and then return to work sooner than thirty consecutive calendar days from your accrual date (effective retirement date), your monthly retirement (~~(allowance)~~) benefit will be reduced in accordance with RCW 41.35.060(1) until you (~~(separate)~~) remain absent for at least thirty consecutive calendar days.

(c) If you (~~(wait)~~) retire and remain absent at least thirty consecutive calendar days from your accrual date, you may return to work in any position (eligible(~~(r)~~) or ineligible(~~(r; temporary, etc.)~~)) for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your SERS retirement benefit until you reach your applicable hour limit.

Example: Amy's last day at work for the ABC school district is June 19, 2015, and her official retirement date is September 1, 2015, (when she starts getting her monthly benefit). She wants to return to work at the start of the new school year on September 8, 2015. She needs to wait thirty consecu-

tive calendar days from her September 1st retirement date before returning to work. If she returns to work before October 1st, her benefit will be reduced until she meets the required thirty-day break from employment.

(2) **What is the annual hour limit?** ~~((After you meet the thirty-day waiting period))~~ Except as provided in subsection (5) of this section regarding the 2008 early retirement factors (ERFs), after being absent at least thirty consecutive calendar days as described in subsection (1)(c) of this section, ~~((there are different annual hour limits that apply to you based on what kind of))~~ your annual hour limit will be based on the position you return to.

(a) **No limit.** You ~~((can))~~ may work as many hours as you want without affecting your retirement ~~((allowance))~~ benefit if you work:

(i) In ~~((an ineligible position;~~

~~((ii) As a retiree returning as an active member of a))~~ a position that is not eligible for membership in a DRS or higher education retirement plan;

~~((iii))~~ (ii) As ~~((a bona fide))~~ an independent contractor;
~~((iv))~~ (iii) For a private employer; or
~~((v))~~ (iv) If you end your SERS membership as an elected official ~~((of a city or town))~~ under RCW 41.35.030 (2)(b).

(b) **Eight hundred sixty-seven-hour limit.** You may work up to eight hundred sixty-seven hours ~~((in an eligible position as defined in RCW 41.32.010(37), 41.35.010(22), or 41.40.010(25), or as a firefighter or law enforcement officer, as defined in RCW 41.26.030 (3) and (4),))~~ in a calendar year, in a position which is eligible for membership in a DRS or public institution of higher education retirement plan, before your retirement ~~((allowance))~~ benefit is suspended.

~~((e))~~ If you are retired from SERS and another DRS retirement system, refer to the table below to determine the effect of returning to work:

Dual System Combination	Return to Work System	Outcome
SERS Plan 2 or 3 and LEOFF Plan 2	SERS	Your LEOFF Plan 2 monthly retirement allowance would be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	PERS	Your LEOFF Plan 2 monthly retirement allowance would be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before their SERS monthly retirement allowance would be suspended.
	TRS	Your LEOFF Plan 2 monthly retirement allowance would be suspended and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	LEOFF Plan 2	Your LEOFF Plan 2 monthly retirement allowance would be suspended and you would be mandated back into LEOFF Plan 2 membership. Your SERS monthly retirement allowance would be suspended until you terminate from LEOFF Plan 2.
	WSPRS	If you have less than fifteen years of service credit in either system you are retired from, then you are mandated into membership in WSPRS and your SERS and LEOFF Plan 2 monthly retirement allowances are suspended.

Dual System Combination	Return to Work System	Outcome
		<p>If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS. Your LEOFF-Plan 2 monthly retirement allowance is suspended and you can work up to eight hundred sixty-seven hours during the calendar year before your SERS monthly retirement allowance would be suspended.</p>
<p>SERS Plan 2 or 3 and PERS Plan 2 or 3</p>	<p>SERS</p>	<p>You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowances would be suspended.</p>
	<p>PERS</p>	<p>You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowances would be suspended.</p>
	<p>TRS</p>	<p>You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowances would be suspended.</p>
	<p>LEOFF Plan 2</p>	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your SERS and PERS monthly retirement allowances are suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowances would be suspended.</p>
	<p>WSPRS</p>	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your SERS and PERS monthly retirement allowances would be suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowance would be suspended.</p>
<p>SERS Plan 2 or 3 and TRS Plan 1</p>	<p>SERS</p>	<p>You can work up to fifteen hundred hours during the fiscal year in an eligible position before your SERS and TRS monthly retirement allowances would be suspended.</p>

Dual System Combination	Return to Work System	Outcome
	PERS	<p>If the position is at any educational institution in Washington state you can work up to fifteen hundred hours during the fiscal year before your SERS and TRS monthly retirement allowances would be suspended.</p> <p>If the position is not at an educational institution in Washington state, you can work unlimited hours without your SERS or TRS monthly retirement allowance being suspended.</p>
	TRS	<p>You can work up to fifteen hundred hours during the fiscal year in an eligible position before your SERS and TRS monthly retirement allowances would be suspended.</p>
	LEOFF Plan 2	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your SERS and TRS monthly retirement allowances are suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work unlimited hours without your SERS and TRS monthly retirement allowances being suspended.</p>
	WSPRS	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your SERS and PERS monthly retirement allowances would be suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before their SERS and PERS monthly retirement allowance would be suspended.</p>
SERS Plan 2 or 3 and TRS Plan 2 or 3	SERS	<p>You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and TRS monthly retirement allowances would be suspended.</p>
	PERS	<p>You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS and TRS monthly retirement allowances would be suspended.</p>
	TRS	<p>The retiree can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before their SERS and TRS monthly retirement allowances would be suspended.</p>

Dual System Combination	Return to Work System	Outcome
	LEOFF Plan 2	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF and your SERS and TRS monthly retirement allowances are suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2 and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and TRS monthly retirement allowances would be suspended.</p>
	WSPRS	<p>If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in WSPRS and your SERS and PERS monthly retirement allowances would be suspended.</p> <p>If you have fifteen or more years of service credit in either system then you may not become a member in WSPRS and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS and PERS monthly retirement allowances would be suspended.</p>
SERS Plan 2 or 3 and WSPRS	SERS	Your WSPRS monthly retirement allowance would not be suspended and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	PERS	Your WSPRS monthly retirement allowance would not be suspended and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	TRS	Your WSPRS monthly retirement allowance would not be suspended and you can work up to eight hundred sixty seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	LEOFF Plan 2	If you have less than fifteen years of service credit in either system you retired from, then you are mandated into membership in LEOFF. Your SERS monthly retirement allowance is suspended but your WSPRS monthly retirement allowance would not be suspended.

Dual System Combination	Return to Work System	Outcome
		If you have fifteen or more years of service credit in either system then you may not become a member in LEOFF Plan 2. You can work up to eight hundred sixty-seven hours during the calendar year in an eligible position before your SERS monthly retirement allowance would be suspended.
	WSPRS	Your WSPRS monthly retirement allowance would be suspended and you are mandated back into membership. Your SERS monthly retirement allowance would be suspended until you terminate from WSPRS.)

(3) What hours (~~are counted~~) count toward the limit(~~s~~)?

(a) Counted toward the eight hundred sixty-seven hour limit(~~s~~): All compensated hours that are worked (~~for any DRS covered employer~~) in an eligible position covered by a DRS or higher education retirement plan, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) Not counted toward the hour limit(~~s~~): Cashouts of unused sick and vacation leave.

(4) What happens if I work (~~over~~) more than the annual eight hundred sixty-seven hour limit?

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement (~~allowance~~) benefit for the month in which you exceed the limit. (~~The suspension will be effective the day after the day in which you exceeded the hour limit.~~)

(b) Your retirement (~~allowance~~) benefit will be restarted beginning (~~with~~) the next calendar year (January) or the day after you terminate all eligible (~~DRS covered~~) employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the hour limit and received a retirement (~~allowance~~) benefit. See RCW 41.50.130.

(5) What if I retired using the 2008 early retirement factors (ERFs)?

(a) If you retire using the 2008 ERFs and then return to work before age sixty-five:

(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.

(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.

(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.

(b) If you retire using the 2008 ERFs and then return to work at or after age sixty-five, you can work under the rules described in subsections (2) and (3) of this section.

(6) Can I return to SERS membership?

(a) (~~If you are a SERS retiree,~~) If you retire from SERS, you have the option to return to membership if you are employed by a SERS employer and meet the eligibility criteria. The option to return to membership is prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.35.030(3).

(b) If you reenter SERS membership and later choose to retire again, DRS will recalculate your retirement (~~allowance~~) benefit under the applicable statutes and regulations. See WAC 415-110-830. You will be subject to the return to work rules in place at the time of your retirement.

(c) If you are a retiree from another retirement system (~~that~~) administered by DRS (~~administers~~), you may choose to enter SERS membership if you are eligible. See WAC 415-110-725. The option to (~~return to~~) enter membership is prospective from the first day of the month following the month in which you request (~~to return to~~) membership. See RCW 41.04.270 and 41.35.030.

(7) What if I retired from SERS and another DRS retirement system?

(a) If you retired from SERS using the 2008 ERFs and another DRS retirement system and are under age sixty-five:

(i) Your SERS retirement benefit will be impacted as described in subsection (5) of this section.

(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.

(b) If you retired from SERS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.

Note: You may have a choice of returning to membership. See the following WAC sections for more information: WAC 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

(8) Terms used.

(a) 2008 Early retirement factors (ERFs) - RCW 41.35.420 (3)(b) for SERS Plan 2, or RCW 41.35.680 for SERS Plan 3.

(b) Accrual date - RCW 41.35.450, 41.35.640.

((b) Acronyms used:

(i) LEOFF: Law enforcement officers' and firefighters' retirement system.

(ii) PERS: Public employees' retirement system.

(iii) SERS: School employees' retirement system.

(iv) TRS: Teachers' retirement system.

(v) WSPRS: Washington state patrol retirement system.)

(c) ((Calendar day—WAC 415-02-030.)) Elected official - WAC 415-110-550.

(d) Eligible position - RCW ((41.35.060(2))) 41.35.010; WAC 415-110-680 through 415-110-700.

(e) Ineligible position - RCW 41.35.010((23)).

(f) ((Law enforcement officer—RCW 41.26.030(3).

(g)) Member - RCW 41.35.010((5)).

(g) Month - Calendar month as defined in WAC 415-02-030.

(h) Public institution of higher education - RCW 28B.10.400.

(i) SERS - School employees' retirement system.

AMENDATORY SECTION (Amending WSR 02-02-060, filed 12/28/01, effective 1/1/02)

WAC 415-112-525 ((How soon can I return to work as a retiree?)) What are the return to work rules for TRS Plan 1, Plan 2, and Plan 3? ((1) If you return to work sooner than one full calendar month after your accrual date, your retirement allowance will be reduced by 5.5% for every seven hours worked during the month until you separate from all employment for one full calendar month. See RCW 41.32.570 (TRS Plan 1), 41.32.802 (TRS Plan 2), or 41.32.862 (TRS Plan 3).

Example 1:

Dave's last day of work is September 15th. He has no agreement to return to work. His accrual date is October 1st. If Dave wants to return to work after he retires, he will need to wait until at least November 1st to avoid receiving the daily percentage reduction in his retirement allowance.

Example 2:

Brian's last day of work is September 15th. He has no agreement to return to work. His accrual date is October 1st. Brian subsequently is asked to work for five seven-hour work days between October 10th and October 17th. On November 1st, Brian's retirement allowance will be reduced by five and one-half percent for every seven hours worked during October. (RCW 41.32.570.) On December 1st, he will qualify for his full retirement benefit. Brian will also qualify to return to work under the work limits described in WAC 415-112-540(2).

Example 3:

Joe's last day of work is September 15th. He has no agreement to return to work. His accrual date is October 1st. Joe then returns to work on October 10th and continues working. Joe's retirement benefit will be reduced by 5.5% for each seven hours he works. Joe's benefit reduction will accrue up to one hundred forty hours per month. If he stops working,

his full retirement benefit will resume after he remains separated for one full calendar month. Any benefit reduction over one hundred percent will be applied to Joe's allowance in subsequent months.

(2) If you have a written agreement to return to work before your accrual date, and in fact return to work, you have not entered retirement status. See WAC 415-112-515. In this case, you are not a retiree, and the 5.5% reduction in subsection (1) of this section does not apply.

Example 4:

Teri's last day of work is September 15th. Her accrual date would ordinarily be on October 1st. However, on September 18th, Teri signed an agreement to work for one day in October. Teri signed the agreement prior to her accrual date. Under WAC 415-112-515 she is not a retiree, and not eligible for her retirement benefits. In addition, the 5.5% reduction does not apply. Teri's accrual date will now be November 1st, as long as she did not have any other agreements to work.

Defined terms used. Definitions for the following terms used in this section may be found in the sections listed:

(a) "Accrual date" — WAC 415-112-520; RCW 41.32.795, 41.32.855.

(b) "Eligible position" — RCW 41.40.010, 41.32.010 (37)(a), 41.35.010(22).

(c) "Employer" — RCW 41.32.010(11.)) (1) **How soon can I return to work after I retire without impacting my TRS retirement benefit?**

(a) You may begin working immediately after you retire without impacting your TRS retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) You are a TRS Plan 1 retiree, your only employment is as an elected official, and you end your TRS membership under RCW 41.32.263.

(b) If you retire and then return to work for a public employer except as provided in (a) of this subsection, sooner than thirty consecutive calendar days from your accrual date (effective retirement date), your retirement allowance will be reduced until you remain absent for at least thirty consecutive calendar days. See RCW 41.32.570 (TRS Plan 1), 41.32.802 (TRS Plan 2), or 41.32.862 (TRS Plan 3).

(c) If you retire and remain absent at least thirty consecutive calendar days from your accrual date, you may return to work in any position (eligible or ineligible) for any employer whose retirement plan is administered by the department of retirement systems (DRS) or a public institution of higher education, without impacting your TRS retirement benefit until you reach your applicable hour limit.

(d) **Examples:**

(i) **Return to work with no reduction**

Casey's last day of work is January 20th. Her accrual date (effective retirement date) is February 1st, and there are 28 days in February. If Casey wants to return to work for a public employer after she retires, she will need to wait until at least March 3rd to avoid the daily percentage reduction in her retirement allowance.

(ii) Return to work before thirty day waiting period ends

Brian's last day of work is September 1st. His accrual date (effective retirement date) is October 1st. Brian returns to work October 10 through October 17th. In November, Brian's retirement allowance will be reduced by 5.5% for every seven hours worked during October. Brian's new thirty day wait period would be October 18th through November 16th.

(2) What is the annual hour limit? Except as provided in subsection (5) of this section regarding the 2008 early retirement factors, after being absent at least thirty consecutive calendar days as described in subsection (1)(c) of this section, your annual hour limit will be based on the position you return to.

(a) No limit. You may work as many hours as you want without affecting your retirement benefit if:

(i) You go to work for a private employer;

(ii) You are an independent contractor as defined in WAC 415-02-110; or

(iii) You are a TRS Plan 1 retiree, and:

(A) Your only employment is as an elected official, and you end your TRS membership under RCW 41.32.263; or

(B) You go to work for a nonpublic educational institution.

(iv) You are a TRS Plan 2 or Plan 3 member working as an on-call substitute teacher.

(b) Eight hundred sixty-seven-hour limit. You may work up to eight hundred sixty-seven hours in a year (July through June for TRS Plan 1, January through December for TRS Plan 2) before your retirement benefit is suspended.

(3) What hours count toward the limit?

(a) Counted toward the eight hundred sixty-seven-hour limit: All compensated hours that are worked in an eligible position, including the use of earned sick leave, vacation days, paid holidays, compensatory time, and cashouts of compensatory time.

(b) Not counted toward the hour limit: Cashouts of unused sick and vacation leave.

(4) What happens if I work more than the annual eight hundred sixty-seven-hour limit?

(a) If you work more than the annual limit, your retirement benefit will be suspended. The suspension will be effective the day after you exceed the hour limit. DRS will prorate your retirement benefit for the month in which you exceed the limit.

(b) Your retirement benefit will be restarted beginning the next year (July for TRS Plan 1, January for TRS Plan 2 or Plan 3) or the day after you terminate all eligible employment, whichever occurs first.

(c) DRS will recover any overpayments made to you for the month(s) in which you exceeded the hour limit and received a retirement benefit. See RCW 41.50.130.

(5) What if I am a TRS Plan 2 or Plan 3 member and retired using the 2008 early retirement factors (ERFs)?

(a) If you retire using the 2008 ERFs and then return to work before age sixty-five:

(i) You will not receive your retirement benefit for any month in which you are an employee in a position covered by a DRS or higher education retirement plan including, but not

limited to, permanent, nonpermanent, project, temporary, eligible and ineligible positions.

(ii) You will not receive your retirement benefit for any month in which you earn compensation for service performed as a contractor, or as the result of service performed by those in your employ, for an employer covered by a DRS or higher education retirement plan.

(iii) Your retirement benefit will stop effective the first day of the month you return to work and will restart the first day of the month after you stop working.

(b) If you retire using the 2008 ERFs, upon reaching age sixty-five you can work under the rules described in subsections (2) and (3) of this section.

(6) Can I return to TRS membership?

(a) You may choose to return to membership if you are employed by a public educational institution and are otherwise eligible. Membership will be prospective from the first day of the month following the month in which you request to return to membership. See RCW 41.32.044.

(b) If you reenter TRS membership and later choose to retire again, DRS will recalculate your retirement benefit under the applicable statutes and regulations. You will be subject to the return to work rules in place at the time of your retirement.

(c) If you are a retiree from another retirement system administered by DRS, you may choose to enter TRS membership if you are eligible. See WAC 415-112-546. The option to enter membership is prospective from the first day of the month following the month in which you request membership. See RCW 41.04.270 and 41.35.030.

(7) What if I retired from TRS and another DRS retirement system?

(a) If you retired from TRS using the 2008 ERFs and another DRS retirement system, and are under age sixty-five:

(i) Your TRS retirement benefit will be impacted as described in subsection (5) of this section.

(ii) The retirement benefit from the other DRS retirement system will be impacted based on the rules for that system.

(b) If you retired from TRS and another DRS retirement system without using the 2008 ERFs, or using the 2008 ERFs and have reached age sixty-five, see WAC 415-113-300 to determine the effect of returning to work.

Note: You may have a choice of returning to membership. See the following WAC sections for more information: 415-108-725, 415-110-725, 415-112-546, 415-106-725, and 415-104-111.

(8) Terms used.

(a) "Accrual date" - WAC 415-112-520; RCW 41.32.-795, 41.32.855.

(b) "Eligible position" - RCW 41.32.010.

(c) "Employer" - RCW 41.32.010.

(d) "Year."

(i) For TRS Plan 1, a "year" is July 1st through June 30th.

(ii) For TRS Plan 2 and Plan 3, a "year" is January 1st through December 31st.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 415-112-541 How will returning to work affect my TRS Plan 1 monthly pension?
 WAC 415-112-542 How will returning to work affect my TRS Plan 2 or Plan 3 monthly retirement allowance?

EMPLOYMENT AFTER RETIREMENTNEW SECTION

WAC 415-113-300 How is my benefit affected if I return to work after retiring from multiple DRS retirement systems? (1) If you retired using the 2008 early retirement factors (ERFs) and return to work for a DRS employer before age sixty-five, your retirement benefit(s) based on the 2008 ERFs will be immediately suspended. Any benefit(s) not based on the 2008 ERFs will be subject to rules for that system.

(2) If you are retired from multiple DRS systems and return to work for a DRS employer, your benefits will be affected according to rules of each respective system with the following exception:

If one of the systems you retired from is TRS Plan 1, your annual hourly limit for all your systems will be counted using a fiscal year (July through June).

See WAC 415-108-710 (PERS), 415-110-710 (SERS), 415-112-541 (TRS Plan 1), 415-112-541 (TRS Plan 2 and Plan 3), 415-106-700 (PSERS), RCW 41.26.500 (LEOFF Plan 2), 43.43.130 (WSPRS).

(3) Term used.

Employer - See WAC 415-02-030.

WSR 16-17-049
PERMANENT RULES
NORTHWEST CLEAN
AIR AGENCY

[Filed August 11, 2016, 3:06 p.m., effective September 11, 2016]

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

Purpose: The goal of this rule making is three-fold. First is to clarify and update the solid fuel burning device program to be more consistent with other local agencies within Washington as adapted for local needs. This includes adding, deleting, or revising certain definitions; clarifying that devices that did not meet the solid fuel burning device requirements in effect at the time of installation must be removed or made permanently inoperable; and clarifying and adding burn ban exemptions that allow certain categories of people to continue using their solid fuel burning devices during burn bans. Second is to update the general definition section in the rule to add a couple of new definitions as a result of the solid fuel burning device program rule change and to clarify a couple of existing definitions. Third is to update the external adoption-

by-reference list to ensure that the most recent versions of the referenced regulations are adopted.

Citation of Existing Rules Affected by this Order: Amending sections 104, 200, and 506 of the Regulation of the northwest clean air agency.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 16-13-001 on June 1, 2016.

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: August 11, 2016.

Mark Buford
 Deputy Director

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 16-18 issue of the Register.

WSR 16-17-056
PERMANENT RULES
HORSE RACING COMMISSION

[Filed August 12, 2016, 1:44 p.m., effective September 12, 2016]

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

Purpose: Amends language to address the requirements if the racing association operates as an advanced deposit wagering provider.

Citation of Existing Rules Affected by this Order: Amending chapter 260-49 WAC.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 16-14-100 on July 5, 2016.

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 3, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: August 12, 2016.

Douglas L. Moore
Executive Secretary

AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

WAC 260-49-020 Requirements to conduct authorized advance deposit wagering. (1) The advance deposit wagering rules set forth in this chapter shall apply to the establishment and operation of accounts by an authorized advance deposit wagering service provider for applicants whose principal residence address is in the state of Washington.

(2) Advance deposit wagering by any person whose principal residence address is in the state of Washington may be conducted only by an authorized advance deposit wagering service provider licensed by the commission pursuant to this chapter.

(3) A class 1 racing association must (~~obtain commission approval of its~~) have a contract in place with an authorized advance deposit wagering service provider that complies with all state and federal laws and regulations. Contracts shall be approved by the commission.

(4) No advance deposit wagering service provider shall solicit, accept, open or operate an account for any person with a principal residence address in the state of Washington unless the service provider has received a license in good standing from the commission.

(5) The commission may suspend or revoke a license to operate as an authorized advance deposit wagering service provider, withdraw approval of a contract between a class 1 racing association and an authorized advance deposit wagering service provider and/or impose fines, if the authorized advance deposit wagering service provider, its officers, directors, or employees violate chapter 67.16 RCW or Title 260 WAC.

(6) An authorized advance deposit wagering service provider located within Washington shall not solicit, accept, open or operate advance deposit wagering accounts for persons whose principal residence is outside of the state of Washington, including residents of foreign jurisdictions unless:

(a) The service provider has received a license from the commission in good standing;

(b) Wagering on that same type of live racing is lawful in the jurisdiction which is the person's principal residence; and

(c) The authorized advance deposit wagering service provider complies with the provisions of the Interstate Horseracing Act, 15 U.S.C. §§ 3001 to 3007, and the laws of the jurisdiction, which is the principal place of residence of the applicant.

(7) The authorized advance deposit wagering service provider shall provide a bond or irrevocable letter of credit in an amount set by the commission for the purpose of ensuring that payments to the commission and to Washington account

holders are made. In the alternative, a service provider may provide other means of assurance of such payment including, but not limited to, evidence of bond(s), irrevocable letter(s) of credit or other forms of financial guarantees posted and in good standing with regulatory authorities in other jurisdictions, which shall be subject to the approval of the commission. Any bond, letter of credit or other assurance of payment acceptable to the commission provided by the service provider shall run to the Washington horse racing commission as obligee, and shall be for the benefit of the commission and any account holder who suffers a loss by reason of the service provider's violation of chapter 67.16 RCW or these rules. The bond, letter of credit or other assurance of payment shall be conditioned on the obligor as licensee faithfully complying with chapter 67.16 RCW and these rules. The bond shall be continuous and may be canceled by the surety only upon the surety giving written notice to the executive secretary of its intent to cancel the bond. The notice of cancellation shall be effective no sooner than thirty days after the notice is received by the executive secretary. In the event of cancellation of the bond, letter of credit or other assurance of payment the service provider shall file a new bond, letter of credit or other assurance of payment prior to the effective date of the cancellation notice.

(8) Persons whose primary residence is within Washington shall not participate in advance deposit wagering unless such activity is conducted through an authorized advance deposit wagering service provider.

(9) The content and frequency of reports from an authorized advance deposit wagering service provider shall be at the discretion of the commission.

(10) No class 1 racing association shall enter into a written agreement under this section that is in violation of, or may be construed as waiving any provision of chapter 67.16 RCW, Title 260 WAC or any applicable federal, state or local law.

(11) Every class 1 racing association approved under this chapter shall file with the commission a monthly statement showing amounts contributed to and balances in the purse fund and the breeders awards fund. This statement shall be filed with the commission no later than twenty-five days after the end of each month.

(12) In determining whether to approve an application under this chapter, the commission shall consider the following factors:

(a) The impacts on all entities conducting business as part of the Washington horse racing industry;

(b) Whether the commission deems the state compliance and monitoring efforts of the state where the authorized advance deposit wagering service provider is located are sufficient for compliance with applicable laws and for the protection of the public and to ensure the integrity of all operations and financial transactions under the agreement between the class 1 racing association and the authorized advance deposit wagering service provider; and

(c) Any other factor the commission identifies on the record as relevant to its determination.

AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

WAC 260-49-030 Advance deposit wagering service provider license for a class 1 racing association. (1) A class 1 racing association licensed under chapters 67.16 RCW and ~~((chapter))~~ 260-13 WAC may apply for a license from the commission to operate as an advance deposit wagering service provider in accordance with chapter 67.16 RCW and this chapter.

(2) An application to operate as an advance deposit wagering service provider must address the requirements of this chapter, and the class 1 racing association shall file with the commission an original and five copies of the application and plan of operation.

(3) As part of the application, the class 1 racing association shall submit a detailed plan of how its proposed advance deposit wagering service provider would operate. At a minimum, the operating plan shall address the following issues:

(a) The manner in which the proposed simulcasting and advance deposit wagering service provider will operate and the regular hours of operation;

(b) Programs for responsible wagering;

(c) A plan for verification of an applicant's identity, age and residence when establishing an account;

(d) Establish a dispute resolution process for account holders who file a claim against the advance deposit wagering service provider;

(e) The requirements for accounts established and operated for persons whose principal residence is outside of the state of Washington;

(f) The process for an account holder to make withdrawals from the account holder's account;

(g) The process for handling wagers when wagering pools cannot be merged with the wagering pools of the race track where the race is being run live; and

(h) Any additional information required by the commission.

(4) The commission may require changes in a proposed plan of operations as a condition of granting a license.

(5) The commission may conduct investigations or inspections or request additional information from the class 1 racing association, as it deems appropriate in determining whether to license the class 1 racing association to operate as an advance deposit wagering service provider.

(6) A license authorizes ~~((only))~~ the class 1 racing association to establish, manage and operate an advance deposit wagering service provider. The class 1 racing association shall not subcontract operation of the advance deposit wagering service provider to another person or entity without authorization from the commission. The class 1 racing association shall assume liability in respect to Washington accounts for any subcontractor authorized by the commission.

(7) Approval of a license under this section shall be for twelve months from the date of approval, unless rescinded by the commission.

(8) No subsequent changes in the advance deposit wagering service provider's plan of operations may occur unless ordered by the commission or until written approval is obtained from the commission.

(9) The commission, or its staff, shall be given access to review and audit all records and financial information of a class 1 racing association related to the conduct of advance deposit wagering, including resident and nonresident accounts. This information shall be made available to the commission or its staff by the class 1 racing association at its location at reasonable hours. The commission may require the class 1 racing association to annually submit to the commission audited financial statements of the advance deposit wagering service provider.

(10) The class 1 racing association, as the operator of an advance deposit wagering entity shall at least monthly, unless otherwise directed by the commission, deposit directly to the commission's operating account six tenth of one percent of the total gross handle from Washington residents.

(a) The commission shall distribute twenty-five percent of the six tenth of one percent deposit to the Washington bred owners' bonus fund and breeders award account.

(b) The association shall contribute an amount equal to the commission's distribution of the twenty-five percent of the six tenth of one percent into the Washington bred owners' bonus fund and breeders awards prior to the yearly distribution of the awards.

AMENDATORY SECTION (Amending WSR 04-21-053, filed 10/18/04, effective 11/18/04)

WAC 260-49-080 Distribution of source market fee—More than one class 1 racing association. (1) The source market fee generated from wagers on a class 1 racing association's live races will be distributed to the class 1 racing association conducting that meet after deducting contributions to the commission, one percent owners bonus, breeders awards, and class C purse fund per WAC 260-49-070. The remaining source market fee from the class 1 racing association's live meet shall be distributed in accordance with the agreement between the class 1 racing association and the recognized horsemen's association.

(2) The source market fee generated from races conducted outside Washington shall be allocated proportionate to the gross amount of all sources of parimutuel wagering during each twelve-month period derived from the associations' live race meets after deducting contributions to the commission, one percent owners' bonus, and breeders awards ~~((, and class C purse fund per WAC 260-49-070))~~. The remaining proportional share of the source market fee from races conducted outside Washington shall be distributed in accordance with the agreement between the class 1 racing association and the recognized horsemen's association. "All sources of parimutuel wagering" shall mean the total of in-state and out-of-state wagering on the associations' live race meet. This percentage must be calculated annually. The commission shall calculate the proportion of the source market fee for each class 1 racing association based upon the preceding calendar year. The commission shall inform the authorized advance deposit wagering service provider(s) of the percentage of source market fee to be distributed to each class 1 racing association. The authorized advance deposit wagering service provider(s) shall distribute the source market fee

to the class I racing associations according to the percentages established by the commission.

(3) A class I racing association is not entitled to source market fees until it has completed one race meet in accordance with the requirements of RCW 67.16.200.

(4) A class I racing association must complete a live race meet in accordance with RCW 67.16.200 within each succeeding twelve-month period to maintain eligibility to continue participating in advance deposit wagering and to receive a proportionate share of the source market fee.

WSR 16-17-060
PERMANENT RULES
DEPARTMENT OF HEALTH

[Filed August 12, 2016, 5:12 p.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: Chapter 246-562 WAC, Physician visa waivers (J1 visa waiver program). The department of health is adopting amendments to update and streamline rules to meet current federal regulations, reduce administrative requirements, and increase the number of physicians serving rural and underserved areas of the state.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-562-110; and amending WAC 246-562-010, 246-562-020, 246-562-040, 246-562-050, 246-562-060, 246-562-070, 246-562-075, 246-562-080, 246-562-085, 246-562-087, 246-562-090, 246-562-120, 246-562-130, 246-562-140, and 246-562-150.

Statutory Authority for Adoption: RCW 70.185.040.

Other Authority: P.L. 110-362.

Adopted under notice filed as WSR 16-11-051 on May 13, 2016.

Changes Other than Editing from Proposed to Adopted Version: Nonsubstantive changes were made from the proposed to adopted version. In WAC 246-562-020(9) and 246-562-075 the date when applications for physician practices in areas without a health professional shortage areas (HPSA) designation will be accepted was changed to January 15. In WAC 246-562-020(10) the last table entry was changed to read "More than 3 waivers for a single applicant in a single HPSA."

A final cost-benefit analysis is available by contacting Renee Fullerton, P.O. Box 47853, Olympia, WA 98504-7853, phone (360) 236-2814, fax (360) 236-2830, e-mail renee.fullerton@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 11, Repealed 1.

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 15, Repealed 1.

Date Adopted: August 12, 2016.

John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-010 Definitions. ~~((The following definitions apply in the interpretation and implementation of these rules.))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) ~~"Applicant" means ((a health care facility that seeks to employ a physician))~~ "an entity with an active Washington state business license that provides health care services and seeks to employ a physician at a Washington state practice location(s) and is requesting state sponsorship or concurrence of a J-1 visa waiver.

(2) ~~(("Department" means the department of health.))~~ "Board eligible" means having satisfied the requirements necessary to sit for board examinations.

(3) ~~(("Board eligible" means having satisfied the requirements necessary to sit for board examinations.))~~ "Department" means the Washington state department of health.

(4) "Employment contract" means a legally binding agreement between the applicant and the physician named in the visa waiver application ((which)) that contains all terms and conditions of employment((;)) including, but not limited to, the salary, benefits, length of employment and any other consideration owing under the agreement.

(5) "Full time" means a minimum forty hours of medical practice per week, not including call coverage, consisting of at least thirty-two hours seeing patients on an ambulatory or in-patient basis and may include up to eight hours administrative work for at least forty-eight weeks per year.

(6) ~~(("Health care facility" means an entity with an active Washington state business license doing business or proposing to do business in the practice location where the physician would be employed, whose stated purposes include the delivery of medical care.~~

~~((7))~~ "Health professional shortage area" ((f))or "HPSA((g))" means an area federally designated as having a shortage of primary care physicians or mental health care.

~~((8))~~ (7) "Hospitalist" means a physician, usually an internist, who specializes in the care of hospitalized patients.

(8) "Integrated health care system (system)" means an organized system in which more than one health care entity participates, and in which the participating entities:

(a) Hold themselves out to the public as participating in a joint arrangement; and

(b) Participate in joint payment activities, such as clinics where a physician group charges a professional fee and a hospital charges a facility fee.

(9) "Low income" means that a family's total household income is less than two hundred percent of the federal poverty level as defined by the U.S. Federal Poverty Guidelines published annually.

(10) ~~("Medically underserved area" (MUA) means a federally designated area based on whether the area exceeds a score for an Index of Medical Underservice, a value based on infant mortality, poverty rates, percentage of elderly and primary care physicians to population ratios.~~

~~((11)) "Physician" means the foreign physician(;) eligible to be licensed under chapter 18.71 or 18.57 RCW named in the visa waiver application, who requires a waiver to remain in the United States to practice medicine.~~

~~(11) "Practice location" means the physical location where the visa waiver physician will work.~~

(12) "Primary care physician" means a physician board certified or board eligible in family practice, general internal medicine, pediatrics, obstetrics/gynecology, geriatric medicine or psychiatry. Physicians who have completed any subspecialty or fellowship training, excluding OB or geriatric training, are not considered primary care physicians for the purpose of this chapter.

(13) "Publicly funded employers" means organizations such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations.

(14) "Sliding fee discount schedule" means a written delineation documenting the value of charge discounts granted to patients based upon ((financial hardship.

~~((14)) family income up to two hundred percent of the annual federal poverty guidelines.~~

(15) "Specialist" means a physician board certified or board eligible in a specialty other than family practice, general internal medicine, pediatrics, obstetrics/gynecology, geriatric medicine or psychiatry (the current definition of "primary care" for the waiver program).

~~((15)) (16) "Sponsorship" means a request by the department on behalf of ((a health care facility)) an applicant to federal immigration authorities to grant a visa waiver for the purpose of recruiting and retaining physicians.~~

~~((16) "Visa waiver" means a federal action that waives the requirement for a foreign physician, in the United States on a J-1 visa, to return to his/her home country for a two-year period following medical residency training.))~~

(17) "Vacancy" means a full-time physician practice opportunity that is based on a planned retirement, a loss of an existing physician, or an expansion of physician services in the service area.

(18) "Visa waiver" means a federal action that waives the requirement for a foreign physician, in the United States on a J-1 visa, to return to his/her home country for a two-year period following medical residency training.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-020 Authority to sponsor visa waivers. (1) The department ~~((of health))~~ may assist communities to recruit and retain physicians, or other health care professionals, as directed in chapter 70.185 RCW, by exercising an option provided in federal law ~~((8 U.S.C. See. 1184(i) as amended by Public Law 108-441 and 22 C.F.R. 514.44(e)))~~. This option allows the department ~~((of health))~~ to sponsor a

limited number of visa waivers each federal fiscal year if certain conditions are met.

(2) The department may acknowledge and support as needed sponsorship proposed by federal agencies, including the United States Department of Health and Human Services.

(3) The department may carry out a visa waiver program, or, in the event of resource limitations or other considerations, may discontinue the program. Purposes of the program are:

(a) To increase the availability of physician services in existing federally designated ~~((shortage areas))~~ health professional shortage areas (HPSA) for ~~((health care facilities))~~ applicants that have long standing vacancies;

(b) To improve access to physician services for communities and specific underserved populations that are having difficulty finding physician services;

(c) To serve Washington communities ~~((which))~~ that have identified a physician currently holding a J-1 visa as an ideal candidate to meet the community's need for ((primary)) health care services ((or specialist services as allowed by WAC 246-562-080)).

