

**WSR 20-05-079**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Aging and Long-Term Support Administration)  
[Filed February 18, 2020, 1:10 p.m.]

Supplemental Notice to WSR 19-11-062.

Preproposal statement of inquiry was filed as WSR 18-05-022.

Title of Rule and Other Identifying Information: Chapter 388-112A WAC, Residential long-term care services training. This chapter provides training and certification requirements for long-term care workers in residential settings, along with instructor and curricula standards.

Hearing Location(s): On April 7, 2020, at 10:00 a.m., at Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>.

Date of Intended Adoption: Not earlier than April 8, 2020.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., April 7, 2020.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by March 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is planning to amend chapter 388-112A WAC, Residential long-term care services training. The proposed rules include the following changes:

- WAC 388-112A-0010 contains technical corrections, and adds definitions for special needs and renewal period;
- WAC 388-112A-0050, 388-112A-0060, 388-112A-0070, and 388-112A-0090 contain technical corrections on identifying qualifying credential[s] for exemption;
- WAC 388-112A-0125 is a new section added to clarify employment and training records that caregivers should provide and employers review prior to hire;
- WAC 388-112A-0490 and 388-112A-0495 correct language to be consistent with statutory requirements in RCW 70.128.230 and 18.20.270;
- WAC 388-112A-0590 clarifies when training may be applied to the seventy-hour long term care worker basic training;
- WAC 388-112A-0600 renumbers provisions for clarity;
- WAC 388-112A-0610 and new WAC 388-112A-0611 and 388-112A-0612 clarify continuing education requirements, who needs to complete it each year, how many hours are required, and corresponding deadlines including for caregivers hires who return after a break in service. For the adult family subsection, the rule also clarifies continuing education requirement for safe food handling to match the requirement under RCW 70.128.250;

- WAC 388-112A-1020 clarifies training curriculum approval and online requirements; and
- WAC 388-112A-1240, 388-112A-1270, and 388-112A-1285 contain technical corrections to clarify instructor qualifications.

Due to significant feedback from stakeholders after the first supplemental CR-102 hearing, the department reengaged with stakeholders over several weeks to address concerns. The resulting mutually-agreed language further clarifies rules particularly around the subject of continuing education. Language to the proposed changes are sufficient to warrant a second supplemental CR-102 request.

Reasons Supporting Proposal: These changes are necessary to clarify caregiver training and certification requirements, and training program requirements.

Statutory Authority for Adoption: RCW 74.39A.009, 74.39A.070, 74.39A.074, 74.39A.341, 18.20.270, 18.88B.-021, 18.88B.035, 70.128.230, 71A.12.030, 70.97.080.

Statute Being Implemented: RCW 74.39A.074, 18.88B.-021.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: David Chappell, 4450 10th Avenue S.E., Lacey, WA 98503, 360-725-2516; and Enforcement: Adora Brouillard, 4450 10th Avenue S.E., Lacey, WA 98503, 360-725-2538.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5310, phone 360-725-2495, fax 360-725-2646, TTY 1-800-833-6388, email [suliva@dshs.wa.gov](mailto:suliva@dshs.wa.gov).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These proposed rules impact adult family homes, assisted living facilities, enhanced services facilities, and community instructor training programs. These businesses fall under the following North American Industry Classification System designations:

- Residential mental health facilities - NACIS code 6232;
- Residential developmental disabilities homes - NACIS codes 62321, 623210;
- Other residential care facilities - NACIS codes 6239, 62399, 623990;
- Continuing care, assisted living facilities - NAICS code 6233, 62331, 623311, 623312;
- Technical and trade schools - NAICS code 61151.

The department of social and health services' aging and long-term support administration has analyzed the proposed rule amendments and has determined that the listed small businesses may be impacted by these changes. However, the department estimates that the costs are "minor" as that term is defined in RCW 19.85.030.

February 13, 2020

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-0010 What definitions apply to this chapter?** The following definitions apply to this chapter:

(1) **"Activities of daily living"** means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, medication assistance, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) **"Adult family home training network"** means a nonprofit organization established by the exclusive bargaining representative of adult family homes designated under RCW 41.56.026 with the capacity to provide training, workforce development, and other services to adult family homes.

(3) **"Applicant"** means:

(a) An individual who is applying for an adult family home license;

(b) An individual with an ownership interest in a partnership, corporation, or other entity that is applying for an adult family home license; or

(c) An individual who is applying for an enhanced services facility license.

~~((3))~~ (4) **"Capable caregiving training"** ~~((is the name of))~~ means the DSHS developed training curricula in dementia and mental health that will be available in three class levels. The level one series of the class in both dementia and mental health meets the requirements ~~((provided in))~~ under RCW 18.20.270 and 70.128.230 for specialty training. The level two and level three capable caregiving classes, when developed, in both topics may be completed for continuing education credits.

~~((4))~~ (5) **"Care team"** includes the resident and everyone involved in ~~((his or her))~~ their care. The care team may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the resident's well-being. However, the resident directs the service plan when able.

~~((5))~~ (6) **"Challenge test"** means a competency test taken for specialty training without first taking the class for which the test is designed.

~~((6))~~ (7) **"Competency"** ~~((defines))~~ means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

~~((7))~~ (8) **"Competency testing"** including challenge testing, evaluates a student to determine if they can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course.

~~((8))~~ (9) **"Core basic training"** is the portion of the seventy-hour long-term care worker basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and

safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.

~~((9))~~ (10) **"Date of hire"** for determining timeframes related to training and certification, means the day an individual was first hired as a long-term care worker as determined by the department according to WAC 388-112A-0115.

~~((10))~~ (11) **"DDA"** means the developmental disabilities administration.

~~((11))~~ (12) **"Designee"** means a person in an assisted living facility or enhanced services facility who supervises long-term care workers and is designated by an assisted living facility administrator or enhanced services facility administrator to take the trainings in this chapter required of the facility administrator. An assisted living facility or enhanced services facility administrator may have more than one designee.

~~((12))~~ (13) **"Direct care worker"** means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes direct care workers).

~~((13))~~ (14) **"Direct supervision"** means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or has been exempted from the basic training requirements, and is on the premises and quickly available to the caregiver.

~~((14))~~ (15) **"DSHS"** or **"department"** ~~((refers to))~~ means the department of social and health services.

~~((15))~~ (16) **"Enhancement"** means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course content and skills. Enhancements may include new student materials, videos or DVDs, online materials, and additional student activities.

~~((16))~~ (17) **"Entity representative"** means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

~~((17))~~ (18) **"Guardian"** means an individual as defined in chapter 11.88 RCW.

~~((18))~~ (19) **"Home"** ~~((refers to))~~ means adult family homes, enhanced services facilities, and assisted living facilities.

~~((19))~~ (20) **"Home care aide certified"** or **"home care aide"** means a person who obtained and maintains a home care aide certification through the department of health.

~~((20))~~ (21) **"Indirect supervision"** means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or was exempted from basic training requirements, and who is quickly and easily available to the long-term care worker, but not necessarily on-site.

~~((21))~~ (22) **"Learning objectives"** ~~((are))~~ means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

~~((22))~~ (23) **"Long-term care worker"** ~~((includes))~~ means:

(a) All persons who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) Long-term care workers do not include:

(i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or

(ii) Persons who are not paid by the state, by a private agency, or facility licensed by the state to provide personal care services.

~~((23))~~ (24) **"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living, which is provided to meet the resident's care needs.

~~((24))~~ (25) **"Provider"** means any person or entity licensed by the department to operate an adult family home, enhanced services facility, or assisted living facility, or any person or entity certified by the department to provide instruction and support services to meet the needs of persons receiving services under Title 71A RCW.

~~((25))~~ (26) **"Renewal period"** means the certification renewal period as defined in WAC 246.12.010.

(27) **"Resident"** means a person residing and receiving long-term care services at an assisted living facility, enhanced services facility, or adult family home. As applicable, "resident" also means the resident's legal guardian or other surrogate decision maker.

~~((26))~~ (28) **"Resident manager"** means a person employed or designated by the provider to manage the adult family home who meets the requirements in WAC 388-76-10000 and this chapter.

~~((27))~~ (29) **"Routine interaction"** means regular contact with residents.

~~((28))~~ (30) **"Seventy-hour long-term care worker basic training"** means the seventy-hours of required training that a new long-term care worker must complete within one hundred and twenty days of hire. It has three components: Core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.

~~((29))~~ (31) **"Special needs"** means a resident has dementia consistent with WAC 388-78A-2510 for assisted living or WAC 388-76-10000 for adult family homes; mental illness consistent with WAC 388-78A-2500 for assisted living or WAC 388-76-10000 for adult family homes; or developmental disabilities consistent with WAC 388-78A-2490

for assisted living or WAC 388-76-10000 for adult family homes.

(32) **"Specialty training"** ~~((refers to))~~ means curricula that meets the requirements of RCW 18.20.270 and 70.128-230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

~~((30))~~ (33) **"Training entity"** means an organization, including an independent contractor, who provides or may provide training under this chapter using approved curriculum.

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-0050 What are the training and certification requirements for volunteers and long-term care workers in adult family homes, adult family home providers, and adult family home applicants?** (1) The following chart provides a summary of the training and certification requirements for ~~((volunteers and))~~ a volunteer, a long-term care ~~((workers in adult family homes))~~ worker and an adult family home ~~((provider))~~ provider in an adult family home:

Who	Status	Facility Orientation	Safety/ orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	(( <del>Certification as a home care aide (HCA))</del> ) <u>Required credential</u>
(a) Adult family home resident manager, or long-term care worker in adult family home.	(i) An ARNP, RN, LPN, NA-C, <u>HCA</u> , NA-C student or other professionals listed in WAC 388-112A-0090.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Required per WAC 388-112A-0400.	Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC.  Required twelve hours per WAC 388-112A-0610 for NA-Cs, <u>HCAs</u> and other professionals listed in WAC 388-112A-0090, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.	(( <del>Not required</del> )) <u>Must maintain in good standing the certification or credential or other professional role listed in WAC 388-112A-0090.</u>
	(ii) A long-term care worker employed on January 6, 2012, or was previously employed sometime between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on the date of <del>(his or her)</del> hire. WAC 388-112A-0090.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Required per WAC 388-112A-0400.	Required twelve hours per WAC 388-112A-0610.	Not required.

Who	Status	Facility Orientation	Safety/ orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	<del>((Certification as a home care aide (HCA)))</del> Required credential
	(iii) Employed in an adult family home and does not meet the criteria in subsection (1)(a) or (b) of this section. Meets definition of long-term care worker in WAC 388-112A-0010.	Not required.	Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112-0400.	Required. Twelve hours per WAC 388-112A-0610.	<u>Home care aide certification</u> required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065).
(b) Adult family home provider <u>or entity representative</u> .	A person who has an adult family home license and does not meet the criteria in subsection (1)(a)(i), (ii), or (iii) of this section. This requirement applies to an entity representative of a licensed entity. WAC <del>((388-76-1000))</del> <u>388-76-10000</u> .	Not required.	Completed prior to licensing.	Completed prior to licensing.	Completed prior to licensing.	Required. Twelve hours per WAC 388-112A-0610.	<u>Home care aide certification</u> completed prior to licensing.
(c) Volunteer staff in adult family home.	An unpaid person.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Not required.	Not required.	Not required.

(2) The following chart provides a summary of the training and certification requirements for an adult family home ((~~applicants~~) applicant prior to licensure and an adult family home entity representative and resident ((~~managers~~) manager prior to assuming the duties of the position:

Who	Status	Orientation and safety training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	<del>((Certification as a home care aide (HCA)))</del> <u>Required credential</u>
(a) Adult family home applicant.	(i) An RN, LPN, ARNP, NA-C, <u>HCA</u> , NA-C student and other professionals as listed in WAC 388-112A-0090.	Not required.	Not required.	Required per WAC 388-112A-0400.	Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC.  Required twelve hours per WAC 388-112A-0610 for NA-Cs, <u>HCA</u> s and other professionals listed in WAC 388-112A-0090, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. <del>((The CE is not required during application process.))</del>	<del>((Not required))</del> <u>Must maintain in good standing the certification or credential or other professional role listed in WAC 388-112A-0090.</u>
	(ii) A long-term care worker employed on January 6, 2012, or was previously employed sometime between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on the date of <del>((his or her))</del> hire, WAC 388-112A-0090.	Not required.	Not required.	Required per WAC 388-112A-0400.	Required twelve hours per WAC 388-112A-0610. <del>((The CE is not required during application process.))</del>	Not required.

Who	Status	Orientation and safety training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	<del>((Certification as a home care aide (HCA)))</del> <u>Required credential</u>
	(iii) Seeking a license to operate an adult family home and is not exempt under subsection (2)(a)(i) or (ii) of this section. WAC 388-112A-0030.	Required. Five hours per WAC 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112A-0400.	Required twelve hours per WAC 388-112A-0610. <del>((The CE is not required during application process.))</del>	<u>Home care aide certification</u> required per WAC 388-112A-0105.
(b) Adult family home <u>entity representative and resident manager.</u>	Employed or designated by the provider to manage an adult family home and is not exempt under subsection (2)(a)(i) or (ii) of this section. WAC 388-112A-0030.	Required. Five hours per WAC 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112A-0400.	Required. Twelve hours per WAC 388-112A-0610.	<u>Home care aid certification</u> required per WAC 388-112A-0105.

(3) The remainder of this chapter describes the training and certification requirements in more detail.

(4) The following training requirements are not listed in the charts in subsections (1) and (2) of this section but are required under this chapter:

- (a) First aid and CPR under WAC 388-112A-0720;
- (b) Nurse delegation under WAC 388-112A-0500 and 388-112A-0560; and
- (c) Adult family home (AFH) administrator training under WAC 388-112A-0810.

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-0060 What are the training and certification requirements for volunteers and long-term care workers in assisted living facilities and assisted living facility administrators?** (1) The following chart provides a summary of the training and certification requirements for ~~((volunteers))~~ a volunteer, an administrator or designee, and a long-term care ~~((workers))~~ worker in an assisted living ~~((facilities and assisted living administrators or administrator designees))~~ facility:

Who	Status	Facility orientation	Safety/orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	<del>((Certification as a home care aide (HCA)))</del> <u>Required credential</u>
(a) Long-term care worker in assisted living facility.	(i) An ARNP, RN, LPN, NA-C, <u>HCA</u> , NA-C student or other professionals listed in WAC 388-112A-0090.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Required per WAC 388-112A-0400.	Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC.  Required. Twelve hours per WAC <del>((388-112A-0610))</del> <u>388-112A-0611</u> for NA-Cs, <u>HCA</u> s, and other professionals listed in WAC 388-112A-0090, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010.	<del>((Not required))</del> <u>Must maintain in good standing the certification or credential or other professional role listed in WAC 388-112A-0090.</u>
	(ii) A long-term care worker employed on January 6, 2012, or was previously employed sometime between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on the date of <del>((his or her))</del> hire. WAC 388-112A-0090.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Required per WAC 388-112A-0400.	Required. Twelve hours per WAC <del>((388-112A-0610))</del> <u>388-112A-0611</u> .	Not required.



Who	Status	Facility orientation	Safety/orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	<del>((Certification as a home care aide (HCA)))</del> <u>Required credential</u>
	(iii) Employed in an assisted living facility and does not meet the criteria in subsection (1)(a) or (b) of this section. Meets the definition of long-term care worker in WAC 388-112A-0010.	Not required.	Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112A-0400.	Required. Twelve hours per WAC <del>((388-112A-0610))</del> <u>388-112A-0611.</u>	<u>Home care aide certification</u> required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065).
(b) Assisted living facility administrator or administrator designee.	A qualified assisted living facility administrator or administrator designee who does not meet the criteria in subsection (1)(a)(i), (ii), or (iii) of this section.	Not required.	Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112A-0400.	Required. Twelve hours per WAC <del>((388-112A-0610))</del> <u>388-112A-0611.</u>	<u>Home care aide certification</u> required per WAC 388-112A-0105.
(c) Volunteer staff in assisted living facility.	An unpaid person.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Not required.	Not required.	Not required.

(2) The remainder of this chapter describes the training and certification requirements in more detail.

(3) The following training requirements are not listed in the charts in subsection (1) of this section but are required under this chapter:

- (a) First aid and CPR under WAC 388-112A-0720;
- (b) Nurse delegation under WAC 388-112A-0500 and 388-112A-0560;
- (c) Assisted living facility (ALF) administrator training under WAC 388-78A-2521.

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-0070 What are the training and certification requirements for applicants, administrators or their designees, volunteers, and long-term care workers in enhanced services facilities?** (1) The following chart provides a summary of the training and certification requirements for ~~((applicants))~~ an applicant, ~~((administrators))~~ an administrator or ~~((their~~

~~designees)) designee, ((volunteers)) a volunteer, and a long-term care ((workers)) worker in an enhanced services ((facilities)) facility:~~

Who	Status	Facility orientation	Safety/ orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Quarterly in-service education	<del>((Certification as a home care aide (HCA))) Required credential</del>
(a) Enhanced services facility (ESF) applicant, administrator or their designee, or long-term care worker in ESF.	(i) An ARNP, RN, LPN, NA-C, <u>HCA</u> , NA-C student or other professionals listed in WAC 388-112A-0090.	Required by WAC 388-112A-0200(1).	Not required.	Not required.	Per WAC 388-107-0650 for applicants required prior to facility licensing and for administrators and long-term care workers prior to providing client services.	Not required of ARNPs, RNs, or LPNs in chapter 388-112A WAC.  Required twelve hours per WAC <del>((388-112A-0610))</del> <u>388-112A-0612</u> for NA-Cs, <u>HCA</u> s, and other professionals listed in WAC 388-112A-0090, such as individuals with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. Per WAC 388-107-0670, ten hours must be in subject appropriate for residents served in the facility.	Required of employees per WAC 388-107-0680.	<del>((Not required))</del> <u>Must maintain in good standing the certification or credential or other professional role listed in WAC 388-112A-0090.</u>

Who	Status	Facility orientation	Safety/ orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Quarterly in-service education	((Certification as a home care aide (HCA))) <u>Required credential</u>
	(ii) Enhanced services facility (ESF) applicant that does not meet the criteria in subsection (1)(a)(i) of this section.	Not required.	Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0340.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Per WAC 388-107-0650 for applicants required prior to facility licensing.	Required. Twelve hours per WAC <del>((388-112A-0640))</del> <u>388-112A-0612</u> . Per WAC 388-107-0660 and 388-107-0670, ten hours must be in subjects appropriate for residents served in the facility.	Required of employees per WAC 388-107-0680.	<u>Home care aide certification</u> required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 388-107-0630(6)(b).
	(iii) A long-term care worker who was employed on January 6, 2012, or was previously employed sometime between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on <del>((his or her hire))</del> <u>the date of hire</u> . WAC 388-112A-0090.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Required per WAC 388-112A-0400 and prior to providing client services per WAC 388-107-0650.	Required. Twelve hours per WAC <del>((388-112A-0640))</del> <u>388-112A-0612</u> . Per WAC 388-107-0660 and 388-107-0670, ten hours must be in subjects appropriate for residents served in the facility.	Required of employees per WAC 388-107-0680.	Not required.

Who	Status	Facility orientation	Safety/ orientation training	Seventy-hour long-term care worker basic training	Specialty training	Continuing education (CE)	Quarterly in-service education	<del>((Certification as a home care aide (HCA)))</del> Required credential
	(iv) Employed in an enhanced services facility and does not meet the criteria in subsection (1)(a)(i), (ii) or (iii) of this section. Meets definition of long-term care worker in WAC 388-112A-0010.	Not required.	Required. Five hours per WAC 388-112A-0200(2) and 388-112A-0220.	Required. Seventy-hours per WAC 388-112A-0300 and 388-112A-0340.	Required per WAC 388-112A-0400 and prior to providing client services per WAC 388-107-0650.	Required. Twelve hours per WAC <del>((388-112A-0610))</del> 388-112A-0612. Per WAC 388-107-0660 and 388-107-0670, ten hours must be in subjects appropriate for residents served in the facility.	Required of employees per WAC 388-107-0680.	<u>Home care aide certification</u> required per WAC 388-112A-0105 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065).
(b) Volunteer staff in adult family home or assisted living facility.	An unpaid person.	Required per WAC 388-112A-0200(1).	Not required.	Not required.	Not required.	Not required.	Not required.	Not required.

(2) The remainder of this chapter and chapter 388-107 WAC describes the training and certification requirements in more detail.

(3) The following training requirements are not listed in the chart in subsection (1) of this section but are required under this chapter:

- (a) First aid and CPR under WAC 388-112A-0720; and
- (b) Enhanced services facility (ESF) administrator training under WAC 388-112A-0800.

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-0090 Which long-term care workers are exempt from the seventy-hour long-term care worker basic training requirement?** The following long-term care workers are exempt from the seventy-hour long-term care worker basic training requirement:

(1) An ~~((applicant for an adult family home license on or before January 6, 2012 who met the basic training requirements in effect at the time of application;~~

~~(2) A person))~~ individual employed as a long-term care worker on January 6, 2012, who ~~((completed))~~ complied with the basic training requirements in effect on the date of ~~((his or her))~~ hire;

~~((3) A person employed as a long-term care worker on January 6, 2012 who completed within one hundred twenty days of hire the basic training requirements in effect on the date of his or her hire;~~

~~(4) A person))~~ (2) An individual previously employed as a long-term care worker who ~~((completed))~~ complied with the basic training requirements in effect on the date of ~~((his or her))~~ hire and was employed as a long-term care worker at some ~~((point))~~ time between January 1, 2011 and January 6, 2012;

~~((5) Washington state department of health)~~ (3) A registered ~~((nurses))~~ nurse, licensed practical ~~((nurses))~~ nurse, and advanced registered nurse ~~((practitioners))~~ practitioner licensed under chapter 18.79 RCW;

~~((6) Washington state department of health)~~ (4) A nursing ~~((assistants))~~ assistant certified under chapter 18.88A RCW and ~~((persons))~~ a person in an approved training program for certified nursing assistants under chapter 18.88A RCW provided ~~((that))~~ they complete the training program within one hundred twenty days of the date of hire and the department of health has issued ~~((them-their))~~ the nursing assistant certified credential within two hundred days of the date of hire;

~~((7))~~ (5) A home health aide who was employed by a medicare certified home health agency within the year before the ~~((home health aide))~~ individual was hired as a long-term care worker and who has met the requirements of 42 C.F.R. Sec. 484.36; ~~((and))~~

~~((8))~~ (6) An individual with special education training with an endorsement granted by the Washington state superintendent of public instruction as described in RCW 28A-300.010; and

(7) A home care aide (HCA) certified under chapter 18.88B RCW.

#### NEW SECTION

**WAC 388-112A-0125 Prior to hiring a long-term care worker, what training and certification requirements must be reviewed?** Before hiring a long-term care worker, the home must review and verify the following training and certification information. The home must verify the highest level of training or certification achieved by the individual.

(1) When the individual is a home care aide certified under chapter 18.88B RCW, the home must:

(a) Verify that the individual's home care aide certification is current and in good standing;

(b) Confirm the individual has completed continuing education as required under WAC 388-112A-0610, 388-112A-0611, or 388-112A-0612; and

(c) Confirm that the specialty training is completed as required under WAC 388-112A-0495.

(2) When the individual is exempt from the seventy-hour long-term care worker training and certification requirements under WAC 388-112A-0090, the home must obtain, review, and verify the following:

(a) Documents demonstrating that the individual is exempt from training and certification which may include:

(i) Washington state provider credential number, showing that the individual's license or certification is current and in good standing;

(ii) A letter from a former or current employer documenting work history during the exemption period described in WAC 388-112A-0090;

(iii) Employment history records from the Washington state employment security department documenting work history information during the exemption period;

(iv) Federal tax statements documenting work history information during the exemption period; or

(v) Documents showing completion of the basic training as required under WAC 388-112A-0090;

(b) Compliance with continuing education requirements as required under WAC 388-112A-0610, 388-112A-0611, or 388-112A-0612; and

(c) Compliance with specialty training if required under WAC 388-112A-0495.

(3) An individual who has worked as a long-term care worker in the past, but who did not complete the training or certification that was required at the time, may be eligible to have the date of hire reset in accordance with this section and WAC 388-112A-0110.

(a) An individual who is eligible to reset the date of hire under WAC 388-112A-0110 must submit a new application and fee to the department of health in accordance with WAC 388-112A-0110, and adhere to the training or certification requirements under this chapter.

(b) An individual who is not eligible to reset the date of hire as provided in WAC 388-112A-0110 must not be paid to provide personal care assistance until they complete required training and become certified as a long-term care worker.

(4) The home must comply with continuing education documentation requirements under WAC 388-112A-0620.

(a) An individual who worked as a long-term care worker during the previous calendar year is held accountable for CE completion by a new employer on the date of hire and shall provide at new hire documentation of continuing education compliance during the calendar year in which the individual is hired; or

(b) An individual who works for multiple employers or moves between employers shall on the date of hire, provide documentation of continuing education compliance, for the year in which the individual is hired.

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-0490 ~~((When must facility))~~ What are the specialty training requirements for applicants, resident managers, administrators, and other types of entity representatives ~~((complete specialty training))~~ in adult family homes, assisted living facilities, and enhanced services facilities? Adult family homes.**

(1) An adult family home ~~((applicants))~~ applicant, ~~((providers))~~ provider, entity ~~((representatives))~~ representative, and resident ~~((managers))~~ manager must complete specialty training ~~((or developmental disability caregiver training))~~ and demonstrate competency before ~~((the home is licensed or before a new entity representative or resident manager assumes the duties of the position in order to admit))~~ admitting or ~~((serve))~~ servicing residents who have special needs related to mental illness, dementia, or a developmental disability.

(2) If a resident develops special needs while living in a home without a specialty designation, the provider, entity representative, and resident manager have one hundred twenty days to complete specialty training or developmental disability caregiver training and demonstrate competency.

**Assisted living facilities.**

(3) If an assisted living facility serves one or more residents with special needs, the assisted living facility administrator or ~~((his or her))~~ designee must complete specialty training ~~((or developmental disability caregiver training))~~ and demonstrate competency within one hundred twenty days of date of hire.

(4) If a resident develops special needs while living in an assisted living facility, the assisted living facility administrator or ~~((his or her))~~ designee has one hundred twenty days to complete specialty training and demonstrate competency.

#### **Enhanced services facilities.**

(5) An enhanced services ((facilities applicants)) facility applicant, ((providers)) provider, entity ((representatives)) representative, and resident ((managers)) manager must complete dementia and mental health specialty training and demonstrate competency before the home is licensed or before a new entity representative or resident manager assumes the duties of the position in order to admit or serve residents who have special needs related to mental illness, dementia, or a developmental disability.

(6) If a resident develops special needs while living in ~~((a home))~~ an enhanced services facility without a specialty designation, the provider, entity representative, and resident manager have one hundred twenty days to complete developmental disability specialty training and demonstrate competency.

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-0495 ~~((What are the facility long-term care workers?))~~ What are the specialty training ((deadlines and what is the requirement for supervision until the training is completed)) and supervision requirements for long-term care workers in adult family homes, assisted living facilities, and enhanced services facilities? **Adult family homes.****

(1) If an adult family home serves one or more residents with special needs, the adult family home must ensure that a long-term care ((workers must complete)) worker employed by the home completes and ((demonstrate)) demonstrates competency in specialty training as described in WAC 388-112A-0400 within one hundred twenty days of hire.

(2) ~~((During the period to complete the specialty training the))~~ Until a long-term care worker completes the requirements of subsection (1) of this section, the home must not allow the long-term care worker to provide personal care to a resident with special needs without direct supervision ((until that long-term care worker demonstrates competency in specialty training)), unless indirect supervision is allowed under subsection (3) of this section.

(3) The long-term care worker may ~~((have))~~ provide personal care with indirect supervision if ~~((the long-term care worker is))~~ one or more of the following requirements are met:

(a) The long-term care worker is a nursing assistant certified (NA-C) under chapter 18.88A RCW;

(b) The long-term care worker is a certified home care aide (HCA) under chapter 18.88B RCW;

(c) The long-term care worker is a licensed practical nurse (LPN) under chapter 18.79 RCW;

(d) The long-term care worker is a registered nurse (RN) under chapter 18.79 RCW; or

(e) The long-term care worker ~~((meets the exemption criteria described in))~~ is exempt from the seventy-hour basic training under WAC 388-112A-0090.

#### **Assisted living facilities.**

(4) If an assisted living facility serves one or more residents with special needs, the assisted living facility must ensure that a long-term care ((workers must complete)) worker employed by the facility completes and ((demonstrate)) demonstrates competency in specialty training within one hundred twenty days of hire. However, if specialty training is not integrated with basic training, the specialty training must be completed within ninety days of completion of basic training.

(5) ~~((During the period to complete the specialty training, the))~~ Until a long-term care worker completes the specialty training and demonstrates competency as required under subsection (4) of this section, the home must not allow the long-term care worker to provide personal care to a resident with special needs without indirect supervision ((until that long-term care worker demonstrates competency in specialty training)).

#### **Enhanced services facilities.**

(6) All long-term care workers in enhanced services facilities ((are facilities that serves one or more residents with special needs, and long-term care workers)) must complete and demonstrate competency in mental health and dementia specialty training prior to providing client services.

~~((7))~~ Long-term care workers are not required to complete specialty training if the adult family home or assisted living facility has no residents with a special need where the specialty training is required.)

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-0590 May nurse delegation core and specialized diabetes training occur in the same year as the seventy-hour long-term care worker basic training?** (1) Nurse delegation core and specialized diabetes training may ~~((occur))~~ be required in the same year as basic training if ~~((required to be able to perform))~~ delegated tasks need to be performed. ((The training hours)) If completed within one hundred twenty days of hire, the nurse delegation core and specialized diabetes training hours may ((apply to)) be counted toward the population specific component of the seventy-hour long-term care worker basic training.

(2) A long-term care ((workers)) worker in an enhanced services ((facilities are)) facility is not permitted to perform nurse delegated tasks.

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-0600 What is continuing education and what topics may be covered in continuing education?**

(1) Continuing education is annual training designed to promote professional development and increase a caregiver's

knowledge, expertise, and skills. DSHS must approve continuing education curricula and instructors.

~~(2)~~ (2) The same continuing education course must not be repeated for credit unless it is a new or more advanced training on the same topic. However, a long-term care ((workers)) worker may repeat up to five credit hours per year on the following topics:

- (a) Bloodborne pathogens and infection control;
- (b) CPR training;
- (c) First-aid training;
- (d) Food handling training;
- (e) Health insurance portability and accountability act (HIPAA);
- (f) Medication assistance;
- (g) Disaster preparedness;
- (h) Aging sensitivity;
- (i) Resident rights as it relates to caregiving issues in chapter 70.129 RCW;
- (j) Resident safety;
- (k) Abuse and neglect identification and mandatory reporting; and
- (l) Topics where the assisted living facility, enhanced services facility, or adult family home can demonstrate a need for retraining.

~~((2))~~ (3) Continuing education must be on a topic relevant to the care setting, care needs of residents, or long-term care worker career development. In addition to the topics listed in subsection (1) of this section, topics or course may include:

- (a) Personal care services;
- (b) Mental illness;
- (c) Dementia;
- (d) Developmental disabilities;
- (e) Depression;
- (f) Communication skills;
- (g) Positive resident behavior support;
- (h) Developing or improving resident centered activities;
- (i) Dealing with wandering or aggressive resident behaviors;
- (j) Deescalating challenging behaviors; and
- (k) Medical conditions.

~~((3))~~ (4) Nurse delegation core and nurse delegation specialized diabetes training hours when not applied to basic training hours may count towards continuing education.

~~((4))~~ (5) Specialty training, except if completed through a challenge test, may be used to meet continuing education requirements.

~~((5))~~ (6) When hours from a class approved as specialty training are counted toward basic training requirements, the hours must not be counted toward continuing education.

~~((6))~~ (7) Residential care administrator training under WAC 388-112A-0800 may be used to meet the continuing education requirements described in WAC 388-112A-0610 during the year it was completed.

~~((7))~~ (8) Successful completion of a department of health approved home care aide certified alternative bridge program may be applied up to twelve hours of continuing education in the year it was completed.

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-0610 Who in an adult family home is required to complete continuing education training each year, how many hours of continuing education are required, and when must they be completed?** (1) ~~((Adult family homes))~~ The continuing education training requirements that apply to certain individuals working in adult family homes are described below.

(a) The following long-term care workers must complete twelve hours of continuing education by their birthday each year:

(i) A certified home care ((aides must complete twelve hours of continuing education by their birthday each year after obtaining certification as required by the Washington department of health as described in RCW 74.39A.341.

~~(b) If exempt from certification as described in))~~ aide;

(ii) A long-term care worker who is exempt from the seventy-hour long-term care worker basic training under ((RCW 18.88B.041, long-term care workers must complete twelve hours of continuing education by their birthday each year.