(4) The department may only sponsor a visa waiver request when:

(a) The application contains all of the required information and documentation;

(b) The application meets the criteria contained in this chapter ((246-562-WAC));

(c) For applicants that have benefited from department sponsorship previously, the applicant's history of compliance will be a consideration in future sponsorship decisions.

~~((The department will limit its activities:~~

~~((a))~~ Prior to submission of an application, the department may provide information on preparing a complete application(;

~~((b) For applicants that have benefited from department sponsorship previously, the applicant's history of compliance will be a consideration in future sponsorship decisions;~~

~~((c) Because the number of sponsorships the department may provide is limited, and because the number of shortage areas is great, sponsorship will be limited. In any single program year, a health care facility in any one designated health professional shortage area or medically underserved area:~~

~~((i) Will not be allotted more than two sponsorships;~~

~~((ii) Will not be allotted more than one specialist sponsorship as allowed by WAC 246-562-080(4); and~~

~~((iii) Will not be allotted more than one hospitalist sponsorship per hospital;~~

~~((d) In any given program year twenty of the federally allocated sponsorships will be allotted for primary care physicians and ten of the federally allocated sponsorships will be allotted for specialists through March 31. Any waiver sponsorships that remain unfilled on April 1 of each program year will be available to:~~

~~((i) Both primary care and specialist physicians consistent with the provisions of this chapter; and~~

~~((ii) Physicians intending to practice in nondesignated shortage areas in health care facilities that meet the criteria in WAC 246-562-075)).~~

(6) In any single federal fiscal year the department will limit the number of sponsorships granted to each applicant.

Applicants, including integrated health care systems, in a single HPSA:

(a) Will not be allotted more than two sponsorships per practice location:

(b) Will not be allotted more than one hospitalist sponsorship per hospital:

(c) Will not be allotted more than three sponsorships total across all practice locations in the HPSA between October 1st and May 31st of the federal fiscal year.

(7) Applicants located outside designated HPSAs will be allotted no more than three sponsorships across all practice locations in a single county.

(8) Between October 1st and March 31st of the federal fiscal year the department will grant not more than ten specialist waivers. Any waiver sponsorships that remain unfilled on April 1st of each federal fiscal year will be available to both primary care and specialist physicians consistent with the provisions of this chapter.

(9) Starting January 15th of each federal fiscal year, the department will consider applications for physicians intending to practice in areas without a HPSA designation for applicants that meet the criteria in WAC 246-562-075.

(10) Starting June 1st of each federal fiscal year, the department will consider applications for additional sponsorships from applicants who have already received their maximum three waivers in a single HPSA.

<u>Type of sponsorship</u>	<u>Application timeline and conditions</u>
<u>Primary care in HPSA</u>	<u>Available starting Oct. 1 until state reaches annual federal cap</u>
<u>Specialist in HPSA</u>	<u>Limited to 10 sponsorships from Oct. 1 - March 31, no restriction starting April 1 until state reaches annual federal cap</u>
<u>Nondesignated area (FLEX waiver)</u>	<u>Available starting Jan. 15, limited to 10 total in a federal fiscal year</u>
<u>More than 3 waivers for a single applicant in a single HPSA</u>	<u>Available starting June 1 until state reaches annual federal cap</u>

AMENDATORY SECTION (Amending WSR 98-20-067, filed 10/2/98, effective 11/2/98)

WAC 246-562-040 Principles that will be applied to the visa waiver program. (1) The visa waiver program is considered a secondary source for recruiting qualified physicians. It is not a substitute for broad recruiting efforts for graduates from U.S. medical schools.

(2) Sponsorship may be offered to ~~((health care facilities))~~ applicants that can provide evidence of sustained active recruitment for the vacancy in the practice location ~~((with))~~ for a physician who has specific needed skills.

(3) Sponsorship is intended to support introduction of physicians into practice settings that promote continuation of the practice beyond the initial contract period.

(4) Sponsorship will be for an employment situation where there is community support and a collegial professional environment.

(5) The visa waiver program will be used to assist ~~((health care facilities))~~ applicants that provide care to all residents of the federally designated ~~((under served area))~~ HPSA. When a ~~((federal))~~ HPSA designation is for ~~((an under served))~~ a population~~((s))~~ group as approved by the federal Health Research and Services Administration as defined by 42 C.F.R. Chapter 1, Part 5, Appendices A or C. the ~~((health care facility))~~ applicant must provide care to the ~~((under served))~~ population group.

(6) Sponsorship is available to ~~((health care facilities))~~ applicants that can document the provision of needed services, regardless of public or private ownership.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-050 Review criteria. Applicants and physicians must meet all federal criteria for international medical graduates seeking a visa waiver including the criteria established in 8 U.S.C. ((1184(l) as amended by Public Law 108-441 and 22 C.F.R. Sec. 514.44(e) which are incorporated by reference. Copies of these provisions may be requested from the department by writing to the Washington State Department of Health, Office of Community and Rural Health, Visa Waiver Program, PO Box 47834, Olympia, WA 98504-7834.

~~The criteria set out in chapter 246-562 WAC must also be met))~~ Sec. 1182(e), 8 U.S.C Sec. 1184(1), and 22 C.F.R. Sec. 41.63(e).

Applicants must also meet the criteria in this chapter.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-060 Criteria for applicants. (1) Applicants must ~~((be existing health care facilities that))~~:

(a) ~~((Are))~~ Be licensed to do business in Washington state; and

(b) Have provided medical care in Washington state for a minimum of twelve months prior to submitting the application.

(2) Applicants may be for-profit, nonprofit, or government organizations.

(3) Except for state ~~((institutional and))~~ psychiatric or correctional facilities ~~((designated as federal shortage areas)),~~ the applicant must:

(a) Currently serve:

(i) Medicare clients;

(ii) Medicaid clients;

(iii) Low-income clients~~((, such as subsidized basic health plan enrollees));~~

(iv) Uninsured clients; and

(v) The population of the federal designation, if applicable.

(b) Demonstrate that during the twelve months prior to submitting the application, the ~~((health care facility was providing a minimum of ten percent of the applicant's total patient visits to medicaid clients, and/or other low-income clients.~~

~~(c) Agree to implement a sliding fee discount schedule for the physician named in the J-1 visa waiver application. The schedule must be:~~

~~(i) Available in the client's principal language and English; and~~

~~(ii) Posted conspicuously; and~~

~~(iii) Distributed in hard copy to individuals making or keeping appointments with that physician.) practice location(s) where the physician will work provided a minimum of fifteen percent of total patient visits to medicaid and other low-income clients. Clients dually eligible for medicare and medicaid may be included in this total.~~

(c) Have or agree to implement a sliding fee discount schedule for the practice location(s) in the J-1 visa waiver application. The schedule must be:

(i) Available in the client's principal language and English;

(ii) Posted conspicuously;

(iii) Distributed in hard copy upon patient request; and

(iv) Updated annually to reflect the most recent federal poverty guidelines.

(4) Applicants must provide documentation demonstrating that the employer made a good faith effort to recruit a qualified graduate of a United States medical school for a physician vacancy in the same salary range.

(a) Active recruitment, specific to the location and physician specialty, must be for a period of not less than six months in the twelve months prior ((to submitting a visa waiver application to the department)) to signing an employment contract with the J-1 visa waiver physician. Active recruitment documentation can include one or more of the following:

~~((a))~~ (i) Listings in national publications;

~~((b))~~ (ii) Web-based advertisements;

~~((c))~~ Statewide newspaper advertisements;

~~((d))~~ (iii) Contractual agreement with a recruiter or recruitment firm; or

~~((e))~~ (iv) Listing the position with the ((office of community and rural health,)) department recruitment and retention program.

(b) In-house job postings and word-of-mouth recruitment are not considered active recruitment for the purpose of the J-1 physician visa waiver program((; however, they can be used in addition to the methods described in (a) through (e) of this subsection)).

(5) Applicants must have a signed employment contract with the physician. The employment contract must:

(a) Meet state and federal requirements throughout the period of obligation, regardless of physician's visa status;

(b) Not prevent the physician from providing medical services in the designated ~~((shortage area))~~ HPSA after the term of employment ~~((i.e., no noncompete clauses;))~~ including, but not limited to, noncompetition clauses; and

(c) Specify the three year period of employment(~~;~~

~~(i) Three years minimum for primary care sponsorship; or~~

~~(ii) Five years minimum for specialist sponsorship)).~~

(6) Any amendments made to the required elements of the employment contract~~((;))~~ under subsection (5) of this section~~((;))~~ during the first three years ~~((for primary care physicians or five years for nonprimary care specialist physicians))~~ of contracted employment must be reported to the department for review and approval. The department will complete review and approval of such amendments within thirty calendar days of receipt.

(7) Applicants must pay the physician ~~((prevailing wage as determined and approved by U.S. Department of Labor. Approval must be documented on a U.S. Department of Labor form ETA-9035 signed by an authorized official))~~ at least the required wage rate as referenced by the federal Department of Labor at 20 C.F.R. Sec. 655.731(a) for the specialty in the area or as set by negotiated union contract.

(8) If the applicant has previously requested sponsorship of a physician, WAC 246-562-020 ~~(4)(c)~~ will apply.

(9) ~~((If the applicant is not a publicly funded provider, additional criteria apply. The applicant must provide documentation of notification of intent to submit application for J-1 visa physician waiver to all publicly funded providers who provide medical care in HPSA or MUA designated area. Publicly funded providers include, but are not limited to, public hospital districts, local health departments, or community and/or migrant health centers.~~

Notification must:

~~(a) Be sent at least thirty days prior to submitting the application to the department;~~

~~(b) Include a statement giving the publicly funded providers thirty days to provide comment to the department regarding the J-1 physician visa application; and~~

~~(c) Provide the department's address.~~

~~((10))~~ Applicants must submit status reports to the department every ~~((six))~~ twelve months, with required supporting documentation, during the initial term of employment~~((, three years for primary care physicians or five years for specialists)).~~

(10) Physicians with a J-1 visa waiver must submit annual surveys to the department during their obligation period and a final survey one year after they complete their obligation so that the department can evaluate physician retention.

(11) Applicants must cooperate in providing the department with clarifying information, verifying information already provided, or in any investigation of the applicant's financial status.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-070 Criteria for the proposed practice location to be served by the physician. (1) The proposed practice location(s) must be located in:

(a) A federally designated primary care ~~((health professional shortage area(s)))~~ HPSA(s); or

(b) A federally designated mental ~~((health professional shortage area(s)))~~ HPSA(s) for psychiatrists(~~;~~ or

~~(e) A federally designated whole-county medically underserved area(s); or~~

~~(d) A combination of federally designated areas); or~~

~~(c) A state operated psychiatric or correctional facility.~~

(2) If the federal designation is based on a specific population, the ~~((health care facility))~~ applicant must serve the designated population.

(3) ~~((If the practice location is in both a population designation area and a medically underserved area, the designated population must be served.~~

(4)) ~~((shortage area or whole-county medically underserved area,))~~ HPSA or a state correctional or psychiatric institution the applicant must meet the criteria in WAC 246-562-075.

~~((5) The health care facility))~~ (4) The practice location named in the visa waiver application may be an existing practice location or a new practice location. If a new practice location is planned, the additional criteria in (a) through (c) of this subsection apply. New practice locations must:

(a) Have the legal, financial, and organizational structure necessary to provide a stable practice environment, and must provide a business plan that supports this information;

(b) Support a full-time physician practice;

(c) Have written referral plans that describe how patients using the new ~~((primary care))~~ location will be connected to ~~((existing secondary and tertiary))~~ other care if needed.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-075 Criteria for waiver sponsorships in nondesignated ~~((shortage))~~ areas. ~~((Public Law 108-441 allows states to sponsor up to five waivers each program year for physicians who will practice medicine in a health care facility that is not located in a designated health professional shortage area but serves patients who reside in designated shortage areas. Waivers will not be open to physicians practicing in nondesignated shortage areas until April 1 of each program year. For waiver approval, the health care facility must:~~

~~(1) Provide care to patients who reside in designated shortage areas:~~

~~(a) Describe the facility's service area.~~

~~(b) Provide a patient visit report that identifies total patient visits in last six months of service by patient origin zip code.~~

~~(2) Describe who will benefit from the physician's services:~~

~~(a) Identify the percentage of medicaid and medicare patients who will have access to this physician.~~

~~(b) Describe how the facility will assure access to this physician for low-income or uninsured patients.~~

~~(c) Explain if the physician has language skills that will benefit patients at this facility.~~

~~(3) Provide a detailed report of the extensive recruitment efforts made to recruit a U.S. physician for the specific position that the J-1 physician will fill.~~

~~(a) Explain why this physician is necessary at this location.~~

~~(b) Explain why it is difficult to recruit a U.S. physician for this location.~~

~~(c) Provide the number of physicians interviewed for this position.~~

~~(d) Provide the number of physicians offered this position.)~~

Key objectives of the J-1 visa waiver program are to increase access to physicians for low income, medicaid-covered and otherwise medically underserved individuals. Federal law allows states to sponsor a limited number of physicians each federal fiscal year who will practice medicine at a location outside a designated HPSA that serves significant numbers or percentages of patients who reside in designated HPSAs. Sponsorships will not be open to applicants hiring physicians to practice outside HPSA-designated areas until January 15th of each federal fiscal year unless the employer is a state correctional or psychiatric institution.

The determination of appropriateness for a sponsorship in a nondesignated area will take into consideration the following factors.

(1) Nature of the applicant and practice location(s). Certain health care facilities play an important role in serving Washington's medically underserved populations. Specifically, providers of important services to the state's vulnerable population groups, particularly in specialty and tertiary care services draw patients from a large area, including designated HPSAs. Applicants must describe their practice location's service area and to what extent they provide service to residents of designated HPSAs.

(2) Expected patient panel to be served by the sponsored physician. Successful nondesignated waiver applicants must be able to describe:

(a) The percentage the sponsored physician's panel reasonably expected to be medicaid and medicare patients given current use of the service and practice location by those populations.

(b) How the applicant will ensure access to this physician for low-income or uninsured patients.

(c) If there is a unique practice area or substantial referral network making the physician a statewide resource for certain medical conditions.

(d) If the physician has language skills that will benefit patients at the practice location.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-080 Criteria for the physician. (1) The physician seeking a J-1 visa waiver from Washington state must not have a J-1 visa waiver application pending for any other employment offer. The physician((s)) must provide a letter attesting that no other applications are pending.

(2) The physician((s)) must have the qualifications described in recruitment efforts for a specific vacancy.

(3) The physician((s are)) is considered eligible to apply for a waiver when:

(a) ~~((They have))~~ The physician has successfully completed ~~((their))~~ a residency or fellowship program; or

(b) ~~((They are))~~ The physician is in the final year of a residency or fellowship program, and the physician provides a letter from their program that:

(i) Identifies the date the physician will complete the residency or fellowship program; and

(ii) Confirms the physician is in good standing with the program.

(4) ~~The~~ physician(s) must provide direct patient care.

(5) The physician must comply with all provisions of the employment contract set out in WAC 246-562-060.

(6) The physician must:

(a) Accept medicaid assignment; ~~(and~~

~~(b))~~ post and implement a sliding fee discount schedule; ~~(and~~

~~(c))~~ serve the low-income population; ~~(and~~

~~(d))~~ serve the uninsured population; and

~~((e))~~ serve the ~~((shortage))~~ HPSA designation population; or

~~((f))~~ (b) Serve the population of a local, state, or federal governmental ~~((institution))~~ psychiatric or corrections facility as an employee of the institution.

(7) ~~The~~ physician(s) must have an active ~~((Washington state medical))~~ license under chapter 18.71 or 18.57 RCW. The applicant may substitute a copy of the license application and request an exception if the application ~~((for a Washington state medical license))~~ was submitted to the Washington state board of osteopathic medicine and surgery four or more weeks prior to submission of the visa waiver application.

(8) Physician(s) must be an active candidate for board certification on or before the start date of employment.

(9) Physician(s) must provide the following documentation:

(a) A current Curriculum Vitae;

(b) U.S. Department of State Data Sheet, Form DS-3035;

(c) All ~~((DS 2019/IAP 66))~~ U.S. Department of State DS-2019 Forms (Certificate of Exchange visitor status);

(d) ~~((Letter from residency program if applying as a primary care physician or from fellowship program if applying as a specialist that:~~

(i) Addresses the physician's interpersonal and professional ability to effectively care for diverse and low-income people in the United States; and

(ii) Describes an ability to work well with supervisory and subordinate medical staff, and adapt to the culture of United States health care facilities; and

(iii) Documents level of specialty training, if any; and

(iv) Is prepared on residency or fellowship program letterhead and is signed by residency or fellowship program staff or faculty; and

(v) Includes name, title, relationship to physician, address and telephone number of signatory.

~~(e))~~ A physician attestation statement described in subsection (1) of this section;

~~((f))~~ (e) A no objection statement;

~~((g))~~ (f) A personal statement from the physician regarding the reason for requesting a waiver;

~~((h))~~ (g) U.S. Citizenship and Immigration Services (USCIS) I-94 Entry and Departure cards; and

~~((i))~~ (h) USCIS Form G-28 Notice of Entry of Appearance from an attorney, when applicable.

The statements required in (e) and (f) of this subsection may be on a form provided by the department or other format

that provides substantially the same information as the department form.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-085 Eligibility for primary care and specialist waivers. (1) Primary care waivers.

(a) Primary care waivers are available to the following physician specialties:

(i) Family medicine;

(ii) General internal medicine;

(iii) Pediatrics;

(iv) Geriatric medicine;

(v) Obstetrics and gynecology; or

(vi) Psychiatry and its subspecialties.

(b) Physicians who have completed any additional subspecialty training are not eligible for a primary care waiver, with the exception of geriatric medicine and psychiatry. Continuing medical education (CME) will not be considered subspecialty training for the purposes of this rule.

(2) **Specialist waivers.** Specialist waivers are available to nonprimary care physician specialties. Applicants submitting an application for a specialist physician must:

(a) ~~((Demonstrate a need for the nonprimary care specialty by addressing one of the following need criteria:~~

(i) ~~The physician specialty is needed to meet state or federal health care facility regulations, for example to maintain the hospital trauma designation level.~~

~~(A) Identify the regulation; and~~

~~(B) Address how the facility is currently meeting this regulation.~~

(ii) ~~The physician specialty is needed to address a major health problem in the facility service area.~~

~~(A) Identify the health problem and how this specialty will address it;~~

~~(B) Provide incident rates of the pathology and tie diagnosis codes to payer mix (i.e., how many patients are affected and how many are low income or uninsured?); and~~

~~(C) If this specialty is not available in the community, identify the nearest location where this specialty service can be obtained.~~

(iii) ~~The physician specialty is needed to address population to physician ratio because the current ratio does not meet national standards.~~

~~(A) Provide the population to physician ratio for the specialty, include source for data provided;~~

~~(B) Provide the number of physicians (FTE) practicing this specialty in the same health professional shortage area/facility service area;~~

~~(C) Provide the distance to the nearest physician practicing the same specialty; and~~

~~(D) Describe how the demand for the specialty has been handled in the past.~~

~~(b) Describe the referral system that includes:~~

~~(i) On-call sharing;~~

~~(ii) Affiliation agreements with other health care entities in the service area, specifically with publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or cor-~~

rectional facilities, who have an obligation to provide care to underserved populations:

(e) ~~Provide at least one letter of support for this type of physician specialty~~ from a primary care provider practicing with publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations outside of the applicant's organization.

(d) ~~Provide written notice to the department and all publicly funded providers in the health care facility's HPSA or MUA designated area within thirty days of the physician's start date of employment. The notice must include:~~

~~(i) The physician's name, employment start date and practice location;~~

~~(ii) Services to be provided; and~~

~~(iii) Identification of accepted patients, such as medic-aid, medicare, or basic health plan.)) Demonstrate a need for the nonprimary care specialty by using data to show how the physician specialty is needed to address a major health problem in the practice location service area, address a population to provider ratio imbalance, or meet government requirements such as trauma designation regulations.~~

~~(b) Describe how this specialty will link to primary care.~~

~~(c) Describe how the demand for the specialty has been handled in the past.~~

~~(d) Describe the practice location's referral system that includes:~~

~~(i) On-call sharing;~~

~~(ii) How patients from other health care entities in the service area, specifically publicly funded employers, will be able to access the sponsored physician's services.~~

~~(e) Provide written notice to the department and all publicly funded employers in the applicant's HPSA within thirty days of the sponsored physician's start-date of employment. The notice must include:~~

~~(i) The sponsored physician's name, employment start date, and practice location;~~

~~(ii) Services to be provided; and~~

~~(iii) Identification of accepted patients, such as medic-aid, medicare, and the availability of a sliding fee schedule of discounts.~~

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-087 Eligibility for facilities hiring physicians as hospitalists. (1) ~~((A health care facility))~~ An applicant is limited to one hospitalist sponsorship per hospital per ~~(program)~~ federal fiscal year. Multiple employers at the same location are not allowed.

(2) ~~((A facility))~~ An applicant may only use inpatient data on the patient visit report required in WAC 246-562-060 to demonstrate that ~~((ten))~~ fifteen percent of applicant's total patient visits were to medicaid ~~((and/or))~~ and other low-income patients.

(3) ~~((A facility))~~ An applicant must identify primary care physicians in the community who will accept unattached medicaid, medicare or uninsured patients for follow-up care.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-090 Application form. ~~((1))~~ Physician visa-waiver program application forms are available online at www.doh.wa.gov/hsqa/ocerh or may be requested from: Washington State Department of Health, Office of Community and Rural Health, Visa Waiver Program, PO Box 47834, Olympia, WA 98504-7834.

~~(2))~~ Applications must be completed, address all state and federal requirements, and must include all required documents as specified in the department application form. Applications are available on the department's web site.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-120 Department review and action.

(1) The department will review applications for completeness in the date order received.

(2) Applications must be mailed, sent by commercial carrier, or delivered in person ~~((Applications may not be sent by telefax, or electronically))~~ as long as the U.S. Department of State requires a paper application.

(3) The department may limit the time period during which applications may be submitted including cutting off applications after the state has sponsored all applications allowed in a given federal fiscal year.

(4) ~~((Should multiple primary care physician applications arrive at the department on the same day, the department will rank those applications according to the following criteria:~~

~~(a) Facilities located in federally designated shortage areas will rank ahead of those facilities located in nondesignated areas.~~

~~(b) Federally designated shortage facilities will rank first.~~

~~(c) Publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations, will rank second.~~

~~(d) Critical access hospitals and rural health clinics will rank third.~~

~~(e) All other private practice, for profit facilities will rank last.~~

~~(f) If multiple applications within a designated category arrive on the same day or if a ranked order cannot be determined by using the criteria in (a) through (f) of this subsection, then applications will be ranked by:~~

~~(i) Percentage of services provided to low-income, uninsured and sliding fee-based patients;~~

~~(ii) Distance from applicant's practice location to nearest publicly funded provider;~~

~~(iii) Language skill of provider matching those significantly represented in the community;~~

~~(iv) Type of services provided, outpatient versus inpatient; and~~

~~(v) Facility location, rural versus urban based on RUCA codes to most current census data.~~

~~(5) Should multiple specialist applications arrive at the department on the same day, the department will rank these applications according to the following criteria:~~

~~(a) Facilities located in federally designated shortage areas will rank ahead of those facilities located in nondesignated areas.~~

~~(b) Hospitals or other health care facilities at risk of being out of state compliance standards will rank first. For example: The physician specialty is needed to maintain trauma designation or meet certificate of need requirements.~~

~~(c) Federally designated shortage facilities will rank second.~~

~~(d) Publicly funded employers, such as public hospital districts, community health centers, local, state, or federal governmental institutions or correctional facilities, who have an obligation to provide care to underserved populations will rank third.~~

~~(e) All other private practice, for profit facilities will rank last.~~

~~(f) If multiple applications within a designated category arrive on the same day, or if a ranked order cannot be determined by using the criteria in (a) through (e) of this subsection, then applications will be ranked by:~~

~~(i) Percentage of services provided to low-income, uninsured and sliding fee based patients;~~

~~(ii) Distance from applicant's practice location to nearest publicly funded provider;~~

~~(iii) Language skill of provider matching those significantly represented in the community;~~

~~(iv) Type of services provided, outpatient versus inpatient; and~~

~~(v) Facility location, rural versus urban based on RUCA codes to most current census data.~~

~~(6)) If the department receives more complete applications than the number of available waiver slots, priority will be given in the following order:~~

~~(a) Applications submitted by state psychiatric or correctional facilities;~~

~~(b) Applications for physicians working in outpatient primary care practice locations that:~~

~~(i) Are located in a HPSA;~~

~~(ii) Serve the highest percentage of medicaid and other low-income patients; and~~

~~(iii) Are not eligible for another visa waiver program.~~

~~(c) Applications for physicians working in outpatient specialty care practice locations that:~~

~~(i) Are located in a HPSA; and~~

~~(ii) Serve the highest percentage of medicaid and other low-income patients.~~

~~(5) The department will review applications within ten working days of receipt of the application to determine if the application is complete.~~

~~((7) The department will return incomplete applications to the applicant, and provide a written explanation of missing items.~~

~~(8) Incomplete applications may be resubmitted with additional required information. Resubmitted applications will be considered new applications and will be reviewed in date order received on resubmission.~~

~~(9)) (6) The department will notify the applicant if the application is incomplete and will provide an explanation of what items are missing.~~

~~(7) Applicants with incomplete applications can submit additional documentation; however, the application will not be considered for approval until missing items are received and the application will not retain the date order.~~

~~(8) The department will return applications that are received after the maximum number of sponsorships have been approved. This does not apply to copies of other federal ((J-1)) visa waiver applications.~~

~~((10) The department will return sponsorship applications to applicants who have had two approved sponsorships in the current year for the shortage area.~~

~~((11)) (9) If an applicant who has already received three sponsorships submits additional applications before June 1st, the department will return the applications. Starting on June 1st these additional applications will be accepted for consideration if the department still has waiver sponsorships available.~~

~~(10) If the Washington state ((medical)) license under chapter 18.71 or 18.57 RCW is pending at the time the application is submitted to the department, the department may:~~

~~(a) Sponsor or concur;~~

~~(b) Hold the application in order received; or~~

~~(c) Return the application as incomplete.~~

~~((12)) (11) The department will review complete applications against the criteria specified in this chapter.~~

~~((13)) (12) The department may:~~

~~(a) Request additional clarifying information;~~

~~(b) Verify information presented;~~

~~(c) Investigate financial status of the applicant;~~

~~(d) ((Further investigate any comments generated by publicly funded provider notification of application for waiver;~~

~~((e)) Return the application as incomplete if the applicant does not supply requested clarifying information within thirty days of request. Incomplete applications must be resubmitted. Resubmitted applications will be considered new applications and will be reviewed in date order received.~~

~~((14)) (13) The department will notify the applicant in writing of action taken. If the decision is to decline sponsorship, the department will provide an explanation of how the application failed to meet the stated criterion or criteria.~~

~~((15)) (14) The department may deny a visa waiver request or, prior to U.S. Department of State approval, may withdraw a visa waiver recommendation for cause, ((which shall include the following:~~

~~(a) The application is not consistent with state and/or federal criteria;~~

~~(b) Fraud;~~

~~(c) Misrepresentation;~~

~~(d) False statements;~~

~~(e) Misleading statements; or~~

~~(f) Evasion or suppression of material facts in the visa waiver application or in any of its required documentation and supporting materials.~~

~~((16)) when the department finds the applicant has engaged in conduct contrary to the intent of the J-1 visa~~

waiver program identified in WAC 246-562-020 including, but not limited to, the following:

(a) Application is not consistent with state or federal criteria;

(b) Dishonesty;

(c) Evasion or suppression of material facts in the visa waiver application or in any of its required documentation and supporting materials;

(d) Fraud;

(e) History of noncompliance for applicants who benefited from previous department sponsorship;

(f) Misrepresentation; or

(g) Violation of Washington state laws and rules related to charity care.

(15) Applications denied may be resubmitted with concerns addressed. Resubmitted applications will be considered new applications and will be reviewed in date order received.

AMENDATORY SECTION (Amending WSR 06-07-035, filed 3/8/06, effective 4/8/06)

WAC 246-562-130 Eligibility for future participation in the visa waiver program. (1) ~~((Health care facilities))~~ Applicants may be denied future participation in the state visa waiver program if:

(a) The required ~~((six-month))~~ reports are not submitted in a complete and timely manner.

(b) A sponsored physician does not serve the designated ~~((shortage area and/or shortage))~~ HPSA or HPSA population at an approved practice location for the full three years of employment ~~((for primary care physicians or the full five years of employment for specialists))~~.

(c) A sponsored physician does not remain employed by the applicant for the full three years of employment ~~((for primary care physicians or the full five years of employment for specialists))~~.

(d) The applicant has a history of noncompliance with any of the provisions of this chapter or federal labor law requirements.

(2) A ~~((health care facility))~~ potential applicant may request a determination of eligibility prior to submitting an application. The department will review the situation upon receipt of a written request.

AMENDATORY SECTION (Amending WSR 03-19-054, filed 9/11/03, effective 10/12/03)

WAC 246-562-140 Department's responsibility to report to the U.S. Department of State and the United States ~~((Bureau of))~~ Citizenship and Immigration Services. (1) The department may report to the U.S. Department of State and the United States ~~((Bureau of))~~ Citizenship and Immigration Services if the applicant or physician is determined to be out of compliance with any of the provisions of this chapter.

(2) The department may report to the U.S. Department of State and the United States ~~((Bureau of))~~ Citizenship and Immigration Services if the physician is determined to have left employment in the federally designated area.

AMENDATORY SECTION (Amending WSR 00-15-082, filed 7/19/00, effective 8/19/00)

WAC 246-562-150 Appeal process. (1) The applicant or physician may appeal the following department decisions:

(a) To deny or withdraw a visa waiver sponsorship;

(b) To deny a request for approval of an employment contract amendment;

(c) Determination that the applicant or physician is out of compliance with this chapter; or

(d) Determination that the applicant is not eligible for future participation in the visa waiver program.

(2) The appeal process is governed by the Administrative Procedure Act (chapter 34.05 RCW), chapter 246-10 WAC, and this chapter.

(3) To initiate an appeal, the applicant must file a written request for an adjudicative proceeding within twenty-eight days of ~~((receipt))~~ the department's mailing of the department's decision on the application.

(4) The request shall be mailed, by a method showing proof of receipt, to the Adjudicative ~~((Clerk))~~ Clerk's Office, P.O. Box 47879, ~~((2413 Pacific Avenue,))~~ Olympia, WA 98504-7879.

(5) The request must contain:

(a) A specific statement of the issue or issues and law involved;

(b) The grounds for contesting the department's decision; and

(c) A copy of the department's decision.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-562-110 Waiver requests federal waiver programs.

WSR 16-17-066

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed August 16, 2016, 7:46 a.m., effective September 16, 2016]

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

Purpose: ~~WAC 458-20-187 Coin-operated Tax responsibility of vending machine owners and operators vending machines, amusement devices, and service machines,~~ explains the taxability of income from vending machines that operate after accepting payment.

WAC 458-20-187 was amended to:

- Remove the terms "amusement devices" and "service machines" and define all previously categorized amusement devices and service machines as vending machines;
- Add examples of retail and nonretail vending machines;
- Acknowledge that vending machines accept payment in forms other than coins;
- Add a list of other rules the reader may find helpful; and

- Remove outdated language referencing retail sales tax less than one cent, bond requirements, and addendums.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-187 (Rule 187) ~~Coin-operated Tax responsibility of vending machine owners and operators vending machines, amusement devices, and service machines.~~

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

Adopted under notice filed as WSR 16-13-111 on June 21, 2016.

Changes Other than Editing from Proposed to Adopted Version:

- Subsection (1), added that the income from the sale, lease, and operation of vending machines apply to this rule.
- Subsection (1), removed the reference to "reverse" vending machines because the rule does not apply to these types of vending machines.
- Subsection (1), removed the reference to gas meters because it is outdated.
- Subsection (3)(b)(i), included references to RCW 82.04.050.
- Subsection (4)(a)(i), added language that clarified the measure of tax for both retailing B&O tax and retail sales tax.

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

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

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

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

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

Date Adopted: August 16, 2016.

Kevin Dixon
Rules Coordinator

AMENDATORY SECTION (Amending WSR 86-18-022, filed 8/26/86)

WAC 458-20-187 ((Coin-operated) Tax responsibility of vending machine(s), amusement devices and service machines) owners and operators. ((1) Definitions. As used herein the term "vending machines" means machines which, through the insertion of a coin will return to the patron a predetermined specific article of merchandise or provide facilities for installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers. It includes machines which vend photographs, toilet

articles, cigarettes and confections as well as machines which provide laundry and cleaning services.

(2) The term "amusement devices" means those devices and machines which, through the insertion of a coin, will permit the patron to play a game. It includes slot and pinball machines and those machines or devices which permit the patron to see, hear or read something of interest.

(3) The term "service machines" means any coin-operated machines other than those defined as "vending machines" or "amusement devices." It includes, for example, scales and luggage lockers, but does not include coin-operated machines used in the conduct of a public utility business, such as telephones and gas meters; also excluded are shuffleboards and pool games.

(4) ~~Business and occupation tax. Persons operating vending machines are engaged in a retailing business and must report and pay tax under the retailing classification with respect to the gross proceeds of sales.~~

(5) ~~Persons operating amusement devices, except shuffleboard, pool, and billiard games, are taxable under the service and other business activities classification on the gross receipts therefrom.~~

(6) ~~Persons engaged in operating shuffleboards or games of pool or billiards are taxable under the retailing classification on the gross receipts therefrom and are responsible for collecting and reporting to the department the retail sales tax measured by the gross receipts therefrom.~~

(7) ~~Persons operating service machines are taxable under the service and other business activities classification upon the gross income received from the operation of such machines.~~

(8) ~~When coin-operated machines are placed at a location owned or operated by a person other than the owner of the machines, under any arrangement for compensation to the operator of the location, the person operating the location has granted a license to use real property and will be responsible for reporting and paying tax upon his gross compensation therefor under the service classification.~~

(9) ~~Where the owner of amusement devices which are placed at the location of another has failed to pay the gross receipts tax and/or retail sales tax due, the department may proceed directly against the operator of the location for full payment of all tax due.~~

(10) ~~Retail sales tax. The retail sales tax applies to the sale of merchandise through vending machines and persons owning and operating such machines are liable for the payment of such tax. (However, see WAC 458-20-244 for vending machine sales of food.) For practical purposes such persons are authorized to absorb the amount of the tax on the individual sales and to pay directly to the department the retail sales tax on the total amount received from such machines.~~

(11) ~~Effective March 11, 1986, on all retail sales through vending machines the tax need not be stated separately from the selling price or collected separately from the buyer. (See RCW 82.08.050.) The seller may deduct the tax from the total amount received in the machines to arrive at the net amount which becomes the measure of the tax.~~

(12) ~~Where a vending machine is designed or adjusted so that single sales are made exclusively in amounts less than~~

the minimum sale on which a 1¢ tax may be collected from the purchaser, and the kind of merchandise sold through such machines is not sold by the operator over the counter or other than through vending machines at that location, the selling price for purposes of the retail sales tax shall be 60% of the gross receipts of the vending machine through which such sales are made. This 60% basis of reporting is available only to persons selling tangible personal property through vending machines.

(13) In order to qualify for the foregoing reduction in the measure of the retail sales tax, the books and records of the operator must show for each vending machine for which such reduction is claimed: (a) The location of the machine, (b) the selling price of sales made through the machine, (c) the type and brands of merchandise vended through the machine and (d) the gross receipts from that machine. The foregoing records may be maintained for each location, rather than for each machine, in cases where several machines are maintained by the same operator at the same location, provided that all of such machines make sales exclusively in amounts less than the minimum sale on which a 1¢ tax may be collected. The reduction will be disallowed in any instance where sales made through vending machines in such amounts are not clearly and accurately segregated from other sales by the operator and the burden is on the operator to make sales under such conditions and to maintain such records as to demonstrate absolute compliance with this requirement.

(14) Every operator or owner of a vending machine, before taking a deduction from gross sales through certain vending machines, shall file with the department annually an addendum to his application for registration with the department, on a form provided by the department, which form shall contain the following information:

(a) Number of vending machines in his ownership making sales under the above minimum.

(b) Value of such sales in the most recent calendar year.

(c) A statement that no sales are made by the owner or operator at any machine location of articles or products sold through such machines, except by vending machines and no provision is made either through the machine or otherwise, for multiple sales under circumstances where the tax may legally be collected from the buyer.

(15) The department will require a bond sufficient to assure recovery of any disallowed discount of tax due in any instance of registration where the department has reason to feel such recovery could be in jeopardy.

(16) Sales of vending machines, service machines and amusement devices to persons who will operate the same are sales at retail and the retail sales tax is applicable to all such sales.

(17) Use tax. The use tax applies to all tangible personal property used by persons making sales through vending machines, upon which the retail sales tax has not been paid, except inventory items resold through such machines.

Revised April 28, 1978.

Effective July 1, 1978.)) (1) **Introduction.** This rule

explains the taxability of income from the sale, lease, and operation of vending machines. It does not apply to vending machines used in the conduct of a public utility business, such as public pay telephones.

(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including those in the following list:

(a) WAC 458-20-102 Reseller permits.

(b) WAC 458-20-108 Selling price—Credit card service fees, foreign currency, discounts, patronage dividends.

(c) WAC 458-20-127 Newspapers, magazines, and periodicals.

(d) WAC 458-20-131 Gambling activities.

(e) WAC 458-20-15503 Digital products.

(f) WAC 458-20-165 Laundry, dry cleaning, linen and uniform supply, and self-service and coin-operated laundry services.

(g) WAC 458-20-178 Use tax and the use of tangible personal property.

(h) WAC 458-20-183 Amusement, recreation, and physical fitness services.

(i) WAC 458-20-185 Tax on tobacco products.

(j) WAC 458-20-186 Tax on cigarettes.

(k) WAC 458-20-243 Litter tax.

(l) WAC 458-20-244 Food and food ingredients.

(3) **What are vending machines?** Vending machines are machines that through the insertion of coins or other forms of payment will provide one of the following functions either directly or under the operation of the patron:

(a) **Vending machines that return tangible personal property.** Tangible personal property returned from vending machines include, but is not limited to, photographs, toiletries, cigarettes, beverages, food, candy, and tangible media such as a DVD or CD.

(b) **Vending machines that provide a service.**

(i) Vending machines that provide a retail service include machines that install, repair, clean, alter, imprint, improve tangible personal property, or provide any other service listed as a retail sale under RCW 82.04.050. Examples include, but are not limited to, vending machines that provide bowling ball polishing, perform car washes, allow the operation of vacuum equipment, and dispense air or water. Also included are vending machines that provide locker rentals found in amusement park, theme park, and water park facilities, as provided in RCW 82.04.050, and vending machines that accept self-payment for automobile parking.

(ii) Vending machines that provide a nonretail service include, but are not limited to, weight scales, coin cashing machines, and luggage locker rentals at any facility other than an amusement park, theme park, or water park; and self-service and coin-operated laundry services. For information about self-service and coin-operated laundry services, see WAC 458-20-165.

(c) **Vending machines that offer a game to be played.**

(i) Vending machines that offer retail games to be played, such as those listed in RCW 82.04.050, including air hockey, billiards, pool, foosball, darts, shuffleboard, ping pong, and similar games.

(ii) Vending machines that offer nonretail games to be played include, but are not limited to, pinball and arcade games.

(4) **Taxability of income from vending machines.**

(a) **Retailing and retail sales tax.** Persons operating vending machines listed in subsection (3)(a), (b)(i), and (c)(i)

of this rule are making a retail sale and must report and pay tax under the retailing business and occupation (B&O) tax classification on the gross receipts from those machines. In addition, the retail sales tax applies to sales through vending machines listed in subsection (3)(a), (b)(i), and (c)(i) of this rule and operators of such machines are liable for the collection and payment of the tax.

(i) Retail sales tax separately stated. Retail sales tax does not need to be stated separately from the selling price or collected separately from the buyer when sales are through vending machines. See RCW 82.08.050. The operator may deduct the tax from the total amount received in the machine to arrive at the net amount that becomes the measure of the retailing B&O and retail sales tax.

(ii) Exemption for food and food ingredients. Retail sales and use tax exemptions for food and food ingredients do not apply to sales of food and food ingredients dispensed from vending machines. For information on how to calculate tax on food and food ingredient sales see WAC 458-20-244.

(b) Service and other activities. Persons operating vending machines listed in subsection (3)(b)(ii) and (c)(ii) of this rule must report and pay tax under the service and other activities B&O tax classification on the gross receipts from those machines.

(c) License to use real property. When vending machines are placed at a location owned or operated by a person other than the owner of the machines, under any arrangement for compensation to the location operator, the location operator has granted the owner of the machines a license to use real property. The location operator is responsible for remitting tax on its gross receipts under the service and other activities B&O tax classification.

(d) Sales and leases of machines. Sales or leases of vending machines to persons who will operate them are sales at retail subject to the retailing B&O and retail sales tax.

(e) Use or deferred sales tax. The use or deferred sales tax applies to all tangible personal property used by persons making sales through vending machines, if the retail sales tax has not been paid, except inventory items resold through such machines.

Citation of Existing Rules Affected by this Order:
Amending WAC 182-530-2000, 182-530-2100, and 182-530-3200.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 16-07-089 on March 18, 2016.

Changes Other than Editing from Proposed to Adopted Version: WAC 182-530-2000 (1)(b)(iii), the agency added language for clarification:

(ii) Contraceptive patches, contraceptive rings, and oral contraceptives, excluding emergency contraception, when dispensed in a one-year supply only, unless one of the following applies:

(A) A smaller supply is directed by the prescriber;

(B) A smaller supply is requested by the client;

(C) The pharmacy does not have adequate stock.

WAC 182-530-2000 (1)(c)(i), the agency revised this section as follows:

(c) Vitamins, minerals, and enzymes when prescribed for:

(i) Prenatal vitamins, when prescribed and dispensed to pregnant women;

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: August 16, 2017 [2016].

Wendy Barcus
Rules Coordinator

WSR 16-17-071

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed August 16, 2016, 3:49 p.m., effective September 16, 2016]

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

Purpose: Revisions to these rules clarify the agency's coverage of smoking cessation products for pregnant women; change the minimum days' supply required when dispensing contraceptives; update the coverage of vitamins, minerals, and enzymes; and change the minimum number of days to request authorization of an emergency fill. This complies with federal and state law regarding coverage of smoking cessation products for pregnant women.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies. (1) The ~~((department))~~ medicaid agency covers:

(a) Outpatient drugs, including over-the-counter (OTC) drugs, as defined in WAC ~~((388-530-1050))~~ 182-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC ~~((388-530-1050))~~ 182-530-1050;

(iii) The drug is not excluded from coverage under WAC ~~((388-530-2100))~~ 182-530-2100;

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC ~~((388-530-7500 which describes the drug rebate program))~~ 182-530-7500; and

(v) ~~The drug is prescribed by a provider with prescriptive authority ((see)). Exceptions to the prescription requirement exist for family planning and emergency contraception ((for women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(g)))~~ in (b) of this subsection, and for OTC drugs that promote smoking cessation in (g) of this subsection.

(b) Family planning drugs, devices, and drug-related supplies per chapter ~~((388-532))~~ 182-532 WAC and as follows:

(i) ~~((Over the counter -))~~ OTC ~~((+))~~ family planning drugs, devices, and drug-related supplies without a prescription when the ~~((department))~~ agency determines it necessary for client access and safety ~~((-))~~;

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC ~~((388-530-7500))~~ 182-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, ~~((only))~~ excluding emergency contraception, when dispensed in ~~((at least a three-month supply, unless otherwise directed by the prescriber. There is no required minimum for how many cycles of emergency contraception may be dispensed.~~

(e) Prescription vitamins and mineral products, only as follows:

(i) ~~When prescribed for clinically documented deficiencies;~~

(ii) ~~Prenatal vitamins, when prescribed and dispensed to pregnant women; or~~

~~((+))~~ a one-year supply only, unless:

(A) A smaller supply is directed by the prescriber.

(B) A smaller supply is requested by the client.

(C) The pharmacy does not have adequate stock.

(c) Vitamins, minerals, and enzymes when prescribed for:

(i) Prenatal vitamins, when prescribed and dispensed to pregnant women;

(ii) A medical condition caused by a clinically documented deficiency;

(iii) A United States Preventive Services Task Force recommendation with an A or B rating;

(iv) Fluoride ~~((prescribed))~~ for clients under ~~((the))~~ age ~~((of))~~ twenty-one; or

(v) A clinically documented medical condition that causes vitamin, mineral, or enzyme deficiencies, and the deficiency cannot be treated through other dietary interventions.

(d) OTC drugs, vitamins, and minerals when determined by the ~~((department))~~ agency to be the least costly therapeutic alternative for a medically accepted indication. The ~~((department))~~ agency will maintain and publish a list of the covered OTC drugs available to clients which have been determined to be the least costly therapeutic alternatives for medically accepted indications. This subsection (1)(d) of this section does not apply to products prescribed for the treatment of

cough or cold symptoms. See ~~((WAC 388-530-2000 (1)(i) and 388-530-2100))~~ (1)(i) under this subsection and WAC 182-530-2100 (1)(b)(v) for coverage of products prescribed for the treatment of cough and cold symptoms.

(e) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC ~~((388-530-2100))~~ 182-530-2100; and

(iv) Determined by the ~~((department,))~~ agency that a product covered under chapter ~~((388-543))~~ 182-543 WAC related to durable medical equipment and supplies should be available at retail pharmacies.

(f) Preservatives, flavoring ~~((and/or)),~~ or coloring agents, only when used as a suspending agent in a compound.

(g) ~~((Over the counter -))~~ OTC ~~((+))~~ drugs, without a prescription, to promote smoking cessation only for clients ~~((who are))~~ age eighteen ~~((years of age))~~ or older and participating in ~~((a department-approved))~~ an agency-approved smoking cessation program. Limitation extensions as described in WAC ~~((388-501-0169))~~ 182-501-0169 are prohibited for the age and counseling requirements in this section.

(h) ~~((Prescription))~~ Drugs prescribed to promote smoking cessation only for clients ~~((who are eighteen years of age or older and))~~ participating in ~~((a department-approved))~~ an agency-approved smoking cessation program, or for clients who are pregnant with a verifiable estimated due date and receiving smoking cessation counseling from the prescribing provider. Limitation extensions as described in WAC ~~((388-501-0169))~~ 182-501-0169 are prohibited for the age and counseling requirements in this section.

(i) For the treatment of cough and cold symptoms:

(i) Only the following generic, single ingredient formulations:

(A) Guaifenesin 100 mg/5 ml liquid or syrup;

(B) Dextromethorphan 15 mg/5 ml liquid or syrup;

(C) Pseudoephedrine 30 mg or 60 mg tablets;

(D) Saline nasal spray 0.65%; and

(ii) Generic combination product dextromethorphan-guaifenesin 10-100 mg/5 ml syrup, including sugar-free formulations.

(2) The ~~((department))~~ agency does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

AMENDATORY SECTION (Amending WSR 13-18-035, filed 8/28/13, effective 9/28/13)

WAC 182-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies. (1) The medicaid agency does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.

(b) A drug prescribed:

- (i) For weight loss or gain;
- (ii) For infertility, frigidity, impotency;
- (iii) For sexual or erectile dysfunction;
- (iv) For cosmetic purposes or hair growth; or
- (v) For treatment of cough or cold symptoms, except as listed in WAC 182-530-2000 (1)(i).

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

(f) A product:

(i) With an obsolete National Drug Code (NDC) for more than two years;

(ii) With a terminated NDC;

(iii) Whose shelf life has expired; or

(iv) Which does not have an eleven-digit NDC.

(g) Over-the-counter (OTC) drugs, vitamins, and minerals, except as allowed under WAC 182-530-2000 (1)(i).

(h) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).

(i) Free pharmaceutical samples.

(j) ~~(Over-the-counter)~~ OTC or prescription drugs to promote smoking cessation unless the client is age eighteen ~~((years old))~~ or older and participating in ~~((a-medicare))~~ an agency-approved cessation program, or is pregnant with a verifiable estimated due date and receiving smoking cessation counseling from the prescribing provider.

(2) A noncovered drug can be requested through the exception to rule process as described in WAC 182-501-0160.

(3) If a noncovered drug is prescribed through the early and periodic screening, diagnosis, and treatment (EPSDT) process, an authorization request may be submitted indicating that the request is EPSDT related, and the request will be evaluated according to the process in WAC 182-501-0165. (See WAC 182-534-0100 for EPSDT rules.)(-)

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-530-3200 The ~~((department's))~~ medicaid agency's authorization process. (1) The ~~((department))~~ agency may establish automated ways for pharmacies to meet authorization requirements for specified drugs, devices, and drug-related supplies, or circumstances as listed in WAC ~~((388-530-3000))~~ 182-530-3000 (3) and (4) including, but ~~((are))~~ not limited to:

(a) Use of expedited authorization codes as published in the ~~((department's))~~ agency's prescription drug program billing instructions and numbered memoranda;

(b) Use of specified values in national council of prescription drug programs (NCPDP) claim fields;

(c) Use of diagnosis codes; and

(d) Evidence of previous therapy within the ~~((department's))~~ agency's claim history.

(2) When the automated requirements in subsection (1) of this section do not apply or cannot be satisfied, the pharmacy provider must request authorization from the ~~((department))~~ agency before dispensing. The pharmacy provider must:

(a) Ensure the request states the medical diagnosis and includes medical justification for the drug, device, drug-related supply, or circumstance as listed in WAC ~~((388-530-3000))~~ 182-530-3000 (3) and (4); and

(b) Keep documentation on file of the prescriber's medical justification that is communicated to the pharmacy by the prescriber at the time the prescription is filled. The records must be retained for the period specified in WAC ~~((388-502-0020))~~ 182-502-0020(5).

(3) When the ~~((department))~~ agency receives the request for authorization:

(a) The ~~((department))~~ agency acknowledges receipt:

(i) Within twenty-four hours if the request is received during normal state business hours; or

(ii) Within twenty-four hours of opening for business on the next business day if received outside of normal state business hours.

(b) The ~~((department))~~ agency reviews all evidence submitted and takes one of the following actions within fifteen business days:

(i) Approves the request;

(ii) Denies the request if the requested service is not medically necessary; or

(iii) Requests the prescriber submit additional justifying information.

(A) The prescriber must submit the additional information within ten days of the ~~((department's))~~ agency's request.

(B) The ~~((department))~~ agency approves or denies the request within five business days of the receipt of the additional information.

(C) If the prescriber fails to provide the additional information within ten days, the ~~((department))~~ agency will deny the requested service. The ~~((department))~~ agency sends a copy of the request to the client at the time of denial.

(4) The ~~((department's))~~ agency's authorization may be based on, but not limited to:

(a) Requirements under this chapter and WAC ~~((388-501-0165))~~ 182-501-0165;

(b) Client safety;

(c) Appropriateness of drug therapy;

(d) Quantity and duration of therapy;

(e) Client age, gender, pregnancy status, or other demographics; and

(f) The least costly therapeutically equivalent alternative.

(5) The ~~((department))~~ agency evaluates request for authorization of covered drugs, devices, and drug-related supplies that exceed limitations in this chapter on a case-by-case basis in conjunction with subsection (4) of this section and WAC ~~((388-501-0169))~~ 182-501-0169.

(6) If a provider needs authorization to dispense a covered drug outside of normal state business hours, the provider may dispense the drug without authorization only in an emergency. The ~~((department))~~ agency must receive justification from the provider within ~~((seventy-two hours))~~ seven days of the fill date ~~((, excluding weekends and Washington state holidays,))~~ to be ~~((paid))~~ reimbursed for the emergency fill.

(7) The ~~((department))~~ agency may remove authorization requirements under WAC ~~((388-530-3000))~~ 182-530-3000 for, but not limited to, the following:

(a) Prescriptions written by specific practitioners based on consistent high quality of care; or

(b) Prescriptions filled at specific pharmacies and billed to the ~~((department))~~ agency at the pharmacies' lower acquisition cost.

(8) Authorization requirements in WAC ~~((388-530-3000))~~ 182-530-3000 are not a denial of service.

(9) Rejection of a claim due to the authorization requirements listed in WAC ~~((388-530-3000))~~ 182-530-3000 is not a denial of service.

(10) When a claim requires authorization, the pharmacy provider must request authorization from the ~~((department))~~ agency. If the pharmacist fails to request authorization as required, the ~~((department))~~ agency does not consider this a denial of service.

(11) Denials that result as part of the authorization process will be issued by the ~~((department))~~ agency in writing.

(12) The ~~((department's))~~ agency's authorization:

(a) Is a decision of medical appropriateness; and

(b) Does not guarantee payment.

WSR 16-17-082

PERMANENT RULES

DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed August 17, 2016, 2:09 p.m., effective September 17, 2016]

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

Purpose: Chapter 246-840 WAC, Nursing education programs, the rules are updated to address changes in methods of delivery, including distance learning and simulation. The new and amended rules provide better public protection by addressing all levels of nursing education, establishing standards for out-of-state distance learning programs that place students in Washington state, and reduce barriers for internationally educated nurses.

Citation of Existing Rules Affected by this Order: Amending WAC 246-840-045, 246-840-090, 246-840-500, 246-840-505 and 246-840-510; and repealing WAC 246-840-130, 246-840-455, 246-840-515, 246-840-520, 246-840-525, 246-840-530, 246-840-535, 246-840-540, 246-840-545, 246-840-548, 246-840-550, 246-840-555, 246-840-560, 246-840-565, 246-840-570, and 246-840-575.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, 18.79.150, 18.79.190, and 18.79.240.

Adopted under notice filed as WSR 16-08-043 on March 30, 2016.

Changes Other than Editing from Proposed to Adopted Version: Changes since the CR-102:

1. WAC 246-840-511(4), inserted the word "not" between the words "does" and "maintain" to read: "The commission may take action as identified in WAC 246-840-557 against a nursing education program that does not maintain national nursing education accreditation status." The word "not" was in the original text in the existing rule but was inadvertently dropped and readded at the hearing.

2. WAC 246-840-519 (3)(a)(viii), replaced "significant risk for patient harm" with the words "unreasonable risk of patient harm." The revised sentence reads: "Reporting and logging of events involving a student and faculty member that the nursing education program has reason to believe resulted in patient harm, unreasonable risk of patient harm, or diversion of legend or scheduled drugs." This phrase change creates consistency with the rest of the rules.

A final cost-benefit analysis is available by contacting Mindy Schaffner, Washington State Nursing Care Quality Assurance Commission, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4745, fax (360) 236-4738, e-mail Mindy.Schaffner@doh.wa.gov [Mindy.Schaffner@doh.wa.gov].

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

Number of Sections Adopted at 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 50, Amended 5, Repealed 16.

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 50, Amended 5, Repealed 16.

Date Adopted: May 13, 2016.

Paula R. Meyer, MSN, RN, FRE

Executive Director

Nursing Care Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 08-11-019, filed 5/12/08, effective 6/12/08)

WAC 246-840-045 Initial licensure for registered nurses and practical nurses who graduate from an international school of nursing. (1) Registered ~~((nursing))~~ nurse and practical ~~((nursing))~~ nurse applicants educated in a jurisdiction which is not a member of the National Council of State Boards of Nursing and applying for initial licensure must:

~~((+))~~ (a) Successfully complete a basic nursing education program approved in that country.

~~((+))~~ (i) The nursing education program must be equivalent to the minimum standards prevailing for nursing education programs approved by the commission.

~~((b))~~ (ii) Any deficiencies in the nursing program (theory and clinical practice in medical, psychiatric, obstetric, surgical and pediatric nursing) ~~((must))~~ may be satisfactorily completed in a commission approved nursing program or program created for internationally educated nurses identified in WAC 246-840-549, 246-840-551 or 246-840-552.

(b) Obtain an evaluation or certificate from a commission approved credential evaluation service verifying that the educational program completed by the applicant is equivalent to nursing education in the state of Washington.

~~((2))~~ (c) Demonstrate English language proficiency by passing a commission approved English proficiency examination at a commission designated standard, or provide evidence directly from the school of earning a high school diploma or college degree from a United States institution prior to commission approval to take the national licensing examination.

Individuals from ~~((countries where English is the primary language and where nursing education (theory and clinical) is conducted in English will have this requirement waived))~~ Canada (except for Quebec), United Kingdom, Ireland, Australia, New Zealand, American Samoa, Guam, Northern Mariana Island, and U.S. Virgin Islands will have this requirement waived.

~~((3))~~ (d) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

~~((4))~~ (e) Successfully pass the commission approved licensure examination as provided in WAC 246-840-050.

~~((5))~~ (2) Registered nurse and practical nurse applicants must submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

~~((LPNs must submit an:~~

~~((i))~~ Official transcript directly from the nursing education program or licensure agency in the country where the applicant was educated ~~((or))~~ and previously licensed.

(i) Transcript must be in English or accompanied by an official English translation. If the applicant's original documents (education and licensing) are on file in another state or with an approved credential ~~((evaluating))~~ evaluation agency, the applicant may request that the state board or approved credential evaluating agency send copies directly to the commission in lieu of the originals.

(ii) The transcript must:

(A) Include the applicant's date of enrollment, date of graduation and credential conferred.

(B) Describe the course names and credit hours completed.

(C) Document equivalency to the minimum standards in Washington state. Course descriptions or syllabi may be requested to determine equivalency to Washington state standards.

~~((ii))~~ (c) Documentation from a commission approved nursing program showing that any deficiency ~~((in theory and clinical practice in medical, psychiatric, obstetric, surgical and pediatric nursing))~~ has been satisfactorily completed.

~~((iii))~~ (d) Documents must show the applicant has passed a commission approved English proficiency examination ~~((at a commission designated standard. This documentation will not be required from individuals from countries~~

~~where English is the primary language and where nursing education (theory and clinical) is conducted in English.~~

~~(e) RNs must submit:~~

~~(i) A certificate or credential from a commission approved credential evaluating service verifying that the educational program completed by the applicant is equivalent to registered nursing education in Washington state. This documentation will not be required for individuals who have passed the national licensing examination and are licensed as a registered nurse by another United States nursing board.~~

~~(ii) Documents showing the applicant has passed a commission approved English proficiency examination at a commission designated standard. This documentation will not be required for individuals from countries where English is the primary language or where nursing education, theory and clinical, is conducted in English)) or the requirement is waived as identified in subsection (1) of this section.~~

AMENDATORY SECTION (Amending WSR 08-11-019, filed 5/12/08, effective 6/12/08)

WAC 246-840-090 Licensure for nurses by interstate endorsement. Registered ~~((nursing))~~ nurse and practical ~~((nursing))~~ nurse applicants for interstate endorsement ~~((as a nurse))~~ may be issued a license without examination provided the applicant meets the following requirements:

(1) The applicant ~~((has))~~ graduated and holds a ~~((credential))~~ degree from:

(a) A commission or state board approved program preparing candidates for licensure as a nurse; or

~~((b))~~ (b) A nursing program that is equivalent to commission approved nursing education in Washington state at the time of graduation as determined by the commission ~~((; which program must fulfill the minimum requirements for commission or state board approved registered nursing programs in Washington at the time of graduation))~~.

~~((2))~~ The applicant was originally licensed to practice as a nurse in another state or territory after passing a state approved examination.

~~((3))~~ The applicant possesses a current active nursing license without discipline in another state or territory, or, possess an inactive or expired license in another state or territory and successfully complete a commission approved refresher course.

~~((a))~~ An applicant whose license was inactive or expired must be issued a limited education authorization by the commission to enroll in the clinical portion of the refresher course.

~~((b))~~ The limited education authorization is valid only while working under the direct supervision of a preceptor and is not valid for employment as a registered nurse.

~~((4))~~ (2) The applicant holds a current active nursing license in another state or territory, or holds an inactive or expired license in another state or territory and successfully completes a commission-approved refresher course.

~~((a))~~ An applicant whose license was inactive or expired must be issued a limited education authorization by the commission to enroll in the clinical portion of the refresher course.

(b) The limited education authorization is valid only while working under the direct supervision of a preceptor and is not valid for employment as a registered nurse.

(3) The applicant was originally licensed to practice as a nurse in another state or territory after passing the National Council Licensure Examination (NCLEX).

(4) Applicants graduating from nursing programs outside the U.S. must demonstrate English proficiency by passing a commission approved English proficiency test if the nursing education is not in one of the following countries: Canada (except for Quebec), United Kingdom, Ireland, Australia, New Zealand, American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands, or complete one thousand hours of employment as a licensed nurse in another state, or provide evidence directly from the school of earning a high school diploma or college degree from a United States institution.

The one thousand hours of employment must be in the same licensed role as the nurse is applying for licensure in Washington state. Proof of employment must be submitted to the commission.

(5) For RNs: If the applicant is a graduate of a nontraditional nursing education program ((in nursing)) and:

(a) Was licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must ((document)) submit evidence of two hundred hours of preceptorship in the role of a registered nurse as defined in WAC 246-840-035, or at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(b) Was not licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must ((document)) submit evidence of at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

((5)) (6) Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

((6)) (7) Applicants must submit the following documents:

(a) A completed licensure application with the required fee as defined in WAC 246-840-990.

(b) An official transcript sent directly from the applicant's nursing education program to the commission if the education cannot be verified from the original board of nursing, or commission-approved evaluation agency.

(i) The transcript must contain adequate documentation ((to demonstrate)) demonstrating that the applicant ((has)) graduated from an approved nursing program or ((has)) successfully completed the prelicensure portion of an approved graduate-entry registered nursing program.

(ii) The transcripts shall include course names and credits accepted from other programs.

(c) Verification of an original registered or practical nurse license ((sent directly to the commission)) from the state or territory of original licensure. ((This document must include verification that the original licensure included passing a state examination or computerized verification from NurSYS@.

(d) Verification of a current active or expired nurse license in another state or territory sent directly to the com-

mission from that state's or territory's licensure agency. Verification that the applicant has successfully completed a commission approved refresher course may be accepted if the applicant's out of state licensure is on inactive or expired status.) The verification must identify that issuance of the original licensure included passing the NCLEX.

(d) For applicants educated outside the United States and in territories or countries not listed in subsection (4) of this section, successful results of a commission approved English proficiency exam, or, evidence of one thousand hours worked as a nurse.

(e) For RNs: If the applicant is a graduate of a nontraditional program in nursing and:

(i) Was licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit documentation of two hundred hours of preceptorship in the role of a registered nurse as defined in WAC 246-840-035 or at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

(ii) Was not licensed as a practical/vocational nurse prior to licensure as a registered nurse, the applicant must submit documentation of at least one thousand hours of practice as a registered nurse without discipline of the registered nurse license by any other state or territory.

AMENDATORY SECTION (Amending WSR 95-21-072, filed 10/16/95, effective 11/16/95)

WAC 246-840-500 Philosophy governing approval of nursing education programs. The commission believes that quality nursing education provides the foundation for safe and effective nursing practice. Nursing education shall be accessible and promote student and faculty diversity. While the commission ((herein)) has established minimum standards for approved ((schools of)) nursing education programs, it believes that each ((school of)) nursing education program should have flexibility in developing and implementing its philosophy, purposes, and objectives. Such development and implementation should be based not only upon the minimum standards for approved ((schools of)) nursing education programs, but also upon sound educational and professional principles for the preparation of registered ((and)) nurses, practical nurses, advanced registered nurse practitioners, and other nurses who pursue graduate nursing degrees and postgraduate degrees and certifications to meet current and future nursing needs of the public. The commission believes that there must be congruence between the total program activities of the ((school of)) nursing education program and its stated philosophy, purpose and objectives.

The commission further believes that the ((minimum)) standards for approved ((schools of)) nursing ((can be)) education programs are useful ((to schools of nursing by)) for promoting self-evaluation and peer evaluation, which may lead to further program development and ongoing continuous quality improvement.

AMENDATORY SECTION (Amending WSR 05-12-058, filed 5/26/05, effective 6/26/05)

WAC 246-840-505 Purposes of commission approval of nursing education programs. The commission approves nursing education programs to:

(1) Assure preparation for the safe and effective practice of nursing by setting minimum standards for nursing education programs preparing persons for licensure as registered nurses ~~((of))~~, practical nurses, advanced registered nurse practitioners, or for preparing nurses for additional graduate education or higher levels of nursing practice.

(2) Provide criteria for the approval, development, evaluation, and improvement of new and established nursing education programs.

(3) Assure ~~((candidates))~~ graduates of nursing education programs are educationally prepared for licensure at the appropriate level of nursing practice.

(4) Facilitate interstate endorsement of graduates of commission approved nursing education programs ~~((of nursing))~~.

(5) Assure nursing education standards for out-of-state distance learning nursing education programs placing students in Washington state for clinical or other practice experiences are equivalent to in-state nursing education programs.

(6) Assure internationally educated nurses' educational preparation is equivalent to that of in-state nursing education programs.

AMENDATORY SECTION (Amending WSR 05-12-058, filed 5/26/05, effective 6/26/05)

WAC 246-840-510 Approval of initial (new) in-state nursing education programs. (1) ~~((Application for program development.))~~ New nursing education programs must submit a commission approved application for approval to operate a new undergraduate, post-licensure, or graduate nursing education program in Washington state.

(2) Graduate programs changing from a master's degree in nursing to a doctoral of nursing practice degree must submit a substantive change request identified in WAC 246-840-554(3).

(3) The commission shall consider the need, size, type, and geographic location when approving a program.

Phase I: Submission of application and feasibility study

(4) A postsecondary educational institution wishing to establish a nursing education program or additional program in nursing shall ~~((seek nursing commission approval to begin the process in the following manner))~~ submit an application and feasibility study as follows:

(a) Submit to the commission a statement of intent to establish a nursing education program or additional program on a form provided by the commission~~((s))~~ and a completed feasibility study that includes ~~((at least))~~ the following information:

(i) ~~((Nursing))~~ Studies documenting the current and future supply and demand needs for ((entry-level)) nurses in the area of the proposed nursing education program;

(ii) Purposes and classification of the proposed nursing education program;

(iii) Availability of qualified candidates for the nurse administrator and faculty positions;

(iv) Budgeted nurse administrator and faculty positions over the course of five years;

(v) ~~((Availability))~~ Source and description of adequate and acceptable clinical or practice facilities for the nursing education program;

(vi) ~~((Availability))~~ Description of adequate and acceptable academic facilities for the nursing education program;

(vii) Potential effect on other nursing programs ~~((in the area))~~ within a sixty mile radius of the proposed nursing education program location;

(viii) Evidence of financial resources adequate and acceptable for the planning, implementation, and continuation of the nursing education program for the next five years;

(ix) Anticipated student population; ~~((and))~~

(x) Tentative time schedule for planning and initiating the nursing education program; and

(xi) Accreditation status of the parent institution.

(b) Respond to the commission's request(s) for additional information.

~~((e) Receive or be denied nursing commission approval for program development.))~~

Phase II: Nursing education program development

~~((2) Program development. Upon approval))~~ (5) Only after receiving commission approval for nursing education program development, the educational institution shall:

(a) Appoint a qualified nurse administrator ~~((and))~~;

(b) Provide appropriate resources, consultants, and faculty to develop ~~((a))~~ the proposed nursing education program ~~((:~~

~~((b)))~~; and

(c) At least three months prior to ~~((admission of))~~ advertising and admitting students ~~((and with sufficient time for commission review))~~, submit the proposed program plan ~~((that includes all of))~~ including the following:

(i) Program purpose and outcomes;

(ii) Organization and administration within the educational institution and within the nursing unit or department including the nurse administrator, faculty, and nursing support staff;

(iii) Resources, facilities, and services for students and faculty;

(iv) Policies and procedures ~~((for student selection, admission, progression, withdrawal and graduation, and record system))~~ as identified in WAC 246-840-519 (3)(a) through (c);

(v) A plan for hiring and retaining faculty, including qualifications, responsibilities, organizational structure, and faculty/student ratio in classroom, clinical, and practice experiences;

(vi) Curriculum, including course descriptions, course outcomes, and course topical outlines;

(vii) Initial year and five-year sustaining budget;

(viii) Projected plans for the orderly expansion and ongoing evaluation of the program.

~~((e))~~ (d) If required by the commission, arrange a ((survey)) site visit to the campus to clarify and ((amplify)) augment materials included in the written proposed program

plan. The visit ~~((will))~~ may be conducted by a representative of the commission before a decision regarding approval is ~~((rendered))~~ made.

~~((d) Receive or be denied initial approval of the proposed nursing program.))~~

Phase III: Initial approval

~~((3) Initial approval.~~

~~((a))~~ (6) The nursing education program may only admit students if it has received initial approval by the commission(~~(;~~

~~((b))~~);

(a) The ~~((school))~~ nursing education program shall submit progress reports as requested by the commission(~~(;~~ and

~~((c) Survey))~~);

(b) Site visits shall be scheduled as deemed necessary by the commission during the period of initial approval. A site survey, conducted by the commission, will determine whether graduates may test for the ~~((licensure))~~ national council licensing examination (NCLEX)~~((@))~~ as identified in WAC 246-840-050 or graduate certification exams as identified in WAC 246-840-302 (3)(a), (b), (c) and (d) for advanced registered nurse practice.

Phase IV: Full approval

~~((4) Full approval.~~

~~((a))~~ (7) A self-evaluation report of compliance with the standards for nursing education as identified in WAC ~~((246-840-550 through 246-840-575))~~ 246-840-511 through 246-840-556, shall be submitted to the nursing commission within six months following graduation of the first class.

~~((b))~~ (a) The commission may conduct a ~~((survey))~~ site visit to determine full approval of the nursing education program.

~~((c))~~ (b) The commission will review the self-evaluation report, survey reports and program outcome data in order to grant or deny full approval of the nursing education program under WAC ~~((246-840-530(1)))~~ 246-840-558(1).

NEW SECTION

WAC 246-840-511 Accreditation requirements for all nursing education programs located in Washington state. (1)(a) A nursing education program must be located in a postsecondary educational institution with approval from either the Washington state student achievement council or state board of technical and community colleges to grant the appropriate degree or certificate; and

(b) A nursing education program must be located in an institution accredited by a United States Department of Education approved regional accrediting body or national institutional accrediting body.

(2) All nursing education programs having received full commission approval on or before the effective date of this rule, must become accredited or achieve candidacy status granted by a national nursing education accrediting body recognized by the United States Department of Education on or before January 1, 2020.

(3) New nursing education programs receiving full commission approval after the effective date of this rule, must

obtain national nursing education accreditation within four years of receiving full commission approval.

(4) The commission may take action as identified in WAC 246-840-557 against a nursing education program that does not maintain national nursing education accreditation status.

(5) Any nursing education program not having national nursing education accreditation must disclose to students in all publications describing the program that it lacks national nursing education accreditation and this may limit future educational and career options for the students.

NEW SECTION

WAC 246-840-512 Standards and evaluation of nursing education programs. (1) The nursing education program shall meet minimum standards established by the commission as detailed in WAC 246-840-511 through 246-840-556.

(2) The nursing education program shall implement a written, comprehensive, systematic plan for ongoing evaluation that is based on program outcomes data and input from faculty, students, health care partners and consumers, and that incorporates continuing improvement goals and measures.

(a) The plan must include evaluative criteria, methods used to evaluate, frequency of evaluation, assignment of responsibility, and measurable indicators or benchmarks of effectiveness for the nursing education program and instruction.

(b) The nursing education program shall document analysis of the data collected and actions taken as a result of use of the systematic program evaluation plan.

(c) Major changes in the professional nursing education program must be evidence-based.

(d) The nursing education program shall review and analyze the evaluative methods and instruments used to measure program outcomes for appropriateness according to the timeline specified in the plan.

(e) The nursing education program shall evaluate didactic and clinical course effectiveness each time a course is taught.

(f) Implementation of the plan for systematic program evaluation and ongoing quality improvements must be documented in faculty or faculty-related minutes.

(g) The following items must be included in the systematic program evaluation: Faculty, student and graduate satisfaction surveys, faculty, resource and services surveys of faculty and students, faculty workload surveys and evaluations, national council licensing examination (NCLEX) pass rates, post licensure certification examination pass rates, student attrition and completion rates, employment rates after graduation, employer satisfaction, and program and student learning outcomes.

(h) Faculty and students shall participate in program planning, implementation, evaluation, and continuous quality improvement.

(3) Program information communicated by the nursing education program must be accurate, complete, and consistent.

NEW SECTION

WAC 246-840-513 Reporting and recordkeeping requirements for nursing education programs. (1) Within two business days, nursing education programs shall report to the commission, on forms provided by the commission, events involving a student or faculty member that the program has reason to believe resulted in patient harm, an unreasonable risk of patient harm, or diversion of legend drugs or controlled substances.