~~(i) Unless voluntarily certified as a home care aide under chapter 18.88B RCW, the continuing education does not apply to registered nurses and licensed practical nurses licensed under chapter 18.79 RCW.~~

~~((i))~~ (ii) Continuing education requirements under subsection (1)(b) of this section do not apply to)) WAC 388-112A-0090 (1) and (2);

(iii) A certified nursing ((assistants)) assistant, and ((per-sons)) a person with special education training and an endorsement granted by the Washington state office of superintendent of public instruction, as described in RCW 28A.-300.010; and

(iv) An adult family home provider, entity representa-tive, and resident manager as provided under WAC 388-112A-0050.

~~((e) For))~~ (b) A long-term care ((workers that are)) worker who is a certified ((as a)) home care ((aide or nursing assistant, if the first renewal period is less than a full year from the initial date of certification, no continuing education will be due for the first renewal period)) aide, must comply with continuing education requirements under chapter 246-980 WAC.

(c) The continuing education requirements of this section do not apply to a registered nurse, a licensed practical nurse, and an advanced registered nurse practitioner licensed under chapter 18.79 RCW, even if voluntarily certified as a home care aide under chapter 18.88B RCW.

(d) If exempt from certification under RCW 18.88B.041, a long-term care worker must complete twelve hours of continuing education within forty-five calendar days of being hired by the adult family home or by the long-term care worker's birthday in the calendar year hired, whichever is later; and

(i) Must complete twelve hours of continuing education by the long-term care worker's birthday each calendar year worked thereafter; or

(ii) If the forty-five calendar day time period allows the long-term care worker to complete continuing education in

January or February of the following year, the hours of credit earned will be applied to the calendar year in which the long-term care worker was hired.

(e) If the birthday following initial certification as a home care aide or nursing assistant (NA-C) is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

(f) Continuing education must include one half hour per year on safe food handling in adult family homes as described in RCW 70.128.250 ((when the)) for a long-term worker who does not maintain a food handler's permit, and completed basic or modified basic caregiver training before June 30, 2005. A long-term care worker who completed basic or modified basic training after June 30, 2005 is not required to have a food handler's permit.

(2) ((Assisted living facilities.

(a) Certified home care aides must complete twelve hours of continuing education by their birthday each year after obtaining certification as required by the Washington department of health as described in RCW 74.39A.341.

(b) Long-term care workers exempt from certification under RCW 18.88B.041 must complete twelve hours of continuing education by their birthday each year.

(c) For long-term care workers that are certified as a home care aide or nursing assistant, if the first renewal period is less than a full year from the initial date of certification, no continuing education will be due for the first renewal period.

(i) Unless voluntarily certified as a home care aide under chapter 18.88B RCW, the continuing education does not apply to registered nurses and licensed practical nurses licensed under chapter 18.79 RCW.

(ii) Continuing education requirements under subsection (2)(b) of this section apply to certified nursing assistants and persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010.

(iii) Assisted living facility administrators or the administrator designees must complete twelve hours of continuing education by their birthday each year.

(3) Enhanced services facilities.

(a) Certified home care aides must complete twelve hours of continuing education by their birthday each year after obtaining certification as required by the Washington department of health as described in RCW 74.39A.341.

(b) Long-term care workers exempt from certification under RCW 18.88B.041 must complete twelve hours of continuing education by their birthday each year for each year they worked.

(c) For long-term care workers that are certified as a home care aide or nursing assistant, if the first renewal period is less than a full year from the initial date of certification, no continuing education will be due for the first renewal period.

(i) Unless voluntarily certified as a home care aide under chapter 18.88B RCW, the continuing education does not apply to registered nurses and licensed practical nurses licensed under chapter 18.79 RCW.

(ii) Continuing education requirements under subsection (3)(b) of this section do apply to certified nursing assistants and persons with special education training and an endorse-

ment granted by the superintendent of public instruction, as described in RCW 28A.300.010.

(iii) Enhanced services facility administrators or the administrator designees must complete twelve hours of continuing education by their birthday each year.

(d) Enhanced services facility certified home care aide staff and nursing assistant certified staff must have ten of their twelve hours of annual continuing education cover relevant education regarding the population served in the enhanced services facility as provided in WAC 388-107-0660.

(e) In addition to the annual continuing education requirements for individual staff, the enhanced services facility must provide three hours of staff education per quarter relevant to the needs of the population served.

(4) A long-term care worker who does not complete continuing education as required in subsections (1) through (3) of this section or RCW 74.39A.341 must not be paid to provide care until they complete the required continuing education.

(5) One hour of completed classroom instruction or other form of training (such as an online course) equals one hour of continuing education. For online courses, the training entity must establish a way for the long-term care worker to ask the instructor questions)) A long-term care worker who does not complete continuing education as required under this chapter must not provide care until the required continuing education is completed.

## NEW SECTION

**WAC 388-112A-0611 Who in an assisted living facility is required to complete continuing education training each year, how many hours of continuing education are required, and when must they be completed?** (1) The continuing education training requirements that apply to certain individuals working in assisted living facilities are described below.

(a) The following long-term care workers must complete twelve hours of continuing education by their birthday each year:

(i) A certified home care aide;

(ii) A long-term care worker who is exempt from the seventy-hour long-term care worker basic training under WAC 388-112A-0090(1) and (2);

(iii) A certified nursing assistant, and a person with special education training and an endorsement granted by the Washington state office of superintendent of public instruction, as described in RCW 28A.300.010; and

(iv) An assisted living facility or the administrator designee as provided under WAC 388-112A-0060.

(b) A long-term care worker, who is a certified home care aide must comply with continuing education requirements under chapter 246-980 WAC.

(c) The continuing education requirements of this section do not apply to a registered nurse, a licensed practical nurse, and an advanced registered nurse practitioner licensed under chapter 18.79 RCW, even if voluntarily certified as a home care aide under chapter 18.88B RCW.



(d) If exempt from certification under RCW 18.88B.041, a long-term care worker must complete twelve hours of continuing education within forty-five calendar days of being hired by the assisted living facility or by the long-term care worker's birthday in the calendar year hired, whichever is later; and

(i) Must complete twelve hours of continuing education by the long-term care worker's birthday each calendar year worked thereafter; or

(ii) If the forty-five calendar day time period allows the long-term care worker to complete continuing education in January or February of the following year, the credit hours earned will be applied to the calendar year in which the long-term care worker was hired.

(e) If the birthday following initial certification as a home care aide or nursing assistant (NA-C) is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

(2) A long-term care worker who does not complete continuing education as required under this chapter must not provide care until the required continuing education is completed.

#### NEW SECTION

**WAC 388-112A-0612 Who in an enhanced services facility is required to complete continuing education training each year, how many hours of continuing education are required, and when must they be completed?** (1) The continuing education training requirements that apply to certain individuals working in enhanced services facilities are described below.

(a) The following long-term care workers must complete twelve hours of continuing education by their birthday each year:

(i) A certified home care aide;

(ii) A long-term care worker who is exempt from the seventy-hour long-term care worker basic training under WAC 388-112A-0090(1) and (2);

(iii) A certified nursing assistant, and a person with special education training and an endorsement granted by the Washington state office of superintendent of public instruction, as described in RCW 28A.300.010; and

(iv) An enhanced services facility applicant, facility representative, administrator, or the administrator designee as provided under WAC 388-112A-0070.

(b) A long-term care worker, who is a certified home care aide must comply with continuing education requirements under chapter 246-980 WAC.

(c) The continuing education requirements of this section do not apply to a registered nurse, a licensed practical nurse, and an advanced registered nurse practitioner licensed under chapter 18.79 RCW, even if voluntarily certified as a home care aide under chapter 18.88B RCW.

(d) If exempt from certification under WAC 18.88B.041, a long-term care workers must complete twelve hours of continuing education within forty-five calendar days of being hired by the enhanced services facility or by the long-term care worker's birthday in the calendar year hired, whichever is later; and

(i) Must complete twelve hours of continuing education by the long-term care worker's birthday each calendar year worked thereafter; or

(ii) If the forty-five calendar day time period allows the long-term care worker to complete continuing education in January or February of the following year, the credit hours earned will be applied to the calendar year in which the long-term care worker was hired.

(e) If the birthday following initial certification as a home care aide or nursing assistant (NA-C) is less than a full year from the date of certification, no continuing education will be due for the first renewal period.

(f) Enhanced services facility certified home care aide staff and nursing assistant certified staff must have ten of the twelve hours of annual continuing education cover relevant education regarding the population served in the enhanced services facility as provided in WAC 388-107-0660.

(g) In addition to the annual continuing education requirements for individual staff, the enhanced services facility must provide three hours of staff education per quarter on topics relevant to the needs of the population served.

(2) A long-term care worker who does not complete continuing education as required in this chapter must not provide care until the required continuing education is completed.

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-1020 What must be submitted to DSHS for curriculum approval?** (1) If a training entity modifies a department developed curriculum in any manner, the training entity must submit the curriculum to the department for approval.

(2) Training must not be offered before receiving department curriculum and instructor approval.

(3) Online classes when applicable must adhere to the DSHS online class standards in effect at the time of approval. These online standards are posted on the DSHS website.

**(4) For orientation and safety training:**

(a) Submit an outline of what will be covered in each training offered, ~~((like))~~ including a table of contents or a class syllabus, that shows where the required introductory topics listed in WAC 388-112A-0210 for orientation and WAC 388-112A-0230 for safety training are covered in the training.

(b) Department required orientation and safety training application forms must be submitted to the department at least forty-five days before the training is expected to be offered.

(c) Training cannot be offered before the department approves the curriculum and instructor.

~~((3))~~ **(5) For continuing education:**

(a) Continuing education curriculum delivery models must only include instructor led, online instructor led (such as a webinar), or online interactive self-paced learning with access to an instructor.

(b) ~~((Online classes must adhere to the DSHS online class standards in effect at the time of approval. These online standards are posted on the department's web site.~~

~~(e))~~ For continuing education classes, submit on a department developed form a summary of the class that includes the topic, a brief description of what the training will cover, a course outline, the number of training hours, and a description of how the training is relevant to the care setting, care needs of residents, or long-term care worker career development.

~~((4))~~ (c) For online training courses, submit the information requested in ~~((e))~~ (b) of this subsection and a description of how the instructor or training will assess that the students have integrated the information being taught. The training entity must establish a way for the long-term care worker to ask the instructor questions.

(d) One hour of completed classroom instruction or other form of training (such as online course) equals one hour of continuing education.

~~((e))~~ (e) Department required continuing education training application forms must be submitted at least forty-five days in advance of the training. The department must approve the curriculum and instructor before the training may be offered.

~~((4))~~ (6) For core basic training:

(a) If the instructor or training entity uses the DSHS developed home care aide course (formally known as the revised fundamentals of caregiving) learner's guide with enhancements, they must submit the DSHS form with all required information.

(b) If the instructor or training entity does not use a DSHS developed home care aide course (formally known as the revised fundamentals of caregiving) learner's guide with enhancements to teach the seventy-hour long-term care worker basic training, they must submit to DSHS the following for approval:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives described in this chapter are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook, long-term care worker manual, learning activities, audio-visual materials, handouts, and books;

(iii) The table of contents or curriculum outline, including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-112A-0320 (12)(a) and (b) and infection control skills such as hand washing and putting on and taking off gloves; and

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) Method of teaching, including learning activities that incorporate adult learning principles;

(C) Methods used to determine whether each long-term care worker understands the materials covered and can demonstrate all skills;

(D) A list of the sources or references that were used to develop the curriculum and if the primary source or reference is not a published citation, the instructor must provide detail on how the content is evidence based;

(E) Description of how the curriculum was designed to accommodate long-term care workers with either limited English proficiency, learning disabilities, or both; and

(F) Description and proof of how input was obtained from consumer and long-term care worker representatives in the development of the curriculum.

(c) Curriculum submitted for the core competency section of basic training, called core basic training, as described in WAC 388-112A-0320, must include how much time students will have to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

(d) Entities that submit curriculum for the population specific component of the seventy-hour long-term care worker basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

~~((5))~~ (7) For specialty training:

(a) For specialty training that is not ~~((the))~~ DSHS developed curriculum or another department approved specialty training curriculum, submit the required specialty training application form and any additional learning objectives added to the competency and learning objectives checklist, the enhancements that have been added, and additional student materials or handouts.

(b) To be approved, an alternative curriculum must at a minimum include:

(i) All the DSHS published learning outcomes and competencies for the course;

(ii) ~~((Printed))~~ Student materials that support the curriculum, a teacher's guide or manual, and learning resource materials such as learning activities, audio-visual materials, handouts, and books;

(iii) The recommended sequence and delivery of the material; and

(iv) The teaching methods or approaches that will be used for different sections of the course, including for each lesson:

(A) Learning activities that incorporate adult learning principles and address the learning readiness of the student population;

(B) Practice of skills to increase competency;

(C) Feedback to the student on knowledge and skills;

(D) An emphasis on facilitation by the teacher; and

(E) An integration of knowledge and skills from previous lessons to build skills;

(v) A list of the sources or references, if any, used to develop the curriculum;

(vi) Methods of teaching and student evaluation for students with either limited-English proficiency, learning disabilities, or both; and

(vii) A plan for updating material~~((and))~~.

~~((6))~~ (8) Substantial changes to a previous approved curriculum must be approved before they are used.

AMENDATORY SECTION (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-1240 What are the minimum qualifications for an instructor for core basic, population spe-**

**cific, on-the-job, residential care administrator, nurse delegation core, and specialized diabetes trainings?** An instructor for core basic, population specific, on-the-job, residential care administrator, nurse delegation core, and nurse delegation specialized diabetes trainings must meet the following minimum qualifications:

- (1) Twenty-one years of age;
- (2) Has not had a professional health care, adult family home, assisted living facility, or social services license or certification revoked in Washington state; ~~(and)~~
- (3) Meets one or more of the following education or work experience requirements upon initial approval or hire:
  - (a) Is a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting;
  - (b) Has an associate degree or higher degree in the field of health or human services and six months professional or caregiving experience within the last five years in a community based setting or an adult family home, enhanced services facility, assisted living facility, supported living through the developmental disabilities administration (DDA), or home care setting; or
  - (c) Has a high school diploma or equivalent and one year of professional or caregiving experience within the last five years in an adult family home, enhanced services facility, assisted living, supported living through DDA, or home care setting;
- (4) Meets one or more of the following teaching experience requirements:
  - (a) One hundred hours of experience teaching adults in an appropriate setting on topics directly related to basic training or basic training topics that may be offered as continuing education;
  - (b) Forty hours of teaching basic training while being mentored by an instructor who is approved to teach basic training; or
  - (c) Instructors with adult family homes, enhanced services facilities, and assisted living facilities ~~((that))~~ who do not ~~((meet the criteria))~~ have the experience described in (a) or (b) of this subsection, must have and attest to the following experience and plans in their application:
    - (i) Forty hours of informal teaching experiences unrelated to basic training topics such as guest lecturing, team teaching, and volunteer teaching with parks, local high schools, 4-H groups, English as a second language (ESL) groups, senior organizations, and religious organizations;
    - (ii) Three adult learning techniques that the instructor will implement in ~~((his or her))~~ the long-term care worker training; and
    - (iii) Three ways the instructor plans on improving ~~((his or her))~~ instructional ~~((facilitation))~~ skills and the method the instructor will use to measure improvement such as submitting the continuous improvement plan feedback from the DSHS adult education class;
- (5) Except for instructors for nurse delegation core and diabetes training, completion of a class on adult education that meets the requirements of WAC 388-112A-1297;
- (6) The instructor must be experienced in caregiving practices and ~~((capable of demonstrating))~~ demonstrate com-

petency ~~((with respect to))~~ for teaching the course content or units being taught;

- (7) Instructors who will administer tests must have experience or training in assessment and competency testing;
- (8) Community instructors for nurse delegation core and diabetes training must have a current Washington registered nurse (RN) license in good standing without practice restrictions; and
- (9) Facility instructors must be approved and contracted by the department as a community instructor in order to be approved to teach the following classes:
  - (a) Nurse delegation core;
  - (b) Nurse delegation diabetes training; or
  - (c) DSHS adult education training curriculum.

**AMENDATORY SECTION** (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-1270 What are the minimum qualifications for community instructors for mental health specialty training?** (1) The minimum qualifications for community instructors for mental health specialty training, in addition to the general qualifications in WAC 388-112A-1240 (1) and (2), include:

- (a) The instructor must be experienced in mental health caregiving practices and capable of demonstrating competency in the entire course content;
  - (b) Education:
    - (i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education, or accredited college classes, in subjects directly related to mental health, including, but not limited to, psychology (one year of education equals twenty-four credits in a semester system, thirty-six credits in a quarter system, or at least eighty hours of seminars, conferences, and continuing education); and
    - (ii) Successful completion of the mental health specialty training class before the instructor trains others;
  - (c) Work experience: Two years full-time equivalent direct work experience with people who have a mental illness; and
  - (d) Teaching experience:
    - (i) Two hundred hours experience teaching long-term care related subjects;
    - (ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297;
    - (iii) Successful completion of the DSHS instructor qualification/demonstration process; and
    - (iv) The instructor has been approved and contracted by the department as a community instructor;
  - (e) Instructors who will administer tests must have experience or training in assessment and competency testing; and
- (2) Five years of full-time equivalent direct work experience with people who have a mental illness may substitute for either:
- (a) The credential described in subsection (1)(b)(i) of this section; or
  - (b) The one year of education in college classes or eighty hours in seminars, conferences, continuing education described in subsection ~~((1)(b)(ii))~~ (1)(b)(i) of this section.

(3) If your status is an approved instructor for mental health specialty training, you may instruct a new mental health specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

**AMENDATORY SECTION** (Amending WSR 17-22-036, filed 10/24/17, effective 11/24/17)

**WAC 388-112A-1285 What are the minimum qualifications for community instructors for dementia specialty training?** (1) The minimum qualifications for instructors for dementia specialty, in addition to the general qualifications defined in WAC 388-112A-1240 (1) and (2) include:

(a) The instructor must be experienced in dementia caregiving practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, or mental health specialist, with at least one year of education in seminars, conferences, continuing education or college classes, in dementia or subjects directly related to dementia, such as, but not limited to, psychology (one year of education equals twenty-four credits in a semester system, thirty-six credits in a quarter system, or at least eighty hours of seminars, conferences, or continuing education); and

(ii) Successful completion of the dementia specialty training, prior to beginning to train others;

(c) Work experience: Two years full-time equivalent direct work experience with people who have dementia;

(d) Teaching experience:

(i) Two hundred hours experience teaching long-term care related subjects;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor; and

(e) Instructors who will administer tests must have experience or training in assessment and competency testing.

(2) Five years of full-time equivalent direct work experience with people who have dementia may substitute for either:

(a) The credential (bachelor's degree, registered nurse, or mental health specialist) described in subsection (1)(b)(i) of this section; or

(b) The one year of education in college classes or eighty hours in seminars, conferences, continuing education described in subsection ~~((1)(b)(ii))~~ (1)(b)(i) of this section.

(3) If your status is an approved instructor for dementia specialty training, you may instruct a new dementia specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

**WSR 20-05-092**  
**PROPOSED RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed February 19, 2020, 10:48 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency.

Hearing Location(s): On April 8, 2020, at 10 a.m., at the NWCAA Office, 1600 South 2nd Street, Mount Vernon, WA.

Date of Intended Adoption: April 9, 2020.

Submit Written Comments to: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA 98273, email [info@nwcleanairwa.gov](mailto:info@nwcleanairwa.gov), fax 360-428-1620, by April 8, 2020, at 11 a.m.

Assistance for Persons with Disabilities: Contact Laurie Caskey-Schreiber, phone 360-428-1617, fax 360-428-1620, email [info@nwcleanairwa.gov](mailto:info@nwcleanairwa.gov), by April 1, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update the effective date for external rules that are adopted by reference (AbR) in NWCAA Sections 104 and 155 to allow NWCAA to implement the most recent version of the referenced state and federal rules.

Remove the definitions in NWCAA Section 580 because they have previously been rolled into NWCAA Section 200.

New/amended regulation section derivations: Amended NWCAA Section 580: Deleted definitions.

Reasons Supporting Proposal: See list above.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: RCW 70.94.141(1).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Northwest Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mark Buford, 1600 South 2nd Street, Mount Vernon, WA, 360-428-1617.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70.94.141.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 70.94.141.

Explanation of exemptions: Not applicable under RCW 70.94.141.

February 19, 2020

Mark Buford

Executive Director

**SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES**

104.1 All provisions of the following state rules that are in effect as of February 19, 2020 (~~December 26, 2018~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: chapter 173-400 WAC, (except - -025, -030,

-035, -036, -040(1) & (7), -045, -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-442 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-476 WAC, chapter 173-480 WAC, chapter 173-481 WAC, chapter 173-485 WAC, chapter 173-491 WAC. The requirements of the NWCAA Regulation apply in addition to the state-wide regulations adopted and enforced under this paragraph.

104.2 All provisions of the following federal rules that are in effect as of February 19, 2020 (~~December 26, 2018~~) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, XXX, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, OOOOa, QQQQ, and Appendix A - I; 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF; 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) Subpart LLL; 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, WWWW, YYYYY, ZZZZ, BBBBBB, CCCCC, EEEEE, FFFFF, GGGGG, HHHHH, JJJJJ, MMMMM, NNNNN, QQQQQ, SSSSS, TTTTT, VVVVV, WWWWW, XXXXX, ZZZZZ, AAAAAA, DDDDD, EEEEE, and HHHHHH; and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, April 9, 2020

## SECTION 155 - STATE ENVIRONMENTAL POLICY ACT

### 155.1 Authority

(A) NWCAA adopts these policies and procedures under State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules, Washington Administrative Code (WAC) 197-11-904, with respect to its performance of or participation in environmental review.

(B) The SEPA Rules set forth in Chapter 197-11 WAC must be used in conjunction with these policies and procedures.

### 155.2 Purpose and Adoption by Reference.

(A) NWCAA adopts the following sections of Chapter 197-11 WAC by reference in effect as of February 19, 2020:

- WAC 197-11-040: Definitions
  - 050: Lead Agency
  - 055: Timing of the SEPA Process
  - 060: Content of Environmental Review
  - 070: Limitations on Actions During SEPA Process
  - 080: Incomplete or Unavailable Information
  - 090: Supporting Documents
- WAC 197-11-100: Information Required of Applicants
  - 250: SEPA/Model Toxics Control Act Integration
  - 253: SEPA Lead Agency for MTCA Actions
  - 256: Preliminary Evaluation
  - 259: Determination of Nonsignificance for MTCA Remedial Action
  - 262: Determination of Significance and EIS for MTCA Remedial Action
  - 265: Early Scoping for MTCA Remedial Actions
  - 268: MTCA Interim Actions
- WAC 197-11-300: Purpose of This Part
  - 305: Categorical Exemptions
  - 310: Threshold Determination Required
  - 315: Environmental Checklist
  - 330: Threshold Determination Process
  - 335: Additional Information
  - 340: Determination of Non-Significance (DNS)

- 350: Mitigated DNS
- 360: Determination of Significance (DS)/Initiation of Scoping
- 390: Effect of Threshold Determination
- WAC 197-11-400: Purpose of EIS
- 402: General Requirements
- 405: EIS Types
- 406: EIS Timing
- 408: Scoping
- 410: Expanded Scoping
- 420: EIS Preparation
- 425: Style and Size
- 430: Format
- 435: Cover Letter or Memo
- 440: EIS Contents
- 442: Contents of EIS on Non-Project Proposals
- 443: EIS Contents When Prior Non-Project EIS
- 444: Elements of the Environment
- 448: Relationship of EIS to Other Considerations
- 450: Cost-Benefit Analysis
- 455: Issuance of DEIS
- 460: Issuance of FEIS
- WAC 197-11-500: Purpose of This Part
- 502: Inviting Comment
- 504: Availability and Cost of Environmental Documents
- 508: SEPA Register
- 510: Public Notice
- 535: Public Hearings and Meetings
- 545: Effect of No Comment
- 550: Specificity of Comments
- 560: FEIS Response to Comments
- 570: Consulted Agency Costs to Assist Lead Agency
- WAC 197-11-600: When to Use Existing Environmental Documents
- 610: Use of NEPA Documents
- 620: Supplemental Environmental Impact Statement - Procedures
- 625: Addenda - Procedures
- 630: Adoption - Procedures
- 635: Incorporation by Reference - Procedures
- 640: Combining Documents
- WAC 197-11-650: Purpose of This Part.
- 655: Implementation.
- 660: Substantive Authority and Mitigation.
- 680: Appeals.
- WAC 197-11-700: Definitions
- 702: Act
- 704: Action
- 706: Addendum
- 708: Adoption
- 710: Affected Tribe
- 712: Affecting
- 714: Agency
- 716: Applicant
- 718: Built Environment
- 720: Categorical Exemption
- 722: Consolidated Appeal
- 724: Consulted Agency
- 726: Cost-Benefit Analysis
- 728: County/City
- 730: Decision-Maker
- 732: Department
- 734: Determination of Non-Significance (DNS)
- 736: Determination of Significance (DS)
- 738: EIS
- 740: Environment
- 742: Environmental Checklist
- 744: Environmental Document
- 746: Environmental Review
- 750: Expanded Scoping
- 752: Impacts
- 754: Incorporation by Reference
- 756: Lands Covered by Water
- 758: Lead Agency
- 760: License
- 762: Local Agency
- 764: Major Action
- 766: Mitigated DNS
- 768: Mitigation
- 770: Natural Environment

- 772: NEPA
- 774: Non-Project
- 776: Phased Review
- 778: Preparation
- 780: Private Project
- 782: Probable
- 784: Proposal
- 786: Reasonable Alternative
- 788: Responsible Official
- 790: SEPA
- 792: Scope
- 793: Scoping
- 794: Significant
- 796: State Agency
- 797: Threshold Determination
- 799: Underlying Governmental Action
- WAC 197-11-800: Categorical Exemptions
- 880: Emergencies
- 890: Petitioning DOE to Change Exemptions
- WAC 197-11-900: Purpose of This Part
- 902: Agency SEPA Policies
- 904: Agency SEPA Procedures
- 916: Application to Ongoing Actions
- 920: Agencies with Environmental Expertise
- 922: Lead Agency Rules
- 924: Determining the Lead Agency
- 926: Lead Agency for Governmental Proposals
- 928: Lead Agency for Public and Private Proposals
- 930: Lead Agency for Private Projects With One Agency With Jurisdiction
- 932: Lead Agency for Private Projects Requiring Licenses From More Than One Agency, When One of the Agencies Is a County/City
- 934: Lead Agency for Private Projects Requiring Licenses From A Local Agency, Not a City/County, and One or More Than One State Agency
- 936: Lead Agency for Private Projects Requiring Licenses From More Than One State Agency

- 938: Lead Agencies for Specific Proposals
- 940: Transfer of Lead Agency Status to a State Agency
- 942: Agreements on Lead Agency Status
- 944: Agreements on Division of Lead Agency Duties
- 946: DOE Resolution of Lead Agency Disputes
- 948: Assumption of Lead Agency Status
- WAC 197-11-960: Environmental Checklist
- 965: Adoption Notice
- 970: Determination of Non-Significance (DNS)
- 980: Determination of Significance and Scoping Notice (DS)
- 985: Notice of Assumption of Lead Agency Status
- 990: Notice of Action

(B) In addition to the definitions contained in WAC 197-11-700 through WAC 197-11-799, when used in these policies and procedures the following terms shall have the following meanings, unless the context indicates otherwise:

SEPA Rules. "SEPA Rules" means Chapter 197-11 WAC.

155.3 Responsible Official Designation and Responsibilities

(A) For all proposals for which NWCAA is the lead agency, the responsible official shall be the Control Officer of NWCAA or the NWCAA employee designated by the Control Officer.

(B) For all proposals for which NWCAA is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to "NWCAA," the "lead agency," or "responsible official" by these policies and procedures.

(C) NWCAA shall retain all documents required by these policies and procedures and make them available in accordance with applicable law.

155.4 Lead Agency Determination and Responsibilities

(A) When the NWCAA receives an application for or initiates a proposal that involves a nonexempt action, the NWCAA shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the NWCAA is aware that another agency is in the process of determining the lead agency. When the NWCAA is the lead agency for a proposal, the

responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

(B) When NWCAA is not the lead agency for a proposal, it shall use and consider, as appropriate, the environmental documents of the lead agency in making decisions on the proposal. NWCAA shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the Agency may conduct supplemental environmental review under WAC 197-11-600.

(C) If NWCAA receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination and take such action as authorized by the SEPA Rules.

(D) NWCAA may make agreements as to lead agency status or shared lead agency duties for a proposal as described in WAC 197-11-942 and 197-11-944.

(E) When making a lead agency determination for a private project, NWCAA shall require sufficient information from the applicant to identify which other agencies (if any) have jurisdiction over the proposal.

#### 155.5 Time Limits and Other Considerations Applicable to SEPA Rules

(A) For nonexempt proposals, the DNS, FEIS, and/or such other environmental documentation as the responsible official deems appropriate shall accompany NWCAA's staff recommendation to any appropriate advisory body.

#### 155.6 Use of Exemptions

(A) When NWCAA receives an application for a permit or, in the case of governmental proposals, NWCAA initiates the proposal, NWCAA shall determine whether the permit and/or the proposal is exempt. NWCAA's determination that a permit or proposal is exempt shall be final and not subject to administrative review. If a permit or proposal is exempt, none of the procedural requirements of these policies and procedures apply to the proposal. NWCAA shall not require completion of an environmental checklist for an exempt permit or proposal.

(B) In determining whether or not a proposal is exempt, NWCAA shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, NWCAA shall determine the lead agency, even if the license application that triggers NWCAA's consideration is exempt.

(C) If a proposal includes both exempt and nonexempt actions, NWCAA may authorize exempt actions prior to compliance with the procedural requirements of these policies and procedures, except that:

(1) NWCAA shall not give authorization for:

(a) Any nonexempt action;

(b) Any action that would have an adverse environmental impact; or

(c) Any action that would limit the choice of alternatives.

(2) NWCAA may withhold approval of an exempt action that would lead to modification of the physical environment,

when such modification would serve no purpose if nonexempt action(s) were not approved; and

(3) NWCAA may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

#### 155.7 Environmental Checklist

(A) A completed environmental checklist (or a copy) shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in these policies and procedures; notwithstanding the preceding, a checklist is not needed if NWCAA and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The environmental checklist shall be in the form provided in WAC 197-11-960, except that Section B.2.a. Air, of the checklist shall state: "What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke, greenhouse gases) during construction and when the project is completed? If any, generally describe and give approximate quantities, if known." As used throughout these policies and procedures, environmental checklist means the environmental checklist required by these policies and procedures.

(B) NWCAA shall use the environmental checklist to determine the lead agency and, if NWCAA is the lead agency, for determining the responsible official and for making the threshold determination.

(C) For private proposals, NWCAA will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, NWCAA shall complete the environmental checklist. NWCAA may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

(1) NWCAA has technical information on a question or questions that is unavailable to the private applicant; or

(2) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

#### 155.8 Mitigated DNS

(A) As provided in these policies and procedures and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

(B) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. "Early notice" means NWCAA's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal. The request must:

(1) Follow submission of a complete permit application and environmental checklist for a nonexempt proposal for which NWCAA is lead agency; and

(2) Precede NWCAA's actual threshold determination for the proposal.



(C) The responsible official should respond to the request for early notice within 30 working days. The response shall:

(1) Be written;

(2) State whether NWCAA currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading NWCAA to consider a DS; and

(3) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

(D) As much as possible, NWCAA should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

(E) When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, NWCAA shall base its threshold determination on the changed or clarified proposal and shall make the determination within 15 days of receiving the changed or clarified proposal:

(1) If NWCAA indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, NWCAA shall issue and circulate a DNS under WAC 197-11-340(2).

(2) If NWCAA indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, NWCAA shall make the threshold determination, issuing a DNS or DS as appropriate.

(3) The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific.

(4) Mitigation measures that justify issuance of a mitigated DNS may be incorporated in the DNS by reference to NWCAA staff reports, studies, or other documents.

(F) A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen-day comment period and public notice.

(G) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by NWCAA.

(H) If NWCAA's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, NWCAA should evaluate the threshold determination to ensure consistency with WAC 197-11-340 (3)(a) (withdrawal of DNS).

(I) NWCAA's early notice under NWCAA 155.8(C) above shall not be construed as determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind NWCAA to consider the clarifications or changes in its threshold determination.

#### 155.9 Preparation of EIS—Additional Considerations

(A) Preparation of a draft and final EIS (DEIS and FEIS) and draft and final supplemental EIS (SEIS) is the responsibility of the responsible official. Before NWCAA issues an

EIS, the responsible official shall be satisfied that it complies with these policies and procedures and Chapter 197-11 WAC.