(2) The nursing education program shall keep a log of all events reported by a patient, family member, student, faculty or a health care provider resulting in patient harm, an unreasonable risk of patient harm, or allegations of diversion, and medication errors. The log must include:

- (a) The date and nature of the event;
- (b) The name of the student or faculty member involved;
- (c) The name of the clinical faculty member responsible for the student's clinical experience;
- (d) Assessment of findings and suspected causes related to the incident or root cause analysis;
- (e) Nursing education program corrective action; and
- (f) Remediation plan, if applicable.

(3) The nursing education program shall use the principles of just culture, fairness, and accountability in the implementation and use of all incident reporting logs with the intent of:

- (a) Determining the cause and contributing factors of the incident;
- (b) Preventing future occurrences;
- (c) Facilitating student learning; and
- (d) Using the results of incident assessments for ongoing program improvement.

NEW SECTION

WAC 246-840-514 Purpose and outcomes for approved nursing education programs. (1) The purpose and expected outcomes of the nursing education program shall be stated clearly and must be available to the public in written form.

(2) The purpose and expected outcomes shall be consistent with nursing practice as outlined in chapters 18.79 RCW and 246-840 WAC.

(3) The nursing education program shall have a purpose statement and expected outcomes consistent with the parent institution and with generally accepted standards of nursing practice appropriate for graduates of the type of nursing program offered.

(4) The input of stakeholders including, but not limited to, health care partners and community members shall be considered in developing and evaluating the purpose and expected outcomes of the program.

NEW SECTION

WAC 246-840-516 Organization and administration for all nursing education programs. (1) The nursing education program must be an integral part of the accredited parent institution.

(2) The relationship of the nursing education program to the parent institution and other units within the parent institution must be clearly delineated and included in an organizational chart, which indicates lines of responsibility and authority.

(3) The parent institution shall provide financial support and resources needed to operate a professional nursing education program, which meets the requirements of this chapter and fosters achievement of program goals and expected outcomes.

The financial resources must support adequate educational facilities, equipment, technology, and qualified administrative and instructional personnel sufficient to achieve program goals and outcomes.

(4) The nursing education program shall involve nursing faculty in determining academic policies and procedures.

(5) The nursing education program shall provide opportunity for student participation in the development and evaluation of program policies and procedures, curriculum planning and evaluation.

(6) The nursing education program shall provide accurate information to students and the public.

(7) The governing entity shall employ a qualified nurse administrator with clear institutional authority and administrative responsibility for the nursing program.

NEW SECTION

WAC 246-840-517 Nurse administrator qualification requirements in nursing education programs located in Washington state. (1) The nursing education program administrator must be a professionally and academically qualified registered nurse with an active, unencumbered Washington nursing license.

Practical or Associate Degree Nursing Education Programs

(2) In a nursing education program offering practical or associate degree nursing education, the nurse administrator must have a minimum of:

(a) A bachelor of science in nursing (BSN) from a nursing education program accredited by a national nursing education accrediting body recognized by the United States Department of Education and a graduate degree; or

(b) A graduate degree from a nursing education program accredited by a national nursing education accrediting body recognized by the United States Department of Education; and

(c) Preparation in education that includes teaching adults, adult learning theory, teaching methods, curriculum development, and curriculum evaluation, or two years of teaching experience in nursing education that demonstrates this type of preparation;

(d) Curriculum development and administration experience;

(e) Five years of experience as a registered nurse including two years of experience in nursing education; and

(f) Current knowledge of nursing practice at the practical nurse or associate degree program level as appropriate.

Baccalaureate and Graduate Nursing Education Programs

(3) In a nursing education program offering baccalaureate or graduate degrees in nursing, the nurse administrator must have:

(a) A minimum of a graduate degree with a major in nursing, from a nursing education program accredited by a national nursing education accreditation body recognized by the United States Department of Education and a doctoral degree either in nursing or a health or related educational field from a college or university accredited by a national accrediting body recognized by the United States Department of Education; or

(b) A doctoral degree in nursing from a college or university accredited by a national nursing accrediting body recognized by the United States Department of Education; and

(c) Preparation in education that includes teaching adults, adult learning theory, teaching methods, curriculum development, and curriculum evaluation, or two years of teaching experience in nursing education that demonstrates this type of preparation;

(d) Preparation or experience in nursing administration or educational administration; and

(e) At least five years of experience as a registered nurse including two years of experience in nursing education at or above the highest level of the nursing education program the nurse administrator will be administering.

The commission may grant an exception to the experience in nursing education requirement if the program can demonstrate that two academic years of ongoing educational consultation is provided to the nurse administrator by a person who meets or exceeds nurse administrator qualifications identified in this subsection.

(4) The nurse administrator shall be responsible for creation and maintenance of an environment conducive to teaching and learning through:

(a) Facilitation of the development, implementation, and evaluation of the curriculum.

(b) Communication and decision making regarding program needs, budget preparation and monitoring, and ongoing involvement with central administration and other units of the parent institution.

(c) Facilitation of faculty development and performance review for full-time and part-time faculty consistent with the policies of the institution and standards of professional nursing practice, and encouragement of faculty to seek ways of improving clinical skills and methods of demonstrating continued educational and clinical competence.

Evaluation of clinical performance of nursing faculty in practice situations must be performed by a qualified licensed nurse as appropriate to the level of practice being taught.

(d) Facilitation of faculty recruitment and appointment. The nurse administrator of the nursing education program shall establish a goal for acquiring faculty with diversity in ethnicity, gender, clinical specialty and experience.

(e) Recommendation of faculty for appointment, promotion, tenure, and retention consistent with the policies of the institution and standards in this chapter.

(f) Facilitation of the development of long-range goals and objectives for the nursing program.

(g) Facilitation of recruitment, selection, and advisement of students.

(h) Assurance that the rules of the commission are effectively implemented.

(i) Notification to the commission of events as identified in WAC 246-840-513 and 246-840-554(3).

(5) The nurse administrator must have sufficient time provided to fulfill relevant administrative duties and responsibilities.

NEW SECTION

WAC 246-840-518 Resources, facilities and services for approved nursing education programs. (1) A nursing education program shall have the fiscal, human, physical, technological, clinical and learning resources adequate to support program processes and outcomes.

(2) Classrooms, laboratories, and conference rooms must be available and adequate in size, number, and type according to the number of students and the educational purposes for which the rooms are to be used.

(3) Offices must be available and adequate in size, number, and type to provide faculty with opportunity for uninterrupted work and privacy for conferences with students. Adequate space must be provided for clerical staff, records, files, and other equipment.

(4) An office allowing for private consultation with students and faculty, and support for administrative responsibilities must be available to the nurse administrator.

(5) Library facilities and computer access must be provided for use by the faculty and students. Physical facilities, hours, and scope and currency of learning resources must be appropriate for the purpose of the program and for the number of faculty and students.

(6) The nursing education program shall conduct annual evaluations of resources, facilities, and services based on input from faculty and students. The schedule and results of these evaluations must be available to the commission upon request.

(7) The nursing education program shall demonstrate adequate financial support for faculty, support personnel, equipment, technology, supplies, and services.

NEW SECTION

WAC 246-840-519 Student requirements in all approved nursing education programs. (1) The nursing education program shall hold students accountable for professional behavior as identified in chapters 18.79, 18.130 RCW, and 246-840 WAC, including, academic honesty and integrity.

(2) Written policies and procedures for students must be available and communicated in a fair, accurate, inclusive, and consistent manner.

(3) The approved nursing education program shall:

(a) Develop and implement written policies and procedures specific to nursing students including, but not limited to, the following:

(i) Student selection, admission, progression, remediation, graduation, withdrawal, and dismissal of students;

(ii) Student recordkeeping and systems;

- (iii) ADA accommodations for students;
 - (iv) Student rights and responsibilities;
 - (v) Grievances and complaint processes;
 - (vi) Incident reports and tracking of reports;
 - (vii) Medication administration or selection by students and faculty role in supervising students during medication administration or selection processes;
 - (viii) Reporting and logging of events involving a student and faculty member that the nursing education program has reason to believe resulted in patient harm, unreasonable risk of patient harm, or diversion of legend drugs;
 - (ix) Documenting student near miss errors incidents;
 - (x) Student professional dress;
 - (xi) Professional behavior;
 - (xii) Background check requirements;
 - (xiii) Immunization requirements;
 - (xiv) Clinical practice expectations;
 - (xv) Student performance evaluations; and
 - (xvi) Other expectations of nursing students, including providing direction to students on how to apply for national council licensing examination (NCLEX) testing and licensure.
- (b) Maintain a system of student records in accordance with institutional requirements. Student records shall be available to the commission staff during on-site surveys or investigations.
- (c) Provide a written statement to nursing students of student rights and responsibilities.
- (d) Require and assure that students seeking admission by transfer from another approved nursing education program, or readmission for completion of the program, shall meet the equivalent of the program's current standards.
- (e) Encourage admission of students from diverse populations.

NEW SECTION

WAC 246-840-521 Additional student requirements for prelicensure registered nurse nursing education programs located in the state of Washington. The nursing education program shall provide the student in a prelicensure registered nursing program with written information on the legal role of the nursing technician as defined in WAC 246-840-010 and 246-840-840. The information must be provided prior to the time of completion of the first clinical course and shall clearly advise the student of his or her responsibilities, if he or she chooses to be employed as a nursing technician.

NEW SECTION

WAC 246-840-522 Additional student requirements for RN to BSN and graduate nursing education programs. (1) The nursing education program shall ensure nursing students in RN to BSN and graduate nursing education programs are licensed as a registered nurse in each state or United States territory where practice or clinical experiences occur.

(2) The nursing education program shall provide the student in a graduate nursing program with written or electronic information on the requirements for national certification as appropriate to the level of educational degree and specialty.

NEW SECTION

WAC 246-840-523 Faculty requirements for nursing education programs. (1) Each nursing education program shall have a sufficient number of professionally and academically qualified faculty with adequate diversity of expertise in nursing to meet the nursing education program purpose, outcomes, and identified quality improvement processes.

(2) The nursing education program shall provide new faculty with sufficient orientation to achieve program purpose and outcomes, and to assure safe clinical and practice experiences for students.

(3) The program shall make available ongoing faculty development opportunities to assure faculty members are prepared, experienced, and current in subject matter taught.

(4) Nursing faculty shall have an active, unencumbered Washington state registered nurse license.

(5) Interdisciplinary faculty teaching in the nursing education program shall have academic and professional education and experience in their field of specialization.

(6) Adjunct clinical faculty employed solely to supervise clinical nursing experiences or practice experiences shall meet all the faculty qualifications for the program level they are teaching.

(7) Nursing faculty shall be responsible for:

(a) Developing, implementing, and evaluating the purpose and outcomes of the nursing education program;

(b) Designing, implementing, and evaluating the curriculum;

(c) Developing and evaluating nursing education policies as identified in WAC 246-840-519 (3)(a) through (e) within the framework of the policies of the parent institution;

(d) Participating in or providing for academic advising and guidance of students;

(e) Evaluating student achievement, in terms of curricular objectives as related to both nursing knowledge and practice, including preceptorship or mentored experiences;

(f) Selecting, guiding, and evaluating student learning activities;

(g) Participating in activities to improve their own nursing competency in area(s) of responsibility and to demonstrate current clinical competency; and

(h) Developing criteria for the selection and evaluation of clinical and practice experiences in clinical facilities or clinical practice settings, which address safety and the need for students to achieve the program outcomes and course objectives.

NEW SECTION

WAC 246-840-524 Degree requirements for faculty teaching in practical nursing education programs. In a nursing education program preparing practical nurses only, nursing faculty teaching nursing must have a minimum of a baccalaureate degree with a major in nursing from a nursing education program that is accredited by a nursing education accrediting body approved by the United States Department of Education.

NEW SECTION

WAC 246-840-526 Degree requirements for nursing faculty teaching in prelicensure registered nurse or for RN to BSN education programs. In a nursing education program preparing registered nurses for licensure or for RN to BSN degree, nursing faculty teaching nursing shall:

- (1) Have a minimum of a graduate degree in nursing from an accredited college or university and from a nursing education program that is accredited by a nursing education accreditation body recognized by the United States Department of Education; or
- (2) A bachelor's degree in nursing from an accredited college or university and from a nursing education program that is accredited by a nursing education accreditation body recognized by the United States Department of Education, and a graduate degree in a health or education related field from an accredited college or university.

NEW SECTION

WAC 246-840-527 Degree and licensing requirements for nursing faculty teaching in a nursing education program leading to licensure as an advanced registered nurse practitioner. In a nursing education program preparing students for licensure as advanced registered nurse practitioners, nursing faculty teaching nursing must meet the following qualifications:

- (1) An active, unencumbered Washington state ARNP license;
- (2) A minimum of a graduate degree in nursing from an accredited college or university and from a nursing education program that is accredited by a nursing education accreditation body recognized by the United States Department of Education;
- (3) Two years of clinical experience as a nurse practitioner, nurse midwife, nurse anesthetist, or clinical nurse specialist; and
- (4) Current knowledge, competence, and certification in the role and population foci consistent with teaching responsibilities.

NEW SECTION

WAC 246-840-528 Degree requirements for nursing faculty teaching in a graduate nursing education program not leading to licensure as an advanced registered nurse practitioner. For graduate nursing programs preparing nurses in advanced degrees, nursing faculty teaching nursing must meet the following qualifications:

- (1) A graduate degree in nursing from an accredited college or university and nursing education program that is accredited by a nursing education accrediting body recognized by the United States Department of Education and is at or above the program level being taught; or a bachelor's degree in nursing from a nursing education program that is accredited by a nursing education accrediting body and graduate degree in a health or education related field from an accredited college or university; and
- (2) Demonstrated specialization, expertise, or preparation and experience for the courses being taught.

NEW SECTION

WAC 246-840-529 Exceptions to nursing faculty degree requirements in prelicensure registered nurse nursing education programs. The commission may grant exceptions to faculty degree requirements in prelicensure registered nurse nursing education programs under the following conditions:

- (1) For faculty teaching in the classroom or laboratory, the nursing program shall provide documentation to the commission prior to employment that:
 - (a) Despite aggressive recruitment efforts, it has been unable to attract properly qualified faculty; and
 - (b) The individual will either teach one year or less, or be currently enrolled in a nursing, health-related, or education-related graduate degree program.
- (2) For clinical faculty who will directly supervise registered nursing students at a clinical facility, the nursing education program shall provide documentation to the commission prior to employment that the individual has:
 - (a) A minimum of a baccalaureate degree with a major in nursing from an accredited college or university and from a nursing education program that is accredited by a nursing education accrediting body recognized by the United States Department of Education; and
 - (b) Current clinical experience of at least three years in the clinical subject area taught.
- (3) For faculty teaching registered nursing students in the classroom, laboratory or clinical setting, the individual is nursing faculty tenured prior to November 3, 1995.

NEW SECTION

WAC 246-840-531 Clinical and practice experiences for students in approved nursing education programs. (1) All nursing programs preparing students for licensure shall provide faculty planned clinical or direct patient care experiences based on program outcomes and goals.

- (a) The number of clinical or direct patient care experience hours must be:
 - (i) At least three hundred hours for licensed practical nursing education programs;
 - (ii) At least five hundred hours for associate degree nursing education programs;
 - (iii) At least six hundred hours for bachelors of science in nursing education programs;
 - (iv) At least five hundred hours for masters level nurse practitioner nursing education programs;
 - (v) At least one thousand hours for doctoral of nursing practice nurse practitioner programs.
 - (b) Observation of licensed or qualified health care professionals practicing a technical skill or therapy may be included in the calculation of student clinical hours. Observation is reserved for care or therapy situations, which students are not qualified to deliver;
 - (c) Skill practice labs must not be counted towards clinical practice hours.
- (2)(a) All postlicensure nursing education programs shall have faculty planned practice experiences for students based on program outcomes and goals. Practice experience examples include, but are not limited to: Indirect and direct

patient care, patient or population teaching, population interventions, student nurse teaching or the teaching of nursing students, leadership and change projects, research, accessing client or population data for the purpose of doing quality assurance or improvement projects, informatics, thesis or dissertation development and defense.

(b) The number of practice hours must be equivalent to programs of similar type:

(i) At least one hundred hours for registered nurse to bachelor's degree programs; and

(ii) At least one hundred hours for graduate nursing education programs.

(3) Faculty shall organize clinical and practice experiences based on the educational preparation and skill level of the student.

(4) Faculty shall plan, oversee, and evaluate student clinical and practice experiences.

NEW SECTION

WAC 246-840-532 Faculty to student ratios for clinical and practice experience in nursing education programs. (1) Practical and prelicensure registered nursing education programs shall have a maximum faculty to student ratio of one faculty member to ten students in clinical settings involving direct patient care, and one faculty member to fifteen students at one time in practice settings that are observational, involve student precepted experiences, or are skills practice labs.

(2) Registered nurse to bachelor nursing education programs shall have a maximum faculty to student ratio of one faculty member to fifteen students at one time in clinical and practice settings.

(3) Advanced registered nurse practitioner nursing education programs shall have a maximum faculty to student ratio of one faculty member to six students in clinical and practice settings.

(4) Graduate nursing education programs (not leading to licensure as an advanced registered nurse practitioner) shall have a maximum faculty to student ratio of one faculty member to fifteen students in clinical and practice settings.

(5) A lower ratio of faculty to students may be required for students in initial or highly complex learning situations, or when student or patient safety warrant.

NEW SECTION

WAC 246-840-533 Preceptors, interdisciplinary mentors, and proctors in clinical or practice settings for nursing education programs located in Washington state.

(1) Preceptors may be used to enhance clinical or practice-learning experiences after a student has received instruction and orientation from program faculty who assure the student is adequately prepared for the clinical or practice experience.

(2) Nursing education faculty in prelicensure nursing education programs shall not assign more than two students to each nurse preceptor.

(3) Nursing education faculty in a program leading to licensure as an advanced registered nurse practitioner shall not assign more than one student to each preceptor.

(4) A preceptor may be used in practical and registered nursing education programs when the preceptor:

(a) Has an unencumbered nursing license at or above the level for, which the student is preparing;

(b) Is experienced in the specialty area for at least two years;

(c) Is oriented to the written course and student learning objectives;

(d) Is not related to, or a personal friend of the student; and

(e) Is oriented to the written role expectations of faculty, preceptor, and student.

(5) A preceptor may be used in nursing education programs leading to licensure as an advanced registered nurse practitioner when the preceptor:

(a) Has an active, unencumbered license as an ARNP under chapter 18.79 RCW, a physician under chapter 18.71 RCW, an osteopathic physician under chapter 18.57 RCW, or equivalent license in other states or jurisdictions;

(b) Is experienced in the specialty area for at least two years;

(c) Is oriented to the written course and student learning objectives;

(d) Is not related to, or a personal friend of the student; and

(e) Is oriented to the written role expectations of faculty, preceptor, and student.

(6) A preceptor may be used in graduate nursing programs as appropriate to the course of study when the preceptor:

(a) Is experienced in the specialty area for at least two years;

(b) Is oriented to the written course and student learning objectives;

(c) Is not related to, or a personal friend of the student; and

(d) Is oriented to the written role expectations of faculty, preceptor, and student.

(7) An interdisciplinary mentor who has experience and educational preparation appropriate to the faculty planned student learning experience may be used in some clinical or practice experiences.

(8) Faculty are responsible for the overall supervision and evaluation of the student and must confer with each preceptor or interdisciplinary mentor and student at least once before the student learning experience, at the mid-point of the experience, and at the end of the learning experience.

(9) A proctor who monitors students during the performance of a task or skill must be qualified with educational and experiential preparation in the area being proctored and must be credentialed as a licensed health care provider listed in chapter 18.130 RCW. Such a person may be used on rare, short-term occasions to proctor students when a faculty member has determined that it is safe for a student to receive direct supervision from the proctor for the performance of a particular task or skill that is within the scope of practice for the nursing student.

NEW SECTION

WAC 246-840-534 Use of simulation for clinical experiences in LPN, RN, or RN to BSN nursing education programs located in Washington state. (1) An LPN, RN, or RN to BSN nursing education program may use simulation as a substitute for traditional clinical experiences, after approval by the commission, not to exceed fifty percent of its clinical hours for a particular course.

(a) Simulation as used in this section means a technique to replace or amplify real experiences with guided experiences evoking or replicating substantial aspects of the real world in a fully interactive manner.

(b) The nursing education program shall have an organizing framework providing adequate fiscal, human, technological, and material resources to support the simulation activities.

(c) Simulation activities must be managed by an individual who is academically and experientially qualified and who demonstrates currency and competency in the use of simulation while managing the simulation program.

(d) The nursing education program shall have a budget sustaining simulation activities and training of the faculty.

(e) The nursing education program shall have appropriate facilities, educational and technological resources and equipment to meet the intended objectives of the simulation.

(f) All faculty involved in simulations, both didactic and clinical, shall have training in the use of simulation and shall engage in ongoing professional development in the use of simulation.

(g) Faculty to student ratios in the simulation lab must be in the same ratio as identified in WAC 246-840-532 for clinical learning experiences.

(2) Faculty shall organize clinical and practice experiences based on the educational preparation and skill level of the student.

(3) Qualified simulation faculty must supervise and evaluate student clinical and practice experiences.

(a) The nursing education program shall demonstrate that simulation activities are linked to programmatic outcomes.

(b) The nursing education program shall have written policies and procedures on the following:

(i) Short-term and long-term plans for integrating simulation into the curriculum;

(ii) An identified method of debriefing each simulated activity; and

(iii) A plan for orienting faculty to simulation.

(c) Debriefing as used in this section means an activity following a simulation experience that is led by a facilitator, encourages reflective thinking, and provides feedback regarding the participant's performance.

(d) The nursing education program shall develop criteria to evaluate simulation activities.

(e) Students shall evaluate the simulation experience on an ongoing basis.

(f) The program shall include information about use of simulation in its annual report to the commission.

NEW SECTION

WAC 246-840-536 Dedicated education units for practical nurse or registered nurse nursing education programs. (1) Nursing education programs in collaboration with a health care facility may use dedicated education units as identified in WAC 246-840-010 to provide clinical education and practice experiences for nursing students.

(2) A nursing education program using a dedicated education unit shall have an affiliation agreement identifying the roles and responsibilities of health care staff, nursing education program faculty, and nursing students.

(3) Nursing education programs using dedicated education units shall use licensed nurses as preceptors as identified in WAC 246-840-533 (4)(a), (b), (c), (d), and (e) for practical and registered nurse programs, or WAC 246-840-533 (5)(a), (b), (c), (d), and (e) for programs leading to advanced registered nurse practitioner licensure.

(4) Nursing education program faculty shall only assign students to a licensed nurse preceptor as identified in subsection (3) of this section, based upon the nurse's knowledge, experience, and willingness to work with students.

(5) Nursing education faculty shall not assign more than two students to each licensed nurse preceptor.

(6) Nursing education faculty with the assistance from the preceptor shall be responsible for the evaluation of student clinical performance.

(7) Nursing education faculty shall be responsible for student learning in the dedicated education unit.

NEW SECTION

WAC 246-840-537 Curriculum for approved nursing education programs. (1) The curriculum of the nursing education program must enable the student to develop the nursing knowledge, skills, and professional identity necessary for the level, scope, and standards of competent nursing practice expected at the level of educational preparation.

(2) The curriculum will be revised as necessary to maintain a program reflecting advances in health care and its delivery.

(3) The curriculum, as defined by nursing education, professional and practice standards, shall include evidence-based learning experiences and methods of instruction, including distance education methods, consistent with the written curriculum plan.

(4) Clinical and practice experiences must include opportunities to learn and provide care to clients from diverse ethnic and cultural backgrounds. The emphasis placed on these areas and the scope encompassed shall be in keeping with the purpose and outcomes of the program.

(5) The length, organization, content, methods of instruction, and placement of courses must be consistent with the purpose and outcomes of the program.

(6) All nursing programs delivering curriculum through distance learning methods must ensure that students receive curriculum comparable to in-person teaching and the clinical and practice learning experiences are evaluated by faculty through formative and summative evaluations.

(7) Nursing programs shall not use external nursing examinations as the sole basis for program progression or

graduation. External nursing exams for the purpose of this section, means examinations created by people or organizations outside a student's own nursing education program.

(8) Competency based testing for progression in nursing programs must be based on valid and reliable tools measuring the knowledge and skills expected at an identified level of student or nursing practice.

NEW SECTION

WAC 246-840-539 Curriculum for practical nurse nursing education programs. The practical nurse nursing education program of study must include both didactic and clinical learning experiences and must be:

(1) Effective September 1, 2017, designed to include prerequisite classes in the physical, biological, social and behavior sciences that are transferable to colleges and universities in the state of Washington;

(2) Planned, implemented, and evaluated by the faculty;

(3) Based on the philosophy, mission, objectives, and outcomes of the program and consistent with chapters 18.79 RCW and this chapter;

(4) Organized by subject and content to meet program outcomes;

(5) Designed to teach students to use a systematic approach to clinical decision making and safe patient care;

(6) Designed to teach students:

(a) Professional relationships and communication;

(b) Nursing ethics;

(c) Nursing history and trends;

(d) Commission approved scope of practice decision tree;

(e) Standards of practice;

(f) Licensure and legal aspects of nursing including the disciplinary process, substance abuse and professional values;

(g) Concepts and clinical practice experiences in geriatric nursing, and medical, surgical, and mental health nursing for clients throughout the life span;

(h) Concepts of antepartum, intrapartum, postpartum and newborn nursing with only an assisting role in the care of clients during labor and delivery and those with complications;

(i) Concepts and practice in the prevention of illness and the promotion, restoration, and maintenance of health in patients across the life span and from diverse cultural, ethnic, social, and economic backgrounds; and

(j) AIDS education as required in chapter 246-12 WAC, Part 8.

(7) Designed to prepare graduates for licensure and to practice practical nursing as identified in WAC 246-840-700 and 246-840-705; and

(8) Designed to prepare graduates to practice according to competencies recognized by professional nursing organizations.

(a) Practical nursing courses shall include:

(i) Components of: Client needs; safe, effective care environment; health promotion and maintenance; interdisciplinary communication and collaboration; discharge planning; basics of multicultural health; psychosocial integrity; and physiological integrity.

(ii) Skills laboratory and clinical practice in the functions of the practical nurse including, but not limited to, administration of medications, implementing and monitoring client care, and promoting psychosocial and physiological health.

(iii) Concepts of coordinated care, delegation and supervision.

(b) Practical nurse programs teaching intravenous infusion therapy shall prepare graduates for national certification by a nursing professional practical nurse certifying body.

NEW SECTION

WAC 246-840-541 Curriculum for prelicensure registered nursing education programs. (1) The program of study for a registered nursing education program must include both didactic and clinical learning experiences and must be:

(a) Effective September 1, 2017, designed so that all prerequisite nonnursing course credits and nursing credits are transferable to the bachelor's in nursing programs as identified in the statewide associate in nursing direct transfer agreement between community colleges, colleges, and universities, or the statewide associate of applied science transfer degree;

(b) Designed to include instruction in the physical, biological, social and behavioral sciences. Content is required from the areas of anatomy and physiology (equivalent to two quarter credit terms with laboratory), chemistry, microbiology, pharmacology, nutrition, communication, and computations;

(c) Designed to include theory and clinical experiences in the areas of medical surgical nursing and mental health nursing across the life span, teaching students to use a systematic approach to clinical decision making and preparing students to safely practice professional nursing through the promotion, prevention, rehabilitation, maintenance, restoration of health, and palliative and end of life care for individuals of all ages across the life span;

(d) Designed to include nursing history, health care trends, legal and ethical issues such as professional values, substance abuse and the disciplinary process, scope of practice and commission approved scope of practice decision tree, and licensure and professional responsibility pertaining to the registered nurse role. Content may be integrated, combined, or presented as separate courses;

(e) Designed to include opportunities for the student to learn assessment and analysis of client and family needs, planning, implementation, evaluation, and delegation of nursing care for diverse individuals and groups;

(f) Planned, implemented, and evaluated by faculty;

(g) Based on the philosophy, mission, objectives and outcomes of the program;

(h) Organized logically with scope and sequence of courses demonstrating student learning progression;

(i) Based on sound educational principles and standards of educational practice;

(j) Designed so articulation or dual enrollment agreements between associate and bachelor's degree nursing programs or associate and master's degree nursing programs

exists to facilitate higher levels of nursing education in a timely manner;

(k) Designed to prepare graduates for licensure and to practice as registered nurses as identified in WAC 246-840-700 and 246-840-705;

(l) Designed to prepare graduates to practice as associate degree or bachelor degree nurses as identified by professional nursing organizations; and

(m) Designed to include AIDS education as required in chapter 246-12 WAC, Part 8.

(2) Baccalaureate and entry-level master's degree programs shall also include:

(a) Theory and clinical experiences in community and public health nursing;

(b) The study of research principles and application of statistics to health care practice and intervention; and

(c) The study and practice of leadership, interdisciplinary team coordination, quality assurance and improvement, care coordination and case management.

(3) Registered nursing curricula shall include:

(a) Comprehensive content on: Client needs; safe practice; effective care environment; discharge planning; health promotion, prevention and maintenance; psychosocial integrity and physiological integrity.

(b) Clinical experiences in the care of persons at each stage of the human life cycle, with opportunities for the student to learn and have direct involvement in and responsibility and accountability for the provision of basic nursing care and comfort for clients with acute and chronic illnesses, pharmacological and parenteral therapies, and pain management.

(c) Opportunities for management of care, delegation, supervision, working within a health care team, and interdisciplinary care coordination.

NEW SECTION

WAC 246-840-542 Curriculum for registered nurse to bachelor's or master's in nursing education programs. Registered nurse to bachelor's or master's in nursing education programs must:

(1) Develop curriculum to ensure the courses or content completed at the diploma or associate degree levels of nursing are not duplicated;

(2) Design curriculum to ensure student sufficient exposure to content in science and liberal arts;

(3) Design curriculum to allow students the exposure to apply new concepts to practice at the level of the bachelor's or entry level master's in nursing including, but not limited to, practice experiences identified in WAC 246-840-541(2);

(4) Design curriculum to include critical thinking, problem solving, and clinical reasoning skills at the level of preparation;

(5) Design curriculum including a specific course or content directly related to role differences and effective role transition strategies at the level of preparation;

(6) Design curriculum including competencies in the following areas:

(a) The study and practice of leadership, interdisciplinary team coordination and collaboration, quality assurance

and improvement, and care coordination and case management;

(b) The study and practice of community and public health; and

(c) The theory and application of research and evidence-based practice concepts and processes.

NEW SECTION

WAC 246-840-543 Curriculum for nursing education programs preparing students for licensure as advanced registered nurse practitioners (ARNP). (1) Nursing education programs preparing students for licensure as advanced registered nurse practitioners shall include content culminating in a graduate degree with a concentration in advanced nursing practice as defined in RCW 18.79.059, WAC 246-840-010(2), and 246-840-300.

(2) The nursing education program preparing students for licensure as advanced registered nurse practitioners shall have as its primary purpose the preparation of advanced practice nurses for roles as defined in WAC 246-840-300 and 246-840-302.

(3) Post-master's nursing education programs preparing nurses for licensure as advanced registered nurse practitioners shall teach all competencies designated for the ARNP role including clinical practice. Post-master's students must meet the same ARNP outcome competencies as master's advanced registered nurse practitioner students.

(4) The curriculum of the nursing education program preparing nurses for licensure as advanced registered nurse practitioners shall prepare the graduates to practice in one of the four ARNP roles: Certified registered nurse anesthetist, certified nurse midwife, clinical nurse specialist, or certified nurse practitioner. The curriculum must include:

(a) Clinical and didactic course work preparing the graduate to practice in the role of the ARNP consistent with the designation being sought for licensure;

(b) Advanced physiology/pathophysiology, including general principles applied across the life span;

(c) Advanced health assessment, including assessment of all human systems, advanced assessment techniques, concepts, and approaches;

(d) Diagnostic theory and management of health care problems including diseases representative of all systems;

(e) Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics, pharmacotherapeutics of all broad categories of agent, and pharmacological management of individual patients;

(f) Preparation providing a basic understanding of the principles for decision making in the identified ARNP role;

(g) Role preparation in one of the six population foci of practice, which includes family or individual across the life span, adult gerontology, neonatal, pediatrics, women's health gender-related, and psychiatric mental health;

(h) Advanced practice nursing core, including legal, ethical and professional responsibilities of the ARNP; and

(i) At least five hundred hours in direct patient care in the ARNP role with clinical preceptor supervision and faculty oversight.

(5) Advanced registered nurse practitioner nursing education programs preparing students for two population foci or combined nurse practitioner-clinical nurse specialist shall include content and clinical experience in both functional roles and population foci.

(6) Each student enrolled in an advanced registered nurse practitioner nursing education program shall have an active, unencumbered RN license in each state or United States territory where the clinical practice occurs.

NEW SECTION

WAC 246-840-544 Curriculum for graduate nursing education programs. (1) Graduate nursing education programs shall meet the standards established by the national nursing or nursing-related education accrediting body.

(2) The curriculum of graduate nursing education program shall be congruent with national standards for graduate level nursing education.

(3) The curriculum and practice experiences shall be consistent with the competencies of the specific area of practice, stated program outcomes, and established national standards by a nursing education accrediting body approved by the United States Department of Education.

NEW SECTION

WAC 246-840-546 Distance-learning nursing education course or courses offered by approved nursing programs. Nursing education programs offering distance-learning courses shall:

(1) Ensure distance-learning courses meet established quality and security standards for online and distance learning education;

(2) Develop written policies and procedures ensuring quality assurance controls, security, maintenance, and service support for students and faculty who use the system;

(3) Ensure students receive curriculum comparable to in-person teaching;

(4) Complete ongoing student and faculty evaluations of distance learning courses; and

(5) Provide access to distance-learning courses when requested by the commission.

NEW SECTION

WAC 246-840-547 Extended or satellite nursing campus of nursing education programs approved in Washington state. (1) An approved nursing education program shall obtain commission approval prior to advertising or admitting students in an extended or satellite nursing education campus.

(2) An approved nursing education program wishing to initiate an extended or satellite nursing program off the main campus of the university but located in the state of Washington, must submit an initial plan three to six months prior to the expected date of operations. The initial plan must identify:

(a) The impact on existing nursing education programs in a sixty mile radius from the location of the proposed extended or satellite campus;

(b) Faculty staffing for the extended or satellite program;

(c) How the nursing education program shall meet curriculum and academic standards of the main campus nursing education program;

(d) Adequate clinical or practice facilities for the satellite or extended nursing program;

(e) Academic facilities and resources that meet the requirements identified in WAC 246-840-518; and

(f) Nursing and institutional administration of the extended or satellite program and how the extended or satellite campus meets administration requirements as identified in WAC 246-840-516.

(3) The extended or satellite campus program shall coordinate annual reports and site survey evaluations with administration at the main campus.

NEW SECTION

WAC 246-840-549 Internationally educated nurse program approval criteria for nursing education programs approved in Washington state. (1) A commission approved nursing education program may apply on the forms provided by the commission to offer a nursing education program for internationally educated nurses who do not meet educational requirements for licensure.

(2) All nursing education programs for internationally educated nurses shall:

(a) Have identified theory and clinical student learning objectives and program outcomes.

(b) Include evaluation methods to measure student achievement of the stated theory and clinical objectives.

(c) Be regularly evaluated by faculty and students.

(d) Have written policies and procedures for student admission, withdrawal, dismissal, progression, remediation, and completion of the course.

(e) Maintain student records for at least five years.

(f) Submit certification of successful completion of the program to the commission office on forms provided by the commission.

NEW SECTION

WAC 246-840-551 Internationally educated practical nurse program in an approved nursing education program. For internationally educated practical nurses who do not meet educational requirements for licensure, the nursing education program shall offer the following:

(1) A minimum of sixty hours of core theory content and one hundred twenty hours of simulated competency-based practice experiences.

(2) The theory course content must include, but not be limited to, a minimum of sixty hours in current basic concepts of:

(a) Nursing process;

(b) Pharmacology;

(c) Practical nursing today including legal expectations, the commission approved scope of practice decision tree, the Washington Nurse Practice Act as identified in chapter 18.79 RCW, and the Uniform Disciplinary Act identified in chapter 18.130 RCW;

(d) Basic communications and observational practices needed for identification, reporting, and recording patient needs;

(e) Basic physical, biological, and social sciences necessary for practice; and

(f) Practical nursing knowledge, skills, and professional identity to include, but not be limited to: Concepts of fundamentals, medical, surgical, and mental health nursing across the life span. These concepts must address diverse cultural, ethnic, social, and economic backgrounds of patients and populations.

(3) The practice course content must include a minimum of one hundred twenty hours of competency-based simulation practice in the area(s) listed in subsection (2)(f) of this section. Exceptions may be approved by the commission after adequate rationale is provided by the nursing education program.