(B) The DEIS and FEIS or draft and final SEIS may be prepared by NWCAA, by outside consultants selected by NWCAA, or by such other person as NWCAA may so direct consistent with the SEPA Rules. The NWCAA retains sole authority to select persons or firms to author, co-author, provide special services, or otherwise participate in preparing required environmental documents. If the NWCAA requires an EIS for a proposal and determines that someone other than the NWCAA will prepare the EIS, the responsible official shall notify the applicant after completion of the threshold determination. The responsible official shall also notify the applicant of the NWCAA's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(C) NWCAA may require an applicant to provide information NWCAA does not possess, including specific investigations or research. However, the applicant may not be required to supply information that is not required under these policies and procedures or that is being requested from another agency. (This does not apply to information NWCAA may request under other authority.) Additional information may be required as set forth in WAC 197-11-100.

#### 155.10 Additional Elements To Be Covered In An EIS

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determination or perform any other function or purpose under these policies and procedures:

- (A) Economy
- (B) Social policy analysis
- (C) Cost-benefit analysis

#### 155.11 Public Notice

(A) Whenever the NWCAA issues a DNS under WAC 197-11-340 (2)(b) or a DS under WAC 197-11-360(3), the NWCAA shall give public notice as follows:

(1) If public notice is required for a nonexempt permit or decision document, the notice shall state whether a DS or DNS has been issued and when comments are due.

(2) If no public notice is required for the permit or approval, the NWCAA shall give notice of the DNS or DS by:

(a) Written or electronic (email) notice to public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered, and

(b) Posting notice on the NWCAA website.

(3) Whenever the NWCAA issues a DS under WAC 197-11-360(3), the NWCAA shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

(B) Whenever the NWCAA issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

(1) Indicating the availability of the DEIS in any public notice required for a nonexempt permit or decision document; and at least one of the following methods:

(2) Posting the property, for site-specific proposals;

(3) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(4) Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered;

(5) Notifying the news media;

(6) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;

(7) Publishing notice in NWCAA newsletters and/or sending notice to NWCAA mailing lists (general lists or specific lists for proposals or subject areas); and/or

(8) Posting notice on the NWCAA website.

(C) Whenever possible, the NWCAA shall integrate the public notice required under these policies and procedures with existing notice procedures for the NWCAA's non-exempt permit(s) or approval(s) required for the proposal.

(D) The NWCAA may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

#### 155.12 Designation of Official to Perform Consulted Agency Responsibilities for NWCAA

(A) The responsible official shall be responsible for the preparation of written comments for NWCAA in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

(B) The responsible official shall be responsible for the NWCAA's compliance with WAC 197-11-550 whenever the NWCAA is a consulted agency. The responsible official is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from the NWCAA. If the nature of the proposal is such that it involves significant impacts on NWCAA's facilities or property, or will require a significant amount of time to provide the information requested to the lead agency, NWCAA may request that the lead agency impose fees upon the applicant to cover the costs of NWCAA's SEPA compliance.

#### 155.13 SEPA Substantive Authority

(A) The policies and goals set forth in this ordinance are supplementary to those in NWCAA's existing authorities.

(B) NWCAA may attach conditions to a permit or approval for a proposal so long as the NWCAA determines that:

(1) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance; and

(2) Such conditions are in writing; and

(3) The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

(4) NWCAA has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

(5) Such conditions are based on one or more policies in subsections (D) through (F) of this section and cited in the permit or other decision document.

(C) The NWCAA may deny a permit or approval for a proposal on the basis of SEPA so long as the NWCAA determines that:

(1) The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental EIS prepared pursuant to these policies and procedures; and

(2) Reasonable mitigation measures are insufficient to mitigate the identified impact.

(3) The denial is based on one or more policies identified in subsections (D) through (F) of this section and identified in writing in the decision document.

(D) NWCAA designates and adopts by reference the following policies, plans, rules, and regulations as the potential bases for NWCAA's exercise of substantive authority under SEPA, pursuant to this section:

(1) NWCAA shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) Ensure for all people of Washington, safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) Preserve important historic, cultural, and natural aspects of our national heritage;

(e) Maintain, wherever possible, an environment that supports diversity and variety of individual choice;

(f) Achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

(g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(2) NWCAA recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(E) NWCAA adopts by reference the policies in the following laws and NWCAA resolutions, regulations, and plans:

(1) Federal and state Clean Air Acts, and regulations adopted thereunder.

(2) The Regulation of the Northwest Clean Air Agency

(3) Resolutions adopted by NWCAA Board of Directors.

(4) Maintenance plans.

(5) Washington State Implementation Plan.

(F) NWCAA establishes the following additional policies:

(1) Air quality

(a) Policy Background

(i) Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality of life.

(ii) NWCAA is responsible for monitoring air quality in the three-county area, setting standards, and regulating cer-

tain development activities with the objective of meeting all applicable air quality standards.

(iii) Federal, state, and regional regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts.

(b) Policies

(i) To minimize or prevent adverse air quality impacts.

(ii) To secure and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of its inhabitants, seek public participation in policy planning and implementation, promote the economic and social development of the area within our jurisdiction, and facilitate the enjoyment of the natural attractions of the Puget Sound area.

(iii) To eliminate emissions of ozone-depleting chlorofluorocarbons, in the interests of national and global environmental protection; to consider energy efficiency and conservation to reduce greenhouse gases and in addition, to recognize other existing relevant regulatory requirements.

(iv) To reduce woodstove emissions by educating the public about the effects of woodstove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from woodstoves pursuant to standards adopted by State and Federal Agencies; and to encourage replacing uncertified woodstoves with cleaner sources of heat.

(v) To reduce outdoor burning to the greatest extent practical.

(vi) To develop and adopt strategies for effectively reducing or eliminating impacts from toxic air contaminants.

(vii) To control volatile organic compound (VOC) emissions in order to meet National Ambient Air Quality Standard for ozone.

(viii) If the responsible official makes a written finding that the applicable federal, state, and/or regional regulations did not anticipate or are inadequate to address the particular impact(s) of a project, the responsible official may condition or deny the proposal to mitigate its adverse impacts.

(2) Land Use

(a) Policy Background

(i) Adverse land use impacts may result when a proposed project or land use policy includes uses that may be consistent with applicable zoning requirements but inconsistent with air quality objectives or regulations.

(ii) Adverse cumulative impacts may result when particular land uses permitted under the zoning code occur in an area to such an extent that they expose sensitive populations to air quality related health and environmental adverse impacts.

(b) Policies

(i) To ensure that proposed uses in projects are reasonably compatible with surrounding uses and are consistent with applicable air quality regulations.

(ii) To reduce regional air pollution emissions associated with land uses by promoting clean alternative forms of domestic use fuels, including natural gas, in new single and multifamily housing developments within urban growth areas. In addition, to discourage wood as a source of heat for

residential development in low-lying areas susceptible to pollution accumulations.

(iii) To encourage municipal curbside solid and compostable waste collection services at reasonable costs.

(3) Transportation

(a) Policy Background

(i) Excessive traffic can adversely affect regional air quality.

(ii) Substantial traffic volumes associated with major projects may adversely impact air quality in surrounding areas.

(b) Policies

(i) To minimize or prevent adverse traffic impacts that would undermine the air quality of a neighborhood or surrounding areas.

(ii) To promote transportation demand and systems management actions designed to reduce vehicle emissions by reducing the use of single occupancy vehicles, reducing traffic congestion, and increasing public transportation services.

(iii) To encourage integrating land use and transportation planning.

(iv) To emphasize the importance of air quality conformity determinations required for proposed transportation plans, programs, and projects.

(v) To pursue and support alternative and clean fuels projects and programs.

(vi) To promote and support land use plans and projects designed to reduce vehicle emissions by reducing the use of single occupant vehicles, number of vehicle miles traveled, and traffic congestion; and supporting the use of public transportation.

(vii) In determining the necessary air quality impact mitigation, the responsible official will examine the mitigation proposed by the local jurisdiction.

(4) Cumulative Effects

(a) The analysis of cumulative effects shall include a reasonable assessment of:

(i) The capacity of natural systems, such as air, water, light, and land, to absorb the direct and reasonably anticipated indirect impacts of the proposal, and

(ii) The demand upon facilities, services, and natural systems of present, simultaneous, and known future development in the area of the project or action.

(b) An action or project may be conditioned or denied to lessen or eliminate its cumulative effects on the environment:

(i) When considered together with prior, simultaneous, or induced future development; or

(ii) When, taking into account known future development under established zoning or other regulations, it is determined that a project will use more than its share of present and planned facilities, services, and natural systems.

155.14 Administrative Appeals

(A) NWCAA hereby eliminates, pursuant to WAC 197-11-680(2), appeals to its legislative body of determinations relating to SEPA; and

(B) NWCAA hereby elects, pursuant to WAC 197-11-680(3), not to provide for administrative appeals of determinations relating to SEPA.

155.15 Notice/Statue of Limitations

(A) NWCAA, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

(B) The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the NWCAA, the city clerk or county auditor, applicant, or proponent pursuant to RCW 43.21C.080.

#### 155.16 Fees

(A) In addition to the fees set forth in Section 324 of the NWCAA Regulation, the following fees apply:

(1) Threshold Determination - NWCAA may contract directly with a consultant for preparation of an environmental checklist or other information needed for NWCAA to make a threshold determination, and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs and expenses. In addition, NWCAA may charge a calculated fee from any applicant to cover the costs incurred by NWCAA in preparing an environmental checklist or other information needed for NWCAA to make a threshold determination.

#### (2) Environmental Impact Statement

(a) When NWCAA is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of NWCAA, NWCAA may charge and collect a reasonable fee from any applicant to cover costs incurred by NWCAA in preparing the EIS.

(b) The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

(c) The responsible official may determine that NWCAA will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than NWCAA and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs.

(d) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under NWCAA 155.16 (A)(1) and (2) of these policies and procedures that remain after incurred costs are paid.

(e) NWCAA may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of these policies and procedures relating to the applicant's proposal.

(f) NWCAA shall not collect a fee for performing its duties as a consulted agency, except as provided in WAC 197-11-570.

(g) NWCAA may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter 42.56 RCW.

#### 155.17 Severability

(A) If any provision of these policies and procedures or their application to any person or circumstance is held invalid, the remainder of these policies and procedures, or the

application of such invalid provision to other persons or circumstances, shall not be affected.

PASSED: June 10, 2010 AMENDED: August 13, 2015, April 9, 2020

### SECTION 580 - VOLATILE ORGANIC COMPOUND CONTROL

580.1 The Board of Directors has noted the measurement of ozone concentrations (one hour ave.) nearing the Federal ambient standard at the northern and southern boundaries of the NWCAA jurisdiction. The expanding population and the presence of four large refineries contribute volatile organic compound (VOC) emissions to the atmosphere. Photochemically reactive VOC's are precursors to ozone formation. In order to maintain the current attainment status for ozone, the Board has adopted specific measures to control VOC emissions. Reasonable Available Control Technology (RACT) is required for existing refinery operations, gasoline marketing, and in the use of cutback asphalt. RACT is defined as the lowest emission limit that a particular source is capable of meeting by the application of control that is reasonably available considering technological and economic feasibility.

#### ~~((SECTION 580 - DEFINITIONS~~

~~BOTTOM LOADING~~ means the filling of a tank through a submerged fill line.

~~BULK GASOLINE PLANT~~ means a gasoline storage and transfer facility that receives more than ninety percent of its annual gasoline throughput by transport tank, and reloads gasoline into transport tanks. See also "gasoline station" and "gasoline loading terminal."

~~CERTIFIED VAPOR RECOVERY SYSTEM~~ means a stage II vapor recovery system which has been certified by the California Air Resources Board.

~~CLOSED REFINERY SYSTEM~~ means a disposal system that will process or dispose of those VOC collected from another system.

~~CUTBACK ASPHALT~~ means an asphalt that has been blended with more than seven percent petroleum distillates by weight.

~~DISPOSAL SYSTEM~~ means a process or device that reduces the mass quantity of the uncontrolled VOC emissions by at least ninety percent.

~~GASOLINE~~ Means a petroleum distillate having a true vapor pressure greater than 28.0 kilopascals (kPa) (4 pounds per square inch absolute p.s.i.a.) at 20 degrees Celsius (20 C) temperature, that is a liquid at standard conditions of 102.9 Kpa (14.7 psi) and 20 C, and is used as a fuel for internal combustion engines.

~~GASOLINE STATION~~ means any facility dispensing gasoline into fuel tanks of motor vehicles, from stationary storage tanks. See also "bulk gasoline plant" and "gasoline loading terminal."

~~GASOLINE LOADING TERMINAL~~ means a gasoline transfer facility that receives more than ten percent of its annual gasoline throughput solely or in combination by pipeline, ship or barge, and loads gasoline into transport tanks. See also "bulk gasoline plant" and "gasoline station."

~~LEAK FREE~~ means a liquid leak of less than four drops per minute.

~~PETROLEUM REFINERY~~—means a facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, asphalt, or other products by distilling crude oils or redistilling, cracking, extracting or reforming unfinished petroleum derivatives.

~~PROCESS UNIT~~—means all the equipment essential to a particular production process.

~~PROPER ATTACHMENT FITTINGS~~—means connecting hardware for the attachment of fuel transfer or vapor lines which meets or exceeds industrial standards or specifications and the standards of other agencies or institutions responsible for health and safety.

~~REID VAPOR PRESSURE~~—means the true vapor pressure of volatile organic compounds at 37.8 degrees Celsius (100 degrees Fahrenheit) temperature.

~~STAGE II~~—means gasoline vapor recovery during motor vehicle refueling operations from stationary tanks.

~~SUBMERGED FILL LINE~~—means a pipe, tube, fitting or other hardware for loading liquid into a tank either a discharge opening flush with the tank bottom; or with a discharge opening entirely below the lowest normal operating drawoff level or that level determined by a liquid depth two and one half times the fill line diameter when measured in the main portion of the tank, but not in sumps or similar protrusions.

~~SUBMERGED LOADING~~—means the filling of a tank with a submerged fill line.

~~SUITABLE CLOSURE or SUITABLE COVER~~—means a door, hatch, cover, lid, pipe cap, pipe blind, valve or similar device that prevents the accidental spilling or emitting of VOC. Pressure relief valves, aspirator vents or other devices specifically required for safety and fire protection are not included.

~~TRANSPORT TANK~~—means a container with a capacity greater than one thousand liters (260 gallons) used for transporting gasoline, including but not limited to, tank truck, tank trailer, railroad car, and metallic or nonmetallic tank or cell conveyed on a flatbed truck, trailer or railroad car.

~~THROUGHPUT~~—means the amount of material passing through a facility.

~~TRUE VAPOR PRESSURE~~—means the equilibrium partial pressure of an organic liquid (determined with methods described in American Petroleum Institute Bulletin 2517, "Evaporation Loss from Floating Roof Tanks," 1962).

~~TURNAROUND or PROCESS UNIT TURNAROUNDS~~—means the shutting down and starting up of process units for periodic major maintenance and repair of equipment, or other planned purpose.

~~UPGRADED~~—means the replacement or modification gasoline storage tank(s) and/or piping system(s) that exceeds 50% of the replacement cost.

~~VAPOR BALANCE SYSTEM~~—means a combination of pipes or hoses which create a closed system between the vapor spaces of an unloading tank and receiving tank such that the vapors displaced from the receiving tank are transferred to the tank being unloaded.

~~VAPOR BALANCING~~—means use of a vapor balance system.

~~VAPOR RECOVERY SYSTEM~~—means a process which prevents emission to the atmosphere of volatile organic com-

pounds released by the operation of any transfer, storage, or process equipment.

~~VOLATILE ORGANIC COMPOUND or VOC~~—means an organic compound that participates in atmospheric photochemical reactions. This excludes all compounds determined to have negligible photochemical reactivity by the U.S. Environmental Protection Agency and listed in 40 CFR 51.100(s).

~~WAXY, HEAVY POUR CRUDE OIL~~—means a crude oil with a pour point of 10 C or higher (determined by the American Society for Testing and Materials Standard D97-66, "Test for Pour Point of Petroleum Oils".)

PASSED: December 13, 1989 AMENDED: April 14, 1993, October 13, 1994, February 8, 1996, April 9, 2020

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

**WSR 20-06-013**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**NATURAL RESOURCES**  
[Filed February 20, 2020, 2:33 p.m.]

Supplemental Notice to WSR 19-17-004 and 19-22-078. Preproposal statement of inquiry was filed as WSR 19-13-055.

Title of Rule and Other Identifying Information: Chapter 332-120 WAC, memorandum of understanding (MOU) for survey monument perpetuation during pavement preservation treatment projects, and clarification of existing requirements.

Hearing Location(s): On April 10, 2020, at 1:30 p.m., at DNR Tumwater Compound, 801 88th Avenue S.E., Main Conference Room, Tumwater, WA 98501-7019.

Date of Intended Adoption: April 23, 2020.

Submit Written Comments to: Patrick J. Beehler, PLS, 1111 Washington Street S.E., Mailstop 47030, Olympia, WA 98504-7030, email pat.beehler@dnr.wa.gov, fax 360-902-1778, 360-902-1181, by April 10, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Creation of an MOU process for agencies conducting pavement preservation projects to allow a reasonable and cost effective way for agencies to be in compliance with RCW 58.24.040(8). Adds the requirement to comply with the applicable sections of the Survey Recording Act, chapter 58.09 RCW. Adds definitions and clarifies existing language.

Reasons Supporting Proposal: Pavement preservation projects temporarily cover visible survey monuments in the road surface, but do not physically remove them. A pavement preservation project has limited impact on accessibility and use of survey monument positions. The MOU process will provide a cost savings to both the agencies and the department of natural resources (DNR).

Statutory Authority for Adoption: RCW 58.24.040(8).

Statute Being Implemented: RCW 58.24.040(8).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Patrick J. Beehler, PLS, Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98504-7030, 360-902-1181; Implementation and Enforcement: Bob R. Knuth, PLS, DNR Tumwater Compound, 801 88th Avenue S.E., Tumwater, WA 98501-7019, 360-902-1190.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost savings is anticipated due to the MOUs setting up reporting systems and not requiring monument removal permits.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

February 13, 2020  
Angus W. Brodie  
Deputy Supervisor  
State Uplands

AMENDATORY SECTION (Amending WSR 94-06-034, filed 2/25/94, effective 3/28/94)

**WAC 332-120-020 Definitions.** The following definitions shall apply to this chapter:

Covering: The physical covering of a survey monument such that the physical structure is no longer visible or readily accessible.

Department: The department of natural resources.

Engineer: Any person authorized to practice the profession of engineering under the provisions of chapter 18.43 RCW who also has authority to do land boundary surveying pursuant to RCW 36.75.110, 36.86.050, 47.36.010 or 58.09-090.

Geodetic control point: Points established to mark horizontal or vertical control positions that are part of the National Geodetic Survey Network.

Land boundary survey corner: A point on the boundary of any easement, right of way, lot, tract, or parcel of real property; a controlling point for a plat; or a point which is a General Land Office or Bureau of Land Management survey corner.

Land corner record: The record of corner information form as prescribed by the department of natural resources pursuant to chapter 58.09 RCW.

Land surveyor: Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

Local control point: Points established to mark horizontal or vertical control positions that are part of a permanent government control network other than the National Geodetic Survey network.

Parcel: A part or portion of real property including but not limited to GLO segregations, easements, rights of way, aliquot parts of sections or tracts.

Pavement preservation treatment: Asphalt light bituminous applications such as slurry, micro seal, cape and chip seal treatments that are typically less than 5/8 inch thick.

Removal or destruction: The physical disturbance (~~or covering~~) of a monument such that the ~~(survey point is)~~ physical structure no longer ~~(visible or readily accessible)~~ marks the location of the land boundary position.

Survey monument: The physical structure, along with any references or accessories thereto, used to mark the location of a land boundary survey corner, geodetic control point, or local control point.

Survey Recording Act: The law as established and designated in chapter 58.09 RCW.

AMENDATORY SECTION (Amending WSR 94-06-034, filed 2/25/94, effective 3/28/94)

**WAC 332-120-060 Project completion—Perpetuation of the original position.** (1) After completion of the activity that caused the removal or destruction of the monument, a land surveyor or engineer shall, unless specifically authorized otherwise:

(a) Reset a suitable monument at the original survey point or, if that is no longer feasible;

(b) Establish permanent witness monuments easily accessible from the original monument to perpetuate the position of the preexisting monument.

(2) Land boundary survey monumentation required by this chapter shall meet the requirements of the RCW 58.09.120 and 58.09.130.

(3) After completion of the remonumentation, the land surveyor or engineer shall complete the report form required by this chapter and forward it to the department.

(4) ~~((Additionally, after remonumenting any corner originally monumented by the GLO or BLM, a land corner record form shall also be filed with the county auditor as required by the Survey Recording Act.))~~ A record of survey or land corner record shall be completed as required by the Survey Recording Act to document the remonumentation in the public record.

NEW SECTION

**WAC 332-120-080 Survey monument preservation MOU for chip seal projects.** The purpose of this section is to cooperatively promote a reasonable method of land survey monument preservation throughout a pavement preservation treatment project in lieu of requiring an application for permit to remove or destroy a survey monument, per WAC 332-120-030.

(1) It is the responsibility of the licensed engineer, or their designee, in responsible charge of any pavement preservation project, which may cover existing visible survey monuments, to search for and identify any such survey monuments within the project limits.

(2) A state, county, or municipal agency conducting annual pavement preservation projects that cover existing

survey monuments in the roadway may enter into an MOU with DNR which must include the following requirements:

(a) Annually, prior to the start date of planned pavement preservation projects, send notification to the department of planned projects for that year with road names and mileposts and/or beginning and ending intersections, including start date and expected date of completion;

(b) Acknowledgment of the agency's responsibility to ensure that all known survey monuments within the project area are located and protected;

(c) All monuments that were covered during a project shall be uncovered and made accessible after completion of annual activities; and

(d) The professional engineer in responsible charge of pavement preservation projects shall submit an annual letter to the department certifying that the affected monuments were uncovered.

(3) An agency which does not enter into an MOU under this section is required to submit a permit application following WAC 332-120-030 through 332-120-070 for any pavement preservation project that will cover a survey monument.

**WSR 20-06-030**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
(Board of Physical Therapy)  
[Filed February 26, 2020, 10:27 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 246-915A-010 Physical therapists and physical therapist assistants. The board of physical therapy (board) is proposing to update the effective date in WAC 246-915A-010 for the physical therapy compact per RCW 18.74.500, Article IX(2). This rule adopts the effective date of the compact rules to October 27, 2019.

Hearing Location(s): On April 20, 2020, at 10:00 a.m., at the Department of Health, 20425 72nd Avenue South, Building 2, Room 307, Kent, WA 98032.

Date of Intended Adoption: April 20, 2020.

Submit Written Comments to: Kris Waidely, Department of Health, Board of Physical Therapy, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by April 13, 2020.

Assistance for Persons with Disabilities: Contact Kris Waidely, fax 360-236-2901, TTY 711, email [Kris.waidely@doh.wa.gov](mailto:Kris.waidely@doh.wa.gov), by April 13, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The physical therapy compact commission has made minor amendments to the compact rules. The compact commission held a public rules hearing and the amendments were adopted and became effective on October 27, 2019. The proposed rules reflect the October 27, 2019, effective date. The compact commission rules are not effective in Washington unless the board adopts them. The minor amendments were:

Rule 1.1, adds a new definition for the word "denied" and reorders accordingly based on alphabetical order.

Rule 3.3, eligibility for compact privileges after an adverse action or encumbrance. Clarifies the eligibility of someone who has a denied license by adding a new paragraph and reorders other paragraphs.

Rule 3.5, explanation or termination of a compact privilege. Moves paragraph C in Rule 3.5 to a more appropriate section in Rule 3.3.

Reasons Supporting Proposal: The board is opening rules to comply with RCW 18.74.500, Article IX(2), which mandates that in order to participate in the compact in the state of Washington, the board of physical therapy must adopt compact rules.

Statutory Authority for Adoption: RCW 18.74.500, Article IX(2), and 18.74.023.

Statute Being Implemented: RCW 18.74.500, Article IX(2).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kris Waidely, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4847.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Chapter 18.74 RCW requires rules in order for Washington state to be able to issue compact privileges to physical therapists and physical therapist assistants who hold licenses in other states or who may wish to obtain compact privileges in other compact participating states if their originating state of licensure is Washington. The law requires the board to review the rules adopted by the physical therapy licensure commission (PTLC). The

PTLC rules are not effective in Washington unless the state board adopts them.

February 26, 2020 [2020]  
Renee A. Fullerton  
Executive Director

**AMENDATORY SECTION** (Amending WSR 19-12-056, filed 5/31/19, effective 7/1/19)

**WAC 246-915A-010 Physical therapy licensure compact—Compact commission rules.** (1) The physical therapy licensure compact (compact) is established in Washington under RCW 18.74.500. Its purpose is to facilitate interstate practice of physical therapy with the goal of improving public access to physical therapy services.

(2) The rules of the physical therapy compact commission, in effect as of October (~~28, 2018~~) 27, 2019, are adopted and incorporated by reference.

(3) A copy of the rules is available for public inspection from the department of health at <https://www.doh.wa.gov/LicensesPermitsandCertificates/ProfessionsNewReneworUpdate/PhysicalTherapyLicensureCompact/RulesInProgress> or by calling the department of health's office of customer service at 360-236-4700.

(4) A licensee may exercise a compact privilege as provided in RCW 18.74.500, Article IV. Applicable fees are set forth in WAC 246-915A-990.

## WSR 20-06-035

### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed February 27, 2020, 8:10 a.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 19-15-047.

Title of Rule and Other Identifying Information: WAC 308-101-030 Computation of time.

Hearing Location(s): On April 7, 2020, at 10:00 a.m., at the Highways-Licenses Building, 1125 Washington Street S.E., Conference Room 430, Olympia, WA 98504. Check in at the first floor counter.

Date of Intended Adoption: April 8, 2020.

Submit Written Comments to: Marguerite Friedlander, Administrator, Department of Licensing, Highways-Licenses Building, 1125 Washington Street S.E., Olympia, WA 98504, email [mfriedland@dol.wa.gov](mailto:mfriedland@dol.wa.gov), fax 360-570-7009, by April 6, 2020.

Assistance for Persons with Disabilities: Contact Marguerite Friedlander, administrator, department of licensing, phone 360-664-1523 or 360-902-0105, email [mfriedland@dol.wa.gov](mailto:mfriedland@dol.wa.gov), by April 3, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule establishes a uniform method of computation for determining when the department receives a hearing request form, pursuant to RCW 46.20.308(7).

Reasons Supporting Proposal: This rule will avoid inconsistency in calculations and reduce the number of hearings that would be dismissed for being scheduled beyond the statutory thirty days.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.308.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Marguerite Friedlander, 421 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1523.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. No cost is associated with this rule change.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

February 27, 2020

Damon Monroe

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 18-11-098, filed 5/21/18, effective 9/4/18)

**WAC 308-101-030 Computation of time.** (1) In computing any period of time prescribed or allowed by any applicable statute or rule, RCW 1.12.040 shall apply;

(2) When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation;

(3) Whenever a person has the right to request a hearing or other proceeding within a prescribed period after "notice is given" by the department under Title 46 RCW or 308 WAC, such notice is deemed to be given on the third day after the notice is deposited into the state mailing service;

(4) Whenever a person has the right to request a hearing or other proceeding within a prescribed period after "receiving notice" from the department under Title 46 RCW or 308 WAC, such notice is deemed to be "received" by a person on the third day after the notice is deposited into the state mailing service(-);

(5) A request for a hearing or interview under Title 46 RCW is deemed complete on the day the request is postmarked or, if sent electronically, the date the request is received by the department, and the department is deemed to be in receipt of the hearing or interview request on the third day after the request is postmarked.



**WSR 20-06-051**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

[Filed March 2, 2020, 1:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-17-057.

Title of Rule and Other Identifying Information: WAC 182-509-0300 Modified adjusted gross income (MAGI), 182-509-0320 MAGI income—Noncountable income; 182-509-0335 MAGI income—Educational benefits, 182-509-0345 MAGI income—Income from employment and training programs, 182-509-0350 MAGI income—Needs-based assistance from other agencies or organizations, and 182-509-0355 MAGI income—Gifts and inheritances.

Hearing Location(s): On April 7, 2020, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than April 8, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by April 7, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay service 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by March 27, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending these WACs to: (1) Align income exemptions with the Internal Revenue Code; (2) clarify noncountable income provisions; and (3) remove provisions that are no longer applicable.

Additionally, the agency is repealing three sections from chapter 182-509 WAC because:

- MAGI programs do not count the income from employment and training described in WAC 182-509-0345.
- Rules regarding needs-based assistance from other agencies or organizations set out in WAC 182-509-0350 have been moved to WAC 182-509-0320.
- Gifts and inheritances listed in WAC 182-509-0355 are already identified in WAC 182-509-0320.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Mark Westenhaver, P.O. Box 45534, Olympia, WA 98504-5534, 360-725-1324.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule making does not impose costs on businesses.

March 2, 2020  
 Wendy Barcus  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-21-040, filed 10/7/14, effective 11/7/14)

**WAC 182-509-0300 Modified adjusted gross income (MAGI).** (1) The agency uses the modified adjusted gross income (MAGI) methodology to determine eligibility for MAGI-based Washington apple health ((~~WAH~~)) programs described in WAC 182-509-0305.

(2) MAGI methodology is described in WAC 182-509-0300 through 182-509-0375. Generally, MAGI includes adjusted gross income (as determined by the Internal Revenue Code (IRC)) increased by:

(a) Any amount of foreign income excluded from gross income under Section 911 of the IRC;

(b) Any amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax; and

(c) Any amount of Title II Social Security income or Tier 1 Railroad Retirement income which is excluded from gross income under Section 86 of the IRC.

(3) When calculating a person's eligibility for the programs listed in WAC 182-509-0305, the agency uses the person's MAGI income with the following exceptions:

(a) Scholarships or fellowship grants described in WAC 182-509-0335 used for education purposes are excluded from income;

(b) Income received by American Indian/Alaskan Native individuals described in WAC 182-509-0340 is excluded from income; (~~and~~)

(c) Any income received as a lump sum as described in WAC 182-509-0375 is counted as income only in the month in which it is received; and

(d) Income received by a child age eighteen or younger or a tax dependent as described in WAC 182-509-0360 is excluded from income.

(4) Countable MAGI income is reduced by an amount equal to five percentage points of the federal poverty level (FPL) based on household size to determine net income except that there is no such reduction of countable MAGI income for parents or caretaker relatives with an eligible dependent child (~~(whose net countable income is below fifty-four percent of the FPL)~~) (as described in WAC 182-509-0305(1)). Net income is compared to the applicable standard described in WAC 182-505-0100.

(5) When calculating a person's eligibility for MAGI-based programs listed in WAC 182-509-0305, the agency

determines the medical assistance unit for each person according to WAC 182-506-0010 and 182-506-0012.

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-509-0320 MAGI income—Noncountable income.** For purposes of determining eligibility for modified adjusted gross income (MAGI)-based Washington apple health ~~((WAH))~~ (see WAC 182-509-0300):

(1) Some types of income are not counted when determining eligibility for MAGI-based ~~((WAH))~~ apple health. Under the MAGI income methodology described in WAC 182-509-0300, income is not counted if the Internal Revenue Service (IRS) permits it to be excluded or deducted for purposes of determining the tax liability of a person. (See 26 U.S.C. Sections 62(a) and 101-140.)

(2) Examples of income that are not counted include, but are not limited to:

(a) Bona fide loans, except certain student loans as specified under WAC 182-509-0335;

(b) Federal income tax refunds and earned income tax credit ~~((EITC))~~ payments for up to twelve months from the date received;

(c) Child support payments received by any person included in household size under WAC 182-506-0010;

(d) Nontaxable time loss benefits or other compensation received for sickness or injury, such as benefits from the department of labor and industries (L&I) or a private insurance company;

(e) Title IV-E and state foster care and adoption support maintenance payments;

(f) Veteran's benefits including, but not limited to, disability compensation and pension payments for disabilities paid to the veteran or family members; education, training and subsistence; benefits under a dependent-care assistance program for veterans, housebound allowance and aid and attendance benefits;

~~(g) ((Educational assistance that is not counted under WAC 182-509-0335;~~

~~(h) Native American benefits and payments that are not counted under WAC 182-509-0340;~~

~~(i) Income from employment and training programs that is not counted under WAC 182-509-0345;~~

~~(j) Needs-based assistance from other agencies or organizations that is not counted under WAC 182-509-0350;~~

~~(k) Money withheld from a benefit to repay an overpayment from the same income source;~~

~~((H))~~ One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as Voluntary Agency (VOLAG) payments;

~~((M))~~ (h) Nontaxable income from employment and training programs:

(i) Any portion of income used to repay the cost of obtaining that income source;

~~((N))~~ Insurance proceeds or other income received as a result of being a Holocaust survivor;

~~((O))~~ (i) Insurance proceeds or other income received as a result of being a Holocaust survivor;

(k) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

~~((P))~~ Federal twenty five dollar supplement weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

~~((Q))~~ (l) Income from a sponsor given to a sponsored immigrant;

~~((R))~~ Energy assistance payments;

~~((S))~~ (m) Fringe benefits provided on a pretax basis by an employer, such as transportation benefits or moving expenses;

~~((T))~~ (n) Employer contributions to certain pretax benefits funded by an employee's elective salary reduction, such as amounts for a flexible spending account;

~~((U))~~ (o) Distribution of pension payments paid by the employee (such as premiums or contributions) that were previously subject to tax;

~~((V))~~ Gifts or inheritances to the person that are not counted under WAC 182-509-0355;

~~((W))~~ (p) Gifts as described in IRS Publication 559: Survivors, Executors, and Administrators;

(q) Cash or noncash inheritances, except that the agency counts income produced by an inheritance;

(r) Death benefits from life insurance and certain benefits paid for deaths that occur in the line of duty; and

~~((X))~~ (s) Other payments that are excluded from income under state or federal law.

(3) Income received from ~~((the following cash programs is not countable income for MAGI-based WAH))~~ other agencies or organizations as needs-based assistance is not countable income under this section.

(a) "Needs-based" means eligibility for the program is based on having limited income, or resources, or both. Examples of needs-based assistance are:

(i) Clothing;

(ii) Food;

(iii) Household supplies;

(iv) Medical supplies (nonprescription);

(v) Personal care items;

(vi) Shelter;

(vii) Transportation; and

(viii) Utilities (e.g., lights, cooking fuel, the cost of heating or heating fuel).

(b) Needs-based cash programs include, but are not limited to, the following apple health programs:

~~((A))~~ (i) Diversion cash assistance (DCA);

~~((B))~~ (ii) Temporary assistance for needy families (TANF);

~~((C))~~ (iii) State family assistance (SFA);

~~((D))~~ (iv) Pregnant women's assistance (PWA);

~~((E))~~ (v) Refugee cash assistance (RCA);

~~((F))~~ (vi) Aged, blind, disabled cash assistance (ABD);

and

~~((G))~~ (vii) Supplemental security income (SSI).

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-509-0335 MAGI income—Educational benefits.** For purposes of determining eligibility for modified

adjusted gross income (MAGI)-based Washington apple health ((~~WAH~~)) (see WAC 182-509-0300), the agency or its designee does not count educational ((~~assistance~~)) benefits as income when they are used for education expenses, unless the educational benefits are used for living expenses. Examples include, but are not limited to:

(1) Educational assistance in the form of grants or loans issued under Title IV of the Higher Education Amendments (Title IV - HEA) or through a program administered by the Department of Education (DOE), such as:

- (a) Pell grants (Title IV);
- (b) Stafford loans (Title IV);
- (c) Perkins loan program (Title IV);
- (d) State need grant program (Title IV);
- (e) (~~Christa McAuliffe fellowship program (DOE);~~
- (f) ~~Jacob K. Javits fellowship program (DOE); and~~
- (g) ~~Library career~~) Training programs administered by the Department of Education (DOE).

(2) Payments received for education, training, or subsistence under any law administered by the department of Veteran's Affairs (VA).

(3) Student financial assistance provided under the Bureau of Indian Affairs education programs.

(4) Educational assistance in the form of grants or loans under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-392.

(5) Work study income including:

- (a) Federal or state work study income; and
- (b) WorkFirst work study income.

(6) Payments to service academy cadets at a military academy.

(7) Payments for the purposes of tuition made on behalf of the individual to an educational organization for the education or training of such individual.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-509-0345	MAGI income—Income from employment and training programs.
WAC 182-509-0350	MAGI income—Needs-based assistance from other agencies or organizations.
WAC 182-509-0355	MAGI income—Gifts and inheritances.

### **WSR 20-06-052**

#### **PROPOSED RULES**

#### **STUDENT ACHIEVEMENT COUNCIL**

[Filed March 2, 2020, 2:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-23-011.

Title of Rule and Other Identifying Information: Chapter 250-21 WAC, State student financial aid program—Washington college grant.

Hearing Location(s): On April 7, 2020, at 2:00 p.m., at the Washington Student Achievement Council (WSAC), 917 Lakeridge Way S.W., Olympia, WA 98502.

Date of Intended Adoption: May 29, 2020.

Submit Written Comments to: Carla Idohl-Corwin, P.O. Box 43430, Olympia, WA 98502, email [wcgwac@wsac.wa.gov](mailto:wcgwac@wsac.wa.gov), fax 360-753-7808, by April 6, 2020.

Assistance for Persons with Disabilities: Contact Crystal Hall, phone 360-753-7852, fax 360-753-7808, TTY unavailable, email [crystalh@wsac.wa.gov](mailto:crystalh@wsac.wa.gov), by March 31, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency proposes to repeal existing chapter 250-20 WAC. The proposal is to create a new chapter 250-21 WAC, state student financial aid program—Washington college grant (chapter 28B.92 RCW). This proposal is necessary to implement changes made in the 2019 legislative session. This new chapter does the following:

- Changes the state need grant program to the Washington college grant program.
- Removes the limitation prohibiting two associate degrees within a five year period.
- Removes dependent care allowance.
- Expands the eligible student definition based on the median family income (MFI) expansion in 2020-21 to include one hundred percent MFI.
- Establishes award amounts in statute.
- Removes the requirement that students have a self-help requirement for all recipients.
- Provides for a revised proration chart for award amounts up to the one hundred percent MFI.
- Provides for maximum awards up to fifty-five percent MFI.
- Adds apprenticeship programs as eligible for funding from the Washington college grant program.
- Clarifies student eligibility related to ability to benefit equivalents for students without a high school diploma or equivalent.
- Guarantees funding for all eligible students beginning in 2020-2021.

Reasons Supporting Proposal: The reason for repealing chapter 250-20 WAC and creating a new chapter is to be as concise and clear as possible due to substantial legislative changes. It is necessary to create these rules to implement the new legislation enacted in the 2019 session.

Statutory Authority for Adoption: RCW 28B.92.150.

Statute Being Implemented: Chapter 28B.92 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: WSAC will begin working with participating higher education institutions following adoption of this rule during the remainder of the 2019-20 academic year to implement changes in student eligibility, campus practices, and policies beginning with the 2020-2021 academic year.

Name of Proponent: WSAC, governmental.

Name of Agency Personnel Responsible for Drafting: Carla Idohl-Corwin, WSAC, 360-753-7847; Implementation and Enforcement: Becky Thompson, WSAC, 360-753-7840.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to rules adopted by this agency.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Chapter 28B.92 RCW provides specific content of rules.

March 2, 2020  
Carla Idohl-Corwin  
Senior Associate Director  
Need Based Programs  
and Operations

### Chapter 250-21 WAC

#### STATE STUDENT FINANCIAL AID PROGRAM— WASHINGTON COLLEGE GRANT

##### NEW SECTION

**WAC 250-21-010 Program definitions.** (1) "Council" means the nine-member council of the Washington student achievement council.

(2) "Agency" refers to the Washington student achievement council.

(3) "Office" means the office of student financial assistance, a division of the Washington student achievement council.

(4) "Financial need" shall be determined in accordance with industry standards and provisions as recognized and modified by the office.

(5) The term "post-secondary institution" shall mean:

(a) Any public university, college, community college, or vocational-technical institute operated by the state of Washington, or any other university, college, or institute in the state of Washington offering instruction beyond the high school level which is a member institution of an approved accrediting association.

(b) Any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of an approved accrediting association.

(c) The separate accreditation requirement is waived for branch campuses of out-of-state institutions if the branch campus:

(i) Is eligible to participate in federal student aid programs; and

(ii) Has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington; and

(iii) Has an annual enrollment of at least seven hundred full-time equivalent students; or

(iv) Is a nonprofit institution recognized by the state of Washington as provided in RCW 28B.77.240.

(6) The term "approved accrediting association" shall mean a national or regional accrediting association that is recognized by the council and the Secretary of the U.S. Department of Education and in alignment with WAC 250-61-050.

(7) "Washington resident" shall be defined as an individual who satisfies the requirements of RCW 28B.15.012 (2)(a) through (e) and office-adopted rules and regulations pertaining to the determination of residency.

(8) "Student budgets" is determined by institutions and subject to approval by the office. The student budget consists of that amount required to support an individual as a student for nine months and may take into consideration cost factors for maintaining the student's dependents.

(9) "Family income" is the student's family income for the calendar year as required for federal need analysis.

(a) "Income" means adjusted gross income and nontaxable income as reported on the Free Application for Federal Student Aid (FAFSA) or alternative application approved by the office.

(b) For the dependent student, "family income" means parental income including adjusted gross income and nontaxable income.

(c) For the independent student, "family income" means the income of the student and spouse, if any, reported as part of the student's family.

(d) The institutional aid administrator may adjust the family's income up or down to more accurately reflect the family's financial situation during the academic year. When such adjustments are made, they shall be consistent with guidelines for making changes to determine federal student aid eligibility and documented in the student's file.

(10) "Income cutoff" means the amount of family income below which a student is determined to be eligible for the Washington college grant.

At the discretion of the institution's aid administrator, a student who was eligible for a Washington college grant in the prior academic year may be deemed eligible if their family income increases by no more than three percent and family income is over the one hundred percent MFI level.

(11) "Median family income" is the median income for Washington state, adjusted by family size and number in college and as determined by the office using a federal standard.

(12) "Grant" is the Washington college grant award for each sector as defined in statute.

(13) "Academic year" is that period of time typically between July 1st and the following June 30th, and may include summer terms, during which a full-time student would normally be expected to complete the equivalent of two semesters or three quarters or nine hundred clock hours of instruction.

(14) "Clock hours" means a period of time which is the equivalent of either:

(a) A fifty to sixty minute class, lecture, or recitation; or

(b) A fifty to sixty minute period of faculty-supervised laboratory shop training or internship.

(15) "Apprenticeship payment period" means the time frame approved by the office for an apprenticeship program that is the equivalent of an academic year and usage rate of three quarters full-time equivalent.

(16) "Satisfactory academic progress" is the student's successful completion of a minimum number of credit or clock hours for each term in which the grant was received. Each school's policy for measuring progress of Washington college grant recipients must define satisfactory academic progress as the student's successful completion of the minimum number of credit or clock hours for which the aid was disbursed.

(a) The minimum satisfactory academic progress standard for full-time students is twelve credits per term or three hundred clock hours per term. Satisfactory academic progress for three-quarter time students is nine credits per term or two hundred twenty-five clock hours per term. Satisfactory academic progress for half-time students is six credits per term or one hundred fifty clock hours per term and for less than half-time students is three credits or seventy-five clock hours per term.

(b) Each school's satisfactory academic progress policy must deny further disbursements of state grant aid at the conclusion of any term in which they fail to complete at least one-half of the minimum number of credits or clock hours for which the aid was disbursed or otherwise fails to fulfill the conditions of the institution's satisfactory academic progress policy.

(c) The school may make disbursements to a student who is in a warning status. "Warning" is defined as completion of at least one-half, but less than all of the minimum number of credits for which the aid was calculated and disbursed. The school must have a satisfactory academic progress policy, approved by the office, which limits the number of terms in which a student may receive state grant aid while in a warning status.

(d) The school's aid administrator may at any time, using professional judgment exercised on a case-by-case basis, reinstate a student into a satisfactory academic progress status, in response to an individual student's extenuating circumstances.

(e) An institution may submit an alternative approach to evaluating satisfactory academic progress that includes a plan for improved student retention and comparison data to ensure state funds are used efficiently. The office will initially determine whether to approve the alternative policy, then evaluate it over a specified time frame, then determine whether the policy may continue to be approved.

(17) "Satisfactory program progress" is an apprentice's (qualifying under RCW 28B.92.200 (5)(b)(ii)) successful completion of a minimum number of hours for each apprenticeship payment period in which the grant was received. Each apprenticeship program's policy for measuring progress of Washington college grant recipients must define satisfactory program progress as the apprentice's successful completion of the minimum number of hours for which the aid was disbursed.

(a) A program's satisfactory program progress policy must be submitted to the office for approval and must be pro-

vided to the apprentice prior to or at the point of aid distribution.

(b) The program's aid administrator may at any time, using professional judgment exercised on a case-by-case basis, reinstate an apprentice into a satisfactory program progress status, in response to an individual apprentice's extenuating circumstances.

(18) The term "eligible program" shall mean a program encompassed within the institution's accreditation and be an eligible program for purposes of the federal Title IV student financial aid programs. Apprenticeships qualifying as eligible programs must be a registered apprenticeship program approved under chapter 49.04 RCW.

(19) "Tuition growth factor" means an increase of no more than the average annual percentage growth rate of the median hourly wage for Washington for the previous fourteen years as the wage is determined by the Federal Bureau of Labor Statistics.

(20) "State grant" refers to all state grant programs administered by the office.

(21) "High school+ (HS+)" is a competency based high school diploma program for adult learners eighteen and older who do not have a high school diploma or equivalency.

(22) "Integrated Basic Education and Skills Training Program (I-BEST)" is a nationally recognized model that uses a team-teaching approach to quickly boost students' literacy while they learn job skills or academic subjects.

## PART I

### NEW SECTION

**WAC 250-21-011 Student eligibility.** For a student to be eligible for a Washington college grant they must:

- (1) Demonstrate financial need under RCW 28B.92.205.
- (2) Be a resident of the state of Washington in accordance with RCW 28B.15.012 (2)(a) through (e).
- (3) Have a high school diploma or its equivalent or for those without a high school credential, meet the ability to benefit option. Equivalent standards include a general education development certificate or a certificate of completion of a home-based instruction under chapter 28A.200 RCW.

For a student without a high school diploma or its equivalent, a school may accept:

- (a) A recognized ability to benefit test as defined by federal financial aid regulations;
- (b) Completion of at least six college level credits towards an eligible program of study;
- (c) Alternate state equivalent approved by the U.S. Department of Education; or
- (d) Coenrollment in Washington state's Integrated Basic Education and Skills Training Program (I-BEST) and High school+ (HS+) programs that include an eligible program of study as defined in WAC 250-21-010(18).

(4) Be enrolled or accepted for enrollment as an undergraduate student at a participating postsecondary institution in an eligible program.

(a) Be enrolled in a course load of at least three credits per quarter or the equivalent.

(b) Not be pursuing a degree in theology.

(5) Or be enrolled in an approved apprenticeship program under chapter 49.04 RCW.

(6) Maintain satisfactory academic progress as defined in WAC 250-21-010(16).

(7) Not have received a bachelor's degree or higher or its foreign equivalent.

(8) Have submitted the free application for federal student aid or alternative application provided by the office.

(9) Not owe a refund or repayment on a state grant and is not in default on a state student loan.

(10) Not exceed the following Washington college and the state need grant usage limits of the equivalent of ten full-time semesters or fifteen full-time quarters or equivalent combination of these two or the clock hour equivalent.

Usage limits for students who are attending schools that are closed will have their usage limits restored for any terms received at the closing school.

(11) Any student who has obtained a state grant through means of a willfully false statement or failure to reveal any material fact, condition, or circumstance affecting eligibility will be subject to applicable civil or criminal penalties.

#### NEW SECTION

##### **WAC 250-21-021 Institutions seeking participation.**

(1) Eligible postsecondary institutions as defined under RCW 28B.92.030(4) and WAC 250-21-010(5) applying for participation in state financial aid programs will undergo a rigorous review process including, but not limited to, evaluations of administrative capacity and electronic systems; adequacy of financial aid staffing; and historical performance including, but not limited to, the last five years of the institution's participation status and performance in Title IV programs, accreditation status, changes in ownership or majority control, legal or regulatory issues, student complaints, financial strength, and student outcome performance measures.

(a) An institution terminated due to unsatisfactory performance must wait a minimum of one year from the date of termination prior to initiating a new application.

(b) Institutional performance measure information collected for evaluation may include, but is not limited to:

- (i) Student completion rates;
- (ii) Student placement rates;
- (iii) Federal student loan cohort default rates;
- (iv) Annual financial statements;
- (v) U.S. Department of Education financial composite scores;
- (vi) Federal participation status and program review findings;
- (vii) State reauthorization or relicensing reports;
- (viii) Accrediting agency reports, show cause or findings;
- (ix) Enrollments by program;
- (x) Intent to create or terminate programs;
- (xi) Enrollment trends;
- (xii) Pending legal or regulatory issues;
- (xiii) Written student complaints;
- (xiv) Ownership or majority control history; and
- (xv) Any other information relevant to institutional eligibility as requested by the office.

(c) In evaluating completion and placement standards, the office will rely on the standards of the institution's accrediting agency or the standard established between the office and the institution.

Multiple year averages may be considered in evaluating these standards.

(d) Generally, institutional applicants must participate in federal Title IV student financial aid programs in a fully certified status. Applicants that are provisionally certified will be evaluated on a case-by-case basis on the degree to which the underlying causes of the provisional certification indicate an enhanced risk to state funds.

(e) The office will provide a public notification of institutions undergoing review for participation in state financial aid programs and will accept and consider public comment during the period specified in the notification.

(2) Institutional applicants which meet the required standards for participation and are approved by the office may be required to have eligible student data incorporated into legislative cost and forecasting models prior to receipt of state financial aid funding. All newly approved institutions will be evaluated on the performance measures listed under (1)(b) for a minimum of five years of successful participation.

(3) Nothing in this section shall prevent the office, in the exercise of its sound discretion, from denying eligibility to an institution which the office determines is unable to properly administer state financial aid programs or provide advertised services to its students.

#### NEW SECTION

**WAC 250-21-026 Participating institutions.** (1) Participating postsecondary institutions must renew eligibility annually, or as required by the office, by:

(a) Participating in a fully certified status in the federal Title IV student financial aid programs including, at a minimum, the Federal Pell Grant program. Institutions not participating in a fully certified status will be evaluated on a case-by-case basis for continued participation and may have additional conditions imposed by the office in order to maintain their participation in state financial aid programs.

(b) Demonstrating an ongoing capacity to properly administer state financial aid programs including ensuring adequate staffing, proper training, and the maintenance of electronic systems sufficient to comply with program tracking, payment requests, and reporting obligations.

(c) Verifying continued institutional compliance with state financial aid requirements on awarding, conditions of award, satisfactory academic progress, repayment, student maintenance budgets, and such other areas as necessary to assure proper administration of the programs. The office will analyze these policies and may require adjustments to achieve consistent treatment of students in similar circumstances across campuses and support student success.

(d) Private institutions must submit their audited financial statements and federal financial aid compliance audits on an annual basis.

(e) Private nonprofit institutions with less than five years of continuous successful participation in state financial aid programs, Western Governors University - Washington as

established under RCW 28B.77.240, and all participating private for-profit institutions, must submit performance measure information as listed under WAC 250-21-021 (1)(b) on an annual basis, or as directed by the office.

(f) Signing an "agreement to participate" that affirms the institution's agreement to abide by all program rules, regulations, and guidelines, to maintain and provide all pertinent information, records, and reports requested by the office and to notify the office within thirty days of any change to information reported on the agreement form including, but not limited to, material changes to the institution's Title IV participation status, accreditation status, locations, contact information, or affiliated third-party servicers.

(g) Notifying the office within thirty days of transactions considered a change of ownership or majority control including, but not limited to:

- (i) Sale of the institution;
- (ii) Transfer of the controlling interest of stock of the institution or its parent corporation;
- (iii) Merger of two or more institutions; and
- (iv) Division of one institution into two or more institutions.

(2) If evaluation of administrative capability, performance measures, financial strength, participation status and performance in Title IV programs, accreditation status, or changes in ownership or majority control result in concerns about an institution's participation in state financial aid programs, the office may act in accordance with WAC 250-21-081. If an institution disputes actions taken by the office, the institution may appeal per the procedure outlined in WAC 250-21-091.

(3) Nothing in this section shall prevent the office, in the exercise of its sound discretion, from terminating the participation of an institution which the office determines is unable to properly administer state financial aid programs or provide advertised services to its students.

#### NEW SECTION

**WAC 250-21-031 Institutional administrative requirements.** (1) Institutions shall provide financial aid application requirements, due dates, and awarding policies to prospective and admitted students.

(2) Institutions must award all Washington college grant eligible students regardless of their awarding practices.

(3) Institutions shall provide state grant recipients with satisfactory academic progress and repayment standards and the conditions of award.

(4) Institutions shall submit a report to the office related to student eligibility and awards under the format and schedule set forth by the office.

(5) The burden of proof of a grant recipient's eligibility is with the institution. At a minimum:

(a) The institution must be able, on request of the office, to reconstruct the calculations and rationale for the student's grant eligibility and award amounts.

(b) The financial aid form or comparable financial status documents, or other information documenting financial status used to make the award, with the resulting financial need

analysis must be on record in the financial aid office for all grant recipients.

(c) The institution must also have on record justification for reawarding a Washington college grant to any student who failed to make satisfactory academic progress.

(6) The office shall establish annual minimum criteria by which the eligible student is to be awarded. Those criteria shall include the maximum award for each sector and the income cutoff level as well as ensuring that state-level awarding priorities are followed.

(7) The institution shall examine the student's aid application to determine the overall need and specific Washington college grant eligibility and the appropriate award, using the office-approved criteria.

(8) The office may require the institution to provide progression and completion data for all students who are receiving state grants under the ability to benefit provision outlined in WAC 250-21-011 (3)(a) through (d).

(9) The office will make available to all participating institutions, a list of all students who owe state grant repayments or have otherwise exhausted their Washington college grant eligibility. It is the institution's responsibility to ensure that no ineligible student receives a Washington college grant.

#### NEW SECTION

**WAC 250-21-041 Award procedure.** (1) The Washington college grant award for an individual student shall be the grant, appropriate for the sector attended, adjusted for the student's family income and rate of enrollment. Each eligible student receiving a grant must receive the maximum grant award for which they are eligible, unless such award should exceed the student's overall need.

(2) The grant amount for students shall be established as defined in statute RCW 28B.92.030.

(a) For students attending approved apprenticeship programs, includes tuition and fees, as determined by the office, in addition to required program supplies and equipment.

(b) The grant award shall not exceed the actual tuition and fees charged to the eligible student on an annualized basis.

(3) The total Washington college grant award shall be reduced for students with family incomes greater than fifty-five percent of the state's median and for less than full-time enrollment.

Eligible students shall receive a prorated portion of their Washington college grant for any academic period in which they are enrolled at least three or more quarter credits or the equivalent. Students enrolled at a three-quarter time rate will receive seventy-five percent of their grant. Students enrolled half-time will receive fifty percent of their grant. Students enrolled in three or more quarter credits or the equivalent will receive twenty-five percent of their grant.

(4) Eligible students must be awarded for all terms they are enrolled for at least three quarter credits or the equivalent. This applies to both Washington college grant and the college bound scholarship.

(5) All financial resources available to a Washington college grant recipient, when combined, may not exceed the stu-

dent's financial need. The student will not be considered over-awarded if they receive additional funds after the institution disburses aid, and the total resources exceed their financial need by three hundred dollars or less by the end of the academic year as defined in WAC 250-21-010(13).

(6) The institution will notify the student of the Washington college grant award and include the conditions of award following guidance provided by the office.

#### NEW SECTION

**WAC 250-21-051 Institutional fund management requirements.** (1) Once a student is identified as eligible and an award is calculated, institutions submit anticipated awards and payment requests for eligible students using the office's established process.

(2) Private institutions must first disburse awards to eligible students and then request reimbursement from the office via the office's established process. Private institutions must provide students with the opportunity to direct how they will receive their state grant aid using an office-approved student directive form. Private institutions may not place any other conditions on the receipt of the payment.

(3) Institutional payment requests may be made any time of the academic year and are encouraged to be at least monthly. Payments for a new academic year will not begin until the institution is approved for participation in the upcoming year and reconciled for the prior year.

(4) Disbursement documentation and student directives are to be retained by the institution. They must be made available for inspection upon request of the office. If a student fails to cash their Washington college grant check or pick up any remaining funds by the close of the academic year, the funds shall be returned to the program at WSAC and treated as funds declined by the student.

(5) A student-by-student fund reconciliation must be completed by the institution at the time payments are reported using the office's established process and no later than the end of each term.

(a) Record level reports must be filed with the office as requested.

(b) A final student-by-student reconciliation must be filed with the office at the end of each academic year.

(6) No institution may disburse nor claim more funds than that amount required to serve the eligible students at each institution.

(7) If there is a change in enrollment prior to the start of the term, the award must be recalculated. This policy is separate and distinct from the federal repayment policy and computation.

If a Washington college grant recipient never attends in the term for which they received a Washington college grant award, the repayment is one hundred percent of the grant amount.

The institution shall advise the student and the office of amounts to be repaid.

#### NEW SECTION

**WAC 250-21-061 Program administration and audits.** (1) The staff of the office will manage the administrative functions relative to this program.

(2) The office will review institutional administrative practices to determine institutional compliance with rules, regulations, and program guidelines. If such a review determines that an institution has failed to comply with program rules and regulations or guidelines, the office pursuant to the procedures of WAC 250-21-081 may suspend, terminate or place conditions upon the institution's participation in the program and require reimbursement to the program for any funds lost or improperly expended.

#### NEW SECTION

**WAC 250-21-071 Student complaint process.** Should a student question their Washington college grant eligibility or award, the student should direct questions and complaints to the financial aid officer at the institution they attend prior to contacting the office for assistance if necessary.

#### NEW SECTION

**WAC 250-21-081 Suspension or termination of institutional participation.** (1) The executive director, or their designee, may suspend or terminate an institution's participation in state financial aid programs based on a finding that:

(a) The institution has failed or is failing to comply with any term of the institutional participation agreement; or

(b) The institution has violated any provision of this chapter; or

(c) The institution has violated any applicable federal or state law.

(2) In the case of an adverse finding the executive director shall provide the institution a notice of violation that includes details of the legal basis of the finding and the facts used to make the determination.

(3) The institution will have an opportunity to respond to the notice of violation and address deficiencies within a reasonable time specified by the agency including, but not limited to, reimbursement from the institution any funds expended out of compliance with the provisions of this chapter.

(4) The executive director may suspend the institution's participation for a specified time period if, in the executive director's judgment, the deficiencies can be corrected within the given time period. Upon suspension, the institution must immediately cease making any new commitments of state financial aid to enrolled students and may only make disbursement of aid to currently enrolled students with the agency's prior approval for the remainder of the current term. Participation may be reinstated after all deficiencies have been resolved to the satisfaction of the agency.

(5) The executive director may terminate the institution's participation if, in the executive director's judgment, any noted deficiency cannot be corrected within any reasonable time period, or the institution has failed to remedy deficiencies during a period of suspension under subsection (4) of this



section. Upon termination of participation, the institution must immediately cease disbursement of state financial aid.

(6) Reinstatement of participation requires a new application for participation submitted no earlier than one year following termination.

(7) The executive director's action to terminate participation is subject to the hearing procedures specified in WAC 250-21-091.

#### NEW SECTION

**WAC 250-21-091 Appeal process.** (1) An institution may appeal the executive director's action to terminate participation in state financial aid programs.

(2) The institution must submit a request for a hearing to the executive director, in writing, at the council office no later than thirty days following receipt of the notice of termination. In the written request, the party must identify the basis for the appeal and state that a hearing is requested.

(3) Hearings shall be conducted in accordance with the Washington Administrative Procedure Act, chapter 34.05 RCW, as follows:

(a) The presiding officer, who shall be the executive director, or the hearing officer designated by the executive director, shall conduct the hearing under the provisions of chapter 34.05 RCW and shall enter an initial order under RCW 34.05.461 (2) through (9).

(b) The executive director shall review the initial order under RCW 34.05.464 and either enter a final order or remand the matter for further proceedings under RCW 34.05.464(7).

(c) If the agency action is upheld, the party that initiated the hearing process shall pay the costs of the administrative hearing within sixty days following final disposition of the matter.

(d) Any further review of final action must be taken in accordance with RCW 34.05.510, et seq.

## PART II

#### NEW SECTION

**WAC 250-21-100 Apprentice eligibility.** (1) For an apprentice to be eligible for a Washington college grant they must:

(a) Demonstrate financial need under RCW 28B.92.205 and defined by the office;

(b) Be a resident of the state of Washington in accordance with RCW 28B.15.012 (2)(a) through (e);

(c) Have a high school diploma or its equivalent or for those without a high school credential, meet the ability to benefit as approved by the office;

(d) Be enrolled in an eligible apprenticeship program;

(e) Meet satisfactory program progress as defined by the program and approved by the office;

(f) File a financial aid application, as defined by the office;

(g) Not have received a bachelor's degree or higher or its foreign equivalent;

(h) Not owe a refund or repayment on a state grant and is not in default on a state student loan; and

(i) Not exceed the following Washington college and the state need grant usage limits. The equivalent of any one or combination of the following: Ten full-time semesters, fifteen full-time quarters, or fifteen apprenticeship payment periods.

(2) Any apprentice who has obtained a state grant through means of a willfully false statement or failure to reveal any material fact, condition, or circumstance affecting eligibility will be subject to applicable civil or criminal penalties.

#### NEW SECTION

**WAC 250-21-121 Apprenticeship programs seeking participation.** (1) Eligible apprenticeship programs as defined under RCW 28B.92.200 (5)(b)(ii) and chapter 49.04 RCW applying for participation in the Washington college grant will undergo a rigorous review process including, but not limited to, evaluations of administrative capacity and electronic systems; adequacy of staffing; and historical performance which may include, but is not limited to, changes in ownership or majority control, legal or regulatory issues, apprentice complaints, financial strength, and apprentice outcome performance measures.

(a) An apprenticeship program terminated due to unsatisfactory performance must wait a minimum of one year from the date of termination prior to initiating a new application.

(b) Apprenticeship program performance measures are to be defined by the office.

(c) Apprenticeship program applicants must be in a fully participating, not a provisional, status under chapter 49.04 RCW.

(d) The office will provide a public notification of programs undergoing review for participation in the Washington college grant and will accept and consider public comment during the period specified in the notification.

(2) Program applicants which meet the required standards for participation and are approved by the office may be required to have eligible apprentice data incorporated into legislative cost and forecasting models prior to receipt of Washington college grant funding. All newly approved programs will be evaluated on the performance measures listed under subsection (1)(b) of this section for a minimum of five years of successful participation.

(3) Nothing in this section shall prevent the office, in the exercise of its sound discretion, from denying eligibility to a program which the office determines is unable to properly administer the Washington college grant or provide advertised services.

#### NEW SECTION

**WAC 250-21-126 Participating apprenticeship programs.** (1) Participating programs must renew eligibility annually, or as required by the office, by:

(a) Participating in a full, not provisional, status under chapter 49.04 RCW. Programs not participating in a fully certified status will be evaluated on a case-by-case basis for continued participation and may have additional conditions imposed by the office in order to maintain their participation in Washington college grant;

(b) Demonstrating an ongoing capacity to properly administer the Washington college grant including ensuring adequate staffing, proper training, and the maintenance of electronic systems sufficient to comply with program tracking, payment requests, and reporting obligations;

(c) Verifying continued program compliance with requirements on awarding, conditions of award, satisfactory program progress, repayment, calculation of equipment and supply costs, and such other areas as necessary to assure proper administration of the programs. The office will analyze these policies and may require adjustments to achieve consistent treatment of apprentices in similar circumstances across programs and support apprentice success;

(d) Signing an "agreement to participate" that affirms the program's agreement to abide by all rules, regulations, and guidelines, to maintain and provide all pertinent information, records, and reports requested by the office and to notify the office within thirty days of any change to information reported on the agreement form; and

(e) Notifying the office within thirty days of transactions considered a change of ownership or majority control.

(2) If evaluation of administrative capability, performance measures, financial strength, participation status or changes in ownership or majority control result in concerns about a program's participation in state financial aid programs, the office may act in accordance with WAC 250-21-081. If a program disputes actions taken by the office, the institution may appeal per the procedure outlined in WAC 250-21-091.

(3) Nothing in this section shall prevent the office, in the exercise of its sound discretion, from terminating the participation of a program which the office determines is unable to properly administer the Washington college grant or provide advertised services.

#### NEW SECTION

**WAC 250-21-131 Apprenticeship program administrative requirements.** (1) Programs shall provide financial aid application requirements, due dates, and awarding policies to prospective and current apprentices.

(2) Programs must award all Washington college grant eligible apprentices.

(3) Programs shall provide Washington college grant recipients with satisfactory program progress and repayment standards and the conditions of award.

(4) Programs shall submit a report to the office related to apprentice's eligibility and awards under the format and schedule set forth by the office.

(5) The burden of proof of a grant recipient's eligibility is with the apprenticeship program. At a minimum:

(a) The program must be able, on request of the office, to reconstruct the calculations and rationale for the apprentice's grant eligibility and award amounts.

(b) The financial aid form or comparable financial status documents, or other information documenting financial status used to make the award, with the resulting financial need analysis must be on record for all grant recipients.

(c) The program must also have on record justification for reawarding a Washington college grant to any apprentice who failed to make satisfactory program progress.

(6) The office shall establish annual minimum criteria by which the eligible apprentice is to be awarded. Those criteria shall include the maximum award for each program and the income cutoff level as well as ensuring that state-level awarding priorities are followed.

(7) The program shall examine the apprentice's aid application to determine the overall need and specific Washington college grant eligibility and the appropriate award, using the office-approved criteria.