NEW SECTION

WAC 246-840-552 Internationally educated registered nurse program in an approved nursing education program. For internationally educated registered nurses who do not meet educational requirements for licensure, the nursing education program must offer the following:

(1) A minimum of eighty hours core theory content and one hundred sixty hours of simulated competency-based practice in medical surgical nursing, mental health, family, child, and obstetrical nursing.

(2) The core course content shall include, but not be limited to, a minimum of eighty hours of theory in current concepts of:

(a) Nursing process;

(b) Pharmacology;

(c) Professional nursing today including legal expectations, the commission approved scope of practice decision tree, the Washington State Nursing Practice Act as identified in chapter 18.79 RCW, and the Uniform Disciplinary Act identified in chapter 18.130 RCW;

(d) Communications and observational practices needed for identification, reporting, and recording patient needs;

(e) Basic physical, biological and social sciences necessary for practice; and

(f) Registered nursing knowledge, skills, and abilities to include, but not be limited to, concepts of fundamentals, medical, surgical, parent, child, geriatric, family, community, and mental health nursing.

(3) The competency-based simulated practice experiences must include a minimum of one hundred sixty hours of practice in the area(s) listed in subsection (2)(f) of this section. Exceptions must be justified to and approved by the commission.

NEW SECTION

WAC 246-840-553 Innovation projects or program approach for approved nursing education programs located in Washington state. (1) A nursing education program may apply to implement an innovative program approach or project by complying with the provisions of this section.

(2) Nursing education programs approved to implement innovative approaches or programs shall continue to provide quality nursing education preparing graduates to practice safely, competently, and ethically within the scope of practice as defined in chapter 18.79 RCW and chapter 246-840 WAC.

(3) The purpose of innovations in nursing education program approval is to:

(a) Foster innovative models of nursing education to address the changing needs in health care;

(b) Assure innovative approaches or programs protect the public; and

(c) Assure innovative approaches or programs maintain quality outcome standards.

(4) A nursing education program that holds full commission approval may be eligible to implement an innovative approach or program.

(5) The following information shall be provided to the commission at least three months in advance of requested implementation date:

(a) Identifying information to include name of nursing program, address, responsible party and contact information;

(b) A brief description of the current program;

(c) Identification of the regulation(s) affected by the proposed innovative approach;

(d) Length of time for, which the innovative approach is requested;

(e) Description of the innovative approach, including objective(s);

(f) Brief explanation of why the nursing education program wants to implement an innovative approach at this time;

(g) Explanation of how the proposed innovation differs from approaches in the current program;

(h) Rationale with available evidence supporting the innovative approach;

(i) Identification of resources supporting the proposed innovative approach;

(j) Expected impact innovative approach will have on the program, including administration, students, faculty, and other program resources;

(k) Plan for implementation, including timeline;

(l) Plan for evaluation of the proposed innovation, including measurable criteria/outcomes, method of evaluation, and frequency of evaluation; and

(m) Additional application information as requested by the commission.

(6) The following are the standards for approval:

(a) Eligibility and application criteria in subsections (4) and (5) of this section are met;

(b) The innovative approach or program will not compromise the quality of education or safe practice of students;

(c) Resources are sufficient to support the innovative approach or program;

(d) Rationale with available evidence supports the implementation of the innovative approach or program;

(e) Implementation plan is reasonable to achieve the desired outcomes of the innovative approach or program;

(f) Timeline provides for a sufficient period to implement and evaluate the innovative approach or program; and

(g) Plan for periodic evaluation is comprehensive and supported by appropriate methods of evaluation.

(7) If the application meets the standards, the commission may:

(a) Approve the application; or

(b) Approve the application with modifications as agreed between the commission and the nursing education program.

(8) If the submitted application does not meet the criteria in subsections (4) and (5) of this section, the commission may deny approval or ask for more information.

(9) The commission may rescind the approval or require the nursing education program to make modifications if:

(a) The commission receives evidence, which substantiates adverse impact; or

(b) The nursing education program fails to implement the innovative approach or program as presented and approved.

(10) The nursing education program shall provide the commission with progress reports conforming to the evaluation plan as requested by the commission.

(a) If any report indicates patients or students were adversely impacted by the innovation, the nursing education program shall provide documentation of corrective measures and their effectiveness; and

(b) The final evaluation report shall conform to the evaluation plan, detailing and analyzing the outcomes data.

(11) If the innovative approach or program achieves the desired outcomes, has not compromised public protection, and is consistent with core nursing education criteria, the nursing education program may request the innovative approach or program be continued.

NEW SECTION

WAC 246-840-554 Ongoing evaluation and approval of nursing education programs located in Washington state.

(1) Nursing education programs meeting the requirements of WAC 246-840-511 through 246-840-556 may be approved by the commission for a maximum of ten years.

(2) To ensure continuing compliance with nursing education standards, nursing education programs may be required to participate in self-studies, self-evaluations and commission site visits at various times in the approval cycle depending on program outcomes and complaints received by the commission and as deemed necessary by the commission.

(3) Any proposed substantive nursing education program change must be presented to the commission for approval at least three months prior to implementation.

(a) Substantive changes include the following:

(i) Changes in legal status, control, ownership, or resources of the institution;

(ii) Faculty numbers below the required staff for clinical as found in WAC 246-840-532 or clinical simulation sections identified in WAC 246-840-534 (1)(g);

(iii) Changes in faculty composition when their expertise or experiences are not adequate to teach those areas of nursing described in WAC 246-840-523, 246-840-539, 246-840-541, 246-840-542, 246-840-543, and 246-840-544;

(iv) Changes in the number of students admitted requiring one or more additional clinical or practice groups, or

changing the required faculty to student ratios of 1:10 for pre-licensure programs and 1:6 for nursing education programs preparing students for advanced practice registered nurse licensure; or

(v) Major curriculum revision or changes in the length of the program.

(A) Major curriculum revisions include:

(I) Changes in curricular delivery method;

(II) Changes in nursing model or conceptual framework;

(III) Changes in curriculum meaning or direction of the curriculum such as philosophy, program goals, program terminal objectives, course objectives and descriptions;

(IV) Changes in total program credits; or

(V) Addition or deletion of a satellite or extended campus.

(B) The following changes do not require commission approval:

(I) Movement of content from one course to another; or

(II) Formatting changes in syllabi.

(b) The nurse administrator of the program shall submit the following when requesting approval for substantive changes:

(i) A letter explaining the substantive change request;

(ii) The rationale for the proposed change and anticipated effect on the program including faculty workload, students, resources, clinical or practice experiences, and facilities;

(iii) A summary or grid that explains the difference between the current practice and proposed change;

(iv) A timeline for implementation of the change; and

(v) The methods of evaluation to be used to determine the effect of the change.

(4) The program shall submit annual reports on forms provided by the commission and on the date specified.

NEW SECTION

WAC 246-840-556 Ongoing approval, accreditation and commission reviews.

(1) The commission may accept accreditation by a commission-recognized national nursing education accreditation body approved by the United States Department of Education as evidence of compliance with the standards of nursing education programs.

(a) The nursing education program shall submit to the commission a copy of any self-study submitted to the national nursing education accrediting body at the time the report is sent to the national nursing education accrediting body.

(b) The nursing education program shall submit to the commission within thirty days of receiving any report or accreditation letter from the national nursing education accreditation body to include, but not limited to: Continuous improvement progress reports, substantive change notification and accreditation action letters, site visit reports and program response letters, final site visit report and letter.

(c) The nursing education program shall submit notice of any change in program or institution accreditation status with the commission within thirty days of receipt of notice from the national accreditation body.

(d) Failure to submit notice of accreditation survey results within thirty days may result in a site visit or other sanctions as described in WAC 246-840-558.

(e) Programs holding approval based upon national nursing education accreditation must comply with WAC 246-840-511 through 246-840-556.

(f) The commission may grant approval for a continuing period, not to exceed ten years, to nursing education programs with maximum continuing national accreditation.

(g) If the nursing program is accredited for less than maximum accreditation, the program must provide the commission with a copy of the report and a plan of correction for the items of noncompliance within thirty days of receipt from the accreditation body. The commission may require an additional report regarding noncompliance, or may conduct a site visit.

Evaluation of a Nursing Program by the Commission

(2) Programs not nationally accredited by a commission-recognized national nursing accreditation body are subject to a site visit made by representative(s) of the commission on dates mutually agreeable to the commission and the nursing education program.

(a) Prior to the site visit, a nursing education program shall submit a self-evaluation report at least thirty days before the visit providing evidence of compliance with the standards of nursing education as identified in WAC 246-840-511 through 246-840-556.

(b) Prior to commission consideration, a draft of the commission site visit report will be made available to the school for review for corrections in statistical data.

(c) Following the commission's review and decision, the commission will send the program nurse administrator, the president and vice-president of instruction or provost written notification regarding approval of the program.

NEW SECTION

WAC 246-840-557 Commission action following commission site visit, complaint investigation, or national accreditation visits of nursing education programs located in Washington state. (1) When a matter directly concerning a nursing education program is being considered by the commission, any commission member associated with the program shall not participate in the deliberation or decision-making action of the commission.

(2) The commission shall evaluate each program in terms of its conformance to the nursing education standards in this chapter.

(3) Within thirty days of the commission's decision, the commission shall give written notice to the educational institution regarding its decision on the nursing education program's approval status, including the nurse administrator, the president and provost or vice-president of instruction.

(4) The commission shall grant continuing full approval to a nursing education program meeting the requirements of the law and this chapter. Full approval may carry recommendations for improvement and for correcting deficiencies.

(5) If the commission determines an approved nursing education program is not maintaining the education standards

required for approval, the commission shall give written notice specifying the deficiencies and shall designate the period of time in which the deficiencies must be corrected.

(6) The commission may require the program to submit a plan of correction, or the commission may issue a directed plan of correction.

(7) The commission may limit student numbers or deny admission of new students if the program has insufficient resources, including faculty or program administration.

(8) The commission may withdraw program approval if the program fails to correct the deficiencies within the specified period of time.

(9) The commission may summarily suspend approval of a program if circumstances constituting an immediate threat to public safety are present.

NEW SECTION

WAC 246-840-558 Denial, statement of deficiencies, conditional approval or withdrawal of approval of nursing education programs located in Washington state. (1) The commission may deny full approval to new or existing nursing education programs if it determines a nursing education program fails substantially to meet the standards for nursing education as contained in WAC 246-840-511 through 246-840-556.

(2) The commission may issue a statement of deficiencies and request a plan of correction or directed plan of correction requiring compliance within a designated time period.

(3) The commission may grant conditional approval to a nursing education program failing to meet the minimum standards contained in the law and this chapter.

(a) Conditions must be met within a designated time period and shall be specified in writing.

(b) A conditionally approved program shall be reviewed at the end of the designated time period. The review will result in one of the following actions:

- (i) Restoration of full approval to existing programs;
- (ii) Issuance of full approval to a new program;
- (iii) Continuation of conditional approval; or
- (iv) Issuance of intent to withdraw approval.

(4) The following situations may be cause for review, investigation, and a site visit by the commission to determine if the minimum standards for education nursing programs are being met:

(a) Complaints relating to violations of WAC 246-840-511 through 246-840-556;

(b) Denial, withdrawal, or change of program accreditation status by a commission-recognized national nursing accreditation agency or general academic accreditation agency;

(c) Failure to obtain commission approval of changes requiring commission approval under WAC 246-840-554 and 246-840-556;

(d) Providing false or misleading information to students or the public concerning the nursing program;

- (e) Violation of the rules or policies of the commission;
 - (f) Inability to secure or retain a qualified nurse administrator;
 - (g) Inability to secure or retain faculty resulting in substandard supervision and teaching of students;
 - (h) Noncompliance with the program's stated purpose, objectives, policies, and curriculum resulting in unsatisfactory student achievement or negative program outcomes;
 - (i) Failure to provide clinical or practice experiences necessary to meet the objectives of the nursing program;
 - (j) Faculty student ratio in direct patient care is greater than 1:10 in prelicensure programs or 1:6 in nursing education programs preparing nurses for advanced registered nurse practitioner licensure; and
 - (k) Failure to maintain an average national council licensing examination (NCLEX) annual passing rate or average advanced practice certification annual passing rate of eighty percent.
- (5) If a program:
- (a) Fails to maintain an average NCLEX passing or advanced practice certification rate of eighty percent of first time test takers for one year, the program must complete an assessment of the problem. The program may request technical assistance from the commission.
 - (b) Fails to maintain an average NCLEX passing or advanced practice certification rate of eighty percent of first time writers for two consecutive years, the program must complete an assessment of possible contributing factors and submit a plan of correction to the commission. The commission may place the program on conditional approval status. The program may request technical assistance from the commission.
 - (c) Fails to maintain an average NCLEX passing or advanced practice certification rate of eighty percent of first time writers for three consecutive years, the program must complete an assessment of possible contributing factors, submit a plan of correction, and the commission may conduct a site visit. The program may request technical assistance from the commission. The commission shall place the program on conditional approval status.
 - (d) Fails to maintain a NLCEX passing or advanced practice certification rate of eighty percent for four out of five consecutive years, the commission shall continue the program on conditional approval, require a full evaluation site visit, and may withdraw program approval following the site visit.
 - (6) The commission may withdraw approval from existing nursing education programs if it determines that a nursing education program fails to meet substantially the standards for nursing education as contained in WAC 246-840-511 through 246-840-556.
 - (7) All these actions shall be taken in accordance with the Administrative Procedure Act, chapter 34.05 RCW, and any applicable rules of the commission.

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

NEW SECTION

WAC 246-840-559 Closing of an approved nursing education program located in Washington state.

Voluntary Closure

(1) When a governing institution decides to close a nursing education program it shall immediately notify the commission in writing, stating the reason, plan, and date of intended closing. The governing institution may choose one of the following closing procedures:

(a) The nursing education program may continue until the last class enrolled is graduated if:

(i) The nursing education program continues to meet the standards for approval, WAC 246-840-511 through 246-840-556 until all of the enrolled students have graduated;

(ii) The date of closure is the date on the degree, diploma, or certificate of the last graduate; and

(iii) The governing institution notifies the commission in writing of the closing date; or

(b) The program may close after assisting in the transfer of students to other approved programs if:

(i) The program continues to meet the standards required for approval, WAC 246-840-511 through 246-840-556 until all students are transferred;

(ii) The governing institution submits to the commission a list of the names of students who have been transferred to approved programs and the date on which the last student was transferred; and

(iii) The date on which the last student was transferred shall be the closing date of the program.

Closing as a Result of Withdrawal of Approval

(2) When the commission withdraws approval of a nursing education program, the governing institution shall comply with the following procedures:

(a) Students of the nursing education program shall be notified in writing of their status and options for transfer to an approved program.

(b) The nursing education program shall close after assisting in the transfer of students to other approved programs. The commission must establish a period for the transfer process.

(c) The governing institution shall submit to the commission a list of the names of students who have transferred to approved programs and the date on which the last student was transferred.

Requirements for All Nursing Education Programs That Close

(3) Nursing education programs, regardless of type of closure, shall submit to the commission a plan for the secure storage and access to academic records and transcripts at the time of the decision to close the program.

NEW SECTION

WAC 246-840-561 Reinstatement of approval for nursing programs located in Washington state. The commission may consider reinstatement of withdrawn approval of a nursing education program after one year and upon sub-

mission of satisfactory evidence that the program will meet the standards of nursing education, WAC 246-840-511 through 246-840-556. The commission may conduct a site visit to verify the evidence provided by the nursing education program.

NEW SECTION

WAC 246-840-562 Appeal of commission decisions.

A nursing education program wishing to contest a decision by the commission that affects the program's approval status shall have the right to appeal the commission's decision in accordance with the provisions of chapter 18.79 RCW, chapter 34.05 RCW, the Administrative Procedure Act, and chapter 246-11 WAC.

NEW SECTION

WAC 246-840-563 Criteria for approval of LPN and RN refresher course program located in Washington state.

(1) A program making application to the commission for approval of a refresher course for LPNs and RNs in Washington state shall submit a commission approved application at least three months before expected date of implementation.

(2) For in-state refresher course programs, the refresher program shall have a designated nurse administrator who is responsible for the overall operation and evaluation of the refresher program meeting the following qualifications:

(a) Active, unencumbered Washington state RN license; and

(b) Bachelor's degree in nursing with a graduate degree in nursing from a nursing accredited nursing education program, or bachelor's degree in nursing from a nursing education accredited program and a graduate degree from a health-related field from an accredited university.

(3) The philosophy, purpose and objectives of the refresher course must be clearly stated and available in written form. They must be consistent with the definition of nursing as outlined in chapter 18.79 RCW and WAC 246-840-700 and 246-840-705.

Objectives reflecting the philosophy must be stated in behavioral terms and describe the capabilities and competencies of the graduate.

(4) All nurse faculty shall:

(a) Hold an unencumbered, active license to practice as a registered nurse in the state of Washington;

(b) Be qualified academically and professionally for their respective areas of responsibility.

(i) Faculty in a practical nurse education refresher course program shall hold a minimum of a bachelor's degree in nursing from a nursing accredited nursing program;

(ii) Faculty in a registered nurse refresher course education program shall hold a bachelor's degree in nursing and a graduate degree in nursing from a nursing education accredited program or a bachelor's degree in nursing from a nursing accredited program and a graduate degree in a health-related field from an accredited university.

(c) Be qualified to develop and implement the program of study with at least two years of teaching experience;

(d) Plan, develop, oversee, and evaluate clinical experiences;

(e) Be sufficient in number to achieve the stated program objectives based on patient safety concerns.

The faculty to student ratio in the clinical area and simulation lab must be at least one faculty member to every twelve students. Exceptions shall be justified to and approved by the commission.

(5) The course content, length, methods of instruction and learning experiences shall be consistent with the philosophy and objectives of the course. Outlines and descriptions of all learning experiences shall be available in writing.

(6) The refresher program shall have written policies to include, but are not limited to:

(a) Admission requirements;

(b) Progression requirements and grading criteria;

(c) Dismissal criteria;

(d) Clinical and practice requirements;

(e) Grievance process;

(f) Student expectations and responsibilities; and

(g) Program costs and length of program.

(7) The program shall submit substantive change requests to the commission including changes in:

(a) Program name, mailing address, electronic address, web site address, or phone number;

(b) Curriculum;

(c) Clinical, simulation or didactic hours;

(d) Program instruction methods; or

(e) Ownership including adding or deleting an owner.

(8) Evidence-based methods shall be used to measure the student's achievement of the stated theory and clinical objectives.

(9) The refresher course shall be evaluated by faculty and students regularly.

(10) The refresher course shall ensure that prior to clinical practice experiences, the enrolled student holds either a limited education authorization from the commission, or an active nursing license in Washington state.

(11) The refresher course shall ensure all students have clinical practice experiences.

(12) Refresher course faculty or qualified preceptors may be used to teach in the clinical setting.

(a) Preceptors shall be licensed at same level of licensure as the student's refresher course type;

(b) Preceptors shall not be related to, or friends of the student;

(c) Preceptors shall receive the goals and objectives of the clinical practice course from the refresher program prior to the student's clinical experience; and

(d) Preceptors may assist faculty in the evaluation of the student's clinical learning experience.

(13) The refresher course shall not place students in the clinical setting without first validating student skills and knowledge to perform in the clinical setting.

(14) The refresher course shall maintain student records demonstrating the students have successfully completed the course and met the stated objectives for at least five years from date of course completion.

(15) The refresher course shall provide a certificate of successful completion of the course to the student. The certificate shall contain the following:

- (a) Name of participant;
- (b) Name of program;
- (c) Number of didactic and clinical hours successfully completed; and
- (d) Date of participant's completion of the program.

(16) The refresher course program shall submit an annual report to the commission on commission designated forms.

(17) The refresher course program shall apply for renewal of approval every five years by submitting a commission approved renewal application no later than three months before expiration of the approval.

NEW SECTION

WAC 246-840-564 Curriculum for LPN nurse refresher course. For practical nurse refresher course programs, the course content must consist of a minimum of sixty hours of theory content and one hundred twenty hours of clinical practice.

(1) The theory course content must include, but not be limited to, a minimum of sixty hours in current basic concepts of:

- (a) Nursing process and patient centered care;
- (b) Cultural competence across the life span;
- (c) Pharmacology, medication calculation, administration, safety, and the mitigation and reporting of medication errors;

(d) Review of the concepts in the areas of:

- (i) Current practical nursing practice, including legal expectations as identified in chapters 18.79 and 18.130 RCW, and nursing scope of practice, including the commission approved scope of practice decision tree;

(ii) Therapeutic and basic communications and observational practices needed for identification, reporting, and recording patient needs; and

(iii) Basic physical, biological, and social sciences necessary for practice.

(e) Review and updating of practical nursing knowledge and skills to include, but not be limited to, concepts of delegation, leadership, fundamentals, medical, surgical, geriatric, and mental health nursing.

(2) The clinical course content shall include a minimum of one hundred twenty hours of clinical practice in the area(s) listed in subsection (1)(e) of this section.

(a) Sixty hours of clinical practice may be obtained through lab simulation if the program has adequate lab space and equipment to accommodate student learning and is approved by the commission.

(b) Exceptions shall be justified to and approved by the commission.

NEW SECTION

WAC 246-840-566 Curriculum for registered nurse refresher course. For registered nurse refresher course programs, the course content must consist of a minimum of forty hours core course content, forty hours of specialty course

content, and one hundred sixty hours of clinical practice in the specialty area.

(1) The core course content must include, but not be limited to, a minimum of forty hours of theory in current basic concepts of:

- (a) Nursing process and patient centered care;
- (b) Cultural competence across the life span;
- (c) Pharmacology, major drug classifications, medication calculations and administration, side effects, adverse reactions, associated lab tests and mitigation and reporting of medication errors;

(d) Critical thinking, clinical reasoning, and evidence-based practice;

(e) Review of the concepts in the areas of:

- (i) Current professional nursing practice, including legal expectations as found in chapters 18.79 and 18.130 RCW, and nursing scope of practice, including the commission approved scope of practice decision tree;

(ii) Therapeutic and clinical communication skills and observational practices needed for identification, reporting, and recording patient needs; and

(iii) Basic physical, biological and social sciences necessary for practice.

(f) Review and updating of registered nursing knowledge and skills, including delegation, leadership, interdisciplinary team coordination and care management.

(2) The specialty course content shall include, but not be limited to, a minimum of forty hours of theory in current specialty nursing practice concepts of basic nursing related to the special area of interest such as surgical, pediatrics, obstetrics, psychiatric, acute, intensive, extended care, or community health nursing.

(3) The clinical course content shall include a minimum of one hundred sixty hours of clinical practice in the specialty area(s) of interest as listed in subsection (2) of this section.

(a) Eighty hours of clinical practice may be obtained through lab simulation if the program has adequate lab space and equipment to accommodate student learning and is approved by the commission.

(b) Exceptions shall be justified to and approved by the commission.

NEW SECTION

WAC 246-840-567 Refresher course program for advanced registered nurse practice nurses. (1) A college or university approved by the commission and located in the state of Washington to offer a graduate level nursing education program preparing students for advanced registered nurse licensure may apply to offer an ARNP refresher course program on a commission approved form.

(2) The nurse administrator or qualified designee of an approved ARNP program shall be responsible for the ARNP refresher course program. The designee shall meet the same qualification requirements as identified in WAC 246-840-517(3).

(3) The faculty teaching in the ARNP refresher program shall meet the requirements of WAC 246-840-523 and 246-840-527.

(4) The ARNP refresher course will provide didactic and clinical instruction in the full scope of practice of ARNP role and population foci as allowed in chapter 18.79 RCW and this chapter.

(5) At a minimum, the ARNP refresher program will include instruction and two hundred fifty hours of associated clinical practice and may offer more hours if required for licensure in:

- (a) Advanced physiology/pathophysiology;
- (b) Advanced health assessment;
- (c) Pharmacotherapeutics;
- (d) Diagnosis and management of diseases or conditions consistent with current standards of care;
- (e) Ordering and interpreting diagnostic and laboratory tests;
- (f) Safe and competent performance of procedures;
- (g) ARNP scope of practice as defined in chapters 18.79 RCW and 246-840 WAC;
- (h) Accepted standards of practice for ARNP.

NEW SECTION

WAC 246-840-568 Criteria for approval of refresher course program located outside Washington state. (1) Refresher courses located outside the state of Washington shall be reviewed individually for approval by the commission and must meet curriculum and clinical practice standards identified in WAC 246-840-563 and 246-840-564, or 246-840-566.

(2) The nurse administrator shall hold an active, unencumbered RN license in the state of the program's domicile location and have a bachelor's degree in nursing with a graduate degree in nursing from a nursing accredited nursing education program, or bachelor's degree in nursing from a nursing education accredited program and a graduate degree from a health-related field from an accredited university.

(3) The commission may:

- (a) Approve a refresher program for no longer than five years;
- (b) Deny approval of a refresher program;
- (c) Withdraw approval of a refresher program;
- (d) Place a program on warning or conditional approval status;
- (e) Make on-site visits to determine compliance with commission requirements for initial or ongoing approval, or to investigate a complaint;
- (f) Require a program to submit a plan of correction; or
- (g) Issue a directed plan of correction.

(4) A refresher program wishing to contest a decision of the commission affecting its approval status shall have the right to appeal the commission's decision in accordance with the provisions of chapter 18.79 RCW, chapter 34.05 RCW, the Administrative Procedure Act, and chapter 246-11 WAC.

NEW SECTION

WAC 246-840-569 Commission action regarding refresher course programs. (1) The commission may:

- (a) Approve a refresher program for no longer than five years;
- (b) Deny approval of a refresher program;

(c) Withdraw approval of a refresher program;

(d) Place a program on warning or conditional approval status;

(e) Make on-site visits to determine compliance with commission requirements for initial or ongoing approval, or to investigate a complaint;

- (f) Require a program to submit a plan of correction; or
- (g) Issue a directed plan of correction.

(2) A refresher course program wishing to contest a decision of the commission affecting its approval status shall have the right to appeal the commission's decision in accordance with the provisions of chapter 18.79 RCW and the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 246-840-571 Out-of-state distance learning nursing program approval for practice experiences in Washington state. (1) The commission may approve out-of-state distance learning nursing education programs for the purpose of placing student in clinical or practice experiences in the state of Washington. The out-of-state distance learning nursing education program shall:

(a) Complete and submit a commission approved application and demonstrate equivalency to requirements for in-state Washington nursing programs;

(b) Provide clinical and practice supervision and evaluation of students in Washington state;

(c) Ensure the faculty, preceptors and others who teach, supervise, or evaluate clinical or practice experiences in the state of Washington hold an active, unencumbered nursing license appropriate to the level of student teaching. Faculty must be licensed in the state of Washington as an ARNP if teaching advanced registered nurse practitioner practice;

(d) Preceptors for students in a nursing education program preparing nurses for advanced registered nurse practitioner licensure shall not be related to the student or personal friends, and shall have an active, unencumbered license as an ARNP under chapter 18.79 RCW, a physician under chapter 18.71 RCW, an osteopathic physician under chapter 18.57 RCW, or equivalent in other states or jurisdictions;

(e) Ensure the faculty who teach didactic distance learning nursing courses hold a current and active, unencumbered nursing license in the state where the nursing program has legal domicile;

(f) Be accredited by a nursing education accrediting body approved by the United States Department of Education;

(g) Maintain accreditation status by the nursing education accrediting body;

(h) Report to the commission within thirty days of notice from the nursing education accrediting body if the accreditation status has changed; and

(i) Submit an annual report to the commission as identified in commission approved survey.

(2) The commission may conduct site visits or complaint investigations to clinical or practice locations to ensure compliance with commission requirements.

(3) The commission may withdraw clinical placement approval if it determines a nursing education distance learn-

ing program fails to meet the standards for nursing education as contained in WAC 246-840-511 through 246-840-556.

(4) The commission may refer complaints regarding the distance learning nursing education program to the home state board of nursing and appropriate nursing education accreditation body.

(5) A distance learning nursing education program wishing to contest a decision of the commission affecting its approval status for clinical or practice experiences shall have the right to a brief adjudicative proceeding under the Administrative Procedure Act, chapter 34.05 RCW.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-840-130 Criteria for approved refresher course.
- WAC 246-840-455 Requirements for advanced registered nurse practice educational programs in Washington state.
- WAC 246-840-515 Branch campus and distance learning nursing education programs.
- WAC 246-840-520 Ongoing evaluation and approval of nursing education programs.
- WAC 246-840-525 Commission action following survey visits.
- WAC 246-840-530 Denial, conditional approval or withdrawal of approval.
- WAC 246-840-535 Reinstatement of approval.
- WAC 246-840-540 Appeal of commission decisions.
- WAC 246-840-545 Closing of an approved nursing education program.
- WAC 246-840-548 Standards and evaluation of nursing education.
- WAC 246-840-550 Standard I. Purpose and outcomes for approved nursing education programs.
- WAC 246-840-555 Standard II. Organization and administration for approved nursing education programs.
- WAC 246-840-560 Standard III. Resources, facilities, and services for approved nursing education programs.
- WAC 246-840-565 Standard IV. Students in approved nursing education programs.
- WAC 246-840-570 Standard V. Faculty in approved nursing education programs.
- WAC 246-840-575 Curriculum for approved nursing education programs.

WSR 16-17-089

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed August 18, 2016, 8:18 a.m., effective September 20, 2016]

Effective Date of Rule: September 20, 2016.

Purpose: E2SSB [ESSB] 5931 (Reorganizing and streamlining central service functions, powers, and duties of state government) removed the requirement which allowed employees to participate in the statewide return-to-work initiative program. As a result, rules that addressed this program were repealed. WAC 357-46-095(3) and 357-19-505, which reference the return-to-work initiative program, were inadvertently missed. This proposal repeals WAC 357-19-505 and amends WAC 357-46-095 to remove references to the return-to-work initiative.

In addition, this proposal amends WAC 357-46-095(3) and 357-13-090 to allow employees who are reallocated to a class with a lower salary range maximum to be placed in the general government transition pool.

Citation of Existing Rules Affected by this Order: Repealing WAC 357-19-505; and amending WAC 357-13-090 and 357-46-095.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 16-14-071 on July 1, 2016.

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 2, Repealed 1.

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 2, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 1.

Date Adopted: August 18, 2016.

Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WAC 357-13-090 How is an employee affected when his/her position is reallocated?

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p> <p>→ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and retains existing appointment status.</p> <p>→ The employee retains the previous base salary in accordance with WAC 357-28-120.</p> <p><i>If the employee does not meet the competencies and other position requirements:</i></p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>→ The employee retains appointment status; has the right to be placed on the employer's internal layoff list <u>and in the general government transition pool</u>; and has his/her salary set in accordance with WAC 357-28-120.</p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i> Upon appointment to the higher class, the employee's base salary must be increased a minimum of a two step increase, not to exceed step M of the range as provided in WAC 357-28-115.	<i>If the employee meets the competencies and other position requirements:</i> → The employer's layoff procedure applies.	<i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i>
The director revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC 357-28-130 for determining the employee's salary.		

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 357-19-505 What is the purpose of the return-to-work initiative program?

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-095 Who is eligible for the general government transition pool program? The following individuals are eligible to participate in the general government transition pool program:

- (1) All general government permanent employees separated by layoff or notified by their employer that they are at risk of layoff. This includes Washington management service permanent employees who are separated by layoff or notified by their employer that they are at risk of layoff;
- (2) All general government permanent employees who are reverted and not returned to a permanent position in the ~~((class))~~ classification in which the employee last held permanent status;
- (3) ~~((Employees who are eligible to participate in the return-to-work initiative program in accordance with chapter 357-19 WAC;))~~ All general government permanent employees who are reallocated to a classification with a lower salary range maximum;
- (4) Permanent Washington management service employees who accept a position in Washington general service and are being voluntarily or involuntarily reverted during the trial service period;
- (5) Former permanent classified general government employees who have submitted a written request for reemployment within two (2) years of disability separation and who have met the reemployment requirements of WAC 357-19-475;

- (6) General government employee business unit members whose contract has expired or been terminated; and
- (7) Permanent Washington management service employees who accept acting appointments and who do not return on the agreed upon date in accordance with WAC 357-58-275.

**WSR 16-17-090
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT**

[Filed August 18, 2016, 8:18 a.m., effective September 20, 2016]

Effective Date of Rule: September 20, 2016.

Purpose: To address the requirements that upon return to a permanent position from a project position, an acting Washington management service appointment or a nonpermanent appointment, the setting of an employee's base salary must be addressed in the employer's salary determination policy.

Citation of Existing Rules Affected by this Order: Amending WAC 357-28-035.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 16-14-073 on July 1, 2016.

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

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

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

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

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

Date Adopted: August 18, 2016.

Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 14-24-026, filed 11/21/14, effective 12/22/14)

WAC 357-28-035 What must be addressed in the employer's salary determination policy? The employer's salary determination policy must minimally address the following:

- (1) Setting base salary for new employees;
- (2) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a position in a new class;
- (3) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a permanent position while in a nonpermanent appointment;
- (4) Setting base salary in accordance with WAC 357-28-140 when an employee transfers to a new position;
- (5) Setting base salary when an employee is appointed from an internal or statewide layoff list;
- (6) Setting base salary when an employee is reallocated to a position with a lower salary range and the employee's previous base salary is above step M of the new salary range as permitted in WAC 357-28-120. Under no circumstance should an employee's salary exceed their previous base salary;
- (7) Setting base salary when an employee demotes for reasons other than accepting a demotion in lieu of layoff or accepting a demotion when a position is reallocated;
- (8) Setting base salary when an employee is reverted following a voluntary demotion;
- (9) Authorizing premiums for recruitment and retention as provided in WAC 357-28-095 and 357-28-100; ~~((and))~~
- (10) Setting base salary and progression based on recruitment and retention rather than years of experience for the nurse special pay salary schedules, if allowed by the employer;
- (11) Setting base salary in accordance with WAC 357-19-340 when an employee returns to a permanent position from a project position;
- (12) Setting base salary in accordance with WAC 357-19-353 when an employee returns to a permanent position from an acting WMS appointment; and
- (13) Setting base salary in accordance with WAC 357-19-395 when an employee returns to a permanent position from a nonpermanent appointment.

WSR 16-17-091
PERMANENT RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed August 18, 2016, 8:18 a.m., effective September 20, 2016]

Effective Date of Rule: September 20, 2016.

Purpose: To correct the references from unbroken service date to seniority date for Washington general service and Washington management service employees that are eligible for veteran's preference in a layoff. In accordance with RCW 41.06.133 [(1)](m), an eligible veteran receives a preference in a layoff by having his or her seniority increased by adding up to five years of his or her active military service to the employee's seniority date.

Citation of Existing Rules Affected by this Order: WAC 357-46-060 and 357-58-475.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 16-14-074 on July 1, 2016.

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 2, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 18, 2016.

Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 10-11-073, filed 5/14/10, effective 6/15/10)

WAC 357-46-060 Does a veteran receive any preference in layoff? (1) An eligible veteran receives a preference in layoff by having their seniority increased ~~((This is done by adding the eligible veteran's total active military service, not to exceed five years, to their unbroken service date))~~ for total active military service, not to exceed five years.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) Has received, upon termination of such service:

(i) An honorable discharge;

(ii) A discharge for physical reasons with an honorable record; or

(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired, as evidenced by the "DD Form 214" or other official military records, with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-58-475 Does a veteran receive any preference in layoff? (1) An eligible veteran receives a preference in layoff by having ~~((his/her)) their~~ seniority increased ~~((This is done by adding the eligible veteran's total active military service, not to exceed five years, to his/her unbroken service date))~~ for total active military service, not to exceed five years.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) Has received, upon termination of such service:

(i) An honorable discharge;

(ii) A discharge for physical reasons with an honorable record; or

(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The surviving spouse or surviving registered domestic partner of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

**WSR 16-17-092
PERMANENT RULES
OFFICE OF**

FINANCIAL MANAGEMENT

[Filed August 18, 2016, 8:18 a.m., effective September 20, 2016]

Effective Date of Rule: September 20, 2016.

Purpose: HB 2557, enacted in the 2016 regular legislative session, went into effect on June 9, 2016. HB 2557

changes the conditions in which shared leave is returned to the donor(s). The bill provides that unused shared leave may not be returned to the donor until a statement from the employee's licensed physician or health care practitioner is obtained verifying that the illness or injury is resolved or the employee is released by his or her licensed physician or health care practitioner to return to his or her normal schedule; has not received medical treatment for his or her current condition or any other qualifying condition for at least six months; and the employee's licensed physician or health care practitioner has declined, in writing, the employee's request for a statement indicating the condition has been resolved. This proposal amends WAC 357-31-445 to address these changes.