(8) The office will make available to all participating programs, a list of all recipients who owe state grant repayments or have otherwise exhausted their Washington college grant eligibility. It is the program's responsibility to ensure that no ineligible apprentice receives a Washington college grant.

#### NEW SECTION

**WAC 250-21-141 Award procedure.** (1) The Washington college grant award for an individual apprentice shall be the grant, appropriate for the program attended, adjusted for the apprentice's family income. Each eligible apprentice receiving a grant must receive the maximum grant award for which they are eligible, unless such award should exceed the apprentice's overall need.

(2) The grant amount for apprentices shall be established as defined in statute RCW 28B.92.030. For apprentices attending approved apprenticeship programs, includes tuition and fees, as determined by the office, in addition to required program supplies and equipment.

(3) The total Washington college grant award shall be reduced for apprentices with family incomes greater than fifty-five percent of the state's median and for less than full time.

(4) The program will notify the apprentice of the Washington college grant award and include the conditions of award following guidance provided by the office.

#### NEW SECTION

**WAC 250-21-151 Program fund management requirements.** (1) Once an apprentice is identified as eligible and an award is calculated, programs submit anticipated awards and payment requests for eligible apprentices using the office's established process.

(2) Programs may be required to provide apprentices with the opportunity to direct how they will receive their Washington college grant using an office-approved apprentice directive form. Programs may not place conditions on the receipt of the payment.

(3) Disbursement documentation and directives are to be retained by the program. They must be made available for inspection upon request of the office. If an apprentice fails to cash their Washington college grant check or pick up any remaining funds by the close of the payment period, the funds shall be returned to the Washington student achievement council and treated as funds declined by the apprentice.

(4) An apprentice-by-apprentice fund reconciliation must be completed by the program at the time payments are reported using the office's established process.

(a) Record level reports must be filed with the office as requested.

(b) A final apprentice-by-apprentice reconciliation must be filed with the office at the end of each payment period.

(5) No program may disburse nor claim more funds than that amount required to serve the eligible apprentices.

(6) If there is a change in eligibility prior to the start of the payment period, the award must be recalculated. If a Washington college grant apprentice never starts in the payment period for which they received a Washington college grant award, the repayment is one hundred percent of the grant amount.

The program shall advise the apprentice and the office of amounts to be repaid.

#### NEW SECTION

**WAC 250-21-161 Program administration and audits.** See WAC 250-21-061, all rules apply.

#### NEW SECTION

**WAC 250-21-171 Apprentice complaint process.** See WAC 250-21-071, all rules apply.

#### NEW SECTION

**WAC 250-21-181 Suspension or termination of program participation.** See WAC 250-21-081, all rules apply.

#### NEW SECTION

**WAC 250-21-191 Appeal process.** See WAC 250-21-091, all rules apply.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 250-20-001 Applicability of rules.
- WAC 250-20-011 Student eligibility.
- WAC 250-20-013 Institutional eligibility.
- WAC 250-20-015 Application and agreement to participate.
- WAC 250-20-021 Program definitions.
- WAC 250-20-031 Student application procedure.
- WAC 250-20-037 Reserve of funds.
- WAC 250-20-041 Award procedure.
- WAC 250-20-051 Grants disbursement and repayment.
- WAC 250-20-061 Program administration and audits.
- WAC 250-20-071 Appeal process.
- WAC 250-20-081 Suspension or termination of institutional participation.

WAC 250-20-091 Eligibility of reciprocity students.

**WSR 20-06-053**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed March 2, 2020, 3:04 p.m.]

Supplemental Notice to WSR 19-24-081.

Preproposal statement of inquiry was filed as WSR 19-19-056.

Title of Rule and Other Identifying Information: Hydraulic project approval (HPA) rule making implementing 2SHB 1579 amending sections WAC 220-660-050 Procedures—Hydraulic project approvals, 220-660-370 Bank protection in saltwater areas, 220-660-460 Informal appeal of administrative actions, 220-660-370 Formal appeal of administrative actions, and 220-660-480 Compliance with HPA provisions, of hydraulic code rules in chapter 220-660 WAC.

Hearing Location(s): On April 10-11, 2020, at 8:00 a.m., at the Natural Resources Building, 1111 Washington Street S.E., Olympia, WA 98501.

Date of Intended Adoption: April 24, 2020.

Submit Written Comments to: Randi Thurston, P.O. Box 43200, Olympia, WA 98504-3200, email [HPARules@dfw.wa.gov](mailto:HPARules@dfw.wa.gov), fax 360-902-2946, website <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking>, by 5 p.m., April 10, 2020.

Assistance for Persons with Disabilities: Contact Delores Noyes, phone 360-902-2349, fax 360-902-2946 attn: Randi Thurston, TTY 360-902-2207, email [adaprogram@dfw.wa.gov](mailto:adaprogram@dfw.wa.gov), by 5 p.m., April 10, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule amendments are proposed as necessary to implement elements of 2SHB Bill 1579<sup>1</sup>, a bill passed by the legislature during the 2019 legislative session. This bill implements recommendations of the southern resident orca task force (task force) related to increasing chinook abundance. The bill adds a procedure for potential applicants to request a preapplication determination of whether a project proposed landward of the ordinary high water line (OHWL) requires HPA. The bill also enhanced authority for the department's civil compliance program and repealed a statute relating to marine beach front protective bulkheads or rockwalls for single-family residences.

The CR-101 (WSR 19-19-056) was filed September 16, 2019, and published in the Washington State Register 19-19 on October 2, 2019; and the CR-102 (WSR 19-24-081) was filed December 3, 2019, and published in the Washington State Register 19-24 on December 18, 2019.

The public comment period for this rule making was open from December 3, 2019, through 5:00 p.m. on January 21, 2020. The Washington fish and wildlife commission held a public hearing on January 17, 2020, at 12:30 p.m. in Olympia, Washington. A total of nine written comments were received during the comment period, and four comments were presented orally at the public hearing.

Program staff recommend nine changes to the proposed rules in response to the comments. Eight of these are minor and don't change the effect of the rules. These proposed changes are in the table below. One recommended change resulted in a substantial modification to the civil penalty schedule.

**Table 1 Proposed change from CR-102**

WAC Section	Proposed change from CR-102	Reason for change
220-660-050 (9)(c)(iii)(D)	A description of the measures that will be implemented for the protection of fish life, including any reports assessing impacts from the hydraulic project to fish life <u>and their habitat</u> ( <del>and habitat that supports fish life</del> ), and plans to mitigate those impacts to ensure the project results in no net loss;	This change is needed to reinforce that habitat that supports fish life must be protected as well.
220-660-370	Appropriate methods <u>to assess the need for marine bank protection and, if needed,</u> to design marine bank protection are available in the department's <i>Marine Shoreline Design Guidelines</i> , as well as other published manuals and guidelines.	A change is needed to clarify that the <i>Marine Shoreline Design Guidelines</i> is also an assessment tool.
220-660-370 (3)(d)	An HPA application for <del>((a))</del> new <del>((bulkhead or other))</del> bank protection, <del>((work))</del> or the replacement or rehabilitation of <del>((a bulkhead or other))</del> bank protection <del>((structure))</del> that extends waterward of <del>((the))</del> <u>an</u> existing <u>bank protection</u> structure must include a site assessment, alternatives analysis and design rationale <u>for the proposed method prepared</u> by a qualified professional <del>((such as a)) e.g., coastal geologist, geomorphologist((, etc.))</del> <del>for the proposed ((project and selected technique)) method.</del> The department may grant an exemption depending on the scale and nature of the project. <del>((In addition, this requirement does not apply to projects processed under RCW 77.55.141. This report must include))</del> <u>The applicant must submit a the qualified professional's report to the department as part of a complete application for an HPA that includes:</u>	To eliminate confusion about who is a qualified professional the examples are removed. Qualified professional is already defined in WAC 220-660-030(121).
220-660-370 (5)(a)	The department <del>((may require a person to establish))</del> <u>requires that plans submitted as part of a complete application show</u> the horizontal distances of the structure(s) from <del>((a))</del> permanent <u>local</u> benchmark(s) (fixed objects) <del>((before starting work on the project))</del> .	Proposed change is needed to clarify these are local benchmarks so a survey with designated vertical or horizontal datum is not required.
220-660-480	<u>Added "The department is responsible to help the regulated community understand how to comply. The department achieves voluntary compliance through education and technical assistance when the department advises and consults on permits, conducts compliance checks, performs on-site technical visits, or provides guidance materials written in easily understood language.</u>  <u>When the department cannot get voluntary compliance by issuing a correction request, the department may use a range of increasingly strict enforcement tools. This ranges from issuing notices of correction and stop work orders to penalties and, when appropriate, criminal prosecution."</u>	Proposed change is needed to clarify the compliance sequence in the compliance section introduction.

WAC Section	Proposed change from CR-102	Reason for change
220-660-480	This section does not apply to a project, or to that portion of a project, that has received a forest practices <u>HPA hydraulic project (FPHP) permit</u> from the department of natural resources under chapter <u>76.09 RCW</u> .	A change is needed to avoid confusion because the department of natural resources calls their permit a forest practices hydraulic project (FPHP).
220-660-480 (6)(e)	<u>Signature authority for a notice to comply: A notice to comply must be authorized by a regional habitat program manager, regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director.</u>	The change is needed to clarify who is authorized to issue a notice to comply.
220-660-480 (7)(a)	<u>The department may levy civil penalties of up to ten thousand dollars for each and every violation of chapter 77.55 RCW, this chapter, or provisions of an HPA.</u>	The change is needed to clarify the civil penalty is per violation and not per violation per day.
220-660-480 (8)(d)(iii)	<del><u>Where more than one person has committed or contributed to a violation, and the department issues a civil penalty for that violation, the department may allocate penalty amounts to each person having committed or contributed to the violation.</u></del>  <u>The department will determine whether all or a portion of a penalty should be assessed against a landowner, lessee, contractor or another project proponent. The department should consider the responsible party, the degree of control, the sophistication of the party, and whether different parties conducted different violations.</u>	A change is needed to clarify how a penalty amount could be divided among multiple violators.
220-660-480 (8)(c)	The department amended the penalty schedule to include a base penalty and numeric penalty values for the considerations listed in RCW 77.55.440(6); previous violation history, severity and reparability of the impacts, intent, and cooperation. The sum of the base civil penalty and penalty amount calculated for the considerations will determine the total civil penalty amount not to exceed \$10,000 for each violation. Please refer to the proposed rule language.	A change is needed to provide more transparency and clarity about how a manager will calculate the total penalty amount for each violation.

1 Laws of 2019, chapter 290; codified as RCW 77.55.400 through 77.55.470.

Reasons Supporting Proposal: The regulated community wants more certainty in how authorized Washington department of fish and wildlife (WDFW) staff will determine civil penalty amounts. In response, staff recommend that we amend the penalty schedule to include a base penalty and numeric penalty values for the considerations specific to the incident and site stated in the civil penalty statute, RCW 77.55.440. The department is filing a supplemental CR-102 with the office of the code reviser and will reopen the period for the public to comment on the proposed change. This will delay the adoption of the proposed rules originally scheduled for February 21, 2020. We anticipate the second public hearing will occur at the April 10 - 11, 2020, commission meeting, and staff would request adoption of the proposed rules, including those described in WDFW's supplemental CR-102, during the April 24, 2020, commission conference call.

Statutory Authority for Adoption: RCW 77.04.012, 77.12.047, and 77.55.021; 2SHB 1579 (chapter 290, Laws of 2019 PV).

Statute Being Implemented: Chapter 77.55 RCW Construction projects in state waters; RCW 77.55.400 Determination as to whether construction is a hydraulic project—Pre-application determination—Review and comment period—Written determination, 77.55.410 Violation of chapter, 77.55.420 Stop work order—Notice—Appeal, 77.55.430 Notice to comply—Notice—Appeal, 77.55.440 Penalties—Notice—Appeal—Authority of attorney general to recover penalty—Penalty schedule, 77.55.450 Administrative inspection warrant, 77.55.460 Disapproval of an application—Notice—Review, 77.55.470 Remedies under chapter not exclusive.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None at this time.

Name of Proponent: WDFW, habitat program, protection division, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Randi Thurston, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2602; Enforce-

ment: Chief Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2373.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Randi Thurston, P.O. Box 43200, Olympia, WA 98504-3200, phone 360-902-2602, fax 360-902-2946, TTY 360-902-2207, email HPARules@dfw.wa.gov, website <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking>.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Please see discussion under section 1 of the small business economic impact statement included below.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

**1: Describe rule and compliance requirements**

1.1: Background: Background on topic of this rule-making activity is provided in Section 2 of *Regulatory Analyses for Incorporating Elements of 2SHB 1579 into HPA rules*. A timeline and actions initiating rule making are provided in subsection 2.3 of this document. Those sections provide detail about the history of and need for the proposal. Section 5 of this document discusses how the proposed rule meets the general goals and specific objectives of the statutes. The *Regulatory Analyses for Incorporating Elements of 2SHB 1579 into HPA rules* document is available at <https://wdfw.wa.gov/licensing/hpa/rulemaking/>.

1.2: Compliance requirements of the proposed rule: Most of these rules do not create additional compliance requirements (Table 2). Three proposals, the "civil penalty amount," "civil penalty schedule," and "benchmark" rules can impose additional costs on small businesses. The department has determined that the proposed rule requiring "a report to demonstrate the least impacting technically feasible alternative bank protection design is proposed" will not impose additional costs on small businesses because this proposed change affects single-family saltwater shoreline property owners only.

**Table 2 Rule groups and their status relative to APA and RFA analysis**

Rule Group	Content	WAC	APA Citation (RCW)	RFA Citation (RCW)
"Provisions of 2SHB 1579"	New tools and requirements copied nearly verbatim from statute into rule.	220-660-050 220-660-370 (except subsection (5)) 220-660-460, 220-660-470, 220-660-480 (except WAC 220-660-480(5), 220-660-480(7), 220-660-480(8))	34.05.310(c) Rules adopting or incorporating by reference without material change ... Washington state statutes.	19.85.025(3) rule described in RCW 34.05.310(4).
"Signature authority"	Specifies which department staff have authority to issue which compliance tools.	220-660-480(5) 220-660-480(7)	34.05.310 (4)(b) Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.	19.85.025(3) rule described in RCW 34.05.310(4); 19.85.025(4) Does not affect small businesses.
"Civil penalty amount"	Specifies the department may levy civil penalties of up to \$10,000 for every violation.	220-660-480(7)	Analysis required.	
"Civil penalty schedule"	Schedule for determining civil penalties, developed by the department.	220-660-480(8)	Analysis required.	

Rule Group	Content	WAC	APA Citation (RCW)	RFA Citation (RCW)
"Benchmark"	Requires benchmarks to be [be] shown in the plans submitted as part of a complete application.	220-660-370(5)	Analysis required.	
"Report"	Least impacting feasible alternative analysis report.	220-660-370 (3)(d)	Analysis required for APA because the proposed change affects [affects] single-family residences and properties. No analysis is required for the RFA because the change does not affect businesses.	

**2: Small Business Economic Impact Analysis - Civil Penalty Amount and Civil Penalty Schedule**

2.1: Costs associated with compliance: The department presumes that a person who seeks to or does undertake a hydraulic project will comply with the laws and regulations set forth in chapters 77.55 RCW and 220-660 WAC. Thus, the department has determined that its proposed rules in WAC 220-660-480 do not pose costs upon businesses that comply with these laws and regulations. The department does not have enough data to calculate costs to businesses for noncompliance with chapter 77.55 RCW, chapter 220-660 WAC and the provisions of the HPA, nor to calculate any disproportionate impacts that noncompliance may have on small businesses. To the extent the department's proposed rules in WAC 220-660-480 impose more than minor costs to businesses that do not comply with chapter 77.55 RCW, chapter 220-660 WAC and the provisions of an HPA, the department will mitigate costs to small businesses where doing so is legal and feasible pursuant to RCW 19.85.030, which includes using nonmonetary civil enforcement tools made available under chapter 290, Laws of 2019.

2.2: Steps to reduce costs to individuals and small businesses: When costs to comply exceed the minor cost threshold and costs are disproportionate for small businesses, RCW 19.85.030 compels the agency to reduce costs imposed by the rule on small businesses where it is legal and feasible to do so. The agency must consider, without limitation, each of the methods listed on Table 3.

**Table 3: Methods of reducing costs to businesses for noncompliance**

Subsection	Method	WDFW Response
(a)	Reducing, modifying, or eliminating substantive regulatory requirements;	The substantive civil compliance and enforcement requirements are specified in the statute.
(b)	Simplifying, reducing, or eliminating recordkeeping and reporting requirements;	Recordkeeping and recording requirements set forth in the proposed rules are the minimum necessary to ensure compliance with the permit conditions.
(c)	Reducing the frequency of inspections;	Follow-up compliance inspections are limited to those required to confirm that a noncompliant condition has been corrected.
(d)	Delaying compliance timetables;	The department must provide a reasonable time to achieve compliance. A violator can request an extension of a deadline for achieving compliance.
(e)	Reducing or modifying fine schedules for noncompliance; or	The civil penalty schedule reflects factors statutorily required to be considered.
(f)	Any other mitigation techniques, including those suggested by small businesses or small business advocates.	The department supports providing an opportunity for voluntary compliance prior to imposing any monetary civil penalty. This was suggested by a business advocate and is required under 2SHB 1579, as enacted. Small businesses or business advocates have suggested eliminating the notice of civil penalty, but the statute requires the department to do rule-making to adopt a civil penalty schedule. Thus, it does not have authority to eliminate the notice of civil penalty as suggested.

2.3 Additional steps the department has taken or will take to lessen impacts: Additional steps the department has taken or will take to reduce costs to businesses for noncompliance.

1. Access to technical assistance: The department provides technical assistance to ensure that permitting requirements are understood by proponents of hydraulic projects when we advise and consult on permits, conduct inspections, perform on-site technical visits, and provide regulatory guidance materials. The department also has a technical assistance webpage. A person may request additional technical assistance from the department any time during their project.

2. Opportunity for voluntary compliance: Most people the department works with are not experts in environmental permitting. The department acknowledges that it has a responsibility to help the regulated community understand how to comply with the hydraulic code statute and rule requirements. When violations or potential violations are observed in the field, the department will issue a correction request that describes the measures the project proponent may take to voluntarily address them. The department will use a range of increasingly strict enforcement tools, which could ultimately include monetary civil penalties, but typically only when voluntary compliance cannot be achieved with or without the department's assistance. The department will provide an opportunity to correct and compensate for damage that results from a violation before issuing a notice of civil penalty.

3. Waiver for first-time paperwork violations: Under RCW 34.05.110, a small business may be eligible for a waiver of first-time paperwork violations. The small business is given an opportunity to correct the violation(s). This applies to administrative orders, notices and civil penalties. First time paperwork violations are defined in proposed WAC 220-660-480(12).

4. Staff training: The department's administrative (civil) enforcement actions must be based in fact and law, well-documented, appropriate to the violation, and issued professionally and fairly. Staff authorized to conduct inspections will receive specialized training to ensure they are professional, knowledgeable, and capable of carrying out their duties.

5. Policy and guidelines: The department will develop implementation guidelines for the civil enforcement program. The guidelines will provide direction to staff on how to appropriately respond to incidents of noncompliance.

**3: Small Business Economic Impact Analysis - Benchmarks**

3.1: Costs associated with compliance: Applicants might need technical assistance to establish project benchmarks. The department can aid applicants by directing them to technical businesses that can establish the benchmarks and by providing guidance and training for how applicants and contractors can establish adequate benchmarks. As time allows, the department biologists can also offer technical assistance by establishing the benchmarks at no cost to the applicant. When benchmark measurements are needed, they are frequently done by civil engineers, civil engineer technicians, surveyors, or surveyor technicians. The person establishing the benchmarks will need a tape measure and a compass.

3.2: Identify businesses - minor cost threshold: WDFW analyzed HPA permits issued in 2018 to determine businesses who received an HPA for saltwater bank protection construction, maintenance, or replacement. Fourteen percent (thirteen HPAs) of the permittees for marine bank protection

projects could be identified as businesses. Seventy-two percent (sixty-seven HPA) of permittees were individuals or landowners, and fourteen percent (thirteen HPAs) were governmental entities or nonprofit businesses. WDFW does not require applicants to identify the person or business that will construct their project. Businesses applying for HPAs to construct projects for landowners can identify as such on the HPA application, and this is how we identified businesses for this analysis. WDFW acknowledges that the rules for bank protection in saltwater areas apply to anyone (or any business) applying for this type of HPA, so the business types identified here are not exclusive.

Once businesses were identified, we used the Washington department of revenue business lookup tool<sup>2</sup> to obtain their industry code. When no industry code could be found, we identified the applicant as an individual.

Table 4 provides information about the businesses we identified using this method. We are not able to determine whether businesses are small businesses using this method. This list is not exclusive - anyone who applies for an HPA for bank protection in saltwater areas is subject to the proposed rule. In subsequent analyses we identified additional businesses under the 237990 NAICS code ("Other heavy and civil engineering construction") that might apply or construct marine bank protection projects.

**Table 4 NAICS Codes for 2018 Marine Bank Protection Business Applicants**

Number of permits in 2018	NAICS code	Industry description
1	236115	New single-family housing construction
0	237990	Other heavy and civil engineering construction
3	238140	Masonry contractors
2	238910	Site preparation contractors
3	238990	All other specialty trade contractors
3	531310	Offices of real estate agents and brokers (& property managers)
1	713930	Marinas

3.3: Minor cost threshold: Industry data for determining minor cost thresholds are provided on Table 5. We used a spreadsheet provided by the Washington state auditor's office to determine these values<sup>3</sup>.



**Table 5 Washington business data for businesses identified under industry classification codes identified for analysis**

Industry 4-digit or 6-digit 2012 NAICS Code	Number of Establishments in WA	TOTAL Annual Payroll in WA	TOTAL Annual Revenue in WA	AVG Annual Payroll in WA	AVG Annual Revenue in WA	1% of Annual Payroll	<0.3% of annual revenue or income or \$100
236115	1,261	\$186,272,000	D	\$147,718	D	\$1,477	D
237990	61	\$174,198,000	\$948,293,000	\$2,855,705	\$15,545,787	\$28,557	\$46,637
238140	293	\$74,067,000	\$215,274,000	\$252,788	\$734,724	\$2,528	\$2,204
238910	1,208	\$490,492,000	\$2,047,639,000	\$406,036	\$1,695,065	\$4,060	\$5,085
238990	547	\$182,710,000	\$573,308,000	\$334,022	\$1,048,095	\$3,340	\$3,144
5313	2,852	\$705,915,000	\$1,626,984,000	\$247,516	\$570,471	\$2,475	\$1,711
713930	102	\$17,667,000	\$79,013,000	\$173,206	\$774,637	\$1,732	\$2,324

Source: Washington State Auditor *Minor Cost Threshold Calculator July 2019.xlsx*, which uses data from the 2012 Economic Census of the United States.  
Code "D" means the U.S. Census Bureau data are withheld to avoid disclosing data for individual companies.

3.4: Identify the minor cost thresholds for each industry: We chose the minimum of the two indicator figures from Table 5 as the minor cost thresholds for these industries (Table 6) and identified \$100 as the minor cost threshold for individuals/landowners and nonprofit businesses. Any costs imposed on a small business that are over these thresholds would be considered for this analysis to be more than minor and potentially disproportionate.

**Table 6 Small Business Industry Classification and Minor Cost Thresholds**

NAICS code	Industry Description	Minor Cost Threshold
236115	Residential building construction	\$1,477
237990	Other heavy and civil engineering construction	\$28,557
238140	Masonry contractors	\$2,204
238910	Site preparation contractors	\$4,060
238990	All other specialty trade contractors	\$3,144
531310	Offices of real estate agents and brokers (& property managers)	\$1,711
713930	Marinas	\$1,732
n/a	Individuals/Landowners and nonprofit businesses	\$100

3.5: Costs of compliance: Both the department's biologists and a bulkhead business spokesperson indicated that establishing permanent benchmarks takes approximately ten

minutes once a person is on the project site<sup>4,5</sup>. We assume for this analysis that it takes a person an hour to travel to/from the site. Our business contact suggested that they would hire a civil engineer or a surveyor to conduct the work if they did not already have staff on-board who could establish benchmarks. The benchmarks must be shown on the plans submitted as part of a complete application. We assume for this analysis that it takes a person 10 - 15 minutes to include the benchmarks on the plans. We think that the smallest period of billable hours for a civil engineer or surveyor consultant would be one-half hour. Combined with travel, the total time billed would be 1.5 hours.

Next, we looked at the United States Census data from Bureau of Labor Statistics to determine the average hourly wages for these occupations. We looked at wages for these occupations in the professional, scientific, and technical services industry groups in Washington. Wages range from \$32.20 per hour for a civil engineering technician to \$46.47 for a civil engineer<sup>6</sup>. We chose the civil engineer wages as providing a worst-case view for this analysis. We also analyzed the \$100.00 billable hourly amount suggested by a civil engineer who commented on the proposed rules.

We anticipate the cost of equipment and supplies to be minimal. Table 7 shows the costs to comply with this proposal.

**Table 7 Costs to comply with the benchmark requirement**

Who performs work	Time spent	Cost per hour	Total Cost to Comply per project
Civil engineer in the professional, scientific, or technical consulting services business industry group	1.5 hours	\$46.47 to \$100.00	\$69.71 to \$150.00

3.6: Lost sales or revenues: Income or revenue for each HPA proponent is reduced by between \$69.71 and \$150.00 to comply with this new requirement. If the department can provide technical assistance to the applicant, then there is no loss in revenue.

3.7: Summary of costs to comply: Based on the methods used to estimate costs to comply with the rule proposals, the total cost for each project is estimated at between \$69.71 and \$150.00, as shown on Table 7.

3.8: More than minor costs: Based on the costs of compliance estimated in Table 7, the estimated costs for an individual or a nonprofit business to comply with the proposal are more than the minor cost thresholds shown on Table 6.

3.9: Disproportionate impact on small businesses: The department used employment data from Bureau of Labor Statistics<sup>7</sup> to analyze employment by size of company. We used the industry codes identified on Table 8, except that data for the 6-digit code 236115 are not available so we used the 4-digit code 2361 instead. We compared the cost-to-comply (\$69.71 - \$150.00) to the numbers of employees in three different groups of establishments: businesses having one to forty-nine employees ("small businesses"), businesses having fifty or more employees ("large businesses"), and the best available estimate of the number of employees in the ten percent largest businesses.

**Table 8 Compare cost/employee for small businesses versus larger businesses**

NAICS	Industry	Compliance Cost Per Employee			Amount Higher Costs for Small v. Largest 10%
		Small Businesses	Large Businesses	Largest 10% of Businesses	
2361	Residential building construction	\$0.003 - \$0.006	\$0.02 - \$0.04	\$0.01 - \$0.02	-\$0.01 - \$0.02
237990	Other heavy and civil engineering construction	\$0.10 - \$0.20	\$0.05 - \$0.11	\$0.05 - \$0.11	\$0.05 - \$0.09
238140	Masonry contractors	\$0.04 - \$0.09	\$0.08 - \$0.17	\$0.03 - \$0.06	-\$0.01 - \$0.03
238910	Site preparation contractors	\$0.01 - \$0.02	\$0.02 - \$0.04	\$0.01 - \$0.02	-\$0.00 - \$0.00
238990	All other specialty trade contractors	\$0.02 - \$0.04	\$0.07 - \$0.15	\$0.01 - \$0.02	-\$0.01 - \$0.02
53131	Real estate property managers	\$0.01 - \$0.02	\$0.02 - \$0.04	\$0.01 - \$0.02	-\$0.00 - \$0.00
713930	Marinas	\$0.18 - \$0.39	n/a	\$0.70 - \$1.51	-\$0.52 - \$1.12*

Of these computations, the cost per employee for the largest ten percent of businesses is the least straightforward because, in most cases for these industries, the largest ten percent of businesses in an industry included businesses with fewer than fifty employees. We did not use this datum except for the Marinas industry\* where data for "Large Businesses" are withheld to avoid disclosing data for individual companies.

The smallest cost/employee is three-tenths to sixth-tenths of a cent, and the largest is eighteen to thirty nine cents (seventy cents to one dollar and fifty-one cents using the "largest 10%" figure for the Marinas industry). Costs per employee are smaller for small businesses than for large businesses (or for the largest ten percent of businesses for Marinas) except for "Other heavy and civil engineering construction" businesses, for which the cost is five to nine cents higher per employee for small businesses. We conclude there is not a disproportionate impact for small businesses in most cases. In the case where small businesses pay more per employee, that difference represents ten to twenty cents per employee for small businesses versus five to eleven cents per employee for large businesses.

3.10: Methods to reduce costs: When costs to comply exceed the minor cost threshold and costs are disproportionate for small businesses, RCW 19.85.030 compels the agency to reduce costs imposed by the rule on small businesses where it is legal and feasible to do so. The agency must consider, without limitation, each of the methods listed on Table 9.

3.11: Required methods to reduce costs:

**Table 9 RCW 19.85.030(2) required methods of reducing costs imposed by the rule on small businesses**

RCW 19.85.030(2) Requirements		WDFW Response
Subsection	Method	
(a)	Reducing, modifying, or eliminating substantive regulatory requirements	Eliminating the requirement for adequate benchmarks makes it impossible for the department to determine whether a project is compliant with provisions of the HPA. This does not meet the objectives of the statute.
(b)	Simplifying, reducing, or eliminating recordkeeping and reporting requirements	Once benchmarks are established and recorded on the plans, there are no additional recordkeeping or reporting costs.

RCW 19.85.030(2) Requirements		WDFW Response
Subsection	Method	
(c)	Reducing the frequency of inspections	Not applicable to this proposal. The requirement must be met prior to an HPA being issued.
(d)	Delaying compliance timetables	This provision is being required currently in most saltwater bank protection project HPAs. Delaying the compliance timetable would not have an effect on businesses.
(e)	Reducing or modifying fine schedules for noncompliance; or	Not applicable to this proposal.
(f)	Any other mitigation techniques, including those suggested by small businesses or small business advocates.	No other mitigation techniques have been suggested by small businesses or business advocates.

3.12: Additional steps the department has taken to lessen impacts: Additional steps the department plans to take to minimize costs to those who must comply with the new rules:

1. The department will provide training to saltwater bank protection permitting biologists on how to establish adequate benchmarks and how to help the applicant record the benchmarks in their application materials.

2. The HPA technical assistance webpage has example engineering drawings that show how to establish and document benchmarks on the plans.

3. The department will provide outreach and guidance materials to individuals and businesses for how to establish adequate project benchmarks.

3.13: Involving stakeholders in rule development: Stakeholder outreach is described in Section 6 of the *Regulatory Analyses for HPA Rule Making implementing 2SHB 1579*, and events are summarized on Table 3. One small saltwater bank protection construction business was consulted about this requirement. That business indicated benchmarks are established while they are on-site to take measurements for the structure plans. No additional trips or costs are needed to comply with the new requirement because establishing benchmarks has been a standard practice (the department has been requiring them consistently in HPAs) for the past three-or-more years.

3.14: Number of jobs created or lost: There will likely be no jobs created or lost as a result of this proposal. The time involved to establish benchmarks is small relative to the time required to prepare application materials and structure/site plans. The expertise to establish benchmarks is common to most saltwater bank protection construction businesses.

3.15: Summarize results of small business analysis: Costs to comply are less than the minor cost thresholds for businesses required to comply. Small businesses generally pay less per employee to comply than large businesses, with one exception. For that exception, the cost is five cents more per employee.

2 Available at [https://secure.dor.wa.gov/gteunauth/\\_/#1](https://secure.dor.wa.gov/gteunauth/_/#1)

- 3 *Minor Cost Threshold Calculator July 2019.xlsx* provided through the Governor's Office of Regulatory Innovation and Assistance at [https://www.oria.wa.gov/Portals/\\_oria/VersionedDocuments/RFA/Regulatory\\_Fairness\\_Act/Minor%20Cost%20Threshold%20Calculator%20July%202019.xlsx](https://www.oria.wa.gov/Portals/_oria/VersionedDocuments/RFA/Regulatory_Fairness_Act/Minor%20Cost%20Threshold%20Calculator%20July%202019.xlsx). ORIA RFA support website is: [https://www.oria.wa.gov/site/alias\\_\\_oria/934/Regulatory-Fairness-Act-Support.aspx](https://www.oria.wa.gov/site/alias__oria/934/Regulatory-Fairness-Act-Support.aspx).
- 4 A. Cook. Pers. Comm. July 29, 2019.
- 5 J. Rotsten, Sea Level Bulkhead Builders. Pers. Comm. October 9, 2019.
- 6 May 2018 OES Research Estimates, Occupational Employment Statistics (OES) Survey, Bureau of Labor Statistics, Department of Labor, website <https://www.bls.gov/oes>. Table of OES estimates for the state of Washington downloaded from [https://www.bls.gov/oes/2018/may/oes\\_research\\_estimates.htm](https://www.bls.gov/oes/2018/may/oes_research_estimates.htm) on 10/9/2019.
- 7 We downloaded data for Washington state for each of the identified industries at the United States Census Bureau "American FactFinder" available at <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t>.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting Randi Thurston, P.O. Box 43200, Olympia, WA 98504-3200, phone 360-902-2602, fax 360-902-2946, TTY 360-902-2207, email [HPARules@dfw.wa.gov](mailto:HPARules@dfw.wa.gov), website <https://wdfw.wa.gov/licenses/environmental/hpa/rulemaking>, current rule making website <https://wdfw.wa.gov/about/regulations/development>.

March 2, 2020  
 Michele K. Culver  
 Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 18-10-054, filed 4/27/18, effective 6/1/18)

**WAC 220-660-050 Procedures—Hydraulic project approvals. (1) Description:**

(a) There are six categories of HPAs: Standard, emergency, imminent danger, chronic danger, expedited, and pamphlet. These categories are discussed in more detail throughout this section. Most HPAs issued by the department are standard HPAs. Guidance for applying for an HPA is provided on the department's website.

(b) HPAs do not exempt a person from obtaining other necessary permits and following the rules and regulations of local, federal, and other Washington state agencies.

(2) **Fish life concerns:** Construction and other work activities in or near water bodies can kill or injure fish life directly and can damage or destroy habitat that supports fish life. Damaged or destroyed habitat can continue to cause lost fish life production for as long as the habitat remains altered. HPAs help ensure construction and other work is done in a manner that protects fish life.

(3) **Standard HPA:**

(a) The department issues a standard HPA when a hydraulic project does not qualify for an emergency, imminent danger, chronic danger, expedited or pamphlet HPA. An individual standard HPA is limited to a single project site. Some special types of standard HPAs may cover multiple project sites.

(b) Special types of standard HPAs:

(i) Fish habitat enhancement project (FHEP) HPA.

(A) Projects must satisfy the requirements in RCW 77.55.181(1) to be processed as a fish habitat enhancement project.

(B) Projects that are compensatory mitigation for a development or other impacting project are not eligible. This includes proposals for mitigation banks or in-lieu fee mitigation proposals. The sole purpose of the project must be for fish habitat enhancement.

(C) The department may reject an FHEP proposed under RCW 77.55.181 if the local government raises concerns during the comment period that impacts from the project cannot be mitigated by conditioning the HPA. The department will reject an FHEP if the department determines that the size and the scale of the project raises public health or safety concerns. If the department rejects a project for streamlined processing, the department must provide written notice to the applicant and local government within forty-five days of receiving the application.

(D) An applicant whose fish habitat enhancement project is rejected may submit a new complete written application with project modifications or additional information required for streamlined processing. An applicant may request that the department consider the project under standard HPA processing procedures by submitting a new complete written application for standard processing.

(ii) Multisite HPA.

(A) A standard HPA may authorize work at multiple project sites if:

(I) All project sites are within the same water resource inventory area (WRIA) or tidal reference area;

(II) The primary hydraulic project is the same at each site so there is little variability in HPA provisions across all sites; and

(III) Work will be conducted at no more than five project sites to ensure department staff has sufficient time to conduct site reviews.

(B) The department may make an exception for projects the department has scoped prior to application submittal or when no prepermit issuance site visits are needed.

(iii) General HPA.

(A) The department may issue general HPAs to government agencies, organizations, or companies to perform the same work in multiple water bodies across a large geographic area.

(B) To qualify for a general HPA, projects must protect fish life:

(I) Technical provisions in the HPA must fully mitigate impacts to fish life;

(II) The projects must be relatively simple so that the HPA provisions are the same across all sites, and can therefore be permitted without site-specific provisions; and

(III) The projects must have little or no variability over time in site conditions or work performed.

(C) The general HPA will include a requirement that notice be given to the department when activities utilizing heavy equipment begin. The department may waive this requirement if the permittee and department meet annually to review scheduled activities for the upcoming year.

(D) The department and the applicant may negotiate the scope and scale of the project types covered. The department and the applicant must agree on the fish protection provisions required before the application is submitted.

(E) The department may reject applications for a general HPA if:

(I) The proposed project does not meet the eligibility requirements described in subsection (3)(b)(iii)(B) of this section; or

(II) The department and the applicant cannot agree on the fish protection provisions.

(F) The department must provide written notice of rejection of a general HPA application to the applicant. The applicant may submit a new complete written application with project modifications or additional information required for department consideration under standard HPA processing procedures.

(iv) "Model" HPA.

(A) The department will establish a "model" HPA application and permitting process for qualifying hydraulic projects. To qualify, an individual project must comply with the technical provisions established in the application. Hydraulic projects that qualify for the model process must:

(I) Fully mitigate impacts to fish life in the technical provisions of the HPA;

(II) Be a low complexity project that minimizes misinterpretation of the HPA provisions allowing the HPA to be permitted without site-specific provisions; and

(III) Meet all of the eligibility requirements described in the model application.

(B) If needed to confirm project eligibility, the department may conduct a site visit before approving or rejecting a model application.

(C) The department may reject applications for model HPAs if:

(I) The plans and specifications for the project are insufficient to show that fish life will be protected; or

(II) The applicant or authorized agent does not fill out the application completely or correctly.

(D) The department must provide written notice of rejection of an application to the applicant. The applicant may submit a new complete written application with project mod-

ifications or additional information required for department consideration under standard HPA processing procedures under this section, or may submit a new model application if the department rejected the application because the person did not fill out the original application correctly.

**(4) Emergency HPA:**

(a) Declaring an emergency.

(i) Authority to declare an emergency, or continue an existing declaration of emergency, is conveyed to the governor, the department, or to a county legislative authority by statute. An emergency declaration may be made when there is an immediate threat to life, the public, property, or of environmental degradation;

(ii) The county legislative authority must notify the department, in writing, if it declares an emergency;

(iii) Emergency declarations made by the department must be documented in writing;

(iv) When an emergency is declared, the department must immediately grant verbal approval upon request for work to protect life or property threatened by waters of the state because of the emergency, including repairing or replacing a stream crossing, removing obstructions, or protecting stream banks. The department may also grant written approval if the applicant agrees.

(b) If the department issues a verbal HPA, the department must follow up with a written HPA documenting the exact provisions of the verbal HPA within thirty days of issuing the verbal HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for emergency HPAs.

(d) The department may require a person to submit an as-built drawing within thirty days after the hydraulic project authorized in the emergency HPA is completed.

(e) Within ninety days after a hydraulic project authorized in an emergency HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

**(5) Imminent danger HPA:**

(a) Authority to declare imminent danger is conveyed to the department or county legislative authority by statute. The county legislative authority must notify the department in writing if it determines that an imminent danger exists.

(b) Imminent danger declarations made by the department must be documented in writing.

(c) When imminent danger exists, the department must issue an expedited HPA upon request for work to remove obstructions, repair existing structures, restore banks, and to protect fish life or property.

(d) When imminent danger exists, and before starting work, a person must submit a complete written application to the department to obtain an imminent danger HPA. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for imminent danger HPAs.

(e) Imminent danger HPAs must be issued by the department within fifteen calendar days after receiving a complete written application. Work under an imminent danger HPA must be completed within sixty calendar days of the date the HPA is issued.

(f) Within ninety days after a hydraulic project authorized in an imminent danger HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

**(6) Chronic danger HPA:**

(a) The department must issue a chronic danger HPA upon request for work required to abate the chronic danger. This work may include removing obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish life, or protecting property.

(b) Authority to declare when a chronic danger exists is conveyed to a county legislative authority by statute. A chronic danger is a condition in which any property, except for property located on a marine shoreline, has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway.

(c) The county legislative authority must notify the department in writing when it determines a chronic danger exists.

(d) When chronic danger is declared, and before starting work, a person must submit a complete written application to the department to obtain a chronic danger HPA. Unless the project also satisfies the requirements for fish habitat enhancement projects identified in RCW 77.55.181 (1)(a)(ii), compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is required. Projects that meet the requirements in RCW 77.55.181 (1)(a)(ii), will be processed under RCW 77.55.181(3), and the provisions of chapter 43.21C RCW will not be required.

**(7) Expedited HPA:**

(a) The department may issue an expedited HPA when normal processing would result in significant hardship for the applicant or unacceptable environmental damage would occur.

(b) Before starting work, a person must submit a complete written application to the department to obtain an HPA.

(c) Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act) is not required for expedited HPAs. The department must issue expedited HPAs within fifteen calendar days after receipt of a complete written application. Work under an expedited HPA must be completed within sixty calendar days of the date the HPA is issued.

(d) Within ninety days after a hydraulic project authorized in an expedited HPA is completed, any remaining impacts must be mitigated or a mitigation plan must be submitted to the department for approval.

**(8) Pamphlet HPA:**

(a) There are two pamphlet HPAs, *Gold and Fish* and *Aquatic Plants and Fish*, that cover the most common types of mineral prospecting and removing or controlling aquatic plants, respectively. A person must follow the provisions in the pamphlet. If a person cannot follow the provisions, or disagrees with any provision, the permittee must apply for a standard HPA before starting the hydraulic project.

(b) A person must review a pamphlet HPA before conducting the authorized hydraulic project.

(c) When a pamphlet HPA is used, the permittee must have the pamphlet HPA on the job site when conducting work and the pamphlet must be immediately available for inspection by the department upon request.

(d) All persons conducting the project must follow all provisions of the pamphlet HPA.

(e) The department may grant exceptions to a pamphlet HPA only if a person applies for a standard individual HPA for the project.

(f) Pamphlet HPAs do not exempt a person from obtaining other appropriate permits and following the rules and regulations of local, federal, and other Washington state agencies.

**(9) How to get an HPA:**

(a) How to get a pamphlet HPA: A person can download and save or print a pamphlet HPA from the department's website. A person may also request a pamphlet HPA from the department either verbally or in writing.

(b) How to get an emergency HPA: Upon an emergency declaration, and before starting emergency work, a person must obtain a verbal or written HPA from the department. A complete written application is not required. However, a person must provide adequate information describing the proposed action. Compliance with the provisions of chapter 43.21C RCW (State Environmental Policy Act), is not required for emergency HPAs. A person may request a verbal or written emergency HPA from the biologist who issues HPAs for the geographic area where the emergency is located Monday through Friday from 8:00 a.m. to 5:00 p.m. If the biologist cannot be contacted or it is after business hours, a person must contact the emergency hotline at 360-902-2537 to request an emergency HPA.

(c) How to get a standard, expedited, or chronic danger HPA:

(i) A person must submit a complete written application to the department to obtain an HPA unless the project qualifies for one of the following:

(A) A pamphlet HPA, subsection (3) of this section; or

(B) An emergency HPA, subsection (5) of this section.

(ii) When applying for an HPA, a person must submit one of the following application forms to the department:

(A) The electronic online application developed by the department;

(B) The current version of the JARPA;

(C) The current version of the JARPA including the most recent version of the application for streamlined processing of fish habitat enhancement projects when applying for streamlined processing under RCW 77.55.181. These may be submitted to the department as attachments to the online application form;

(D) The most recent version of the model HPA application or other department-approved alternative applications available from the department's public website; or

(E) The current version of the JARPA if applying for approval of a watershed restoration project under RCW 77.55.171. This may be submitted to the department as an attachment to the online application form.

(iii) A complete application package for an HPA must contain:

(A) A completed application form signed and dated by the applicant, landowner(s) or landowner representative(s) of any project site or off-site mitigation location, and the authorized agent, if any. Completing and submitting the application forms through the department's online permitting system is the same as providing signature and date, if all documents required during the online application process are submitted to the department. The property owner, if different than the applicant, or easement holder must consent to the department staff entering the property where the project is located to inspect the project site or any work;

(B) Plans for the overall project;

(C) Complete plans and specifications for all aspects of the proposed construction or work waterward of the mean higher high water line in salt water, or waterward of the ordinary high water line in fresh water;

(D) A description of the measures that will be implemented for the protection of fish life, including any reports assessing impacts from the hydraulic project to fish life and their habitat ((~~that supports fish life~~)), and plans to mitigate those impacts to ensure the project results in no net loss;

(E) For a standard or chronic danger HPA application, a copy of the written notice from the lead agency demonstrating compliance with any applicable requirements of the State Environmental Policy Act under chapter 43.21C RCW, unless otherwise provided for in chapter 77.55 RCW; or the project qualifies for a specific categorical exemption under chapter 197-11 WAC;

(F) Written approval by one of the entities specified in RCW 77.55.181 if the applicant is proposing a fish enhancement project;

(G) For an expedited application, an explanation of why normal processing would result in significant hardship for the applicant or unacceptable environmental damage.

(iv) HPA application submission:

(A) A person must submit the complete application package:

(I) Using the department's online permitting system;

(II) Sending the package via mail to:

Department of Fish and Wildlife

P.O. Box 43234

Olympia, WA 98504-3234;

(III) Email: [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov);

(IV) Fax: 360-902-2946;

(V) Uploading to a file transfer protocol site acceptable to the department; or

(VI) Hand delivering to the department at 1111 Washington Street S.E., Olympia, WA 98504, Habitat Program, Fifth Floor. The department will not accept applications submitted elsewhere or by other than the applicant or authorized agent.

(B) Dimensions of printed documents submitted with the application package may not be larger than eleven inches by seventeen inches. Pages of documents submitted may not be bound except by paper clips or other temporary fastening.

(C) A person must submit applications and supporting documents with a combined total of thirty or more pages as digital files rather than printed documents. All digital files must be in formats compatible with Microsoft Word, Micro-

soft Excel, or Microsoft Access programs or in PDF, TIFF, JPEG, or GIF formats.

(D) Applications submitted to the habitat program during normal business hours are deemed received on the date the habitat program receives the application. The department may declare applications received by the habitat program after normal business hours as received on the next business day.

**(10) Incomplete applications:**

(a) Within ten days of receipt of the application, the department must determine whether an application meets the requirements of this section. If the department determines the application does not meet the requirements, the department will provide written or emailed notification of an incomplete application to the applicant or authorized agent. This written or emailed notification must include a description of information needed to make the application complete. The department may return the incomplete application to the applicant or authorized agent or hold the application on file until it receives the missing information. The department will not begin to process the application until it receives all information needed to complete the application.

(b) The applicant or authorized agent must submit additional information in response to a written notification of incomplete application through the department's online permitting system or to the department's habitat program, Olympia headquarters office. The department will not accept additional information submitted elsewhere or by other than the applicant or authorized agent.

(c) The department may close any application that has been incomplete for more than twelve months. The department must provide the applicant or authorized agent with written notification at least one week before closing the application and must provide the option for the applicant or authorized agent to postpone the closure for up to one year. The department must provide the applicant with written notification at the time it closes the application. After an application is closed, the applicant or authorized agent must submit a new complete application to receive further consideration of the project.

**(11) Application review period:**

(a) Once the department determines an application is complete, the department will provide to tribes and local, state, and federal permitting or authorizing agencies a seven-calendar-day review and comment period. The department will not issue the HPA (~~(permit)~~) before the end of the review period to allow all interested tribes and agencies to provide comments to the department. The department may consider all written comments received when issuing or provisioning the HPA. The review period is concurrent with the department's overall review period. Emergency, imminent danger, expedited, and modified HPAs are exempt from the review period requirement.

(b) Except for emergency, imminent danger, and expedited HPAs, the department will grant or deny approval within forty-five calendar days of the receipt of a complete written application. The department will grant approval of imminent danger and expedited HPAs within fifteen days of the receipt of a complete written application. The department

will grant approval of emergency HPAs immediately upon request if an emergency declaration has been made.

(c) If the department declares an imminent danger, applicant hardship, or immediate threat regarding an application for expedited or emergency HPA, the department must place written documentation of that declaration and justification for it in the application record within three days of issuing the written HPA.

**(12) Suspending the review period:**

(a) An applicant or authorized agent may request a delay in processing a standard HPA. The applicant or authorized agent must submit a written request for the delay through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept delay requests submitted elsewhere or by a person other than the applicant or authorized agent.

(b) If the department suspends the review period, the department must immediately notify the applicant in writing of the reasons for the delay. The department may suspend the review period (with or without the applicant's concurrence) if:

(i) The site is physically inaccessible for inspection or not in a condition to be evaluated (i.e., snow cover, frozen);

(ii) The applicant or authorized agent remains unavailable or unable to arrange for a field evaluation of the proposed project within ten working days of the department's receipt of the application;

(iii) The applicant or authorized agent submits a written request for a delay;

(iv) The department is issuing (~~(a permit)~~) an HPA for a stormwater discharge and is complying with the requirements of RCW 77.55.161 (3)(b); or

(v) The department is reviewing the application as part of a multiagency permit streamlining effort, and all participating permitting and authorizing agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(c) The department may close any application if the application has been delayed for processing more than twelve months for any of the reasons identified in subsection (12)(a) or (b) of this section. The department must provide the applicant or authorized agent with written notification at least one week before closing the application and must provide the option for the applicant or authorized agent to postpone the closure for up to one year. The department must provide the applicant with written notification at the time it closes the application. After an application is closed, the applicant or authorized agent must submit a new complete application to receive further consideration of the project.

**(13) Issuing or denying a hydraulic project approval:**

(a) Protection of fish life is the only grounds upon which the department may deny or provision an HPA, as provided in RCW 77.55.021. The department may not unreasonably withhold or condition approval of (~~(a permit)~~) an HPA. The HPA provisions must reasonably relate to the project and must ensure that the project provides proper protection for fish life. The department may not impose provisions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(b) The department may not deny an emergency, imminent danger, chronic danger, or an expedited HPA, as provided in RCW 77.55.021. ~~((In addition, the department may not deny an HPA for a project that complies with the conditions of RCW 77.55.141.))~~ However, these projects must ~~((meet the mitigation))~~ comply with the provisions in ((WAC 220-660-080 and the provisions in WAC 220-660-100 through 220-660-450)) this chapter that are included in an HPA. The department will deny any other type of HPA or request to change an existing HPA when the project will not protect fish life, unless enough mitigation can be assured by provisioning the HPA or modifying the proposal. If the department denies approval, the department must provide the applicant with a written statement of the specific reasons why and how the proposed project would adversely affect fish life, as provided in RCW 77.55.021.

(c) The department may place specific time limitations on project activities in an HPA to protect fish life.

(d) The department may require a person to notify the department before construction or other work starts, upon project completion, or at other times that the department deems necessary while the ~~((permit))~~ HPA is in effect. The department may also require a person to provide periodic written reports to assess ~~((permit))~~ HPA compliance.

(e) The HPA must contain provisions that allow for minor modifications to the work timing, plans, and specifications of the project without requiring the reissuance of the ~~((permit))~~ HPA, as long as the modifications do not adversely affect fish life or the habitat that supports fish life. The permittee should contact the habitat program's Olympia headquarters office through email or the department's online permit application system to request a minor modification.

(f) A person may propose or conduct a hydraulic project under an environmental excellence program agreement authorized under chapter 43.21K RCW. These projects must be applied for and permitted under the requirements of chapter 43.21K RCW.

**(14) Hydraulic project approval expiration time periods:**

(a) Except for emergency, imminent danger, expedited, and pamphlet HPAs, the department may grant standard HPAs that are valid for up to five years. The permittee must demonstrate substantial progress on construction of the portion of the project authorized in the HPA within two years of the date of issuance.

(b) Imminent danger and expedited HPAs are valid for up to sixty days, and emergency HPAs are valid for the expected duration of the emergency hydraulic project.

(c) Pamphlet HPAs remain in effect indefinitely until modified or rescinded by the department.

(d) The following types of agricultural hydraulic project HPAs remain in effect without the need for periodic renewal; however, a person must notify the department before starting work each year:

(i) Seasonal work that diverts water for irrigation or stock watering; and

(ii) Stream bank stabilization projects to protect farm and agricultural land if the applicant can show that the problem causing the erosion occurs annually or more frequently. Evidence of erosion may include history of permit application,

approval, or photographs. Periodic floodwaters alone do not constitute a problem that requires an HPA.

**(15) Requesting a time extension, renewal, modification, or transfer of a hydraulic project approval:**

(a) The permittee may request a time extension, renewal, modification, or transfer of an active HPA. Before the HPA expires, the permittee or authorized agent must submit a written request through the department's online permitting system or to the habitat program's Olympia headquarters office. The department may not accept requests for delay, renewal, modification, or transfer of an HPA submitted elsewhere or by a person other than the permittee or authorized agent. Written requests must include the name of the applicant, the name of the authorized agent if one is acting for the applicant, the permit number or application identification number of the HPA, the date issued, the permitting biologist, the requested changes to the HPA if requesting a time extension, renewal, or modification, the reason for the requested change, the date of the request, and the requestor's signature. Requests for transfer of an HPA to a new permittee or authorized agent must additionally include a signed, written statement that the new permittee or authorized agent agrees to the conditions of the HPA, that they agree to allow the department access to the project location to inspect the project site, mitigation site, or any work related to the project, and that they will not conduct any project activities until the department has issued approval.

(b) Requests for time extensions, renewals, or modifications of HPAs are deemed received on the date received by the department. The department may declare applications submitted to habitat program after normal business hours as received on the next business day.

(c) Within forty-five days of the requested change, the department must approve or deny the request for a time extension, renewal, modification, or transfer of an approved HPA.

(d) Unless the new permittee or authorized agent requests a time extension, renewal, or modification of an approved HPA, the department may change only the name and contact information of the permittee or authorized agent and must not alter any provisions of the HPA except the project or location start dates when granting a transfer.

(e) A permittee may request a modification or renewal of an emergency HPA until the emergency declaration expires or is rescinded. Requests for changes to emergency HPAs may be verbal, but must contain all of the information in (a) of this subsection.

(f) The department must not modify or renew an HPA beyond the applicable five-year or sixty-day periods. A person must submit a new complete application for a project needing further authorization beyond these time periods.

(g) The department will issue a letter documenting an approved minor modification(s) and a written HPA documenting an approved major modification(s) or transfer.

**(16) Modifications of a hydraulic project approval initiated by the department:**

(a) After consulting with the permittee, the department may modify an HPA because of changed conditions. The modification becomes effective immediately upon issuance of a new HPA.



(b) For hydraulic projects that divert water for agricultural irrigation or stock watering, or when the hydraulic project or other work is associated with stream bank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the department must show that changed conditions warrant the modification in order to protect fish life.

**(17) Revoking an HPA.**

(a) The department may revoke an HPA under the following conditions:

(i) At the written request of the permittee or authorized agent;

(ii) As the result of an informal or formal appeal decision;

(iii) As the result of a court ruling finding that the department issued the HPA in error;

(iv) Following change of a determination of nonsignificance or mitigated determination of nonsignificance to a determination of significance by a lead agency under chapter 43.21C RCW that applies to the hydraulic project approved by the HPA;

(v) The applicant did not correctly identify compliance with the requirements of chapter 43.21C RCW in the HPA application (~~for an HPA~~) and the department was unaware of the error until after the (~~permit~~) HPA was issued;

(vi) Changed physical or biological conditions at the site of the hydraulic project have occurred before project initiation such that fish life cannot be protected if the project proceeds under the requirements of the existing HPA;

(vii) The permittee has not demonstrated substantial progress on construction of the hydraulic project within two years of the date of issuance as required in RCW 77.55.021 (9)(a). Substantial progress means initiation of work at any of the project locations identified in the HPA;

(viii) Duplicate HPAs have been issued for the same hydraulic project.

(b) The department must provide the permittee or authorized agent with written notification before revoking the HPA.

(c) The department must notify the permittee or authorized agent in writing immediately upon revoking the HPA.

**(18) Requesting a preapplication determination:**

(a) A person may request information or a technical assistance site visit from the department prior to submitting an HPA application or at any other time. The department will provide the requested information either verbally or in writing.

(b) If a person is unsure about whether proposed construction or other work landward of (above) the ordinary high water line requires an HPA, they may request a preapplication determination from the department under RCW 77.55.400. The department must evaluate the proposed project and determine if it is a hydraulic project and, if so, whether an HPA from the department is required to ensure proper protection of fish life.

(c) The preapplication determination request must be submitted through the department's online permitting system and must contain:

(i) A description of the proposed project, which must include the location of the ordinary high water line;

(ii) A map showing the location of the project site, which must include the location of the ordinary high water line; and

(iii) Preliminary plans and specifications of the proposed project, if available, which include the location of the ordinary high water line.

(d) The department must provide tribes and local governments a seven calendar day review and comment period. The department must consider all applicable written comments that it receives before it issues a determination as described in this subsection.

(e) The department must issue a written determination, including its rationale for the decision, within twenty-one calendar days of receiving the request.

(f) Chapter 43.21C RCW (state environmental policy) does not apply to preapplication determinations issued under this subsection.

(g) The department's preapplication determination decision may be appealed as provided in WAC 220-660-460 (Informal appeal of administrative action) or WAC 220-660-470 (Formal appeal of administrative action).

**(19) Notice of intent to disapprove HPA applications:**

(a) The department may disapprove HPA applications submitted by a project proponent who has failed to comply with a stop work order or notice to comply issued under WAC 220-660-480, or who has failed to pay civil penalties issued under WAC 220-660-480. The term "project proponent" has the same definition as in RCW 77.55.410.

(b) The department may disapprove HPA applications submitted by such project proponents for up to one year after the date on which the department issues a notice of intent to disapprove HPA applications, or until such project proponent pays all outstanding civil penalties and complies with all notices to comply and stop work orders issued under WAC 220-660-480, whichever is longer (disapproval period).

(c) The department must provide written notice of its intent to disapprove HPA applications to the project proponent and to any authorized agent or landowner identified in the application, in person or via United States mail, to the mailing address(es) listed on the project proponent's HPA application.

(d) The disapproval period begins on the date the department's notice of intent to disapprove HPA applications becomes final. The notice of intent to disapprove HPA applications becomes final thirty calendar days after the department issues it, or upon exhaustion of all applicable administrative and/or judicial remedies.

(e) Any project proponent issued a notice of intent to disapprove HPA applications may, within thirty days of the date of the notice, initiate a formal appeal of the notice as provided in WAC 220-660-470 (Formal appeal of administrative actions).

(f) The department will provide notice and waiver of fines, civil penalties, and administrative sanctions consistent with RCW 34.05.110 and WAC 220-660-480(12).

**AMENDATORY SECTION** (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

**WAC 220-660-370 Bank protection in saltwater areas.** (RCW 77.55.141 applies to single-family residence

bank protection that will not result in a permanent loss of critical food fish and shellfish habitat. RCW 77.55.021 applies to nonsingle-family residence bank protection and single-family residence bank protection that does not comply with the criteria in RCW 77.55.141. The department may deny bank protection applications processed under RCW 77.55.021 that do not provide proper protection of fish life.) Appropriate methods to assess the need for marine bank protection and, if needed, to design marine bank protection are available in the department's *Marine Shoreline Design Guidelines*, as well as other published manuals and guidelines.

(1) **Description:** ~~(A bank protection structure is a permanent or temporary structure constructed to protect or stabilize the bank. Bank protection methods are either hard or soft techniques. Soft approaches attempt to mimic natural processes by using biotechnical methods such as live plantings, rootwads and large woody material (LWM), and beach nourishment. Usually, soft approaches are designed to be less impacting to fish life. Hard approaches armor the bank with material such as rock, concrete, or wood intended to prevent erosion of the bank. Some projects use both hard and soft approaches. To be considered soft, at least eighty-five percent of the total project area must be constructed with naturally occurring materials in a manner that mimics the natural shore processes taking place in the vicinity of the project. In addition, the remaining fifteen percent of the total project area must not interrupt sediment delivery to the beach (e.g., must not bulkhead a feeder bluff). The total project area extends cross-shore from MLLW to the OHWL, and long-shore from a line perpendicular to the shoreline at the beginning of one end of construction to the other end.)~~ A broad spectrum of bank protection techniques can be applied to protect property. These range from natural techniques that require minimal or no engineering to engineered soft shore protection to hard shore armor. Natural techniques include planting native vegetation, improving drainage, and relocating structures. Natural techniques typically preserve the natural condition of the shore and have few to no negative impacts on fish life. Soft shore techniques include log placement, beach nourishment, resloping the bank, and revegetation can provide erosion protection using strategically placed natural materials while allowing beach processes and fish habitat to remain intact. Conventional hard techniques include bulkheads, seawalls, revetments and retaining walls, which are designed to preclude shoreline migration and bank erosion. Each type of approach has varying degrees of impact. In general, natural techniques result in the fewest impacts to fish life and hard armor have the most impacts.

(2) **Fish life concerns:** ~~(Bank protection structures) Conventional hard techniques as well as some soft shore techniques can physically alter the beach and disrupt ((near-shore ecosystem)) beach processes ((and physical conditions)). This alteration can cause a loss of the beach spawning habitat for Pacific sand lance and surf smelt ((and a loss of migration, feeding, and rearing habitat for juvenile salmon)). These forage fish species are a primary food source for some adult salmon species. This alteration can also reduce beach complexity, the presence of marine riparian vegetation including overhanging vegetation alongshore that produces terrestrial insects that are eaten by juvenile salmon. To pro-~~

tect fish life, the department protects ((the)) both beaches where ((critical food fish or shellfish habitat)) saltwater habitats of special concern occur and the ((nearshore zone geomorphie)) beach processes that form and maintain this ((critical)) habitat.

(3) ~~((Bulkheads and other))~~ **Bank protection design:**

(a) If the ordinary high water line (OHWL) ((is)) has changed since an existing hard bank protection structure was built, and OHWL reestablishes landward of ~~((a bulkhead protection))~~ the structure, the department will consider this reestablished OHWL to be the existing OHWL for permitting purposes. If an HPA application ~~((for an HPA))~~ is submitted for repairs within three years of the breach, the bank protection structure may be repaired or replaced in the original footprint.

(b) A person must use the least impacting technically feasible bank protection alternative. A person should propose a hard armor technique only after considering site characteristics such as the threat to major improvements, wave energy, and other factors in an alternatives analysis. The common alternatives below are in order from most preferred to least preferred:

- (i) Remove the bank protection structure;
- (ii) ~~((No action--))~~ Control upland drainage;
- (iii) Protect, enhance, and replace native vegetation;
- (iv) Relocate improvements or structures;
- (v) Construct a soft structure ~~((by placing beach nourishment and large woody material))~~;
- (vi) Construct upland retaining walls;
- (vii) Construct ~~((a))~~ hard structure ~~((such as bulkhead and rock revetment))~~ landward of the OHWL; and
- (viii) Construct ~~((a))~~ hard structure ~~((such as a bulkhead and rock revetments))~~ at the OHWL.

(c) ~~((Upon receipt of a complete application, the department will determine the applicable RCW under which to process the application.~~

(i) ~~A new, replacement, or repaired single-family residence bulkhead in saltwater areas must not result in the permanent loss of critical food fish or shellfish habitat to be processed under RCW 77.55.141.~~

(ii) ~~If construction of a new single-family residence bulkhead or other bank protection project, or replacement or repair of an existing single-family residence bulkhead or other bank protection project waterward of the existing structure will result in the permanent loss of critical food fish or shellfish habitat, the department must instead process the application under RCW 77.55.021. However,) The construction of all ((bulkheads or other)) bank protection must not result in a permanent loss of surf smelt or Pacific sand lance spawning beds.~~

(d) An HPA application for ~~((a))~~ new ~~((bulkhead or other))~~ bank protection ~~((work))~~, or the replacement or rehabilitation of ~~((a bulkhead or other))~~ bank protection ~~((structure))~~ that extends waterward of ~~((the))~~ an existing bank protection structure must include a site assessment, alternatives analysis and design rationale for the proposed method prepared by a qualified professional ((such as a coastal geologist, geomorphologist, etc.) for the proposed project and selected technique). The department may grant an exemption depending on the scale and nature of the project. ~~((If~~

addition, this requirement does not apply to projects processed under RCW 77.55.141. This report must include) The applicant must submit the qualified professional's report to the department as part of a complete application for an HPA that includes:

- (i) An assessment of the level of risk to existing buildings, roads, or services being threatened by the erosion;
  - (ii) Evidence of erosion and/or slope instability to warrant the stabilization work;
  - (iii) Alternatives considered and the technical rationale specific to the ((design-developed)) bank protection technique proposed;
  - (iv) An analysis of the benefits and impacts associated with the chosen protection ((technique)) method; and
  - (v) An explanation of the ((technique)) method chosen, design parameters, types of materials, quantities, staging, and site rehabilitation.
- (e) The department may require the design of hard bank protection ((projects)) structures to incorporate beach nourishment, large woody material or native vegetation as mitigation.

**(4) ((Single family residence bulkhead projects processed under RCW 77.55.141):**

~~(a) Locate the waterward face of a new bulkhead at or above the OHWL. Where this is not feasible because of geological, engineering, or safety concerns, the bulkhead may extend waterward of the OHWL the least distance needed to excavate for footings or place base rock, but no more than six feet waterward of the OHWL.~~

~~(b) Do not locate the waterward face of a replacement or repaired bulkhead further waterward than the structure it is replacing. Where removing the existing bulkhead will result in environmental degradation such as releasing deleterious material or problems due to geological, engineering, or safety concerns, the department will authorize the replacement bulkhead to extend waterward of, but directly abutting, the existing structure. In these instances, the design must use the least impacting type of structure and construction method.~~

**(5)) Bank protection ((projects processed under RCW 77.55.021)) location:**

(a) Locate the waterward face of a new ((bulkhead)) hard bank protection structure at or above the OHWL. Where this is not feasible because of geological, engineering, or safety concerns, the ((bulkhead)) hard bank protection structure may extend waterward of the OHWL the least distance needed to excavate for footings or place base rock, but no greater than six feet. Soft shoreline ((stabilization techniques that provide restoration of shoreline ecological functions may be permitted)) methods that allow beach processes and habitat to remain intact may extend waterward of the OHWL.