In addition, HB 2557 added a reason when shared leave must be approved. A proposed new rule would provide that shared leave must be approved if a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-445.

Statutory Authority for Adoption: Chapter 41.06 RCW. Adopted under notice filed as WSR 16-14-075 on July 1, 2016.

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

Number of Sections Adopted at 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 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 1, Amended 1, Repealed 0.

Date Adopted: August 18, 2016.

Roselyn Marcus
Assistant Director for
Legal and Legislative Affairs

AMENDATORY SECTION (Amending WSR 07-17-126, filed 8/20/07, effective 9/20/07)

WAC 357-31-445 What happens to leave that was donated under the state leave sharing program and was not used by the recipient? (1) Any shared leave not used by the recipient during each incident/occurrence as determined by the employer must be returned to the donor(s).

(a) If shared leave has been granted ((under WAC 357-31-390 (1)(a), before the employer makes a determination to return the unused leave to the donor(s))) for an employee that suffers from an illness, injury, impairment, or physical mental condition which is of an extraordinary or severe nature unused shared leave may not be returned to the donor until one of the following occurs:

(i) The employer ((must)) receives ((from the affected employee's licensed physician or health care practitioner)) a statement from the affected employee's licensed physician or health care practitioner verifying that the ((employee is released to return to work.)) illness or injury is resolved; or

(ii) The employee is released by their licensed physician or health care practitioner to return to their normal schedule; has not received additional medical treatment for his or her current condition or any other qualifying condition for at least six months; and the employee's licensed physician or health care practitioner has declined, in writing, the employee's request for a statement indicating the employee's condition has been resolved.

(b) The remaining shared leave must be returned to the donors and reinstated to the respective donors' appropriate leave balances based on each employee's current salary rate at the time of the reversion. The shared leave returned must be returned in accordance with office of financial management policies.

(2) Unused shared leave may not be cashed out by a recipient.

NEW SECTION

WAC 357-31-447 When must an employer approve a shared leave request for an employee? An employer must approve a new shared leave request for an employee if a shared leave account is closed and an employee later has a need to use shared leave due to the same condition listed in the closed account.

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

Date Adopted: August 18, 2016.

Jennifer L. Sloan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

WAC 516-04-010 Regular meetings. Regular meetings of the board of trustees of Western Washington University shall be held ~~((on the first Thursday of each month a meeting is held unless such date is changed by board resolution at a meeting regularly scheduled or called for that purpose. A copy of such resolution shall be filed in the president's office. The annual meeting schedule will be published in the Washington State Register prior to January each year))~~ pursuant to schedules and at locations published annually in the *Washington State Register*. Any regular meeting of the board may be rescheduled by publishing notice of the changed date and/or location in the *Washington State Register* at least twenty days in advance of the rescheduled meeting date. If twenty days advance notice of a rescheduled meeting is not given, the meeting is conducted as a special meeting under RCW 42.30.080. All such regular meetings will be conducted in conformance with the laws of the state of Washington and the bylaws of the board.

WSR 16-17-099

PERMANENT RULES

WESTERN WASHINGTON UNIVERSITY

[Filed August 18, 2016, 4:20 p.m., effective September 18, 2016]

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

Purpose: The rule currently states that the board of trustees shall meet on the first Thursday of the month a meeting is held. The board no longer meets on the first Thursday and the purpose is to bring the rule current.

Citation of Existing Rules Affected by this Order: Amending WAC 516-04-010.

Statutory Authority for Adoption: RCW 28B.35.120 (12), 34.05.220 (1)(b), 34.05.250, 42.30.070, and 42.30.075.

Adopted under notice filed as WSR 16-10-073 on May 3, 2016.

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.

WSR 16-17-100

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed August 18, 2016, 5:00 p.m., effective September 18, 2016]

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

Purpose: WAC 246-980-140 Scope of practice for long-term care workers, amended to allow home care aides to provide skills acquisition training to elderly and vulnerable clients to align with the department of social and health services' plan to receive an enhanced medicaid reimbursement rate. This final rule replaces emergency rules filed June 23, 2016, WSR 16-14-007.

Citation of Existing Rules Affected by this Order: Amending WAC 246-980-140.

Statutory Authority for Adoption: RCW 18.88B.021.

Adopted under notice filed as WSR 16-10-110 on May 4, 2016.

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 1, Repealed 0.

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

Date Adopted: August 18, 2016.

Kristin Peterson, JD
Government Relations Director
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 13-19-087, filed 9/18/13, effective 10/19/13)

WAC 246-980-140 Scope of practice for long-term care workers. (1) A long-term care worker performs activities of daily living or activities of daily living and instrumental activities of daily living. A person performing only instrumental activities of daily living is not acting under the long-term care worker scope of practice.

(a) "Activities of daily living" means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. This may include fall prevention, skin and body care.

(b) "Instrumental activities of daily living" means activities in the home and community including cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) A long-term care worker documents observations and tasks completed, as well as communicates observations on the day they were performed to clients, family, supervisors, and, if appropriate, health care providers.

(3) A long-term care worker may perform medication assistance as described in chapter 246-888 WAC.

(4) A long-term care worker may perform nurse delegated tasks, to include medication administration, if he or she meets and follows the requirements in WAC 246-980-130.

(5) A long-term care worker may provide skills acquisition training on instrumental activities of daily living and the following activities of daily living tasks: Dressing, application of deodorant, washing hands and face, hair washing, hair combing and styling, application of makeup, menses care, shaving with an electric razor, tooth brushing or denture care, and bathing tasks excluding any transfers in or out of the bathing area.

WSR 16-17-101
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed August 19, 2016, 9:06 a.m., effective September 19, 2016]

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

Purpose: The department is proposing new WAC language to chapters 388-145, 388-147, and 388-148 WAC to

provide further licensing instructions for child safety and well-being and additional clarification to the minimum licensing requirements. The division of licensed resources minimum licensing requirements were amended on January 11, 2015. Following the release of these amended WAC chapters, DSHS staff, private agency staff, group care staff, and foster parents requested additional changes to be made to the minimum licensing requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 388-145-1305, 388-145-1335, 388-145-1390, 388-145-1440, 388-145-1445, 388-145-1455, 388-145-1535, 388-145-1540, 388-145-1585, 388-145-1605, 388-145-1610, 388-145-1625, 388-147-1305, 388-147-1335, 388-147-1410, 388-147-1455, 388-147-1465, 388-147-1540, 388-147-1545, 388-147-1635, 388-147-1695, 388-148-1305, 388-148-1365, 388-148-1420, 388-148-1425, 388-148-1445, 388-148-1470, 388-148-1475, 388-148-1500, 388-148-1520, 388-148-1525, 388-148-1540, 388-148-1605, and 388-148-1625.

Statutory Authority for Adoption: RCW 74.15.010, 74.15.030, 74.15.040, 74.15.090, 74.13.031.

Other Authority: Public Law 113-183 The Preventing Sex Trafficking and Strengthening Families Act required changes to WAC 388-145-1540, 388-147-1545, and 388-148-1425.

Adopted under notice filed as WSR 16-10-020 on April 25, 2016.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-145-1305, 388-147-1305, and 388-148-1305 had additional language added to clarify that individuals enrolled in services through the developmental disabilities administration the day prior to their eighteenth birthday and either a high school or equivalency course of study or vocational program would still meet the definition of "child," "children," or "youth" for chapters 388-145, 388-147, and 388-148 WAC.

WAC 388-145-1535, 388-147-1540, and 388-148-1420 all have similar language. Language was changed, so when an incident happens that must be reported the foster parent or private agency staff will also need to notify the child's tribal ICW case manager as applicable.

In WAC 388-148-1605 a clarification was made to require a negative tuberculosis test or X-ray when being approved to be a regular substitute care provider. This was also a requirement in the previous WAC revision (5/04).

A final cost-benefit analysis is available by contacting Kristina Wright, 1115 Washington Street, Olympia, WA 98504-5710, phone (360) 902-8349, fax (360) 902-7903, e-mail wrightks@dshs.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 34, 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 34, Repealed 0.

Date Adopted: August 18, 2016.

Patricia K. Lashway
Acting Secretary

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 16-19 issue of the Register.

WSR 16-17-104

PERMANENT RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed August 19, 2016, 2:30 p.m., effective September 19, 2016]

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

Purpose: WAC 246-817-160 Graduates of nonaccredited dental schools, the adopted rule amends education requirements for graduates of nonaccredited dental schools to clarify that after July 1, 2018, education must contain clinical education and be Commission on Dental Accreditation accredited. The rule also clarifies when examination eligibility will be authorized.

Citation of Existing Rules Affected by this Order: Amending WAC 246-817-160.

Statutory Authority for Adoption: RCW 18.32.002 and 18.32.0365.

Adopted under notice filed as WSR 16-12-048 on May 25, 2016.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

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

Number of Sections Adopted at 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: July 15, 2016.

C. Madden, Chair
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 14-20-064, filed 9/26/14, effective 10/27/14)

WAC 246-817-160 Graduates of nonaccredited schools. (1) An applicant for Washington state dental licensure, who is a graduate of a dental school or college not accredited by the (~~American Dental Association~~) Commission on Dental Accreditation shall provide to the Dental Quality Assurance Commission (commission):

(a) Materials listed in WAC 246-817-110 (1) (~~and~~), (3), (5) through (8), and (10) through (13);

(b) Official school transcript or diploma with dental degree listed transcribed to English if necessary; (~~and~~)

(c) Evidence of successful completion of at least two additional predoctoral or postdoctoral academic years of dental education.

(i) Additional predoctoral or postdoctoral dental education completed prior to July 1, 2018, must be obtained at a dental school (~~approved under WAC 246-817-110(2)) in the United States or Canada, approved, conditionally or provisionally, by the Commission on Dental Accreditation.~~

(ii) Additional predoctoral or postdoctoral dental education completed after July 1, 2018, must be obtained in a dental program in the United States or Canada, approved, conditionally or provisionally, by the Commission on Dental Accreditation and include clinical training; and

(d) An applicant for Washington state dental licensure must provide proof of successful completion of an approved:

(i) Practical/clinical examination; or

(ii) Qualifying postgraduate residency program, approved by or administered under the direction of the commission authorized in RCW 18.32.040.

(2) Upon completion of the requirements in subsection (1)(a) through (c) of this section, an applicant may be eligible to take the practical examination as (~~required~~) approved in WAC 246-817-120 (2) through (4).

(a) The commission may issue examination approval up to six months before an applicant has completed the two additional predoctoral or postdoctoral academic years of dental education.

(b) An applicant must provide a letter from the school where the two additional predoctoral or postdoctoral academic years is being obtained indicating expected date of education completion.

WSR 16-17-105

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 16-216—Filed August 19, 2016, 4:24 p.m., effective September 19, 2016]

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

Purpose: This new rule creates three types of fishing combination licenses:

- Fish Washington package that includes the two-pole endorsement, Puget Sound crab endorsement and the Columbia River salmon and steelhead endorsement.

- Combination upgrade that allows residents who purchased an annual freshwater, saltwater, or shellfish/seaweed license to upgrade to a combination for the cost difference.
- Annual senior license that includes freshwater, saltwater, and shellfish/seaweed privileges.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 16-15-055 on July 15, 2016.

Changes Other than Editing from Proposed to Adopted Version: There were several changes:

- Subsection (1), adds the term "residents";
- Subsection (2), removes the terms "nonresident disabled vets" and "razor," and adds "plus transaction and dealer fees. The director may limit the times of the year that this upgrade is made available for sale."; and
- Subsection (3), removes "seventy years of age and older."

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

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

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

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

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

Date Adopted: August 19, 2016.

James B. Scott, Jr.
Special Assistant
to the Director

NEW SECTION

WAC 220-55-165 Reduced rate annual fish Washington license, and license upgrades. (1) There is hereby created an annual fish Washington license for residents that combines recreational freshwater and saltwater fishing, shellfish, and seaweed harvest privileges. The fee for the annual fish Washington license will not be priced higher than the sum of the individual items. The fish Washington license also includes the following:

(a) The Columbia River salmon and steelhead endorsement;

(b) A Puget Sound Dungeness Crab endorsement; and

(c) A two-pole endorsement.

(2) The director is authorized to allow any Washington state resident who has purchased an annual freshwater, saltwater, or shellfish/seaweed license to upgrade to a combination license for the cost difference between his or her current

annual fishing license(s) and the cost of the combination license, plus transaction and dealer fees. The director may limit the times of the year that this upgrade is made available for sale.

(3) There is hereby created an annual senior combination recreation fishing license which includes freshwater and saltwater fishing, shellfish, and seaweed harvest privileges. The state fee for the annual senior combination fishing license will not be priced higher than the sum of the individual items and is available to any senior residents.

WSR 16-17-127

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Nursing Home Administrators)

[Filed August 23, 2016, 9:44 a.m., effective September 23, 2016]

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

Purpose: Chapter 246-843 WAC, Nursing home administrators, the board adopted chapter revisions that replaced outdated language and standards with current, updated terms and standards. The purpose for the adopted revisions is to clarify, streamline, and modernize rules to meet current industry standards and statutory requirements. Repealing WAC 246-843-040, 246-843-073, and 246-843-150 to restructure rules and delete outdated language or standard was also adopted.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-843-040, 246-843-073 and 246-843-150; and amending WAC 246-843-010, 246-843-070, 246-843-071, 246-843-090, 246-843-093, 246-843-095, 246-843-130, 246-843-180, 246-843-205, 246-843-230, 246-843-231, 246-843-270, 246-843-280, and 246-843-330.

Statutory Authority for Adoption: RCW 18.52.061 and 18.130.050.

Other Authority: Chapter 18.52 RCW, RCW 18.130-040, 18.130.062, and 43.70.041.

Adopted under notice filed as WSR 16-10-108 on May 4, 2016.

Changes Other than Editing from Proposed to Adopted Version: The board adopted minor, nonsubstantive changes, technical corrections, and clarifying revisions.

Board approved changes to the adopted rules compared to the proposed rules.

WAC 246-843-010(2) General definitions, the board inserted "AIT" following "Administrator-in-training" to designate this as the acronym to be used throughout the chapter for administrator-in-training. This is a minor change that does not change the intent of the rule.

WAC 246-843-070(2) Examination, the board inserted "... on the current NAB national examination" to specify the required examination. This change was made to provide clarity to the adopted rule.

WAC 246-843-071(7) Application, the board inserted "... to take the current NAB national examination" into the existing rule to specify which exam is required. The board made this change to provide clarity to the adopted rule.

WAC 246-843-090(5) Administrator-in-training program, the board inserted "... for the duration of the AIT program will be allowed" to provide clarification on changes in the AIT program.

WAC 246-843-095 (1)(a) Preceptors for administrator-in-training programs, the board added language indicating the preceptor "must have three years' experience" employed as a licensed nursing home administrator "in the past three years." This was a rephrasing of current language to clarify the intent of the rule.

WAC 246-843-130 (3)(a)(i)-(iv) Continuing education requirements, the board reformatted the current rule to separate the continuing education options available to licensees and eliminate reference to "audio or video presentations with a live moderation or self-study program." The board indicated that the original language was an internal contradiction within the sentence.

WAC 246-843-231 (2)(c)(i) Temporary practice permits, the board added "The department of health issues a license after it receives a national background check report and determines that the applicant meets the requirements for licensure" to make the intent of the rule clearer.

In addition to the above board-approved changes, the board also approved revising the word "shall" to "must" in WAC 246-843-070, 246-843-090, 246-843-093, 246-843-095, and 246-843-205. This suggestion was made by the board's AAG to which the board agreed.

A final cost-benefit analysis is available by contacting Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4723, fax (360) 236-2901, e-mail kendra.pitzler@doh.wa.gov.

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

Number of Sections Adopted at 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 14, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 14, Repealed 3.

Date Adopted: June 17, 2016.

Harry Aubert, Chair
Board of Nursing Home Administrators

AMENDATORY SECTION (Amending WSR 12-14-051, filed 6/28/12, effective 7/29/12)

WAC 246-843-010 General definitions. ((Terms used in these rules have the following meanings:

(1) "On-site, full-time administrator" is an individual in active administrative charge of one nursing home facility or collocated facilities, as licensed under chapter 18.51 RCW, a minimum of four days and an average of forty hours per

week. An "on-site, full-time administrator" in nursing homes with small resident populations, in rural areas, or in nursing homes with small resident populations when the nursing home has converted some of its licensed nursing facility bed capacity for use as assisted living or enhanced assisted living services under chapter 74.39A RCW is an individual in active administrative charge of one nursing home facility, or collocated facilities, as licensed under chapter 18.51 RCW:

(a) A minimum of four days and an average of twenty hours per week at facilities with one to thirty nursing home beds; or

(b) A minimum of four days and an average of thirty hours per week at facilities with thirty-one to forty-nine nursing home beds.

(2) "Active administrative charge" is direct participation in the operating concerns of a nursing home. Operating concerns include, but are not limited to, interaction with staff and residents, liaison with the community, liaison with regulatory agencies, pertinent business and financial responsibilities, planning and other activities as identified in the most current job analysis published by the National Association of Boards of Examiners for Long Term Care Administrators.

(3) "Person" means an individual and does not include the terms firm, corporation, institutions, public bodies, joint stock associations, and other such entities.

(4) "Nursing home administrator-in-training" means an individual in an administrator-in-training program approved by the board.

(5) "Secretary" means the secretary of the department of health or the secretary's designee.

(6) "Collocated facilities" means more than one licensed nursing facility situated on a contiguous or adjacent property, whether or not there are intersecting streets. Other criteria to qualify as a collocated facility would be determined by the nursing home licensing agency under chapter 18.51 RCW.

(7) "Recognized institution of higher learning" means an accredited degree granting institution in the United States or outside the United States that is listed in the directory of accredited institutions of postsecondary education published by the American Council on Education.) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Active administrative charge" means direct participation in the operating concerns of a nursing home. Operating concerns include, but are not limited to, interaction with staff and residents, liaison with the community, liaison with regulatory agencies, pertinent business and financial responsibilities, planning and other activities as identified in the most current job analysis published by the National Association of Boards of Examiners for Long Term Care Administrators.

(2) "Administrator-in-training (AIT)" means an individual in a nursing home administrator-in-training program approved by the board.

(3) "Collocated facilities" means more than one licensed nursing facility situated on a contiguous or adjacent property, whether or not there are intersecting streets. Other criteria to qualify as a collocated facility would be determined by the nursing home licensing agency under chapter 18.51 RCW.

(4) "Department" means the department of health.

(5) "On-site, full-time administrator" means an individual in active administrative charge of one nursing home facility or collocated facilities, as licensed under chapter 18.51 RCW, a minimum of four days and an average of forty hours per week. An "on-site, full-time administrator" in nursing homes with small resident populations, in rural areas, or in nursing homes with small resident populations when the nursing home has converted some of its licensed nursing facility bed capacity for use as assisted living or enhanced assisted living services under chapter 74.39A RCW is an individual in active administrative charge of one nursing home facility, or collocated facilities, as licensed under chapter 18.51 RCW:

(a) A minimum of four days and an average of twenty hours per week at facilities with one to thirty nursing home beds; or

(b) A minimum of four days and an average of thirty hours per week at facilities with thirty-one to forty-nine nursing home beds.

(6) "Person" means an individual and does not include the terms firm, corporation, institutions, public bodies, joint stock associations, and other such entities.

(7) "Recognized institution of higher learning" is a degree granting institution that is:

(a) Accredited by an organization recognized by the council for higher education accreditation (CHEA) and is included in the CHEA list recognized accrediting organizations; or

(b) Accredited by an organization recognized by the United States Department of Education (USDOE) and is included in the USDOE Database of Accredited Postsecondary Institutions and Programs; or

(c) A foreign institution with a program that the board has found to be the equivalent of programs approved by CHEA or by the USDOE. The transcript must also be evaluated and found to be valid and the academic program the equivalent of programs approved by CHEA or the USDOE, by:

(i) An organization that is a current member of the National Association of Credential Evaluation Services (NACES); or

(ii) An organization that is a current member of the Association of International Credential Evaluators, Inc. (AICE).

(8) "Secretary" means the secretary of the department of health or the secretary's designee.

AMENDATORY SECTION (Amending WSR 00-01-072, filed 12/13/99, effective 1/13/00)

WAC 246-843-070 Examination. ~~(1) The board approves subjects of examination for license. The scope, content, form, and character of examination shall be the same for all candidates taking the examination.~~

~~(2) The examination consists of)~~ applicant for nursing home administrator licensure must take:

~~(Boards of Examiners for Long Term)~~ Long Term Care Administrator(s) Boards (NAB) (national) nursing home administrator examination(-

~~(3) Subjects for examination may include, but not be limited to: Resident care management, personnel management, financial management, environmental management, and governance and management.~~

~~(4) Examinations shall be given at least semiannually at times and places designated by the department); or~~

~~(b) If the applicant was licensed prior to 1986, the examination offered by professional examination services (PES).~~

(2) An applicant for a nursing home administrator license must earn a scaled score of one hundred thirteen on the current NAB national examination.

(3) The applicant must be notified about their examination score in writing.

(a) The board and the department must not disclose the applicant's score to anyone other than the applicant, unless requested to do so in writing by the candidate.

(b) The board shall keep a permanent record of the result of the examination for each applicant.

AMENDATORY SECTION (Amending WSR 00-01-072, filed 12/13/99, effective 1/13/00)

WAC 246-843-071 Application. ~~((1) An applicant must pay applicable fees and submit an application for initial credential on forms approved by the secretary. Refer to chapter 246-12 WAC, Part 2.~~

~~(2) Applications shall be completed in every respect prior to the examination date.)~~ Applicants for licensure as a nursing home administrator must meet the following requirements:

(1) Be at least twenty-one years old.

(2) Complete an application for licensure provided by the department that includes all information and payment of fees as required in chapter 246-12 WAC, Part 2 and WAC 246-843-990.

(3) Submit documentation of successful completion of a baccalaureate degree from a recognized institution of higher learning.

(4) Submit verification of successful completion of seven hours of AIDS education and training as required in chapter 246-12 WAC, Part 8.

(5) Satisfy training requirements by:

(a) Successfully completing an AIT program as described in WAC 246-843-090 and 246-843-091; or

(b) Meeting the requirements for an AIT exemption described in WAC 246-843-093; or

(c) Meeting the endorsement requirements described in WAC 246-843-230; or

(d) Meeting the requirements for returning to active status described in WAC 246-843-180.

(6) Successfully pass the examination as described in WAC 246-843-070.

(7) If an applicant is required to take an administrator-in-training program, the applicant may concurrently earn their degree but must submit proof of enrollment in a degree program at a recognized institution of higher learning. The transcript showing successful completion of the degree, sent directly from the institution, must be received before the applicant is approved to take the current NAB national examination.

AMENDATORY SECTION (Amending WSR 00-01-070, filed 12/13/99, effective 1/13/00)

WAC 246-843-090 Administrator-in-training program. ~~((An applicant shall be approved to take an examination for licensure as a nursing home administrator after submitting evidence satisfactory to the board that the applicant meets the following requirements:~~

~~(1) Be at least twenty-one years old.
(2) Complete an application for licensure provided by the division of health professions quality assurance, department of health that includes all information and fees requested. Refer to chapter 246-12 WAC, Part 2.~~

~~(3) Submit documentation of a minimum of a baccalaureate degree from a recognized institution of higher learning.~~

~~(4) Completed an)) To qualify for a nursing home administrator license, an applicant must successfully complete a board approved nursing home administrator-in-training (AIT) program as described below:~~

~~((a) A one thousand five hundred hour AIT program in a nursing home; or~~

~~(b) A one thousand hour AIT program for individuals with a minimum of two years experience as a department manager in a state licensed nursing home or hospital with supervisory and budgetary responsibility; or~~

~~(c) A five hundred hour AIT program in a nursing home for individuals with a minimum of two years experience in the last five years with supervisory and budgetary responsibility in one of the following positions or their equivalent:~~

~~Hospital administrator;~~

~~Assistant administrator in a state licensed nursing home or hospital;~~

~~Director of a hospital based skilled nursing facility;~~

~~Director of a subacute or transitional care unit;~~

~~Director of the department of nursing in a state licensed nursing home;~~

~~Health care consultant to the long term care industry;~~

~~Director of community based long term care service.~~

~~(5)) (1) The AIT program ((shall be)) must:~~

~~(a) Be under the guidance and supervision of a qualified preceptor;~~

~~(b) Be designed to provide for individual learning experiences and instruction based upon the person's academic background, training, and experience;~~

~~(c) Provide for a broad range of experience with a close working relationship between preceptor and AIT. A sponsoring facility of less than fifty beds will be considered for an AIT program only if there is a board approved plan to broaden the AIT experience with an equal percentage of experience in a larger facility;~~

~~(d) Be described in a prospectus signed by the preceptor. The prospectus shall include a description of the rotation through departments ((and is to)). The prospectus must be ((submitted to the board for approval before beginning an AIT program. Changes in the AIT program shall be immediately reported in writing to the board. The board may withdraw approval or alter conditions under which approval was given if the board finds that the approved program has not been or is not being followed.~~

~~(6)) approved by the board before the AIT program start date.~~

~~(2) The AIT program prospectus shall include the following components:~~

~~(a) A minimum of ninety percent of the required AIT program hours are spent in a rotation through each department of a resident occupied nursing home licensed under chapter 18.51 RCW((;)) or a Washington state veterans home established under chapter 72.36 RCW.~~

~~(b) The remaining ten percent of the AIT program will include:~~

~~(i) A written project assignment including at least one problem-solving assignment to improve the nursing home or nursing home procedures. A description of the project ((is to)) must be submitted in writing to the board ((for approval)) and approved before ((beginning)) the AIT program start date. The description of the project should indicate the definition of the project and method of approach such as data gathering. A project report that includes possible alternatives, conclusions, and final recommendations to improve the facility or procedure is to be submitted to the board for approval at least ten days before the scheduled end date of the AIT program;~~

~~((e)) (ii) Planned reading and writing assignments as designated by the preceptor; and~~

~~((d)) (iii) Other planned learning experiences including learning about other health and social services agencies in the community.~~

~~((7)) (3) The AIT program must be approved by the board before the AIT may begin the program.~~

~~(4) Quarterly written reports to the board shall include a detailed outline of AIT activities during the reporting period. Reports ((shall)) must be submitted by both the AIT and preceptor.~~

~~((8) The program shall provide for a broad range of experience with a close working relationship between preceptor and trainee. Toward that end, no program shall be approved if the facility has a capacity of fewer than fifty beds. Exceptions to this general rule may be granted by the board in unusual circumstances.) (5) Changes in the AIT program, including a change of preceptor, facility or topic, must be immediately reported in writing to the board. A request for change must be in writing and explain why the change is needed. The request must be co-signed by the AIT and the approved preceptor. In cases where the preceptor is no longer available, the request may be signed by the governing body. Only two changes for the duration of the AIT program will be allowed.~~

~~(6) A site visit by a board member will take place before the program plan is considered complete.~~

~~(7) The board may withdraw approval or alter conditions under which approval was given if the board finds that the approved program has not been or is not being followed.~~

NEW SECTION

WAC 246-843-091 Length of AIT program. An applicant must complete a one thousand five hundred hour AIT program. The program length may be reduced based on the following:

(1) A one thousand hour AIT program may be granted for individuals with a minimum of:

(a) Two years' experience as a department manager in a state licensed nursing home or hospital with demonstrated supervisory and budgetary responsibility;

(b) Five years' experience working in a nursing home; or

(c) A four year degree program in health administration or nursing.

(2) A five hundred hour AIT program may be granted for individuals with a minimum of two years' experience in the last five years with demonstrated supervisory and budgetary responsibility in one of the following positions or their equivalent:

(a) Hospital administrator;

(b) Assistant administrator in a state licensed nursing home or hospital;

(c) Director of a hospital based skilled nursing facility;

(d) Director of a subacute or transitional care unit;

(e) Director of the department of nursing in a state licensed nursing home;

(f) Health care consultant to the long-term care industry;

(g) Director of community-based long-term care service;

(h) Director or regional director of rehabilitation services in a skilled nursing facility.

(3) A five hundred hour program may be granted for individuals with a master's degree in health administration or nursing.

(4) At the discretion of the board, veterans who have military experience equal to the civilian classifications and time limits in subsections (2) and (3) of this section are eligible for a reduced AIT as described in subsections (2) and (3) of this section.

AMENDATORY SECTION (Amending WSR 00-01-070, filed 12/13/99, effective 1/13/00)

WAC 246-843-093 Exemption. No AIT program is required for:

(1) An individual with a minimum of five ~~((years))~~ years' experience in the last seven years with extensive supervisory and budgetary responsibility in one of the following positions or their equivalent:

(a) Hospital administrator;

(b) Assistant administrator in a hospital or state licensed nursing home;

(c) Director of a hospital based skilled nursing facility;
~~((or))~~

(d) Director of a subacute or transitional care unit; or

(e) Regional director of rehabilitation services in a skilled nursing facility.

(2) Veterans who have military experience equal to the civilian classifications and time limits listed in subsection (1)(a) through (e) of this section.

(3) An individual who has worked as a licensed nursing home administrator for a minimum of ~~((five))~~ two years, in the past ~~((ten years, and whose license did not expire more than three years prior to application date))~~ five years.

~~((3))~~ (4) An individual who graduated ~~((from a))~~ with a baccalaureate or graduate degree in long-term care ((program in a college approved)) administration from a program accredited by the National Association of ~~((Boards of Exam-~~

~~iners for Long-Term))~~ Long Term Care Administrator((s) Boards (NAB).

~~((4))~~ (5) An individual who graduated from a degree program in a recognized educational institution that included a one thousand hour practical experience (practicum) in a nursing home. This practical experience ~~((shall))~~ must be structured to allow a student a majority of time in a systematic rotation through each department of a resident-occupied nursing home. The practical experience shall include planned readings, writing, and project assignments. The practical experience shall include regular contact with the administrator of the facility in which the practical experience was completed.

AMENDATORY SECTION (Amending WSR 00-01-070, filed 12/13/99, effective 1/13/00)

WAC 246-843-095 Preceptors for administrator-in-training programs. The preceptor shall submit a statement to the board describing his or her qualifications and an agreement to perform the duties of a preceptor.

(1) Qualifications of preceptor:

(a) The preceptor ~~((shall be))~~ must have three years' experience employed as a licensed nursing home administrator ~~((for an accumulation of at least))~~ in the past three years.

(b) The preceptor ~~((shall))~~ must be employed full time as the nursing home administrator in the facility where the administrator-in-training is trained.

(c) The preceptor shall have an unrestricted license.

~~((d) The preceptor shall participate in and successfully complete any preceptor workshop or other training deemed necessary by the board.)~~

(2) Duties of the preceptor:

(a) The preceptor shall take the time necessary and have at least a weekly face-to-face conference with the AIT about the activities of the AIT relative to the training program and the nursing home.

(b) The preceptor shall evaluate the AIT and submit quarterly reports to the board on the progress of the AIT program.

(3) A preceptor ~~((shall supervise no more than two AITs at the same time))~~ is limited to the supervision of only one AIT unless the preceptor has prior approval from the board.

AMENDATORY SECTION (Amending WSR 00-01-074, filed 12/13/99, effective 1/13/00)

WAC 246-843-130 Continuing education ~~((courses))~~ requirements. ~~((A course provided to satisfy the continuing education requirement of licensed nursing home administrators shall meet the following conditions before being approved by the board:~~

(1) A request for approval shall be submitted on forms provided by the department at least one day prior to the start of the course;

(2) Such course of study shall consist of a minimum of one hour of organized instruction with the exception of board approved self-study courses;

(3) Such course of study may include the following general subject areas or their equivalents, and shall be oriented to

the nursing home administrator and reasonably related to the administration of nursing homes:

- (a) Resident management;
- (b) Personnel management;
- (c) Financial management;
- (d) Environmental management;
- (e) Governance and management;

(f)) (1) A licensed nursing home administrator must demonstrate completion of thirty-six hours of continuing education every two years and comply with chapter 246-12 WAC, Part 7.

(2) Continuing education approved by the National Continuing Education Review Service (NCERS) is acceptable for continuing education credit.

(3) Continuing education that is not approved by NCERS must meet the following requirements:

(a) The basic methods of continuing education learning are:

- (i) Seminars;
- (ii) Teleconferencing;
- (iii) Webinars; and
- (iv) Self-study programs.

(b) Continuing education courses shall consist of a minimum of one hour of instruction. Hours are based upon clock hours and are calculated in half hour increments. College courses are rated at fifteen hours per each semester unit and ten hours per each quarter credit.

(c) Continuing education must relate to nursing home administration, be designed to promote continued knowledge and skills with nursing home administration standards, and improve and enhance professional competencies. Continuing education must fit within the following subjects:

- (i) Resident centered care;
- (ii) Human resources;
- (iii) Finance;
- (iv) Environment;
- (v) Leadership and management;
- (vi) Suicide prevention;
- (vii) Cultural competency training;

(viii) Laws relating to Washington state nursing homes((;)).

(d) The continuing education provider must offer a certificate of completion that lists the number of clock hours. To receive full credit, attendees must attend the full program. The maximum number of hours allowed for continuing education is seven hours per day.

(4) Continuing education credit of two hours per month may be granted to a preceptor of an administrator-in-training program.

(5) Continuing education credit of a maximum of two hours per month may be granted for serving as a board member for the board of nursing home administrators.

(6) Within one hundred eighty days after becoming licensed, a nursing home administrator((s)) shall attend ((am)) a board approved course on laws relating to nursing homes in Washington. The board will grant retroactive credit to those licensees who obtain the required training as administrators-in-training under WAC 246-843-090. The ((board will approve)) state law training course((s based on the following criteria:

A)) consists of a minimum of a six-hour program, with formal training objectives, that covers the ((following subjects: The)) requirements of chapter 18.52 RCW and essential areas of laws that apply to nursing homes regulated by the department of social and health services under chapter 388-97 WAC to include:

((*) (a) Resident services, medical and social;

((*) (b) Resident rights, including resident decision making, informed consent, advance directives and notices to residents;

((*) (c) Enforcement;

((*) (d) Criminal history inquiries;

((*) (e) Differences between federal and state law.

~~((5) Such course of study shall issue certificates of attendance or other evidence satisfactory to the board.))~~

AMENDATORY SECTION (Amending WSR 02-23-070, filed 11/19/02, effective 2/17/03)

WAC 246-843-180 Expired license. (1) To return to active status ~~((when the license has expired for three years or less)),~~ the practitioner must meet the requirements of WAC 246-12-040 ~~((2)(a) or (b))).~~

(2) ~~((To return to active status when the license has expired for over three years but less than five years, the practitioner must meet the requirements of WAC 246-12-040 (2)(e).~~

~~(3) To return to active status when))~~ If the license has been expired for five years or more, the practitioner must also meet the following requirements:

(a) If the practitioner has been in active practice as a licensed nursing home administrator in another jurisdiction during that time, the practitioner must((:

(i) ~~Meet the requirements of WAC 246-12-040 (2)(e);~~ and

((ii)) provide proof of active practice; or

(b) If the practitioner has not been in active practice as a licensed nursing home administrator in another jurisdiction during that time, the practitioner must((:

(i) ~~Meet the requirements of WAC 246-12-040 (2)(e);~~ and

((ii)) successfully complete the current licensing examination.

AMENDATORY SECTION (Amending WSR 12-14-051, filed 6/28/12, effective 7/29/12)

WAC 246-843-205 Standards of conduct. Licensed nursing home administrators ~~((shall))~~ must be on-site full time as defined in WAC 246-843-010 ~~((+))~~ (5) and in active administrative charge of the licensed nursing home, as licensed under chapter 18.51 RCW, in which they have consented to serve as administrator.

AMENDATORY SECTION (Amending WSR 00-01-072, filed 12/13/99, effective 1/13/00)

WAC 246-843-230 Endorsement. (1) The board may endorse a nursing home administrator currently licensed in another state if that state requires qualifications substantially equivalent to qualifications required by RCW 18.52.071 and

WAC 246-843-090. To obtain a license by endorsement the applicant must:

- (a) Pay applicable application fee;
- (b) Submit an application on forms approved by the secretary;
- (c) Submit a verification form from all states in which currently or previously licensed that verifies the applicant:
 - (i) Was or is currently licensed;
 - (ii) Has not had a nursing home administrator license revoked or suspended; and
 - (iii) Has passed ~~((the))~~ a national examination allowed under WAC 246-843-070;
- (d) Submit a certified transcript of baccalaureate or higher degree, mailed to the department directly from ~~((the college or university))~~ a recognized institution of higher learning;
- (e) ~~((Have completed))~~ Submit documentation of completion of seven clock hours of AIDS education and training~~((Refer to))~~ as required in chapter 246-12 WAC, Part 8.

(2) Applicants who are:

~~((Certified by the American College of Health Care Administrators (ACHCA) may submit verification of ACHCA certification in lieu of college degree transcript.~~

~~((b))~~ Currently certified by the American College of Health Care Administrators (ACHCA) are exempt from taking the current NAB national examination.

~~((c))~~ (b) Currently licensed as a nursing home administrator in another state and who have previously passed the national examination are exempt from taking the current NAB national examination.

AMENDATORY SECTION (Amending WSR 15-02-034, filed 12/30/14, effective 1/30/15)

WAC 246-843-231 Temporary practice permits. (1) Temporary practice permits for applicants seeking licensure for interim placement at specific facilities.

(a) A temporary practice permit may be issued to an applicant who meets the following conditions:

- (i) Holds an unrestricted active license in another state;
- (ii) Is not subject to denial of a license or issuance of a conditional or restricted license; and
- (iii) There are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card.

(b) The temporary practice permit allows the applicant to work in the state of Washington as a nursing home administrator during the time specified on the permit. The temporary practice permit grants the applicant a license to practice within the full scope of practice as a nursing home administrator with the following conditions:

- (i) A temporary practice permit is valid only for the specific nursing home for which it is issued unless otherwise approved by the board;
- (ii) A temporary permit holder shall consult with a Washington state licensed nursing home administrator with whom they have a written agreement for consultation.

(c) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when one of the following occurs:

- (i) The permit holder departs from the nursing home, unless otherwise approved by the board;
 - (ii) One hundred eighty days after the temporary practice permit is issued.
- (d) To receive a temporary practice permit, the applicant must:
- (i) Submit fees and a completed application for the permit;
 - (ii) Submit verification from each state in which the applicant is currently licensed and is in good standing as a nursing home administrator; and
 - (iii) Submit a written agreement for consultation with a Washington state licensed nursing home administrator.

(2) Temporary practice permits for applicants seeking permanent licensure.

(a) A temporary practice permit may be issued to an applicant who meets the following conditions:

- (i) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards to those in Washington;
- (ii) Is not subject to denial of a license or issuance of a conditional or restricted license; and
- (iii) There are no violations identified in the Washington criminal background check and the applicant meets all other licensure conditions including receipt by the department of health of a completed Federal Bureau of Investigation (FBI) fingerprint card.

(b) The temporary practice permit allows the applicant to work in the state of Washington as a nursing home administrator during the time specified on the permit. The temporary practice permit grants the applicant a license to practice within the full scope of practice as a nursing home administrator with the following conditions:

(c) A temporary practice permit will not be renewed, reissued, or extended. A temporary practice permit expires when one of the following occurs:

- (i) The department of health issues a license after it receives the national background check report ~~((if the report is negative and the applicant otherwise meets the requirements for licensure))~~ and determines that the applicant meets the requirements for licensure;
- (ii) A notice of decision on application is mailed to the applicant, unless the notice of decision on application specifically extends the duration of the temporary practice permit; or
- (iii) One hundred eighty days after the temporary practice permit is issued.

(d) To receive a temporary practice permit, the applicant must:

- (i) Submit fees and a completed application for licensure as a nursing home administrator;
- (ii) Meet all requirements and qualifications for the license, except the results from a fingerprint-based national background check;
- (iii) Provide verification of having an active unrestricted license as a nursing home administrator from another state

that has substantially equivalent licensing standards in Washington; and

(iv) Submit the fingerprint card and a written request for a temporary practice permit when the department notifies the applicant the national background check is required.

~~((STANDARDS OF SEXUAL MISCONDUCT))~~

AMENDATORY SECTION (Amending WSR 07-08-005, filed 3/22/07, effective 4/22/07)

WAC 246-843-270 Definitions ~~((for))~~ related to sexual misconduct. The definitions in this section apply throughout this section and through WAC 246-843-280 unless the context clearly requires otherwise:

(1) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(2) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(3) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with community standards of practice for the profession. The activity must be within the scope of practice of the nursing home administrator.

(4) "Nursing home administrator" means an individual applying for a credential or credentialed as a nursing home administrator under chapter 18.52 RCW.

(5) "Patient" or "client" means an individual who receives health care in a nursing home under the administrative charge of the nursing home administrator.

AMENDATORY SECTION (Amending WSR 07-08-005, filed 3/22/07, effective 4/22/07)

WAC 246-843-280 Sexual misconduct. (1) A nursing home administrator ~~((shall))~~ must not engage, or attempt to engage, in sexual misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct ~~((shall))~~ constitutes grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part ~~((except as consistent with accepted community standards of practice for examination, diagnosis and treatment and within the nursing home administrator's scope of practice));~~

(c) Rubbing against a patient or client or key party for sexual gratification;

(d) Kissing of a romantic or sexual nature;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Examination of or touching genitals ~~((without using gloves));~~

(g) Not allowing a patient or client privacy to dress or undress ~~((except as may be necessary in emergencies or custodial situations));~~

(h) Not providing the patient or client a gown or draping ~~((except as may be necessary in emergencies));~~

(i) Dressing or undressing in the presence of the patient, client or key party;

(j) Removing patient or client's clothing or gown or draping ~~((without consent, emergent medical necessity or being in a custodial setting));~~

(k) Encouraging masturbation or other sex act in the presence of the nursing home administrator;

(l) Masturbation or other sex act by the nursing home administrator in the presence of the patient, client or key party;

(m) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(n) Soliciting a date with a patient, client or key party;

(o) Discussing the sexual history, preferences or fantasies of the nursing home administrator;

(p) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(q) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for legitimate health care purposes;

(r) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(s) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for legitimate health care purposes; and

(t) Showing a patient, client or key party sexually explicit photographs, other than for legitimate health care purposes.

(2) Sexual misconduct also includes sexual contact with any person involving force, intimidation, or lack of consent; or a conviction of a sex offense as defined in RCW 9.94A.-030.

(3) A nursing home administrator ~~((shall))~~ must not:

(a) Offer to provide health care services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;

(c) Use health care information or access to health care information to meet or attempt to meet the nursing home administrator's sexual needs.

~~((3))~~ (4) A nursing home administrator ~~((shall))~~ must not engage, or attempt to engage, in the activities listed in subsection (1) of this section with a former patient, client or key party within two years after the provider-patient/client relationship ends.

~~((4))~~ (5) After the two-year period of time described in subsection ~~((3))~~ (4) of this section, a nursing home administrator shall not engage, or attempt to engage, in the activities listed in subsection (1) of this section if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the nursing home administrator; or

(b) There is an imbalance of power, influence, opportunity and/or special knowledge of the professional relationship.

~~((5))~~ (6) When evaluating whether a nursing home administrator is prohibited from engaging, or attempting to engage, in sexual misconduct, the board of ~~((examiners for))~~ nursing home administrators will consider factors~~((s))~~ including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the nursing home administrator-patient relationship;

(b) Transfer of care to another nursing home administrator;

(c) Duration of the nursing home administrator-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the nursing home administrator and the patient or client between the last health care services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the nursing home administrator;

(g) Nature of the patient or client's health condition during and since the professional relationship;

(h) The patient or client's emotional dependence and vulnerability; and

(i) Normal revisit cycle for the profession and service.

~~((6))~~ (7) Patient, client or key party initiation or consent does not excuse or negate the health care provider's responsibility.

~~((7))~~ (8) These rules do not prohibit:

~~((a))~~ ~~((Providing health care services in case of emergency where the services cannot or will not be provided by another nursing home administrator;))~~

~~((b))~~ Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to nursing home administrators; or

~~((c))~~ (b) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the nursing home administrator where there is no evidence of, or potential for, exploiting the patient or client.

AMENDATORY SECTION (Amending WSR 02-23-070, filed 11/19/02, effective 2/17/03)

WAC 246-843-330 Inactive license. (1) A practitioner may obtain an inactive license. Refer to the requirements of chapter 246-12 WAC, Part 4.

(2) To return to active status from inactive status if the license has been on inactive status for less than five years, the practitioner must meet the requirements of ~~((WAC 246-12-110))~~ chapter 246-12 WAC, Part 4.

(3) To return to active status from inactive status if the license has been on inactive status for five years or more:

(a) If the practitioner has been in active practice as a licensed nursing home administrator in another jurisdiction during that time, the practitioner must:

(i) Meet the requirements of ~~((WAC 246-12-110))~~ chapter 246-12 WAC, Part 4; and

(ii) Provide proof of active practice; or

(b) If the practitioner has not been in active practice as a licensed nursing home administrator in another jurisdiction during that time, the practitioner must:

(i) Meet the requirements of WAC 246-12-110; and

(ii) Successfully complete the current licensing examination.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-843-040 Duties and responsibilities.

WAC 246-843-073 Examination score.

WAC 246-843-150 Continuing education requirements for renewal of active license.

WSR 16-17-128 PERMANENT RULES DEPARTMENT OF RETIREMENT SYSTEMS

[Filed August 23, 2016, 11:47 a.m., effective September 23, 2016]

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

Purpose: Eligibility for membership in the public safety employees' retirement system (PSERS) - membership in PSERS is defined in RCW 41.37.010 and 41.37.020. This amendment will clarify how the department interprets the states to determine eligibility.

Citation of Existing Rules Affected by this Order: Amending WAC 415-106-010 Definitions.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 16-15-054 on July 15, 2016.

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: August 23, 2016.

Marcie Frost
Director

AMENDATORY SECTION (Amending WSR 08-02-046, filed 12/27/07, effective 1/27/08)

WAC 415-106-010 Definitions. The definitions in RCW 41.37.010 and WAC 415-02-030 apply to terms used in this chapter. Other terms relevant to the administration of chapter 41.37 RCW are defined in this chapter.

(1) **AFC** means average final compensation as defined in RCW 41.37.010(14).

(2) **City corrections department** means any subsection or unit of a city employing correctional employees.

(3) **County corrections department** means any subsection or unit of a county employing correctional employees.

(4) **Employer** means the state or local government entities as defined in RCW 41.37.010(4) employing members eligible for PSERS.

~~((3))~~ (5) **Full-time employee** means an employee who is regularly scheduled to provide at least one hundred sixty hours of compensated service for an employer each calendar month.

~~((4))~~ (6) **LEOFF** means the law enforcement officers' and firefighters' retirement system.

~~((5))~~ (7) **PERS** means the public employees' retirement system.

~~((6))~~ (8) **Primary responsibility** means the fundamental, crucial job duty performed in a position. It does not include marginal responsibilities, which are extra or incidental to the primary responsibility. The primary responsibility of a position may be considered the primary responsibility because:

(a) The position exists to perform that function; or

(b) There are a limited number of employees available who could perform that function; or

(c) The function is highly specialized, and the incumbent is hired for special expertise or ability to perform it.

(9) **PSERS** means the public safety employees' retirement system.

~~((7))~~ (10) **Reportable compensation** means compensation earnable as that term is defined in RCW 41.37.010(6).

~~((8))~~ (11) **SERS** means the school employees' retirement system.

~~((9))~~ (12) **TRS** means the teachers' retirement system.

~~((10))~~ (13) **WSPRS** means the Washington state patrol retirement system.

~~((11))~~ **County corrections department** means any subsection or unit of a county employing correctional employees.

~~(12)~~ **City corrections department** means any subsection or unit of a city employing correctional employees.

WSR 16-17-144

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 15-13—Filed August 24, 2016, 8:46 a.m., effective October 1, 2016]

Effective Date of Rule: October 1, 2016.

Purpose: The Washington state department of ecology is adopting a new rule, chapter 173-185 WAC, Oil movement by rail and pipeline notification. Chapter 173-185 WAC cre-

ates reporting standards for facilities that receive crude oil by rail, and pipelines that transport crude oil through the state. Additionally, the rule identifies reporting standards for ecology to share information with emergency responders, local governments, tribes, and the public.

Notification of oil movement will provide emergency responders with essential information they can use to better prepare for and respond to incidents. The information provided will identify the volume and type of crude oil scheduled for transport through the state. Emergency responders can use the information to plan response strategies, equipment selection, and staffing levels.

Statutory Authority for Adoption: RCW 90.56.565.

Adopted under notice filed as WSR 16-08-118 on April 6, 2016.

Changes Other than Editing from Proposed to Adopted Version:

- The final rule language includes an update to the definition of "Transmission pipeline" in WAC 173-185-050(12) in response to public comment.
- The word "pipeline" was changed to "transmission pipeline" to clarify which type of pipeline was subject to the rule.
- The phrase "in or through" was included in WAC 173-185-080(1) to clarify that crude oil that is delivered in Washington state or transits through the state in transmission pipelines is subject to the biannual notice requirements in the rule.
- "If known" was removed from WAC 173-185-100 (2)(a) in response to public comment and to bring the reporting requirement into alignment with RCW 90.56.565(3).
- RCW 90.48.120 was added to WAC 173-185-040 to clarify the process ecology will use to issue notices of a determination that a violation has or will occur.

A final cost-benefit analysis is available by contacting Jase Brooks, Department of Ecology Spills Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-7625, fax (360) 407-7288, e-mail Jase.Brooks@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 0, Repealed 0; or Recently Enacted State Statutes: New 11, 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: August 24, 2016.

Maia D. Bellon
Director

Chapter 173-185 WAC
OIL MOVEMENT BY RAIL AND
PIPELINE NOTIFICATION

PART A

GENERAL REQUIREMENTS

NEW SECTION

WAC 173-185-010 Applicability. This chapter applies to owners and operators of:

- (1) Facilities that receive crude oil by railroad car in the state; and
- (2) Transmission pipelines that transport crude oil through the state.

NEW SECTION

WAC 173-185-020 Purpose. The purpose of this chapter is to enhance oil transportation safety in Washington and protect public safety and the environment by establishing notification requirements and procedures that inform emergency response agencies and the public of all crude oil shipments to facilities by rail and crude oil transport by transmission pipelines in the state. This chapter establishes:

- (1) Advance notice requirements for facilities that receive crude oil by railroad car.
- (2) Biannual notice requirements for transmission pipelines that transport crude oil.
- (3) Disclosure procedures for ecology to:
 - (a) Provide nonaggregated information collected under this chapter to the state emergency management division and any county, city, tribal, port, and local government emergency response agency to help these agencies effectively prepare for and respond to oil spills and other accidents.
 - (b) Provide aggregated information collected under this chapter to inform the public about the nature of crude oil movement through their communities.

NEW SECTION

WAC 173-185-030 Compliance schedule. (1) Facilities.

- (a) Owners and operators of facilities in operation at the time this chapter is adopted must meet the advance notice requirements in WAC 173-185-070 on the effective date of this chapter.
 - (b) Owners and operators of new facilities must meet the advance notice requirements in WAC 173-185-070 immediately upon beginning operations in the state.
- (2) Transmission pipelines.
 - (a) Owners and operators of transmission pipelines in operation at the time this chapter is adopted must meet the biannual notice requirements in WAC 173-185-080 on the effective date of this chapter and submit their first biannual notice by January 31, 2017.
 - (b) Owners and operators of new transmission pipelines must meet the biannual notice requirements in WAC 173-185-080 immediately upon beginning operations in the state.

NEW SECTION

WAC 173-185-040 Enforcement and penalties. Any violation of this chapter may be subject to enforcement and penalties under RCW 90.48.120, 90.48.140, and 90.48.144.

NEW SECTION

WAC 173-185-050 Definitions. (1) "**Bulk**" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(2) "**Crude oil**" means any naturally occurring hydrocarbons coming from the earth that are liquid at twenty-five degrees Celsius and one atmosphere of pressure including, but not limited to, crude oil, bitumen and diluted bitumen, synthetic crude oil, and natural gas well condensate.

(3) "**Ecology**" means the state of Washington department of ecology.

(4)(a) "**Facility**" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) For the purposes of oil spill contingency planning in RCW 90.56.210, facility also means a railroad that is not owned by the state that transports oil as bulk cargo.

(c) Except as provided in (b) of this subsection, a facility does not include any:

- (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;
- (ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;
- (iii) Motor vehicle motor fuel outlet;
- (iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or
- (v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(5) "**Navigable waters of the state**" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(6) "**Oil**" or "**oils**" means oil of any kind that is liquid at twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302, adopted August 14, 1989, under Section 102(a) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(7)(a) "**Owner**" or "**operator**" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii)

in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) **"Operator"** does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(8) **"Person"** means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, ship, or any other entity whatsoever.

(9) **"Ship"** means any boat, ship, vessel, barge, or other floating craft of any kind.

(10) **"Spill"** means an unauthorized discharge of oil which enters waters of the state.

(11) **"State"** means the state of Washington.

(12) **"Transmission pipeline"** means all parts of a pipeline whether interstate or intrastate, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks.

(13) **"Waters of the state"** includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and land adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

NEW SECTION

WAC 173-185-060 Severability. If any provision of this chapter is held invalid, the remainder of the chapter is not affected.

PART B

FACILITIES

NEW SECTION

WAC 173-185-070 Advance notice—Facility requirements. (1) Owners and operators of a facility that will receive crude oil from a railroad car must provide ecology with advance notice of all scheduled crude oil deliveries to be received by the facility as provided in this section. Notification may be made by the facility owner or operator's designee.

(2) The advance notice must contain the following information:

(a) Name, address, contact person, and telephone number of the facility;

(b) Region of origin of crude oil as stated, or as expected to be stated, on the bill of lading;

(c) Railroad route taken to the facility within the state, if known;

(d) Scheduled time, which means date, and volume of the scheduled delivery;

(e) Gravity, as measured by the most recently approved standards developed by the American Petroleum Institute or, if unavailable at the time of reporting, expected gravity of crude oil scheduled to be delivered.

(3)(a) Advance notice must be provided to ecology each week for all arrivals of railroad cars carrying crude oil scheduled for the succeeding seven-day period.

(b) All newly scheduled arrivals of railroad cars carrying crude oil after the advance notice time frame under (a) of this subsection must be reported to ecology as soon as possible and before the shipment enters the state. If the shipment is already in the state, the scheduled arrival must be reported when the information is known to the facility.

(4) Notification must be submitted via internet web site established by ecology.

PART C

PIPELINES

NEW SECTION

WAC 173-185-080 Biannual notice—Pipeline requirements. (1) Owners and operators of a transmission pipeline that transports crude oil in or through the state must provide ecology biannual notice of all crude oil transported by the transmission pipeline in or through the state. Notification may be made by the transmission pipeline owner or operator's designee.

(2) The notice must contain the following information:

(a) Company name, address, contact person, and telephone number of the pipeline;

(b) Volume of crude oil by each listed state or province of origin of the crude oil.

(3)(a) Notification must be submitted to ecology each year by July 31st for the period January 1st through June 30th and by January 31st for the period July 1st through December 31st.

(b) Notification must be submitted by e-mail to ecology.

PART D

DISCLOSURES AND NONDISCLOSURES

NEW SECTION

WAC 173-185-090 Disclosures—Emergency management division and county, city, tribal, port, and local government emergency response agencies. Ecology will share the advance notice information collected from facilities under this chapter with the state emergency management division and any county, city, tribal, port, or local government emergency response agency upon request. Requests to access this information must be submitted to ecology by e-mail.

NEW SECTION

WAC 173-185-100 Disclosures—The public. Ecology will disclose information collected under this chapter by publishing it on a quarterly basis on ecology's web site.

(1) Ecology will publish the following crude oil movement information:

(a) Mode of transport (i.e., railroad car or pipeline);

(b) Place of origin by region for facilities and by state or province for transmission pipelines;

(c) Number and volume of reported spills during transport and delivery;

(d) Estimated number of railroad cars delivering crude oil; and

(e) Reported volume of crude oil received by facilities and crude oil transported by transmission pipelines in or through the state.

(2) With respect to information on oil movement to facilities provided by this section, ecology will aggregate information on a statewide basis by:

(a) Route;

(b) Week; and

(c) Type of crude oil.

NEW SECTION

WAC 173-185-110 Nondisclosure. Pursuant to RCW 42.56.270(23) and 90.56.565(5), ecology and any state, local, tribal, or public agency that receives information provided under this chapter may not disclose any such information to the public or to nongovernmental entities that contains proprietary, commercial, or financial information unless that information is aggregated. The requirement for aggregating information does not apply when information is shared by ecology with emergency response agencies as provided in WAC 178-185-090.

WSR 16-17-146

PERMANENT RULES

DEPARTMENT OF ECOLOGY

[Order 15-04—Filed August 24, 2016, 9:10 a.m., effective September 24, 2016]

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

Purpose: Ecology is amending chapter 173-910 WAC, Mercury-containing lights product stewardship program, the purpose of this rule making, consistent with the authorizing statute in chapter 70.275 RCW, is to achieve a statewide goal of recycling all end-of-life mercury-containing lights by 2020 through expanded public education, a uniform statewide requirement to recycle all mercury-containing lights, and the development of a comprehensive, safe, and convenient collection system that includes use of residential curbside collection programs, mail-back containers, increased support for household hazardous waste facilities, and a network of additional collection locations.

The approach to stewardship implemented by the rule was significantly altered by the 2014 legislature. We have revised the rule to reflect and incorporate changes made to the underlying statute. Changes include the requirement to fund the program through an environmental handling charge, revised requirements for stewardship plans and annual reports including independent financial audits, changes in the number of lights that can be recycled per day, changes in definitions, sunset provisions, and other changes as directed by the legislature.

Citation of Existing Rules Affected by this Order: Amending chapter 173-910 WAC, Mercury-containing lights product stewardship program.

Statutory Authority for Adoption: RCW 70.275.040, 70.275.110, 70.275.140.

Adopted under notice filed as WSR 16-07-035 on March 10, 2016.

Changes Other than Editing from Proposed to Adopted Version: There are some differences between the proposed rule filed on March 10, 2016, and the adopted rule filed on August 23, 2016. Ecology made these changes for all or some of the following reasons:

- In response to comments we received.
- To ensure clarity and consistency.
- To meet the intent of the authorizing statute.

The following content describes the changes and ecology's reasons for making them.

WAC 173-910-010 Purpose:

Every producer of mercury-containing lights sold in or into Washington state for sale at retail must ~~fully finance and~~ participate in the product stewardship program.

Ecology deleted the text "fully finance and" for consistency with other changes in the rule to implement the new financing mechanism.

WAC 173-910-020 Applicability:

(7) Any retailer, electric utility, or other person that gives away, offers for sale at retail, or sells mercury-containing lights in or into Washington state at retail.

Ecology added the text "at retail" at the end of the definition to provide clarity and consistency with the statute.

WAC 173-910-100 Definitions:

~~"Fully finance and participate"~~ means the obligation of each producer of mercury-containing lights sold in or into Washington to ~~fund its share of program costs and join in an register with and participate in~~ an approved product stewardship program.

Ecology deleted the words "fully finance and" as well as "fund its share of program costs and join in an" since this language reflected the original funding mechanism. This definition was moved to keep the definitions in alphabetical order.

WAC 173-910-100 Definitions:

~~"Producer's cost"~~ means ~~each participating producer's portion of the product stewardship program cost as determined by the stewardship organization. The program cost includes all administrative and operational costs, including the department's annual fee.~~

Ecology deleted this definition for consistency with other amendments related to the change in funding mechanism, which reflects statutory changes.

WAC 173-910-100 Definitions:

~~"Independent plan"~~ means ~~a plan for collecting, transporting, processing and recycling of mercury-containing lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization designated by a producer or group of producers.~~

~~"Standard Plan"~~ means ~~the plan for the collection, transportation, processing and recycling of mercury-containing lights developed by a stewardship organization in~~

response to the department's request for proposals, approved by the department, and implemented by a stewardship organization

Ecology deleted the "Standard Plan" definition for consistency with other amendments since it was from the former process requiring department-requested proposals for a department-contracted program. We also deleted the "Independent Plan" definition. All references to the "standard plan" and the "independent plan" were deleted from the rule.

WAC 173-910-100 Definitions:

"**Product stewardship plan**" or "**plan**" means a detailed plan describing the manner in which a product stewardship program will be implemented. ~~A product stewardship plan can either be the standard plan or an independent plan~~ for collecting, transporting, processing, and recycling mercury-containing lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization.

With the deletion of the "Standard Plan" and "Independent Plan" definitions that were part of the former process requiring department-requested proposals for a department-contracted program, we modified the "Product Stewardship Plan or Plan" definition to include the descriptive text regarding what is required for the overall program.

WAC 173-910-210 Producers of mercury-containing lights:

~~(2) Each producer must participate in a product stewardship program by: (a) Funding its producer ((share)) cost of the department approved standard plan and program operated by the ((department contracted)) stewardship organization; or (b) Funding its producer ((share)) cost of and operating, either individually or jointly, an independent plan and program approved by the department.~~

Ecology deleted this text since it refers to the former department-contracted program prior to the legislative changes. The remaining subsections (3) through (5) became subsections (2) through (4).

WAC 173-910-210 Producers of mercury-containing lights:

(43) ~~Producers~~ The stewardship organization must pay all administrative and operational costs associated with the ~~standard program or the independent program plan~~ in which they participate, except for the collection costs associated with curbside and mail-back collection programs....."

Ecology deleted the word "Producers" and added "The stewardship organization" to accurately reflect the way the program is funded through the environmental handling charge. References to the standard program and the independent program were deleted since those were in place for the former department-contracted program.

WAC 173-910-210 Producers of mercury-containing lights:

(43) ... For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable locations, a stewardship organization must finance the costs of collection, transportation, and processing of mercury-containing lights collected at the collection locations. The stewardship organization's administrative and operational costs are not required to

include a collection location's cost of receiving, accumulating and storing, and packaging mercury-containing lights.

This language from the statute was proposed to be added under the stewardship organization requirements in WAC 173-910-310(11). In the final rule, we also added the same language at the end of WAC 173-910-210(3) for clarity.

WAC 173-910-210 Producers of mercury-containing lights:

(54) The producer must satisfy the following requirements: (a) Meet its financial obligations to the plan, ~~which includes the department's annual fee;~~

The reference to the department's annual fee was deleted because the product stewardship organization is responsible for paying the department's annual fee consistent with the amended statute. This subsection was renumbered to become (4) in the final rule.

WAC 173-910-310 Stewardship organization requirements:

(1) ~~The~~ A stewardship organization will implement ~~the a~~ department-approved ~~standard plan and independent stewardship organizations will implement department approved independent plans.~~

Ecology deleted text referring to a "standard plan" and an "independent plan" and changed "the" to "a" in two places since there won't be a department-contracted plan consistent with the amended statute.

WAC 173-910-520 Collector requirements:

(7)(f) Use packaging and shipping material that will minimize the release of mercury into the environment by volatilization or any other means and minimize breakage and use mercury vapor barrier packaging as defined in RCW 70.275.020(10) if mercury lights are transported by the United States Postal Service or a common carrier; and

We added language from the statute at RCW 70.275.070 (1)(d) for clarity and consistency because WAC 173-910-320 (1)(c) (from RCW 70.275.030(2), last sentence) cites to the subsection where mercury vapor barrier packaging was proposed to be added, and the subsection didn't include the specific requirement to use this type of packaging.

WAC 173-910-610 Participation requirements:

(6) Education and outreach: Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale at retail or distribute mercury-containing lights at retail must work with stewardship organizations to:

Ecology added the second reference to "at retail" in the final rule language for clarity and consistency.

A final cost-benefit analysis is available by contacting Kirsten Miller, Publication Coordinator, Department of Ecology, 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 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 13, 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 13 [0], Amended 0 [13], Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 13, Repealed 0.

Date Adopted: August 23, 2016.

Maia D. Bellon
Director

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-010 Purpose. (1) Washington state law requires establishment of a convenient and environmentally sound product stewardship program for mercury-containing lights throughout Washington state by January 1, 2013. Every producer of mercury-containing lights sold in or into Washington state for ~~((residential use))~~ sale at retail must ~~((fully finance and))~~ participate in the product stewardship program. Such a system is essential to collect spent mercury lighting from covered entities which, when improperly disposed, releases mercury that threatens human health and the environment.

(2) This chapter implements Mercury-containing lights—Proper disposal, chapter 70.275 RCW.

(3) Washington state law established a statewide goal of recycling all end-of-life mercury-containing lights by 2020 through expanded public education, a uniform statewide requirement to recycle all mercury-containing lights, and the development of a comprehensive, safe, and convenient collection system that includes use of residential curbside collection programs, mail-back containers, increased support for household hazardous waste facilities, and a network of additional collection locations.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-020 Applicability. This chapter applies to:

(1) Any producer of mercury-containing lights sold in or into Washington state, as defined in this chapter.

~~((A stewardship organization operating an approved product stewardship program under contract with the department.~~

~~((3))~~ Any stewardship organization operating an approved product stewardship program for any producer or group of producers.

~~((4))~~ (3) Any covered entities as defined in this chapter.

~~((5))~~ (4) Collectors of mercury-containing lights including those participating in a product stewardship plan approved under this chapter.

~~((6))~~ (5) Transporters of mercury-containing lights participating in a product stewardship plan approved under this chapter.

~~((7))~~ (6) Processors of mercury-containing lights under a product stewardship plan approved under this chapter.

~~((8))~~ (7) Any retailer, electric utility, or other person that gives away, offers for sale at retail, or sells mercury-containing lights in or into Washington state ~~((for residential use))~~ at retail.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-100 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Accumulation point" means where mercury-containing lights from curbside or mail-back programs are accumulated for a product stewardship plan approved by the department.

"Brand" means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand as the producer.

"Collector" means an entity that is licensed to do business in Washington state and that gathers mercury-containing lights from covered entities for the purpose of recycling under a product stewardship plan approved by the department and meets the collector requirements in WAC 173-910-520. Examples of collectors include, but are not limited to, drop off locations, household hazardous waste facilities, collection sites, curbside services, mail-back services, accumulation points, and collection events.

"Compliance audit report" means the report of a comprehensive third-party audit for each processing facility in the product stewardship program.

"Covered entities" means:

(a) A ~~((single family or a multifamily))~~ household generator ~~((and persons that deliver no more than fifteen))~~ or other person who purchases mercury-containing lights at retail and delivers no more than ten mercury-containing lights to registered collectors for a product stewardship program ~~((during a ninety-day period))~~ on any given day; and

(b) A ~~((single family or a multifamily))~~ household generator ~~((and persons that utilize))~~ or other person who purchases mercury-containing lights at retail and uses a registered residential curbside collection program or a mail-back program for collection of mercury-containing lights and ~~((that))~~ discards no more than fifteen mercury-containing lights into those programs ~~((during a ninety-day period))~~ on any given day.

"Department" means the department of ecology.

"Department's annual fee" means the sum total of five thousand dollars paid to the department for each producer participating in a mercury-containing lights product stewardship program to fund department administration, oversight, and enforcement costs.

"Distributor" is an agent who supplies goods to stores and other businesses that sell to consumers.

"Environmental handling charge" or "charge" means the charge approved by the department to be applied to each mercury-containing light to be sold at retail in or into Washington state. The environmental handling charge must cover all administrative and operational costs associated with the product stewardship program, including the fee for the department's administration and enforcement.

"Final disposition" means the point beyond which no further processing takes place and materials from mercury-containing lights have been transformed for direct use as a feedstock in producing new products, or disposed of or managed in facilities that meet all applicable federal, state, and local requirements.

~~("Fiscal growth factor" means the average growth in state personal income for the prior ten fiscal years (chapter 43.135 RCW).)~~

~~"Fully finance and participate" means the obligation of each producer of mercury-containing lights sold in or into Washington to fund its share of program costs and join in an approved product stewardship program.)~~

"Hazardous substances" or "hazardous materials" means those substances or materials identified by rules adopted under chapter 70.105 RCW.

~~("Independent plan" means a plan for collecting, transporting, processing and recycling of mercury-containing lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization designated by a producer or group of producers.)~~

"Mail-back program" means the use of a prepaid postage container transported by the United States Postal Service or a common carrier, using sealable packaging and shipping materials that are designed to prevent the release of mercury into the environment by volatilization or any other means, to return mercury-containing lights for a product stewardship plan approved by the department.

~~("Market share" means the portion of mercury-containing lights sold in Washington state representing a producer's share of all mercury-containing lights products sold in Washington state.)~~

"Mercury-containing lights" means lamps, bulbs, tubes, or other devices that contain mercury and provide functional illumination in homes, businesses, and outdoor stationary fixtures.

"Participate" means the obligation of each producer of mercury-containing lights sold in or into Washington to register with and participate in an approved product stewardship program.

"Person" means a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, cooperative, or other legal entity located within or outside Washington state.

"Premium services" means collection of mercury-containing lights through systems that may include additional fees to cover the collection costs not paid by the product stewardship program, examples include curbside collection or mail-back services.

"Processing" means storage and handling of mercury-containing lights for materials recovery, recycling, or preparing for final disposition. Processing must occur at facilities that meet all applicable federal, state, and local requirements.

"Processor" means an entity engaged in disassembling or dismantling mercury-containing lights to recover materials for recycling or disposal.

"Producer" means a person that meets any one of the following conditions:

(a) Has or had legal ownership of the brand, brand name, or cobrand of a mercury-containing light sold in or into Washington state, ~~((except for persons whose primary business is retail sales)) unless the brand owner is a retailer whose mercury-containing light was supplied by another producer participating in a stewardship program under chapter 70.275 RCW;~~

(b) Imports or has imported mercury-containing lights branded by a producer that meets the requirements of (a) of this definition and where that producer has no physical presence in the United States;

(c) If (a) and (b) of this definition do not apply, makes or made ~~((an unbranded))~~ a mercury-containing light that is offered for sale or sold in or into Washington state; or

(d) Offers for sale, sells or has sold at wholesale or retail a mercury-containing light and does not have legal ownership of the brand but chooses to fulfill the responsibilities of the producer for that product.

~~("Producer's share cost" means each participating producer's share of the product stewardship program cost as determined by the stewardship organization. The program cost includes all administrative and operational costs, including the department's annual fee.)~~

"Product stewardship" means a requirement for a producer of mercury-containing lights to manage and reduce adverse safety, health, and environmental impacts of the product throughout its life cycle, including financing and collecting, transporting, processing, recycling, and final disposition of mercury-containing lights.

"Product stewardship plan" or "plan" means a detailed plan describing the manner in which a product stewardship program will be implemented~~((A product stewardship plan can either be the standard plan or an independent plan))~~ for collecting, transporting, processing, and recycling mercury-containing lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization.

"Product stewardship program" or "program" means the methods, systems, and services financed in the manner provided for under RCW 70.275.050 and provided by producers of mercury-containing lights ((that addresses collecting, transporting)) generated by covered entities that addresses product stewardship and includes arranging for the collection, transportation, processing, recycling, and final disposition of unwanted mercury-containing lights generated by covered entities, including orphan products.

"Recovery" means the collection and transportation of unwanted mercury-containing lights under this chapter.

"Recycling" means transforming or remanufacturing mercury-containing lights into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include energy recovery or energy generation by means of combusting ~~((mercury-containing lights))~~ unwanted products with or without other waste.

"Reporting period" means the period commencing January 1st and ending December 31st in the same calendar year.

"Residuals" means nonrecyclable materials left over from processing an unwanted product.

"Retailer" means a person that offers mercury-containing lights for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

"Reuse" means a change in ownership of a mercury-containing light or its components, parts, packaging, or shipping materials for use in the same manner and purpose for which it was originally purchased, or for use again, as in shipping materials, by the generator of the shipping materials. Reuse does not include dismantling of products for the purpose of recycling.

"Rural" means areas without commercial centers or areas with widely dispersed population.

"Service providers" means collectors, transporters, and processors participating in a stewardship program.

"Stakeholder" means a person that may have an interest in or be affected by a product stewardship program.

~~("Standard plan" means the plan for the collection, transportation, processing and recycling of mercury-containing lights developed by a department contracted stewardship organization in response to the department's request for proposals, approved by the department, and implemented by a stewardship organization under contract with the department.)~~

"Stewardship organization" or "organization" means a producer or group of producers that operate a product stewardship program, an organization designated by a producer or group of producers to act as the agent on behalf of each producer to operate a product stewardship program ~~((or an organization contracted by the department to operate a product stewardship program)).~~

"Transboundary" means crossing a provincial, territorial, or national boundary or border.

"Transporter" means an entity that transports mercury-containing lights from collection sites, accumulation points, or collection services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own mercury-containing lights.

"Unwanted product" means a mercury-containing light no longer wanted by its owner or that has been abandoned, discarded, or is intended to be discarded by its owner.