(b) Do not locate the waterward face of a replacement or repaired ((bulkhead)) hard bank protection further waterward than the structure it is replacing. Where removing the existing ((bulkhead)) hard bank protection will result in environmental degradation such as releasing deleterious material or problems due to geological, engineering, or safety concerns, the department will authorize the replacement ((bulkhead)) bank protection to extend waterward of, but directly abutting, the existing structure. In these instances, ((the design)) a person

must use the least-impacting type of structure and construction method.

**((6) Bulkhead and other)) (5) Bank protection construction:**

(a) The department ((may require a person to establish)) requires that plans submitted as part of a complete application show the horizontal distances of the structure(s) from ((a)) permanent local benchmark(s) (fixed objects) ((before starting work on the project)). Each horizontal distance shown must include the length and compass bearing from the benchmark to the waterward face of the structure(s). The benchmark(s) must be located, marked, and protected to serve as a post-project reference for at least ten years from the date the HPA application is submitted to the department.

(b) A person must not conduct project activities when tidal waters cover the work area including the work corridor, except the area occupied by a grounded barge.

(c) No stockpiling of excavated materials containing silt, clay, or fine-grained soil is approved waterward of the OHWL.

(d) The department may allow stockpiling of sand, gravel, and other coarse material waterward of the OHWL. Place this material within the designated work corridor ((waterward of the bulkhead footing or base rock)). Remove all excavated or stockpiled material from the beach within seventy-two hours of construction.

(e) Backfill all trenches, depressions, or holes created during construction that are waterward of the OHWL before they are filled by tidal waters.

**AMENDATORY SECTION** (Amending WSR 18-10-054, filed 4/27/18, effective 6/1/18)

**WAC 220-660-460 Informal appeal of administrative actions.** An informal appeal is an ((appeal to the department pursuant to)) internal department review of a department HPA decision and is conducted under chapter 34.05 RCW (Administrative Procedure Act).

(1) The department recommends that a person aggrieved by ((the issuance, denial, provisioning, or modification of an HPA)) a department HPA decision contact the department employee responsible for making the decision ((on the HPA)) before initiating an informal appeal. Discussion of concerns with the department employee often results in a resolution ((of the problem)) without the need for an informal appeal.

(2) The department encourages ((aggrieved persons)) a person aggrieved by a department HPA decision to take advantage of the informal appeal process before initiating a formal appeal. However, ((the informal appeal process is not mandatory, and)) a person may ((proceed directly to)) pursue a formal appeal under WAC 220-660-470 without first obtaining informal review under this section.

This rule does not apply to ((any provisions in)) pamphlet HPAs. A person who disagrees with a provision in a pamphlet HPA may apply for an individual, written HPA.

This rule does not apply to correction requests issued following a technical assistance visit or compliance inspection under WAC 220-660-480.

(3) Requesting an informal appeal.

(a) Any person with legal standing may request an informal appeal of ~~((the following department actions:~~

~~(a))~~ the issuance, denial, provisioning, or modification of an HPA ~~((; or)), the rejection of a fish habitat enhancement project application, or a preapplication determination.~~

(b) ~~((An order imposing civil penalties.))~~ Issuance of a stop work order or notice to comply may be informally appealed only by the project proponent who received the notice or order or by the owner of the land on which the hydraulic project is located.

(c) Issuance of a notice of civil penalty may be informally appealed only by the person incurring the penalty.

(4) A request for an informal appeal must be in writing and must be received by the department within thirty days from the date of receipt of the decision ~~((or)), order, or notice.~~ "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence, up to forty-five days from the date of mailing. A person's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt. ~~((The date of actual receipt; however, may not exceed forty-five days from the date of mailing.))~~

(5) A request for informal appeal must be submitted in one of the following ways:

(a) Mailed to the:

HPA Appeals Coordinator  
Department of Fish and Wildlife  
Habitat Program  
P.O. Box 43234  
Olympia, WA 98504-3234;

(b) Email: [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov);

(c) Fax: 360-902-2946; or

(d) Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(6) The request must be plainly labeled as "Request for Informal Appeal" and must include the following:

(a) The appellant's name, address, email address (if available), and phone number;

(b) The specific department action that the appellant contests;

(c) The date of the specific department ~~((issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties))~~ action being contested;

(d) The log number or a copy of the HPA, or a copy of the ~~((order imposing civil penalties))~~ specific department action that the appellant contests;

(e) A short and plain statement explaining why the appellant considers the department action or order to provide inadequate protection of fish life or to be otherwise unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The attorney's name, address, email address (if available), and phone number, if the appellant is represented by legal counsel; and

(j) The signature of the appellant or his or her attorney.

(7) Upon receipt of a valid request for an informal appeal, the department may initiate a review of the department action.

(8) Informal conference. If the appellant agrees, and the appellant applied for the HPA, resolution of the appeal may be facilitated through an informal conference. The informal conference is an optional part of the informal appeal and is normally a discussion between the appellant, the department employee responsible for the decision, and a supervisor. The time period for the department to issue a decision on an informal appeal is suspended during the informal conference process.

(9) Informal appeal hearing. If the appeal is received from a person who is not the permittee, or if the appeal involves an order imposing civil penalties, or if a resolution is not reached through the informal conference process, then the HPA appeals coordinator or designee may conduct an informal appeal hearing or review. Upon completion of the informal appeal hearing or review, the HPA appeals coordinator or designee must recommend a decision to the director or designee. The director or designee must approve or decline to approve the recommended decision within sixty days of the date the department received the request for informal appeal, unless the appellant agrees to an extension of time. The department must notify the appellant in writing of the decision of the director or designee.

(10) If the department declines to initiate an informal review of its action after receipt of a valid request, or the appellant still wishes to contest the department action following completion of the informal appeal process, the appellant may initiate a formal appeal under WAC 220-660-470. Formal review must be requested within the time periods specified in WAC 220-660-470.

AMENDATORY SECTION (Amending WSR 18-10-054, filed 4/27/18, effective 6/1/18)

**WAC 220-660-470 Formal appeal of administrative actions.** A formal appeal is an appeal to the pollution control hearings board ~~((pursuant to))~~ (board) under chapters 34.05 RCW and 371-08 WAC.

(1) The department recommends that a person aggrieved by ~~((the issuance, denial, provisioning, or modification of a))~~ a department HPA decision contact the department employee responsible for making the decision on the HPA before initiating a formal appeal. Discussion of concerns with the department employee often results in a resolution ~~((of the problem))~~ without the need for a formal appeal.

(2) The department encourages ~~((aggrieved persons))~~ a person aggrieved by a department HPA decision to take advantage of the informal appeal process under WAC 220-660-460 before initiating a formal appeal. However, ~~((the informal appeal process is not mandatory, and))~~ a person may ~~((proceed directly to))~~ pursue a formal appeal under this section without first completing the informal appeal process under WAC 220-660-460.

This rule does not apply to ~~((any provisions in))~~ pamphlet HPAs. A person who disagrees with a provision in a pamphlet HPA may apply for an individual, written HPA.

This rule does not apply to correction requests issued following a technical assistance visit or compliance inspection, under WAC 220-660-480.

(3) Requesting a formal appeal.

(a) Any person with standing may request a formal appeal of the ~~((following department actions:~~

~~(a) The))~~ issuance, denial, provisioning, or modification of an HPA; ~~((or~~

~~(b) An order imposing civil penalties.~~

(4) ~~As required by the Administrative Procedure Act, chapter 34.05 RCW, the department must inform the HPA permittee or applicant, or person subject to civil penalty order of the department, of the opportunity for appeal, the time within which to file a written request for an appeal, and the place to file it.)~~ the rejection of a fish habitat enhancement project application for streamlined processing; a notice of intent to disapprove HPA applications; or a preapplication determination.

(b) Issuance of a stop work order, notice to comply, or notice of intent to disapprove HPA applications, may be formally appealed only by a person who received the order or notice from the department or by the owner of the land on which the hydraulic project is located.

(c) Issuance of a notice of civil penalty may be formally appealed only by the person incurring the penalty.

(4) The recipient of a stop work order must comply with the order immediately upon receipt. However, the board may stay, modify, or discontinue the order upon motion, under such conditions as the board may impose.

(5) A request for formal appeal must be in writing and must be filed with the clerk of the ~~((pollution control hearings))~~ board ~~((PCHB))~~ and served on the department within thirty days from the date of receipt of the decision ~~((or))~~, order, or notice. "Date of receipt" means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence ~~((The recipient's)), up to forty-five days from the date of mailing. A person's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, must constitute enough evidence of actual receipt. ((The date of actual receipt; however, may not exceed forty-five days from the date of mailing.))~~

(6) The request must be plainly labeled as "Request for Formal Appeal" and, ~~((pursuant to))~~ under WAC 371-08-340, must include the following:

(a) The appellant's name, mailing address, email address (if available), and phone number; and if represented by another, the representative's name, mailing address, email address, and phone number;

(b) The specific department action that the appellant contests;

(c) The date of the specific department ((issued, denied, provisioned, or modified an HPA, or the date the department issued the order imposing civil penalties)) action being contested;

(d) A copy of the decision, notice, order, or ((permit)) HPA you are appealing, and if appealing a permit decision, a copy of the ~~((permit))~~ HPA application;

(e) A short and plain statement explaining why the appellant considers the department action, notice, or order to provide inadequate protection of fish life or to be otherwise unjust or unlawful;

(f) A clear and concise statement of facts to explain the appellant's grounds for appeal;

(g) Whether the appellant is the permittee, HPA applicant, landowner, resident, or another person with an interest in the department action in question;

(h) The specific relief requested;

(i) The signature of the appellant or his or her representative.

(7) Service on the department must be submitted in one of the following ways:

(a) Mailed to:

HPA Appeals Coordinator  
Department of Fish and Wildlife  
Habitat Program  
P.O. Box 43234  
Olympia, WA 98504-3234;

(b) Email: [HPAapplications@dfw.wa.gov](mailto:HPAapplications@dfw.wa.gov);

(c) Fax: 360-902-2946; or

(d) Hand delivered to the Natural Resources Building, 1111 Washington Street S.E., Habitat Program, Fifth Floor.

(8) The time period for requesting a formal appeal is suspended during consideration of a timely informal appeal. If there has been an informal appeal, the deadline for requesting a formal appeal must be within thirty days from the date of receipt of the department's written decision in response to the informal appeal.

(9) The department at its discretion may stay the effectiveness of any decision or order that has been appealed to the ~~((PCHB))~~ board. The department will use the standards in WAC 371-08-415(4) to make a decision on any stay request. At any time during the appeal ~~((to the PCHB))~~, the appellant may apply to the ~~((PCHB))~~ board for a stay of the decision or order, or removal of a stay imposed by the department.

(10) If there is no timely request for an appeal, the department action will be final and nonappealable.

AMENDATORY SECTION (Amending WSR 15-02-029, filed 12/30/14, effective 7/1/15)

**WAC 220-660-480 Compliance with HPA provisions.** A project proponent must comply with all provisions of chapter 77.55 RCW, this chapter, and the HPA. If a project proponent violates chapter 77.55 RCW or this chapter or deviates from any provision of an HPA issued by the department, the department may issue a correction request, a stop work order, a notice to comply, or a notice of civil penalty. The term "project proponent" has the same definition as in RCW 77.55.410. This section does not apply to a project, or to that portion of a project, that has received a forest practices hydraulic project (FPHP) permit from the department of natural resources under chapter 76.09 RCW.

The department is responsible to help the regulated community understand how to comply. The department achieves voluntary compliance through education and technical assistance when the department advises and consults on permits, conducts compliance checks, performs on-site technical visits, or provides guidance materials written in easily understood language.

When the department cannot get voluntary compliance by issuing a correction request, the department may use a range of increasingly strict enforcement tools. This ranges from issuing notices of correction and stop work orders to penalties and, when appropriate, criminal prosecution.

(1) Technical assistance program: ((Pursuant to)) Under chapter 43.05 RCW, the department will continue to develop programs to encourage voluntary compliance ((with HPA provisions)) by providing technical assistance consistent with chapter 43.05 RCW. The programs include technical assistance visits, printed information, information and assistance by telephone, training meetings, and other appropriate methods for the delivery of technical assistance. In addition, ((provisions of chapter 43.05 RCW require)) the department ((to)) must provide, upon request, a list of organizations((, including private companies,)) that provide technical assistance. This list ((must be)) is compiled by the department from information submitted by the organizations and does not constitute an endorsement by the department of any organization.

(a) Technical assistance is defined in chapter 43.05 RCW as including:

(i) Information on the laws, rules, and compliance methods and technologies applicable to the department's programs;

(ii) Information on methods to avoid compliance problems;

(iii) Assistance in applying for permits; and

(iv) Information on the mission, goals, and objectives of the program.

(b) "Technical assistance documents" means documents prepared to provide information specified in (a) of this subsection that is labeled a technical assistance document by the department. Technical assistance documents do not include ((notices of correction, violation,)) correction requests or civil or criminal enforcement actions. "Correction request" means a notice of violation or a notice of correction as defined in chapter 43.05 RCW. Technical assistance documents do not impose mandatory obligations or serve as the basis for a citation.

**(2) Technical assistance visit:**

(a) ((Pursuant to)) Under RCW 43.05.030, a technical assistance visit is defined as a visit by the department to a project site or other location that:

(i) Has been requested or is voluntarily accepted; and

(ii) The department declares to be a technical assistance visit at the start of the visit.

(b) ((Notice of violation.)) During a technical assistance visit, or within a reasonable time thereafter, the department must prepare a ((notice of violation)) correction request to inform the ((person)) project proponent of any violations of law or department rules identified by the department ((as follows:

~~(i) A description of what is not in compliance and the text of the specific section or subsection of the applicable state law or rule;~~

~~(ii) A statement of what is required to achieve compliance;~~

~~(iii) The date by which the project must achieve compliance;~~

~~(iv) Notice of the means to obtain any technical assistance services provided by the department or others; and~~

~~(v) Notice of when, where, and to whom a request to extend the time to achieve compliance for good cause may be filed with the department.~~

~~(c) A notice of violation is not a formal enforcement action and is not subject to appeal.~~

~~**(3) Notice of correction:**~~

~~(a) Procedures for correction of violations)). "Correction request" means a notice of violation or a notice of correction as defined in chapter 43.05 RCW.~~

~~(c) As provided in RCW 43.05.050, the department may issue a civil penalty under this section without first issuing a correction request when a violation is observed during a technical assistance visit only if:~~

~~(i) The project proponent has previously been subject to an enforcement action for the same or similar type of HPA violation, or has been given previous notice for the same or similar type of HPA violation; or~~

~~(ii) The violation has a probability of causing more than minor harm to fish life.~~

~~**(3) Compliance inspection:**~~

~~(a) If, during any inspection or visit that is not a technical assistance visit, the department becomes aware of conditions that do not comply with applicable laws and rules enforced by the department and are not subject to penalties as provided for in ((subsection (4) of)) this section, the department may issue a ((notice of)) correction request to the ((responsible party that must include:~~

~~(i) A description of what is not in compliance and the text of the specific section or subsection of the applicable state law or rule;~~

~~(ii) A statement of what is required to achieve compliance;~~

~~(iii) The date by which the department requires compliance to be achieved;~~

~~(iv) Notice of the means to contact any technical assistance services provided by the department or others; and~~

~~(v) Notice of when, where, and to who in the department a person may file a request to extend the time to achieve compliance for good cause.~~

~~(b) A notice of correction is not a formal enforcement action, is not subject to appeal, and is a public record.~~

~~(e)) project proponent.~~

~~(b) If the department issues a ((notice of)) correction request, it must not issue a civil penalty for the violations identified in the ((notice of)) correction request unless the ((responsible party)) project proponent fails to comply with the notice(:~~

~~**(4) Civil penalties:**~~

~~(a) The department may impose a civil penalty of up to one hundred dollars per day for a violation of any provisions of chapter 77.55 RCW or this chapter. The department must~~

impose the civil penalty with an order in writing delivered by certified mail or personal service to the person who is penalized. The notice must describe the violation, identify the amount of the penalty, identify how to pay the penalty, and identify the process for informal and formal appeals of the penalty. If the violation is an ongoing violation, the penalty may accrue for each additional day of violation.

(b) ~~The department may issue a civil penalty without first issuing a notice of correction, as provided in RCW 43.05.110)) request.~~

(c) As provided in RCW 43.05.050, the department may issue a civil penalty under this section without first issuing a correction request when a violation is observed during a compliance inspection only if:

(i) The ~~((person))~~ project proponent has previously been subject to an enforcement action for the same or similar type of HPA violation, or has been given previous notice of the same or similar type of HPA violation; or

(ii) Compliance for the current violation is not achieved by the date set or modified by the department in a ~~((previously issued notice of))~~ previous correction~~((, if the department has responded to any request for review of such date by reaffirming the original date or establishing a new date))~~ request for the current violation; or

(iii) The violation has ~~((a probability of placing a person in danger of death or bodily harm, has))~~ a probability of causing more than minor ~~((environmental harm, or has a probability of causing physical damage to the property of another in an amount exceeding one thousand dollars; or~~

(iv) The violation was committed by a business that employed fifty or more employees on at least one day in each of the preceding twelve months.

~~(e) Appeal of a civil penalty. If a civil penalty order is not appealed in a timely manner under WAC 220-660-460 or 220-660-470, the civil penalty order is final and nonappealable. If appealed, the civil penalty becomes final upon issuance of a final order not subject to any further administrative appeal. When a civil penalty order becomes final, it is due and payable.~~

~~(d) Payment of a civil penalty. The penalty imposed is due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty is due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the civil penalty is not paid within thirty days after it becomes due and payable, the department may seek enforcement of the order under RCW 77.55.291 and 34.05.578.~~

~~(e) Unpaid civil penalty. If the amount of any penalty is not paid within thirty days after it is due and payable, the attorney general, upon the request of the director, must bring an action in the name of the state of Washington in the superior court of Thurston County or of any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence must be the same as an ordinary civil action. All penalties recovered under this section must be paid into the state's general fund.~~

~~(f) The department must comply with the requirements of RCW 34.05.110 before issuing a civil penalty to a small business as defined in that statute.~~

~~(5) **Time for compliance:** The department must provide for a reasonable time to achieve compliance. Any person receiving a notice of correction under subsection (3) or (4) of this section may request an extension of time for good cause to achieve compliance. The person must request an extension from the department in writing and follow the procedures specified by the department in the notice. The department must respond in writing within ten calendar days.~~

~~(6)) harm to fish life.~~

~~(4) **Correction request:**~~

~~(a) "Correction request" means a notice of violation or a notice of correction as defined in chapter 43.05 RCW. A correction request is not a formal enforcement action and is not subject to appeal under state law or WAC 220-660-460 Informal appeal of administrative actions or WAC 220-660-470 Formal appeal of administrative actions.~~

~~(b) If during a technical assistance visit or compliance inspection, the department discovers a violation of any provisions within chapter 77.55 RCW, this chapter, or an HPA issued by the department, it must, during the visit or within a reasonable time thereafter, issue a correction request to the project proponent detailing steps needed to bring the project into compliance.~~

~~(c) Contents of a correction request: A correction request must indicate whether it originates from a technical assistance visit or a compliance inspection. A correction request must include:~~

~~(i) A description of what is not in compliance with chapter 77.55 RCW, this chapter, or the HPA;~~

~~(ii) The text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for that violation;~~

~~(iii) A statement of what is required to achieve compliance;~~

~~(iv) The date by which the project proponent must achieve compliance;~~

~~(v) Notice of the means to obtain technical assistance services provided by the department or others; and~~

~~(vi) Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the correction request.~~

~~(d) The department must provide for a reasonable time to achieve compliance.~~

~~(e) Time extension to comply: A request for an extension of the deadline for achieving compliance with the correction request must be submitted to the department in writing within ten calendar days of receiving the correction request. "Date of receipt" is defined in WAC 220-660-460 (4)(b) and 220-660-470 (5)(b). The department must respond in writing to a request for extension of the deadline.~~

~~(5) **Stop work order:**~~

~~(a) The department may issue a stop work order if:~~

~~(i) A violation of chapter 77.55 RCW or this chapter occurs or a deviation from any provisions of an HPA occurs. To qualify for a stop work order, the violation must be serious enough that it could cause significant harm to fish life; and~~

(ii) Immediate action is necessary to prevent continuation of harm, or to avoid more than minor harm, to fish life.

(b) Stop work orders are effective immediately upon issuance. Project proponents must therefore comply with stop work orders immediately upon receipt.

(c) Scope of a stop work order: A stop work order may require that any person stop all work connected with the project until corrective action is taken, and the department has indicated that work may resume. A stop work order may also require that the project proponent take corrective action to prevent, correct, or compensate for adverse impacts to fish life caused by the violation.

(d) Contents of a stop work order. The stop work order must include:

(i) A description of the condition that is not in compliance with chapter 77.55 RCW, this chapter, or the HPA;

(ii) The text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for that violation;

(iii) A statement of what is required to achieve compliance;

(iv) The date by which the department requires compliance with the corrective actions identified in the order;

(v) Notice of the means to contact any technical assistance services provided by the department or others;

(vi) Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the order;

(vii) Means for contacting the department to schedule an inspection to assess compliance; and

(viii) The right to appeal the order.

(e) Signature authority for a stop work order: A stop work order for hydraulic projects conducted without an HPA must be authorized by a regional habitat program manager, regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director. A stop work order for permitted hydraulic projects must be authorized by the regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director.

(f) Providing notice of a stop work order: A stop work order may be issued and provided directly and immediately to the person whose actions are in violation of chapter 77.55 RCW, this chapter, or the HPA, regardless of whether that person is the project proponent. Upon receipt of the stop work order, that person must immediately comply with it. Within five business days of issuing a stop work order, the department must mail a copy of the order to the last known address of any project proponent, to the last known address of the owner of the land on which the hydraulic project is located, and to the local jurisdiction in which the hydraulic project is located. The department must take all reasonable measures to ensure that the project proponent actually receives notice of the stop work order.

(g) Consequences of noncompliance: Failure to comply with a stop work order can result in subsequent civil or criminal enforcement actions, and can also cause the project proponent to be disapproved for future HPA applications as set forth in WAC 220-660-050.

(h) Appealing a stop work order: A stop work order may be appealed within thirty days from receipt of the order by a person who received a copy of the order or by the owner of the land on which the hydraulic project is located. Informal appeals must be filed in the form and manner provided in WAC 220-660-460, and formal appeals must be filed in the form and manner provided in WAC 220-660-470.

(6) Notice to comply:

(a) The department may issue a notice to comply if a violation of chapter 77.55 RCW or this chapter occurs, a deviation from any provisions of an HPA occurs, or damage or potential damage to fish life occurs, and the department determines that a stop work order is not necessary to prevent continuation of or avoid more than minor harm to fish life.

(b) Scope of a notice to comply: A notice to comply must specify the corrective action to be taken, and may also require additional action to prevent, correct, or compensate for adverse impacts to fish life caused by the violation.

(c) Contents of a notice to comply. A notice to comply must include:

(i) A description of the condition that is not in compliance;

(ii) The text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for that violation;

(iii) A statement of what is required to achieve compliance;

(iv) The date by which the department requires compliance to be achieved;

(v) Notice of the means to contact any technical assistance services provided by the department or others;

(vi) Notice of when, where, and to whom a request may be submitted to the department to extend, for good cause, the deadline for achieving compliance with the order; and

(vii) The right to appeal the notice.

(d) The department must provide for a reasonable time to achieve compliance.

(e) Signature authority for a notice to comply: A notice to comply must be authorized by a regional habitat program manager, regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director.

(f) Providing notice: Within five business days of issuing a notice to comply, the department must mail a copy of the notice to the last known address of any project proponent, to the last known address of the owner of the land on which the hydraulic project is located, and to the local jurisdiction in which the hydraulic project is located. The department must take all reasonable measures to ensure that the project proponent actually receives the notice.

(g) Consequences of noncompliance: Failure to comply with a notice to comply can result in subsequent civil or criminal enforcement actions, and can also cause the project proponent to be subject to disapproval of future HPA applications as set forth in WAC 220-660-050.

(h) Appealing a notice to comply: A notice to comply may be appealed within thirty days from the date of receipt of the notice by a person who received the notice or by the owner of the land on which the hydraulic project is located. Informal appeals must be filed in the form and manner pro-



vided in WAC 220-660-460 and formal appeals must be filed in the form and manner provided in WAC 220-660-470.

**(7) Civil penalties:**

(a) The department may levy civil penalties of up to ten thousand dollars for each and every violation of chapter 77.55 RCW, this chapter, or provisions of an HPA. Each and every violation is a separate and distinct civil offense. Penalties are issued in accordance with the penalty schedule provided in subsection (8) of this section.

(b) Notice of civil penalty: The department must issue written notice of any civil penalty imposed under this section. At a minimum, the notice must include:

(i) The factual and legal basis for the penalty, including a description of the violation(s) for which the penalty is imposed and the text of the specific section(s) or subsection(s) of chapter 77.55 RCW, this chapter, or the HPA provision(s) for those violation(s);

(ii) The amount of the penalty; and

(iii) The right of the person incurring the civil penalty to appeal it.

(c) Signature authority for a notice of civil penalty: Civil penalties must be authorized by the regional habitat program manager, regional director, habitat program division manager, habitat program director, habitat program deputy director, or department director. Civil penalties of two thousand five hundred dollars or more must be authorized by the habitat program director, habitat program deputy director, or department director.

(d) Service of notice: The department must serve a notice of civil penalty as follows:

(i) By certified mail to:

(A) The last known address of the person incurring the penalty; and

(B) The local jurisdiction in which the hydraulic project is located; or

(ii) By personal service to:

(A) The person incurring the penalty; and

(B) The local jurisdiction in which the hydraulic project is located.

Within five business days of issuing a penalty, the department must mail a copy of the notice of civil penalty to the last known address of any project proponent and the owner of the land on which the hydraulic project is located. The department must take all reasonable measures to ensure that the project proponent actually receives notice of the penalty.

(e) Effective date of penalty: The penalty imposed becomes due and payable thirty days after receipt of a penalty notice unless an appeal is filed. Whenever an appeal is filed, the penalty becomes due and payable only upon completion of all review proceedings and the issuance of a final notice or order confirming the penalty in whole or in part.

Failure to pay a civil penalty can result in disapproval of future HPA applications as set forth in WAC 220-660-050. When a penalty becomes past due, it is also subject to interest at the rate allowed by RCW 43.17.240 for debts owed to the state.

Unpaid penalties may also be subject to enforcement under RCW 77.55.440 and other applicable laws and regulations under RCW 77.55.470.

(f) Right to appeal civil penalty: Any person incurring a civil penalty issued under RCW 77.55.440 and this section may appeal the civil penalty informally or formally within thirty days of receiving the notice of civil penalty. Informal appeals are conducted under WAC 220-660-460, and formal appeals are conducted under WAC 220-660-470.

(g) Civil penalties received or recovered under RCW 77.55.440 must be deposited into the state's general fund, except that the department is authorized to retain any attorneys' fees and costs it may be awarded in connection with an action brought under RCW 77.55.440 to recover a civil penalty.

**(8) Civil penalty schedule:**

(a) The department may levy a civil penalty, as defined in this section, in any of the following circumstances:

(i) The project proponent fails to complete actions required to be completed in a correction request, stop work order or notice to comply within the time period required for completion contained in the request or notice. Unless the project proponent has previously been subject to an HPA enforcement action or the violation has a probability of more than minor harm to fish life, the department will make a reasonable attempt to achieve voluntary compliance before issuing a civil penalty.

(ii) A project proponent is conducting or has conducted a hydraulic project without having an active HPA or without first obtaining an HPA for the project.

(b) The department's decision to issue a civil penalty under RCW 77.55.440 is based upon consideration of the following:

(i) Previous violation history of the person who will be incurring the penalty;

(ii) Severity and repairability of the impact of the violation(s) on fish life;

(iii) Whether the violation(s) was intentional;

(iv) The extent, if any, to which the person who would be incurring the penalty has cooperated or is cooperating with the department in addressing the violation(s) and its impact on fish life; and

(v) If the penalty will be imposed on a person for a violation committed by another, the extent to which the person incurring the penalty was unaware of the violation, and whether that person received a substantial economic benefit from the violation.

(c) Determining civil penalty amounts: When a penalty is assessed it will be calculated by the department using the following process:

(i) Determine the base civil penalty:

(A) The following violations have a base civil penalty amount of two thousand dollars: Conducting a hydraulic project without a valid HPA; willful misrepresentation of information on the HPA application; or a significant, in the opinion of the department, deviation from the valid HPA that adversely impacts fish life.

(B) All other violations not specifically mentioned have a base penalty of five hundred dollars.

(ii) Calculate the civil penalty amount from the considerations specific to the incident and the site. The following considerations will be independently evaluated for each violation

and added to the base civil penalty to calculate the total civil penalty for each violation:

(A) Previous violation history of the person who will be incurring the penalty, including the frequency and similarity of any previous violations within five years preceding the violation leading to the issuance of the penalty. A history of violations that, under a preponderance of the evidence, shows a pattern of disregard for specific HPA provisions, chapter 77.55 RCW, or this chapter will likely result in a higher penalty amount. In reviewing a person's violation history for purposes of this section, the department may consider previously issued correction requests, stop work orders, notices to comply, notices of civil penalty imposed under chapter 77.55 RCW, criminal convictions imposed under RCW 77.15.300, and any other relevant information that may be available. Points are assessed to determine the penalty amount imposed under (d) of this subsection according to the following criteria:

0 points = The violator has no documented violations within five years preceding the violation leading to the issuance of the penalty.

2 points = The violator has one documented violation within five years preceding the violation leading to the issuance of the penalty.

4 points = The violator has more than one documented violation within five years preceding the violation leading to the issuance of the penalty.

(B) Severity and reparability of impacts, which the department assesses based on harm to fish life caused by the violation(s).

Violations that injure or kill fish life, decrease habitat function, value, or quantity, or cause long term or irreparable damage will likely result in a higher penalty amount. Points are assessed to determine the penalty amount imposed under (d) of this subsection according to the following criteria:

0 points = There is no adverse impact to fish life.

2 points = There is adverse impact to fish life, but it is minor, and no impacts will last beyond the duration of the construction activity.

4 points = There is extensive and/or significant adverse impact to fish life and impacts will last beyond the duration of the construction activity.

(C) Whether the violation(s) was intentional, which the department determines by considering whether the person knew or should have known the action was a violation, whether and to what extent the violation was foreseeable, whether the person to incur the penalty took precautions to avoid committing the violation, and whether the person to incur the penalty had an economic incentive for committing the violation. Violations that are intentional, foreseeable, where economic incentives are clear, or when precautions were not taken to avoid the impact likely result in a larger penalty amount. Points are assessed to determine the penalty amount imposed under (d) of this subsection according to the following criteria:

0 points = The violation was not foreseeable.

1 point = The violation was foreseeable, and no precaution was taken to avoid it.

3 points = The violation occurred after consultation, a technical or compliance site visit, or an enforcement action; or there was a clear economic incentive.

(D) The extent, if any, to which the person who would be incurring the penalty has cooperated or is cooperating with the department in addressing the violation(s) and its impact on fish life. The department assesses the level of a person's cooperation by examining whether the person reported the violation voluntarily, the time lapse, if any, between when the person discovered the violation and when the person reported it, and how responsive the person to incur the penalty was toward department staff. Evidence of a person's poor or inconsistent cooperation with department staff will likely result in a higher penalty amount. Points are assessed to determine the penalty amount imposed under (d) of this subsection according to the following criteria:

0 points = The violator reported the violation in a timely manner and cooperated with department staff to correct the violation.

1 point = The violator did not report the violation in a timely manner, or they did not cooperate with department staff to correct the violation.

3 points = The violator ignored or evaded department contacts or refused to allow department staff to enter the job site where the violation occurred.

(d) The department will calculate a penalty for each violation by adding the points assessed under (c)(ii) of this subsection and applying those corresponding amounts listed in the table below to the base penalty assessed under (c)(i) of this subsection. The base penalty plus the additional amount assessed using the department's point system will determine the total penalty for each violation not to exceed \$10,000.

Points	1	2	3	4	5
Penalty	\$1,000	\$2,000	\$3,000	\$4,000	\$5,000
Points	6	7	8	9	10 or greater
Penalty	\$6,000	\$7,000	\$8,000	\$9,000	\$10,000

Adjusting civil penalty amounts:

(i) A penalty for a violation committed by another may be adjusted downward based on the extent, if any, to which a person incurring the penalty was unaware of the violation and did not receive a substantial economic benefit from the violation.