"Wholesale" means buying and selling goods, generally in original packages, on a large scale in parcels, usually from a manufacturer to a retail, commercial, or industrial client.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-210 Producers of mercury-containing lights. (1) ~~((Beginning January 1, 2013, any))~~ Every producer of mercury-containing lights ((whose mercury-containing lights are offered for sale or)) sold in or into Washington state ((must fully finance and participate in a department approved product stewardship program for mercury-containing lights)) for retail sale in Washington state must participate in a product stewardship program for those products, operated by a stewardship organization and financed in the manner provided by WAC 173-910-310 (3) through (7). Every such producer must inform the department of the producer's participa-

tion in a product stewardship program by including the producer's name in a plan submitted to the department by a stewardship organization as required by WAC 173-910-410, 173-910-420, 173-910-430, and 173-910-440. Producers must satisfy these participation obligations individually or may do so jointly with other producers.

(2) ~~((Each producer must participate in a product stewardship program by:~~

(a) ~~Funding its producer share cost of the standard plan and program operated by the department contracted stewardship organization; or~~

(b) ~~Funding its producer share cost of and operating, either individually or jointly, an independent plan and program approved by the department.~~

~~(3) Producers))~~ No sooner than January 1, 2015:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington state retailers for sale at retail, and each Washington state retailer must add the charge to the purchase price of all mercury-containing lights sold at retail in Washington state, and the producer must remit the environmental handling charge to the stewardship organization in the manner provided for in the stewardship plan; or

(b) Each Washington state retailer must add the mercury-containing light environmental handling charge to the purchase price of all mercury-containing lights sold at retail in Washington state, where the retailer, by voluntary binding agreement with the producer, arranges to remit the environmental handling charge to the stewardship organization on behalf of the producer in the manner provided for in the stewardship plan. Producers may not require retailers to opt for this provision via contract, marketing practice, or any other means. The stewardship organization must allow retailers to retain a portion of the environmental handling charge as reimbursement for any costs associated with the collection and remittance of the charge.

(3) The stewardship organization must pay all administrative and operational costs associated with the ((standard program or the independent program)) plan in which they participate, except for the collection costs associated with curbside and mail-back collection programs. For curbside and mail-back programs, a stewardship organization must finance the costs of transporting and processing mercury-containing lights from the point of accumulation. For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable locations, a stewardship organization must finance the costs of collection, transportation, and processing of mercury-containing lights collected at the collection locations. The stewardship organization's administrative and operational costs are not required to include a collection location's cost of receiving, accumulating and storing, and packaging mercury-containing lights.

(4) The producer must satisfy the following requirements:

(a) ~~((Submit data to the department or stewardship organization to enable a reasonable estimate to be determined of each producer's share cost of the mercury-containing lights product stewardship program;~~

~~(b) Submit market share data to the department to determine market share in the event more than one approved product stewardship plan is operating;~~
~~(e)) Meet its financial obligations to the plan((, which includes the department's annual fee));~~

~~((d)) (b) Comply with producers' requirements as described in the plan;~~
~~((e)) (c) Participate in a fully implemented plan; and~~
~~((f)) (d) Take actions required to correct violations.~~

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-230 Producer violation notices and penalties.

**Table 200
 Producer Violation Notices and Penalties**

Notice	Participation Violation <i>Failure to participate in an approved plan</i>	Implementation Violation <i>Failure to implement an approved plan</i>	Plan/Report Violation <i>Failure to submit plan, update plan, change plan or submit annual report</i>
First Violation Notice	Warning letter to participate within 60 days	Automatic penalty of up to \$5,000, plus warning letter regarding subsequent penalties	Warning letter to comply within 60 days
Second Violation Notice	Penalty of up to \$1,000 per day starting 60 days after receipt of warning letter	Penalty of up to \$10,000 for each 30 days of noncompliance starting 30 days after receipt of warning letter	Penalty of up to \$10,000 per day starting 60 days after receipt of warning letter
If Compliance is Achieved Within 30 Days of Second Violation Notice	Penalty reduced by 50% if compliance is achieved by day 90	Penalty reduced by 50% if compliance is achieved by day 30	Penalty reduced by 50% if compliance is achieved by day 90
Third Violation and Subsequent Notices	Penalty of up to \$1,000 per day for every day of noncompliance to be issued every 60 days	Penalty of up to \$10,000 for every 30 days of noncompliance to be issued every 30 days	Penalty of up to \$10,000 per day for every 30 days of noncompliance to be issued every 30 days

(1) **Participation penalties** apply to producers not participating in an approved product stewardship plan.

(a) Producers selling mercury-containing lights in or into the state for ~~((residential use))~~ sale at retail that are not participating in an approved product stewardship plan will receive a warning letter, or first violation notice, to participate in an approved plan within sixty days or incur penalties. The warning letter will include compliance requirements and notification that the requirements must be met within sixty days.

(b) Producers not participating in an approved product stewardship plan that continue to sell mercury-containing lights in or into the state for ~~((residential use))~~ sale at retail sixty days after receiving the warning letter will receive a penalty, or second violation notice, of up to one thousand dollars for each violation; a violation is one day of noncompliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to not participate in an approved product stewardship plan will receive penalties of up to one thousand dollars per day of noncompliance starting from the date of the second violation notice. This penalty will be issued after each subsequent period of sixty days of noncompliance.

(2) **Implementation penalties** apply to producers that fail to implement their approved product stewardship plan.

(a) Producers not implementing an approved product stewardship plan will receive a penalty for the first violation of up to five thousand dollars, plus a warning letter to implement its approved plan within thirty days or incur additional penalties. The warning letter will include compliance requirements and notification that the requirements must be met within thirty days.

(b) Producers that fail to implement their product stewardship plan will receive a penalty, or second violation notice, of up to ten thousand dollars for the thirty days of noncompliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to fail to implement their product stewardship plan will receive penalties of up to ten thousand dollars for each subsequent thirty days of noncompliance.

(3) **Plan/report penalties** apply to producers that fail to submit a product stewardship plan, plan update, or change the plan when required, or fail to submit an annual report.

(a) Producers not submitting the plan, plan update, or annual report will receive a warning letter, or first violation notice, to submit the plan or report within sixty days or incur penalties. The warning letter will include compliance requirements and notification that the requirements must be met within sixty days.

(b) Producers that fail to submit the plan, plan update, or annual report will receive a penalty, or second violation notice, of up to ten thousand dollars for each violation; a violation is one day of noncompliance starting with the first day of notice of noncompliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to fail to submit the plan, plan update, or annual report will receive penalties of up to ten thousand dollars per day issued after each subsequent period of thirty days of noncompliance.

(4) The department will deposit all penalties collected under this section into the mercury-containing lights recycling account created under chapter 70.275 RCW.

(5) To correct a violation the producer must:

(a) Meet the compliance requirements in the warning or penalty letter from the department; and

(b) Pay any penalties due to the department.

(6) Penalties applied to the stewardship organization in WAC 173-910-340 for the same violation will not be applied to producers.

(7) Penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-310 Stewardship organization requirements. (1) ~~((The department contracted))~~ Δ stewardship organization will implement ~~((the))~~ a department-approved ~~((standard))~~ plan ~~((and independent stewardship organizations will implement department-approved independent plans))~~.

(2) Stewardship organizations will: ~~((a))~~ Estimate the total program cost for the coming year, including the department's annual fee for all participating producers;

~~((i))~~ The department's annual fee for each stewardship organization is the sum total of five thousand dollars paid to the department for each producer participating in the stewardship program.

~~((ii))~~ The department's annual fee for the department contracted standard plan will be adjusted by the annual fiscal growth factor calculated under chapter 43.135 RCW.

~~((iii))~~ For implementation of the fiscal growth factor, the base year for all mercury-containing lights department annual fees will be fiscal year 2011 ending June 30, 2011. In the base year, the fiscal growth factor will be zero.

~~((b))~~ Determine the producer share cost based on market share or other equitable formula for program costs for each participating producer, including their share of the department's annual fee;

~~((c))~~ Submit the program cost and producer share cost to the department for review, adjustment, and approval;

~~((d))~~ Invoice each producer for their department approved producer share cost for the product stewardship program; each producer must pay their invoiced amount within sixty days of receipt of the invoice; and

~~((e))~~ Remit to the department the sum total of the department's annual fee from all participating producers; this fee is due on the first of January for each year of implementation.

~~(3)~~ Producers may request department review of their producer share cost assessment:

~~((a))~~ The producer must pay the total invoiced amount to the stewardship organization within sixty days of receipt of the invoice.

~~((b))~~ The producer may submit a written request to the director of the department to review the producer share cost assessment:

~~((i))~~ The request for review must be delivered to the department within fourteen calendar days of the date on the invoice.

~~((ii))~~ The written request must explain why the estimate is unreasonable based on the evidence available to the product stewardship program and the department.

~~((iii))~~ Within thirty calendar days of receipt of the written request in ~~((b))~~(i) of this subsection, the director or the director's designee will review the request.

~~((iv))~~ The director may request a revision of producer share cost assessments if the producer request is determined to be correct:

~~((A))~~ Stewardship organizations must recalculate the producer share cost assessment for each producer to be approved by the department; and

~~((B))~~ Once the recalculated producer share costs are approved by the department, the stewardship organization must send refunds or assess additional charges to plan participants per the revision.

~~((4))~~ (3) Each stewardship organization must recommend to the department an environmental handling charge to be added to the price of each mercury-containing light sold in or into the state of Washington for sale at retail. The environmental handling charge must be designed to provide revenue necessary and sufficient to cover all administrative and operational costs associated with the stewardship program described in the department-approved product stewardship plan for that organization, including the department's annual fee required by subsection (7) of this section, and a prudent reserve. The stewardship organization must consult with collectors, retailers, recyclers, and each of its participating producers in developing its recommended environmental handling charge. The environmental handling charge may, but is not required to, vary by the type of mercury-containing light. In developing its recommended environmental handling charge, the stewardship organization must take into consideration and report to the department:

(a) The anticipated number of mercury-containing lights that will be sold to covered entities in the state at retail during the relevant period;

(b) The number of unwanted mercury-containing lights delivered from covered entities expected to be recycled during the relevant period;

(c) The operational costs of the stewardship organization as described in WAC 173-910-310(11);

(d) The administrative costs of the stewardship organization including the department's annual fee, described in subsection (7) of this section; and

(e) The cost of other stewardship program elements including public outreach.

(4) The department will review, adjust if necessary, and approve the stewardship organization's recommended environmental handling charge within sixty days of submittal. In making its determination, the department shall review the product stewardship plan and may consult with the producers, the stewardship organization, retailers, collectors, recyclers, and other entities.

(5) No sooner than January 1, 2015:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington state retailers for sale at retail, and each Washington state retailer must add the charge to the purchase price of all mercury-containing lights sold at retail in Washington state, and the producer must remit the environmental handling charge to the stewardship organization in the manner provided for in the stewardship plan; or

(b) Each Washington state retailer must add the mercury-containing light environmental handling charge to the purchase price of all mercury-containing lights sold at retail in Washington state, where the retailer, by voluntary binding agreement with the producer, arranges to remit the environmental handling charge to the stewardship organization on behalf of the producer in the manner provided for in the stewardship plan. Producers may not require retailers to opt for this provision via contract, marketing practice, or any other means. The stewardship organization must allow retailers to retain a portion of the environmental handling charge as reimbursement for any costs associated with the collection and remittance of the charge.

(6) At any time, a stewardship organization may submit to the department a recommendation for an adjusted environmental handling charge for the department's review, adjustment, if necessary, and approval under subsection (3) of this section to ensure that there is sufficient revenue to fund the cost of the program, current deficits, or projected needed reserves for the next year. The department must review the stewardship organization's recommended environmental handling charge and must adjust or approve the recommended charge within thirty days of submittal if the department determines that the charge is reasonably designed to meet the criteria described in subsection (1) of this section.

(7) Beginning March 1, 2015, and each year thereafter, each stewardship organization must pay to the department an annual fee equivalent to five thousand dollars for each participating producer to cover the department's administrative and enforcement costs. The amount paid under this section will be deposited into the product stewardship programs account created in RCW 70.275.130.

(8) Stewardship organizations for a plan must begin implementation of the plan no later than January 1st of the calendar year following approval of the plan by the department.

~~((5))~~ (9) Stewardship organizations must implement the approved plan. Updates to the plan will follow the process outlined in WAC 173-910-460.

~~((6))~~ (10) Stewardship organizations, as agents of their participating producers, are required to:

(a) Annually register producers, collectors, transporters, and processing facilities participating in the stewardship plan and report this information to the department.

(i) Registration includes documentation that each producer, collector, transporter, and processing facility is meeting the requirements of this chapter.

(ii) Provide regular updates to the department for producers, collectors, transporters, and processing facilities participating in the plan.

(b) Submit a product stewardship plan and required plan updates to the department as required in WAC 173-910-440.

(c) Annually report to the department as required in WAC 173-910-430.

(d) Monitor the compliance of all parties participating in the stewardship plan and report compliance issues to the department.

(e) Finance all administrative and operational costs associated with their program, including collection, transport, and processing of mercury-containing lights and the department's annual fee for all participating producers.

(f) Finance the costs of transporting and processing mercury-containing lights from accumulation points for curbside and mail-back collection programs.

~~((7))~~ In the event that there is more than one approved product stewardship plan, each stewardship organization operating a department-approved product stewardship plan must recover their share of mercury-containing lights based on the combined market share of all producers participating in the stewardship organization's approved plan.

~~(8)~~ The department will determine market share for stewardship organizations in the event that there is more than one approved product stewardship plan.

~~(9))~~ (11) A stewardship organization operating a product stewardship program must pay all administrative and operational costs associated with its program with revenues received from the environmental handling charge described in WAC 173-910-310(3). The stewardship organization's administrative and operational costs are not required to include a collection location's cost of receiving, accumulating and storing, and packaging mercury-containing lights. However, a stewardship organization may offer incentives or payments to collectors. The stewardship organization's administrative and operational costs do not include the collection costs associated with curbside and mail-back collection programs.

(12) Stewardship organizations must collaborate with state government, local governments, electric utilities, retailers, collectors, transporters, processing facilities, and citizens in the development and implementation of public education, outreach, and marketing efforts. Education and outreach efforts include, but are not limited to:

(a) Development of a program web site and social media services;

~~((Providing point of sale educational materials, like posters and brochures; and))~~ Product stewardship programs must promote the safe handling and recycling of mercury-containing lights to the public, including producing and offering point of sale educational materials, like posters and brochures, to retailers of mercury-containing lights and point of return educational materials to collection locations.

(c) Publishing media releases in print, radio, and television.

~~((10))~~ (13) All mercury-containing lights collected by a product stewardship program or other collection programs must be recycled.

~~((11))~~ (14) If the department determines a stewardship organization is out of compliance with the requirements of the plan, the department will document each violation and follow the procedures in WAC 173-910-330 and 173-910-340.

~~((12))~~ (15) Stewardship organizations submitting information to the department may request confidential treatment under RCW 43.21A.160.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-320 Stewardship collection system. (1) Stewardship organizations must work with the department, local government officials, retailers, electric utilities, and citizens to establish a convenient collection system for covered entities to deliver their mercury-containing lights into the program.

(a) Product stewardship programs must collect unwanted mercury-containing lights delivered from covered entities for recycling, processing, or final disposition, and not charge a fee when lights are dropped off or delivered into the program.

(b) The stewardship organization must arrange for collection service at locations described in subsection (2) of this section, which may include household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable private locations. No such entity is required to provide collection services at their location. For curbside and mail-back programs, a stewardship organization must pay the costs of transporting mercury-containing lights from accumulation points and for processing mercury-containing lights collected by curbside and mail-back programs.

(c) For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable private locations, a stewardship organization must pay the costs of packaging and shipping materials as required under WAC 173-910-520(7), or must compensate collectors for the costs of those materials, and must pay the costs of transportation and processing of mercury-containing lights collected from the collection locations.

(2) Convenient collection service will:

(a) County: Provide collection services for mercury-containing lights for each county of the state;

(b) City: Provide additional collection services in each city or town with a population greater than ten thousand; and

(c) Rural: Consult with rural counties that do not have logical in-county collection sites to provide convenient alternative arrangements.

(3) This system may provide collection through:

(a) The nearest commercial centers, solid waste sites, retail businesses, household hazardous waste, or other facilities;

(b) Collection events;

(c) Curbside collection, a premium service;

(d) Mail-back service, a premium service; or

(e) A combination of these options.

(4) Stewardship organizations must register collectors and provide updated collector information to the department, including:

(a) Contact information, including site name, operator name, physical address, telephone number, and hours of operation;

(b) Identify prospective collection sites not approved to participate in the program. Provide copies to the department of all written correspondence related to prospective collection sites that were not approved. Notify the department, within five days of denial of a prospective collection site, including the reason for denial.

(5) Each collection site or service must accept up to ~~((fifteen))~~ ten mercury-containing lights on any given day from covered entities at no charge, except for premium services, when lights are dropped off or delivered. Only premium services, such as curbside collection, can accept up to fifteen mercury-containing lights on any given day from covered entities.

(6) Each collection site or service must:

(a) Comply with WAC 173-303-573 as small quantity handlers of universal waste for lamps;

(b) Collect and store mercury-containing lights in a structurally sound container that, when sealed, is designed to prevent the escape of mercury into the environment by volatilization or any other means;

(c) Have a spill and release response plan that describes the materials, equipment, and procedures that will be used to respond to any mercury release from a mercury-containing light; and

(d) Have a worker safety plan that describes the handling of the mercury-containing lights at the collection location and the measures that will be taken to protect worker health and safety.

(7) All mercury-containing lights collected by a product stewardship program must be recycled.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-410 Product stewardship plans. (1) ~~((Stewardship organizations must submit the proposed product stewardship plan to the department by January 1st of the year prior to the planned calendar year when the plan will be implemented.))~~ On June 1st of the year prior to initial implementation, each producer must ensure that a stewardship organization submits a proposed product stewardship plan on the producer's behalf to the department for approval. Plans approved by the department must be implemented by January 1st of the following calendar year. See WAC 173-910-420 for plan content.

(2) Product stewardship plans must provide a program for the collection, transportation, and processing of mercury-containing lights from covered entities in Washington state.

(3) The product stewardship plan must meet the content requirements of WAC 173-910-420.

(4) Prior to implementation, the plan must be approved by the department.

(5) Stewardship organizations must be authorized to submit and implement the plan for each participating producer.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-420 Plan content. Product stewardship plans must contain the following information:

(1) **Overall plan requirements:** The plan must include:

(a) Names and contact information for all participating producers, including names of brands or brand labels used by specific producers;

(b) The number of mercury-containing lights sold annually in or into the state by producers participating in the plan;

(c) The types of mercury-containing lights that the program will accept; and

(d) Details on the management and organization of the stewardship organization.

(2) **Description of the financing system:** The plan must include a description of how the program will be funded by the producers and how compensation is paid to collectors, transporters, and processing facilities for all services provided to a plan and that payments to service providers will be made within an appropriate period of time from date of shipment or other time frame defined in contractual arrangements. Stewardship organizations will:

(a) Provide confirmation that revenues and expenditures applicable to this program will be allocated in accordance with generally accepted accounting principles (GAAP).

(b) Commit to providing an annual financial audit of the stewardship organization conducted by an independent certified public accountant.

(3) **Use of Washington state businesses:** The plan must explain how it seeks to use businesses within the state, including utilities, retailers, charities, household hazardous waste facilities, processing facilities, recycling facilities, and collection and transportation services for implementation of the plan including existing curbside collection services and existing mail-back services for implementation of the plan.

(4) **Plan goals:** The plan will provide goals for the collection of mercury-containing lights for five years of operation, including:

(a) Total number of mercury-containing lights sold in or into the state;

(b) An estimate of the amount of mercury-containing lights available for collection from covered entities; and

(c) Annual program goals for collection of mercury-containing lights from covered entities for the next five years.

(5) **Collectors:** The plan must include the following information about collectors participating in the plan:

(a) The type of collection services in the plan, including curbside collection activities, household hazardous waste facilities, drop-off locations, collection events, and accumulation points for curbside or mail-back collection;

(b) Registration information for collectors participating in the plan as required in WAC 173-910-520(1), including accumulation points used for curbside or mail-back collection;

(c) A written statement from each collector ensuring that the collector will comply with the requirements in WAC 173-910-520;

(d) A statement that collection sites will be:

(i) Staffed during operating hours; and

(ii) Open during regularly scheduled hours and on an ongoing basis.

(e) A description of the consideration given to existing residential curbside collection infrastructure and mail-back systems as appropriate collection mechanisms;

(f) A statement identifying how quickly collection containers will be provided once containers reach capacity;

(g) A description of the communication and outreach process to answer questions, provide supplies, or provide technical assistance to collectors;

(h) A description of the technical assistance to be provided to collection sites, including written instructions on how to participate in the program and how to appropriately handle and store mercury-containing lights;

(i) A description of the packaging and shipping materials that will be used when collecting, accumulating, storing, and transporting mercury-containing lights to minimize the release of mercury into the environment and to minimize breakage; and

(j) Drafts of spill and release response plan and worker safety plan required in WAC 173-910-520.

(6) **Transporters:** The plan must include information about transporters participating in the plan, including:

(a) Registration information for transporters participating in the plan, including names, addresses, and contact information.

(b) A written statement from each transporter ensuring that the transporter will comply with the requirements in WAC 173-910-530.

(7) **Processing facilities:** The plan must include information about processing facilities participating in the plan, including:

(a) Registration information for processors participating in the plan, including names, addresses, contact information and hours of operation;

(b) A description of the methods used to process mercury-containing lights at each processing facility in the program; and

(c) Compliance audit reports for each processing facility participating in the plan completed by a qualified third party. The compliance audit will research, review, and report on the following:

(i) Compliance with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing of mercury-containing lights, components, parts, and materials and disposal of residuals. These include, but are not limited to, applicable legal requirements relating to:

(A) Waste and recyclables processing, storage, handling, and shipping;

(B) Air emissions and waste water discharge, including storm water discharges;

(C) Worker health and safety; and

(D) Transboundary movement of mercury-containing lights, components, materials, waste, or scrap for reuse, recycling, or disposal.

(ii) Information on financial penalties, regulatory orders, or violations the processing facility received in the previous three years; and

(iii) Any other information requested by the department.

(8) **Recordkeeping:** The plan must include procedures for how the stewardship organization will collect and maintain records to meet and demonstrate compliance with the recordkeeping requirements of this chapter. At a minimum, the stewardship organization will track the following information:

(a) Total number of mercury-containing lights sold in or into Washington state for all producers participating in the plan.

(b) The types of mercury-containing lights collected by the program.

(c) List of all collection sites and collection services, including curbside and mail back.

(d) Identification of transporters and processing facilities participating in the plan.

(e) Mercury-containing lights collected, transported, and processed for the plan, including:

(i) Total mercury-containing lights, by weight in pounds, collected from individual collection sites, collection services, curbside and mail back.

(ii) Final destination and quantities of lights processed and disposed.

(f) Education efforts for consumers, retailers, utilities, collectors, transporters, and processors, including assessments of the effectiveness of these efforts.

(g) Efforts to promote the mercury-containing lights collection program.

(9) **Implementation timeline:** The plan must include a timeline showing when each of the following will occur and a detailed description of each activity including, but not limited to:

(a) Start-up of the collection and processing efforts;

(b) Education efforts for consumers, retailers, collectors, transporters, and processors;

(c) Outreach efforts for the mercury-containing lights collection program; and

(d) Continual progress toward collection of spent mercury-containing lights.

(10) **Education, public outreach, and marketing:** A description of how the plan will meet the public education, outreach and marketing requirements, including:

(a) A description of how the public will be informed about the product stewardship program, including how consumers will be provided with information describing collection opportunities for unwanted mercury-containing lights from covered entities and safe handling of mercury-containing lights, waste prevention, and recycling. The description must also include information to make consumers aware that an environmental handling charge has been added to the purchase price of mercury-containing lights sold at retail to fund the mercury-containing light stewardship programs in the state. The environmental handling charge may not be

described as a department recycling fee or charge at the point of retail sale;

(b) How it will provide information about where and how to deliver their mercury-containing lights to a product stewardship program collector at the end of the product's life;

~~((b))~~ (c) Providing a web site and toll-free number that gives information about the product stewardship program in sufficient detail regarding how and where to drop off mercury-containing lights into the product stewardship program, and collaborating with the department to provide information necessary to keep the 1-800-RECYCLE online data base up to date;

~~((c))~~ (d) Describing the outreach method or methods used;

~~((d))~~ (e) How it will ensure outreach to the public throughout the state;

~~((e))~~ (f) How it will provide outreach materials for educating the public to all collectors used by the plan;

~~((f))~~ (g) Explaining how the plan will coordinate education, public outreach, and marketing with other approved product stewardship plans;

~~((g))~~ (h) Explaining how the plan will coordinate on education, public outreach, and marketing with retailers, distributors, wholesalers, and electric utilities; and

~~((h))~~ (i) Explain the public review process implemented by the stewardship organization, the public comments received by the stewardship organization, and how the stewardship organization addressed those comments.

(11) **Other information** deemed necessary by the department to determine compliance with this chapter.

(12) Producers submitting information to the department may request confidential treatment under RCW 43.21A.160.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-430 Annual reports. ~~((On June 1st of each program year each stewardship organization must file an annual report with the department for the preceding calendar year's program. The department will review the report and notify the stewardship organization of any deficiencies that need to be addressed. The annual report must include the following information:))~~ (1) By June 1, 2016, and each June 1st thereafter, each stewardship organization must submit an annual report to the department describing the results of implementing the stewardship organization's plan for the prior calendar year, including an independent financial audit. The department may adopt rules for reporting requirements. Financial information included in the annual report must include, but is not limited to:

(a) The amount of the environmental handling charge assessed on mercury-containing lights and the revenue generated;

(b) Identification of confidential information pursuant to RCW 43.21A.160 submitted in the annual report; and

(c) The cost of the mercury-containing lights product stewardship program, including line item costs for:

(i) Program operations;

(ii) Communications, including media, printing and fulfillment, public relations, and other education and outreach projects;

(iii) Administration, including administrative personnel costs, travel, compliance and auditing, legal services, banking services, insurance, and other administrative services and supplies, and stewardship organization corporate expenses; and

(iv) Amount of unallocated reserve funds.

(2) Beginning in 2023 every stewardship organization must include in its annual report an analysis of the percent of total sales of lights sold at retail to covered entities in Washington that mercury-containing lights constitute, the estimated number of mercury-containing lights in use by covered entities in the state, and the projected number of unwanted mercury-containing lights to be recycled in future years.

(3) All plans and reports submitted to the department must be made available for public review, excluding sections determined to be confidential pursuant to RCW 43.21A.160, on the department's web site and at the department's headquarters.

(4) Contact information: Identify the stewardship organization and the producers participating in the program, including any updated contact information. The list of producer brands sold in or into the state. The total number of mercury-containing lights sold in or into the state by participating producers in the previous year.

~~((2))~~ **(5) Executive summary:** Provide a description of the mercury-containing lights collection and recycling efforts during the reporting period. Include anticipated steps, if needed, to improve performance and a description of challenges encountered during the reporting period and how they will be addressed.

~~((3))~~ **(6) Program description:** Summarize the mercury-containing lights product stewardship program, providing details on the collection, transport, and recycling of mercury-containing lights.

~~((4))~~ **(7) Program goals:** State the goals from the plan, the baseline from which goals were measured, and report on achievement during the reporting period, including:

(a) Describe any adjustments to goals stated in the approved stewardship plan for the upcoming reporting period and accompanying rationale for those changes.

(b) Describe how the program met its goal for the collection of unwanted mercury-containing lights and, if not, what changes have been made or will be made in the next year to meet its goal.

(c) Identify the total mercury-containing lights, by weight in pounds, collected for the preceding program year including documentation verifying collection and processing of that material, including mercury-containing lights collected, reported by county.

~~((5))~~ **(8) Collection system:** Names, locations, contact information for collection sites and services operating in the state in the prior program year and the parties who operated them:

(a) In each county;

(b) For each city with a population greater than ten thousand;

(c) For collection events, curbside collection, or mail-back services; and

(d) Total mercury-containing lights, by weight in pounds, received from each collector.

~~((6))~~ **(9) Processing facility information:** Identify all processing facilities used, including the name, address, and contact information by providing the following:

(a) Total program mercury-containing lights, by weight in pounds, received by each processing facility;

(b) A description of the methods used by each processing facility to process the mercury-containing lights;

(c) Compliance audit reports for each processing facility participating in the plan completed by a qualified third party. The compliance audit will research, review, and report on the following:

(i) Compliance with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing of mercury-containing lights, components, parts, and materials and disposal of residuals. These include, but are not limited to, applicable legal requirements relating to:

(A) Waste and recyclables processing, storage, handling, and shipping;

(B) Air emissions and waste water discharge, including storm water discharges;

(C) Worker health and safety; and

(D) Transboundary movement of mercury-containing lights, components, materials, waste, or scrap for reuse, recycling, or disposal.

(ii) Information on financial penalties, regulatory orders, or violations the processing facility received in the previous three years; and

(iii) Any other information requested by the department.

~~((7))~~ **(10) Education and outreach:** Efforts that were undertaken by the stewardship organization regarding how and where to drop off mercury-containing lights into the product stewardship program. Include an assessment of the effectiveness of these efforts and changes to be implemented in the next year.

~~((8))~~ **(11) Financial report:** Financial audit reports for the stewardship organization completed by a qualified third party.

~~((9))~~ **(12) Other information** deemed necessary by the department to determine compliance with this chapter.

~~((10))~~ **(13) Stewardship organizations** submitting information to the department may request confidential treatment under RCW 43.21A.160.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-440 Plan and annual report submittal.

(1) Plans must include the plan content requirements in WAC 173-910-420.

(a) New product stewardship plans must be submitted by ~~(January)~~ June 1st for implementation in the following calendar year.

(b) The first update of an approved product stewardship plan is required two years after approval and implementation, by July 1st of the second year of implementation.

(c) Second and subsequent updates of an approved product stewardship plan are required every four years, by July 1st of each subsequent third year of implementation.

(d) The department will post product stewardship plans and updates on the department's web site for public review. The department will provide public review comments to the stewardship organization.

(2) Annual reports must include the content requirements in WAC 173-910-430.

(a) Annual reports must be submitted by June 1st for the prior calendar year.

(b) The department may request additional information or clarification during the review of annual reports. If the department determines that additional information is needed, the stewardship organization must submit the additional information to the department within sixty days of receipt of the notice.

(c) The department will post annual reports on the department's web site for public review.

(3) Stewardship organizations must submit one electronic copy of their plan, update, or report to the department. The plan, update, or annual report must be submitted to the Waste 2 Resources Program at the department's headquarters office.

(4) Stewardship organizations submitting information to the department may request confidential treatment under RCW 43.21A.160.

(5) The department may request a hard copy version of the plan or report.

Table 400
Plan and Report Submittal Timeline

Entity	Plan	Plan Update	Annual Report
<i>Timing</i>	<i>For the following calendar year</i>		<i>For the prior calendar year</i>
Stewardship organization submits document	((January) June 1st	July 1st	June 1st
Department initial review	90 days	90 days	60 days
Stewardship organization document revision	60 days	60 days	60 days
Department second review	60 days	60 days	60 days
Stewardship organization resubmits document	60 days	60 days	60 days
Until approved, document review timing follows the second review schedule			

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-520 Collector requirements. (1) Collectors participating in a product stewardship program

including, but not limited to, collection sites, curbside services, mail-back services, accumulation points, and collection events, must register with the stewardship organization. Collector registration information must include:

(a) The legal name of the person owning and operating the collection location;

(b) The address of the collection location;

(c) The phone number of the collection location;

(d) The name, address, and phone number of the individual responsible for operating the collection location; and

(e) Updates of any changes in this information within thirty days of the change.

(2) Mercury-containing lights collected for a plan must be collected free of charge except for premium services.

(3) Mercury-containing lights premium services provide collection and transport of mercury-containing lights from point of collection to product stewardship program accumulation points. For premium services participating in the product stewardship program, the stewardship organization must pay the cost of transporting mercury-containing lights from accumulation points to the processing facility and the cost of processing the mercury-containing lights. Premium services include, but are not limited to:

(a) Curbside collection of mercury-containing lights, which may include additional fees to cover the costs not paid by the product stewardship program.

(b) Mail-back collection of mercury-containing lights, which may include additional fees to cover the costs not paid by the product stewardship program.

(4) Collectors participating in a product stewardship program may include collection events that:

(a) Service rural communities that do not have a continually staffed collection site;

(b) Are registered with the stewardship organization; and

(c) Meet the requirements of this section.

(5) Collectors of mercury-containing lights will not process the collected lights unless they also meet the processing facility requirements in WAC 173-910-540.

(6) Collectors must comply with WAC 173-303-573 as small quantity handlers of universal waste as well as all other applicable laws, rules, and local ordinances.

(7) When providing collection services for a plan, each collector, including collection sites, curbside collection, mail-back service, accumulation points, and collection events must:

(a) Staff the site during operating hours;

(b) Notify the stewardship organization of changes in hours and days of operation;

(c) Handle mercury-containing lights in a way that prevents releases of mercury to the environment;

(d) Have a spill and release response plan that describes the materials, equipment, and procedures that will be used to respond to any mercury release from a mercury-containing light;

(e) Have a worker safety plan that describes the handling of the mercury-containing lights at the collection location and the measures that will be taken to protect worker health and safety;

(f) Use packaging and shipping material that will minimize the release of mercury into the environment by volatil-

ization or any other means and minimize breakage~~((§))~~ and use mercury vapor barrier packaging as defined in RCW 70.275.020(10) if mercury lights are transported by the United States Postal Service or a common carrier; and

(g) Submit all mercury-containing lights collected from covered entities to a department-approved product stewardship program.

(8) A collector must allow the department access for inspections to determine compliance with the requirements in this chapter.

(9) No entity may claim to be collecting mercury-containing lights for a plan unless the entity is registered with the stewardship organization as a collector and submits all collected mercury-containing lights to the transporters and processors identified in the plan.

(10) Any collector found to be out of compliance with this section or the requirements of the plan will not be allowed to participate in the program.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

WAC 173-910-610 Participation requirements. (1)

Retailers, wholesalers, distributors, electric utilities, or other persons that give away, offer for sale, or sell, including internet sales, mercury-containing lights in or into the state for ~~((residential use))~~ sale at retail must comply with the requirements of this section.

(2) Beginning January 1, 2013, mercury-containing lights offered for sale or distributed in or into the state for ~~((residential use))~~ sale at retail must be obtained from producers participating in a product stewardship plan approved by the department.

(a) The department will maintain a list of compliant producers on its web site.

(b) Retailers, wholesalers, distributors, or electric utilities are required to regularly check this list of compliant producers to ensure sales and distribution of compliant product.

(3) Retailers, wholesalers, distributors, or electric utilities must only sell or offer for sale or distribute mercury-containing lights from compliant producers. Existing stock of mercury-containing lights in possession on January 1, 2013, may be sold or distributed even if the producer of the mercury-containing light is not in compliance.

(4) No sooner than January 1, 2015:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington state retailers for sale at retail, and each Washington state retailer must add the charge to the purchase price of all mercury-containing lights sold at retail in this state, and the producer must remit the environmental handling charge to the stewardship organization in the manner provided for in the stewardship plan; or

(b) Each Washington state retailer must add the mercury-containing light environmental handling charge to the purchase price of all mercury-containing lights sold at retail in this state, where the retailer, by voluntary binding agreement with the producer, arranges to remit the environmental handling charge to the stewardship organization on behalf of the producer in the manner provided for in the stewardship plan.

Producers may not require retailers to opt for this provision via contract, marketing practice, or any other means. The stewardship organization must allow retailers to retain a portion of the environmental handling charge as reimbursement for any costs associated with the collection and remittance of this charge.

(5) After January 1, 2013, the department may inspect mercury-containing lights inventory offered for sale or distributed in or into Washington state to determine if the requirements in this chapter are met.

~~((§))~~ (6) Education and outreach: Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale at retail or distribute mercury-containing lights at retail must work with stewardship organizations to:

(a) Ensure distribution of mercury-containing lights in or into Washington state is from producers participating in the product stewardship program; and

(b) Provide information to consumers and customers describing where and how to return mercury-containing lights to the product stewardship program and opportunities and locations for the convenient collection or return of the products at the point of sale. This outreach may include:

(i) Use of artwork in advertisements such as on flyers, shelf-tags, or brochures for this program.

(ii) The stewardship organization's toll-free telephone number and web site.

(iii) Information about how to return mercury-containing lights to the product stewardship program in Washington state either in, on, or with the packaging.

(c) Provide information in a visible location on their web site.