(ii) The department senior or executive level staff person with signature authority for the notice of civil penalty may adjust penalty amounts based on circumstances not listed under (c) of this subsection.

(iii) The department will determine whether all or a portion of a penalty should be assessed against a landowner, lessee, contractor or another project proponent. The department should consider the responsible party, the degree of control, the sophistication of the party, and whether different parties conducted different violations.

(e) Nothing in this section prevents the department from:

(i) Choosing not to issue a civil penalty;

(ii) Issuing a stop work order or notice to comply in lieu of a civil penalty; or

(iii) Referring a violation to any local, state, tribal, or federal agency with jurisdiction.

(f) Penalties determined under this subsection are administered in accordance with procedures in subsection (7) of this section.

(9) Criminal penalty: Under RCW 77.15.300, it is a gross misdemeanor to ~~((construct))~~ conduct any form of hydraulic project or perform other work on a hydraulic project without having first obtained an HPA from the department, or to violate any requirements or conditions of the HPA for such construction or work.

(10) Remedies not exclusive: The remedies under this chapter are not exclusive and do not limit or abrogate any other civil or criminal penalty, remedy, or right available in law, equity, or statute.

(11) Permission to enter property denied - Administrative inspection warrant: If the department is denied entry to a project site for the purpose of ensuring compliance or it has probable cause to believe a violation of chapter 77.55 RCW, this chapter, or the HPA provision(s) has occurred it must obtain landowner consent or an administrative inspection warrant under RCW 77.55.450 before entering the property for this purpose.

(12) First time paperwork violations by small businesses:

(a) The department will provide notice and waiver of fines, civil penalties, and administrative sanctions for first time paperwork violations by a small business, consistent with RCW 34.05.110.

(b) A paperwork violation is limited to:

(i) Failure to have a copy of the HPA, plans, and specifications for a permitted project on-site during construction of, or work on, the project;

(ii) Failure to submit to the department photos or survey results required as a provision in the HPA;

(iii) Failure to notify the department when such notification described in WAC 220-660-050 (13)(d) is required as a provision of the HPA; and

(iv) Failure to submit reports required in the HPA.

(c) A small business may request the waiver by contacting the department and submitting a copy of the business's most recent federal income tax return or most recent return filed with the Washington state department of revenue.

## WSR 20-06-054

### PROPOSED RULES

#### STUDENT ACHIEVEMENT COUNCIL

[Filed March 2, 2020, 3:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-24-009.

Title of Rule and Other Identifying Information: Chapter 250-84 WAC, College bound scholarship rules.

Hearing Location(s): On April 7, 2020, at 12:30 p.m., at the Washington Student Achievement Council (WSAC), 917 Lakeridge Way S.W., Olympia, WA 98502.

Date of Intended Adoption: May 29, 2020.

Submit Written Comments to: Sarah Weiss, P.O. Box 43430, Olympia, WA 98502, email sarahwe@wsac.wa.gov, fax 360-753-7808, by April 6, 2020.

Assistance for Persons with Disabilities: Contact Crystal Hall, phone 360-753-7852, fax 360-753-7808, TTY unavailable, email crystalh@wsac.wa.gov, by March 31, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency proposes to update chapter 250-84 WAC, College bound scholarship rules. This proposal is necessary to bring the current rules into alignment with legislation since the last update in 2010 and to guide current program implementation. Changes include, but are not limited to:

- Clarifying what college bound scholarship is meant to cover.
- Updates from 2019 HB [E2SHB] 1311, 2018 HB [2SHB] 1293.
- Clarified deadline and application process.
- Clarified agencies and district roles and responsibilities.
- Aligned with new Washington college grant rules (proposed chapter 250-21 WAC).

Reasons Supporting Proposal: There have been substantial changes in program requirements and delivery since the last WAC revision in 2010. The current WAC is outdated and needs to be updated to reflect these changes.

Statutory Authority for Adoption: RCW 28B.118.060.

Statute Being Implemented: Chapter 28B.118 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: WSAC has already implemented many of these changes due to recent legislation. The rule updates will align guidance for districts, schools, and other partners.

Name of Proponent: WSAC, governmental.

Name of Agency Personnel Responsible for Drafting: Sarah Weiss, WSAC, 360-753-7630; Implementation and Enforcement: Becky Thompson, WSAC, 360-753-7840.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: Chapter 28B.118 RCW provides specific content of rules.

March 2, 2020

Sarah R. Weiss

Associate Director of  
College Access and Support

AMENDATORY SECTION (Amending WSR 10-17-080, filed 8/16/10, effective 9/16/10)

**WAC 250-84-010 Purpose.** The college bound scholarship as authorized by chapter 28B.118 RCW is designed to

inspire and encourage Washington middle school students from low-income families to dream big and aspire to continuing their education beyond high school. The early commitment of state funding ~~((for tuition))~~ of tuition (at public rates), required fees, and five hundred dollars intended to apply towards books and materials may alleviate some of the financial barriers preventing students from considering college as a future possibility.

**AMENDATORY SECTION** (Amending WSR 10-17-080, filed 8/16/10, effective 9/16/10)

**WAC 250-84-020 Definitions.** "~~((Board))~~ Agency" means ~~((higher education coordinating board))~~ student achievement council, a Washington state agency, as established under chapter 28B.77 RCW.

"C average" means a 2.0 grade point average on a 4.0 scale.

"FAFSA" means Free Application for Federal Student Aid.

"High school graduation" means students must graduate from a public high school, private high school approved under chapter 28A.195 RCW, ~~((having met))~~ or approved home school program under chapter 28A.200 RCW requirements to earn a high school diploma as defined in ~~((WAC 180-51-061 or 180-51-066, whichever is applicable))~~ the current year's chapter 180-51 WAC.

"Legal guardian" means the person appointed by the court to take legal action on behalf of and be responsible for a minor.

"Median family income" means the median income for Washington state, adjusted by family size and reported annually in the federal register and used that year for the administration of the ~~((state need))~~ Washington college grant program.

"Office" means the office of student financial assistance, created by RCW 28B.77.090 within the direction of the student achievement council.

"OSPI" means office of superintendent of public instruction.

"Program" means the college bound scholarship program.

"Tuition and fees" means tuition, building, operating, service and activity fees as are used for purposes of determining the ~~((state need))~~ Washington college grant award.

**AMENDATORY SECTION** (Amending WSR 10-17-080, filed 8/16/10, effective 9/16/10)

**WAC 250-84-030 Eligible applicant.** (1) Washington students ~~((in 2007-08 and thereafter))~~ may apply who are:

(a) Enrolled in the seventh ~~((and))~~ or eighth grade, or in ninth grade (under limited circumstances defined in RCW 28B.118.010), in a public ((or)) school, private school as approved by chapter 28A.195 RCW or home school as defined by chapter 28A.200 RCW; and

(b) Meet the income eligibility as defined in subsection (2) of this section.

~~((Eligible students enrolled in eighth grade in 2007-08 were granted a one-time extension to sign the pledge during the 2008-2009 school year as ninth graders.))~~ A student in the

ninth grade is eligible to sign up for the program, if that student qualifies for free or reduced-price lunches and was previously ineligible during the seventh or eighth grade while a student in Washington.

(2) Seventh ~~((or)),~~ eighth, or ninth (if previously ineligible as defined above) grade students are eligible to apply if one of these requirements are met:

(a) Family income falls within the monthly or annual standards set by the U.S. Department of Agriculture (USDA) for eligibility for participation in the free or reduced price lunch program (FRPL); or

~~((Student participates in the free or reduced price lunch program; or~~

~~((Family receives TANF))~~ The student's family receives temporary assistance for needy families (TANF) benefits; or

~~((or))~~ (c) Student is a foster youth.

To determine eligibility in unusual circumstances, or for assistance in defining household size, foster youth status, and other criteria, the ~~((board will refer students and families to the))~~ office will consult with district or school staff who oversee FRPL, other agencies as needed, students and families as needed, and will refer to the USDA FRPL guidelines.

If a student qualifies in the application year, the information is not required to be updated throughout the middle and high school years. However, income will be verified using the information from the FAFSA or an alternative application provided by the office upon college enrollment. See WAC 250-84-060, eligibility for receipt of scholarship.

(3) Eligible applications are considered complete when ~~((the signed pledge has been received by the board.~~

~~((a) A student must sign a pledge during seventh or eighth grade that commits them to));~~

(a) The signed pledge and signature page has been received by the office by the deadline, as determined by the office.

(i) Students who are dependents and meet requirements outlined in RCW 28B.118.010 are automatically enrolled in partnership with the department of children, youth, and families.

(ii) The deadline for the initial application is June 30th of the student's eighth grade year, and students who qualify to apply in the ninth grade year have until June 30th of their ninth grade year to begin an application. Students have until August 31st at the end of their eighth grade or ninth grade, for those eligible to apply during ninth grade, to complete their application.

(iii) Exceptions to the deadline will be made on a case-by-case basis by the office.

(b) All sections of the application including eligibility are filled and the pledge is signed.

(c) The pledge must include the following criteria:

(i) Graduate from high school with at least a C average or as referenced in RCW 28B.118.010.

(ii) No felony convictions.

~~((or))~~ (d) The section of the application that indicates eligibility must be completed.

~~((or))~~ (e) The pledge must be signed by a parent or legal guardian to attest the information is true and accurate.

~~((d))~~ The signature page for the electronic application, or the signed paper application, must be received by the board.

~~(e)~~ The deadline for the application is June 30th of the student's eighth grade year.

~~(i)~~ Electronic applications must be received by June 30th and paper applications must be postmarked by June 30th.

~~(ii)~~ Missing information for applications received on or before June 30th will be accepted until the student enters the ninth grade year.

~~Exceptions to the deadline will be made on a case-by-case basis by the board based on extenuating circumstances.))~~ The office shall establish a process through which the office may work with a school counselor or administrator to witness a student's pledge if the parent or guardian's signature is not obtained after multiple, documented unsuccessful attempts. These attempts will be documented in the student's file.

AMENDATORY SECTION (Amending WSR 10-17-080, filed 8/16/10, effective 9/16/10)

**WAC 250-84-040 Program promotion to eligible students.** The role of the ~~((board))~~ office, OSPI and school districts related to notification to students, families, and school personnel about the college bound scholarship is defined under chapter 28B.118 RCW.

~~(1) The ((board shall develop and distribute to all schools with students enrolled in seventh or eighth grade, an application pledge form that can be completed and returned electronically or by mail by the student or the school to the board.~~

~~The board will provide K-12 partners, professional associations, and college access programs with program information annually.))~~ office shall work collaboratively with state-wide partners to support students and their families in signing up for the college bound scholarship and pursue college after high school. These partners could include, but are not limited to, K-12 staff, professional associations, and college access programs.

~~(2) The office will provide the official program language and requirements to students, families, and these partners by creating publications for and communicating with for students, families, and stakeholders as needed.~~

~~(a) The office will communicate with college bound students as may be additionally required in RCW 28B.118.040.~~

~~(b) The office shall develop and distribute information regarding the scholarship and materials to support sign-up, in partnership with OSPI, districts, and other nonprofit organizations and agencies, to all schools with students enrolled in seventh, eighth, or ninth grade.~~

~~(3) The role of OSPI is to notify elementary, middle, and junior high schools about the college bound scholarship program using methods in place for communicating with schools and school districts.~~

~~OSPI will encourage schools and districts to target communications to eligible students to the greatest extent possible.((Methods may include, but are not limited to, personalized letters, integrating the application into student conferences, or holding sign-up events)).~~

~~((3))~~ (4) The role of each school district is to notify students, parents, teachers, counselors, and principals about the

Washington college bound scholarship program through existing channels.

Methods may include, but are not limited to, personalized letters, digital media as available, integrating the application into student conferences, or holding sign-up events.

Notification methods may also include, but are not limited to, regular school district and building communications, online scholarship bulletins and announcements, notices posted on school walls and bulletin boards, information available in each counselor's office, and school or district scholarship information sessions.

AMENDATORY SECTION (Amending WSR 10-17-080, filed 8/16/10, effective 9/16/10)

**WAC 250-84-050 Tracking of scholars.** The ~~((statute requires the board and OSPI to))~~ office and OSPI will develop tracking procedures to ensure continued eligibility and to determine compliance for awarding of college bound scholarships (RCW 28B.118.020 and 28B.118.040).

~~(1) The ((board))~~ office shall:

~~(a) Develop and implement a student application, selection, and notification process for scholarships.~~

~~(b) Collect authorization to release information from the student and parent(s)/legal guardian(s).~~

~~(c) Develop ((a web-based application tool and paper)) application tools annually.~~

~~(d) Notify applicants of missing information ((in a timely manner))~~ as soon as possible.

~~(e) Notify applicants of their status of complete application ((in a timely manner))~~ as soon as possible.

~~(f) Treat applications confidentially and hold in a secure environment.~~

~~(g) Provide complete applicants information regarding disbursement of the scholarship and contact information for the ((board)) office.~~

~~(h) Require applicants to update their address and other contact information with the ((board)) office.~~

~~(2) OSPI will work with the ((board)) office to develop student tracking procedures.~~

~~The ((board)) office and OSPI will share data regarding the progress of college bound scholarship students such as current school, grade level, grade point average, and expected graduation date on at least an annual basis through high school graduation, following agency protocols for data exchange and security.~~

~~(3) The board will track complete applicants and monitor progress toward graduation to determine compliance for awarding of scholarships.~~

~~(4) The board will share data and authorized student information from the application for program sign-up efforts and to provide support services to ((scholars)) students who have already applied.~~

~~(a) The ((board)) office will share information with schools and approved college access providers who will provide services to college bound scholarship students to support their academic success, if the proper release of information has been provided by the student and parent(s)/legal guardian(s).~~

(b) Aggregate data will be provided periodically and as requested to schools, districts, and partners to improve sign-up efforts.

AMENDATORY SECTION (Amending WSR 10-17-080, filed 8/16/10, effective 9/16/10)

**WAC 250-84-060 Eligibility for receipt of college bound scholarships.** To be eligible to receive the annual scholarship disbursement, college bound scholarship students who have met the requirements outlined in WAC 250-84-030, must:

(1) Graduate from a Washington high school with at least a C average or receive home-based instruction or meet other requirements as noted under chapter 28A.200 RCW or RCW 28B.50.536.

~~((2))~~ (a) Students receiving home-based instruction may be asked to submit additional documentation confirming students meet the C average requirement.

(b) For a student who does not meet the C average requirement, and who completes fewer than two quarters in the running start program, under chapter 28A.600 RCW, the student's first quarter of running start course grades must be excluded from the student's overall grade point average for purposes of determining their eligibility to receive the scholarship.

(2) Have no felony convictions. The office shall work with other appropriate organizations and agencies to confirm eligibility.

(3) File a FAFSA ~~((see priority consideration under WAC 250-84-070(1)))~~ or an alternative application provided by the office.

~~((3))~~ (4) Be accepted to an institution participating in the ~~((state need))~~ Washington college grant program within the state of Washington (requirements outlined in WAC ~~((250-20-013))~~ 250-21-026).

~~((4))~~ (5) Enroll no later than the fall term (as defined by the institution) one academic year following high school graduation.

For example, students graduating by August ~~((2012))~~ 2019 have until fall ~~((2013))~~ 2020 to begin using the scholarship.

(a) Students who graduate early will be assumed to follow the time frame of their senior year cohort. However, if they enroll early, the four-year scholarship will need to be used within five years of their initial enrollment date.

(b) ~~((Scholarships will not be disbursed prior to fall 2012.~~

~~((c))~~ Students will be considered to have enrolled upon earning credit(s) for the term or receiving the first scholarship disbursement, whichever comes first.

~~((5))~~ (6) Have an annual family income at or below ~~((sixty-five percent))~~ the percentage of the state's median family income stated in RCW 28B.118.010(5) as determined by the income reported on the FAFSA or an alternative application provided by the office and verified by the institution the student is attending ~~((See subsection (6)(d) of this section)).~~

~~((6))~~ (7) Receive the college bound scholarship for no more than four academic years within a five-year period.

(a) The four-year scholarship may be used during any terms within the five-year period, even if enrollment is not continuous.

(b) The scholarship must be used within five academic years of August of the high school graduation year.

For example, students who graduate from high school in ~~((2011-12))~~ 2018-19 must begin college enrollment by fall ~~((2013))~~ 2020, and have through ~~((spring of 2017))~~ summer of 2024 to receive the scholarship.

(c) The total college bound award is limited to twelve quarters, eight semesters or equivalent, prorated for part-time enrollment within the five-year period. In the event of a school closure, refer to WAC 250-21-011.

~~((# subsection (5) of this section))~~ (d) If students do not meet the income requirement ~~((# subsection (5) of this section))~~ in any year within the five-year period, they may still receive the scholarship for any year(s) they do meet the income requirement. Receipt of the four-year scholarship does not have to be continuous.

~~((7))~~ (8) Comply with the other eligibility criteria to receive the college bound scholarship as outlined for the ~~((state need))~~ Washington college grant program in WAC ~~((250-20-011))~~ 250-21-011 including, but not limited to, requirements related to residency, undergraduate student status, academic program eligibility including the theology prohibition, enrollment level, satisfactory academic progress, and repayments.

The requirements for ~~((state need))~~ Washington college grant that do NOT apply to college bound scholarships are the equivalent of five-year limitation for ~~((state need))~~ Washington college grant under WAC ~~((250-20-011(6)))~~ 250-21-011(9) since the college bound scholarship is a four-year award.

AMENDATORY SECTION (Amending WSR 10-17-080, filed 8/16/10, effective 9/16/10)

**WAC 250-84-070 Scholarship award.** (1) The college bound scholarship is intended to combine with the ~~((state need))~~ Washington college grant program and other state aid, as determined by the office, to ensure eligible students have the opportunity to receive sufficient state financial aid to meet the cost of full tuition (at public rates), required fees, plus five hundred dollars for books each year. ~~((The award is intended to replace unmet need, loans, and at the student's discretion, work study.))~~

(2) The value of each college bound scholarship shall be determined by the ~~((board))~~ office annually based on the amount of tuition and fees at public colleges and universities (as used for ~~((state need))~~ Washington college grant purposes) plus five hundred dollars, less the amount of ~~((state need))~~ Washington college grant and any other state aid the student ~~((qualifies for based on the student's MFI, and less any other state aid))~~ is awarded.

~~((a))~~ In order to receive the maximum state need grant for which the student qualifies, the student must meet the financial aid priority consideration deadline for the institution the student plans to attend.

~~((b))~~ College bound scholarship awards will be prorated for part-time attendance as outlined in WAC ~~((250-20-041(4)(b)))~~ 250-21-041(4).

Sector college bound scholarship award amounts (such as public research, regional and two-year, and private career and private four-year) shall follow base award amounts determined for the ~~((state need))~~ Washington college grant program.

**AMENDATORY SECTION** (Amending WSR 10-17-080, filed 8/16/10, effective 9/16/10)

**WAC 250-84-080** ~~((Appeals))~~ **Requests for review and student complaints.** ~~((Appeals))~~ Requests for review of agency decisions regarding application eligibility for initial sign-up and pledge requirements under WAC 250-84-030 should be directed to the ~~((board))~~ office in writing within thirty days after notification of the agency decision. ~~((Appeals))~~ Student complaints regarding scholarship eligibility and awards under WAC 250-84-060 and 250-84-070 shall follow the process outlined under WAC ~~((250-20-071))~~ 250-21-091 for ~~((state need))~~ Washington college grant purposes.

**AMENDATORY SECTION** (Amending WSR 10-17-080, filed 8/16/10, effective 9/16/10)

**WAC 250-84-090 Grant disbursement to institutions.** (1) Cash requests and reimbursements will follow procedures similar to ~~((state need))~~ Washington college grant.

(2) A student-by-student ~~((reconciliation will be completed each term and filed with the board))~~ fund reconciliation must be completed by the institution at the time payments are reported using the office's established process and no later than the end of each term.

(a) Record level reports must be filed with the office as requested.

(b) A final student-by-student reconciliation must be filed with the office at the end of each academic year.

(3) Recalculations as a result of awards in excess of tuition charges shall follow the tolerance outlined in ~~((state need))~~ Washington college grant rules or guidance.

**AMENDATORY SECTION** (Amending WSR 10-17-080, filed 8/16/10, effective 9/16/10)

**WAC 250-84-100 Program administration and audits.** (1) The staff of the ~~((board))~~ office under the direction of the executive director will manage the administrative functions relative to college bound scholarship.

(2) The ~~((board))~~ office will review institutional administrative compliance as outlined in WAC ~~((250-20-064))~~ 250-21-061.

Any student who has obtained a college bound scholarship through means of willfully false statement or failure to reveal any material fact affecting eligibility will be subject to applicable civil or criminal penalties and repayment similar to processes and procedures outlined in WAC 250-21-051.

**WSR 20-06-057**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed March 3, 2020, 9:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-01-098.

Title of Rule and Other Identifying Information: Medical aid rules - conversion factors and maximum daily fees: WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): On April 9, 2020, at 9:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linderway Way S.W., Room S119, Tumwater, WA 98501.

Date of Intended Adoption: May 19, 2020.

Submit Written Comments to: Emily Stinson, P.O. Box 44322, Olympia, WA 98504-4322, email Emily.Stinson@Lni.wa.gov, fax 360-902-4249, by April 9, 2020.

Assistance for Persons with Disabilities: Contact Emily Stinson, phone 360-902-5974, fax 360-902-4249, email Emily.Stinson@Lni.wa.gov, by April 2, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will (1) change the conversion factor used to calculate payment for anesthesia services; and (2) increase the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(3), increase the anesthesia conversion factor from \$3.47 to \$3.57.

WAC 296-23-220 and 296-23-230, increase the maximum daily rate for physical and occupational therapy services from \$127.70 to \$131.48.

Reasons Supporting Proposal: This rule will provide medical aid updates regarding rate setting for some professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Emily Stinson, Tumwater, 360-902-5974; Implementation and Enforcement: Vickie Kennedy, Tumwater, 360-902-4997.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 (5)(b)(vi).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

March 3, 2020

Joel Sacks  
Director

**AMENDATORY SECTION** (Amending WSR 18-10-082, filed 5/1/18, effective 7/1/18)

**WAC 296-20-135 Conversion factors.** (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of \$64.74. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of ~~\$(3.47)~~ 3.57 per minute, which is equivalent to ~~\$(52.05)~~ 53.55 per 15 minutes. The base units and payment policies can be found in the fee schedules.

**AMENDATORY SECTION** (Amending WSR 18-10-082, filed 5/1/18, effective 7/1/18)

**WAC 296-23-220 Physical therapy rules.** Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or ~~\$(127.70)~~ 131.48 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representa-

tive of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diapulse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

**AMENDATORY SECTION** (Amending WSR 18-10-082, filed 5/1/18, effective 7/1/18)

**WAC 296-23-230 Occupational therapy rules.** Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.



An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or \$((+27.70)) 131.48 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

**WSR 20-06-059**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed March 3, 2020, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-101.

Title of Rule and Other Identifying Information: Proposed changes to the electrical rules in chapter 296-46B WAC, Electrical safety standards, administration, and installation.

Hearing Location(s): On April 9, 2020, at 10:00 a.m., at the Department of Labor and Industries (L&I), 7273 Linder-son Way S.W., Tumwater, WA 98501.

Date of Intended Adoption: May 19, 2020.

Submit Written Comments to: Alicia Curry, Department of Labor and Industries, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, email Alicia.Curry@Lni.wa.gov, fax 360-902-5292, by April 9, 2020.

Assistance for Persons with Disabilities: Contact Alicia Curry, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov, by March 26, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to propose changes to the electrical rules in chapter 296-46B WAC, Electrical safety standards, administration, and installation.

L&I's electrical program reviewed the existing rules and new safety codes from the 2020 edition of the National Fire Protection Agency (NFPA) 70, the National Electrical Code (NEC) to update rules for consistency with the national safety standards and to consider other rule changes. The 2020 NEC (NFPA 70-2020) replaces the current 2017 NEC (NFPA 70-2017) standards, effective July 1, 2020.

Washington's electrical stakeholders were invited to participate in the review of the existing rules, submit proposals for changes to the rules, and provide recommendations to the department on possible rule changes. The state's electrical board reviewed proposals and provided advice to the department on adoption of the rules.

This rule making is necessary to propose changes to the new safety codes, update and clarify existing rules, make housekeeping and other rule changes identified during the review process and recommended by stakeholders, a technical advisory committee, and the state's electrical board to improve public safety.

The proposed rules will:

- Amend, clarify, and reorganize requirements for consistency with the 2020 edition of the NEC.
- Adopt the 2019 edition of the American National Standards Institute standards/InterNational Electrical Testing Association (ANSI/NETA) maintenance test specifications for existing installations pertaining to solidly grounded neutral systems over one thousand volts.
- Align the rules with state building code requirements for nonmetallic-sheathed cable to reflect changes in building construction types.
- Adopt proposals requested by stakeholders, such as:
  - Expanding the scope of work for HVAC/refrigeration (06A) and (06B) specialty electricians to allow the replacement of an HVAC unit and flexible supply whip using the same size conductors;
  - Expanding the scope of work for HVAC/refrigeration (06A) specialty electricians to allow the installation of new low-voltage HVAC cable regardless of the number of stories in a building if in a previously occupied and wired space;
  - Expanding the scope of work for nonresidential maintenance (07) specialty electricians to allow the replacement of a circuit breaker, set of fuses, or

- overload heaters having lower ampere ratings to protect the replacement unit;
  - Allowing the use of long radius sweep elbows to connect water pipe enclosing circulation lines for underground geothermal systems; and
  - Allowing Class B permits for replacement of AFCI/GFCI dual function receptacles.
- Adopt the department's existing policies into rule. For example:
  - Newly adopted standards would apply to electrical permits issued on or after the adoption date. Adds new exceptions for new one- and two-family dwellings and multifamily dwellings when the building permit was issued before the adoption date and new installations when plans were received and accepted before the adoption date;
  - Allowing pump installers to test a well without having to hire an electrical contractor; and
  - Requiring training programs to send a completion roster to L&I in electronic format with certain information for a student's successful completion of a training program.
- Amend the electrical continuing education and classroom education requirements. For example:
  - Clarifying the content of electrical theory classes for basic trainee classes and industry related continuing education classes;
  - Increasing the completion timeframe of basic trainee classes from two months to six months; and
  - Requiring industry-related classes for electrical theory and basic trainee classes to be based on original copyrighted material, instead of currently published documents, to align with the allowance for original copyrighted material during open book electrician examinations.
- Exempt the like-in-kind replacement of line-voltage smoke alarms or carbon monoxide alarms from permit and inspection requirements.
- Allowing Class B permits for replacement of electric vehicle cords.
- Eliminate the requirement for training schools to send enrollment rosters for students enrolled in an accredited training program to L&I.
- Add language to the suspension or revocation of electrical license and certification requirements to classify a serious noncompliance as a violation where it can be proven a violator willfully or intentionally violates the law.
- Amend rules for clarity, consistency, and ease of use. For example:
  - Clarifying the definition of "training school" applies to "Washington" public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board;
  - Clarifying that GFCI protection for personnel is not required for receptacles other than 125-volt single phase, 15- or 20 ampere used for recreational vehicle supply equipment or for attachment of a mobile home supply cord;
  - Clarifying that low voltage wiring exemptions for built-in vacuum systems and garage doors applies only to residential installations;
  - Clarifies that replacement of lamps in luminaires is exempt from the electrical licensing requirements; and
  - Clarifying the term "ancillary" applies to structures on other property owned by others.
- Amend rules for general housekeeping, such as typographical and reference corrections, formatting, removal of obsolete language, etc.
 

Reasons Supporting Proposal: The NEC sets the standard for safe electrical installation and inspection in homes, businesses, industry and institutions to protect people and property from electrical hazards. These rules are necessary to ensure the new safety codes that affect electrical work align with existing rules before the NEC is implemented.

Statutory Authority for Adoption: Chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.010 and 19.28.031.

Statute Being Implemented: Chapter 19.28 RCW, Electricians and electrical installations, including RCW 19.28.010 and 19.28.031.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Thornton, Program Manager, Tumwater, Washington, 360-902-6234; Implementation and Enforcement: Annette Taylor, Acting Assistant Director, Tumwater, Washington, 360-902-4334.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Alicia Curry, Department of Labor and Industries, Field Services and Public Safety Division, P.O. Box 44400, Olympia, WA 98504-4400, phone 360-902-6244, fax 360-902-5292, email Alicia.Curry@Lni.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of state-wide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. As discussed in

the cost-benefit analysis document, those changes that are not exempt from the Regulatory Fairness Act requirement will either result in a cost savings to customers or no increased costs over current practice or the baseline. As such, the proposed rule does not impose more-than-minor-costs.

March 3, 2020  
Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-010 General.**

**Adopted standards.**

(1) The ~~((2017))~~ 2020 edition of the National Electrical Code (NFPA 70 - ~~((2017))~~ 2020) published August, 2019 including Annex A, B, ~~((and))~~ C, and subsequent Errata and Tentative Interim Amendments issued by the National Fire Protection Association; Commercial Building Telecommunications Cabling Standard (ANSI/TIA-568-C series, February 2009); Commercial Building Standard for Telecommunications Pathway and Spaces (TIA-569-B, October 2004); Commercial Building Grounding and Bonding Requirements for Telecommunications (ANSI-TIA-607-B, August 2011); Residential Telecommunications Cable Standard (ANSI/TIA/EIA 570-B-2004); and the National Electrical Safety Code (NESC C2-2017 excluding Appendixes A and B) are hereby adopted by reference as part of this chapter.

~~((On July 1, 2020, the 2020 edition of the National Electrical Code (NFPA 70-2020 including Annex A, B, and C is hereby adopted by reference as part of this chapter and replaces the 2017 edition.))~~

This chapter will be followed where there is any conflict between this chapter and the above adopted standards.

The National Electrical Code will be followed where there is any conflict between the National Electrical Code and, ANSI/TIA/EIA 568-C, ANSI/TIA/EIA 569-B, ANSI/TIA/EIA 607-B, ANSI/TIA/EIA 570-B, or the NESC C2.

Adopted standards apply to installations when issue dates of electrical permits are on and after adoption dates except for:

(a) New one- and two-family dwellings, or multifamily dwellings where the issue date of building permits for the premises is before the adoption date; or

(b) New installations where plan review is required by WAC 296-46B-900 when plans are received and accepted for review before the adoption date.

**Inspections - General.**

(2) Electrical inspectors will give information as to the interpretation or application of the standards in this chapter, but will not lay out work or act as consultants for contractors, owners, or users.

(3) A variance from the electrical installation requirements of chapter 19.28 RCW or this chapter may be granted by the department or the city that has electrical inspection jurisdiction when it is assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

(a) Any electrical permit holder may request a variance.

(b) The permit holder must make the request in writing, using a form provided by the department, to the chief electrical inspector or to the city that has electrical inspection jurisdiction. The request must include:

(i) A description of the installation as installed or proposed;

(ii) A detailed list of the applicable code violations;

(iii) A detailed list of safety violations;

(iv) A description of the proposal for meeting equivalent objectives for code and/or safety violations; and

(v) Appropriate variance application fee as listed in chapter 296-46B WAC, Part C.

(4) Electrical wiring or equipment subject to this chapter must be sufficiently accessible, at the time of inspection, to allow the inspector to visually inspect the installation to verify conformance with the NEC and any other electrical requirements of this chapter with the exception of not more than 8 feet of electrical conduit in a foundation of a one- or two-family dwelling or residential outbuilding for use as service entrance raceway.

(5) All required equipment grounding conductors installed in concealed cable or flexible conduit systems must be completely installed and made up at the time of the rough-in cover inspection.

(6) The installation of all structural elements and mechanical systems (e.g., framing, plumbing, ducting, etc.) must be complete in the area(s) where electrical inspection is requested. Prior to completion of an exterior wall cover inspection, either:

(a) The exterior shear panel/sheathing nail inspection must be completed by the building code inspector and, where siding nails or fasteners which penetrate into the wall cavity are to be used, all siding must be installed; or

(b) All wiring and device boxes must be a minimum of 2 1/2 inches from the exterior surface of the framing member; or

(c) All wiring and device boxes must be protected by a steel plate a minimum of 1/16 inch thick and of appropriate width and height installed to cover the area of the wiring or box.

(7) In order to meet the minimum electrical safety standards for installations, all materials, devices, appliances, and equipment, not exempted in chapter 19.28 RCW, must conform to applicable electrical product standards recognized by the department, be listed, or field evaluated. For any equipment that requires an amusement operating permit under chapter 67.42 RCW, the operating permit is prima facie evidence of an appropriate standard. Other than as authorized by the chief electrical inspector or a city authorized to do electrical inspection, equipment must not be energized until such standards are met.

(8) The state department of transportation is recognized as the inspection authority for telecommunications systems installations within the rights of way of state highways provided the department of transportation maintains and enforces an equal, higher or better standard of construction, and of materials, devices, appliances, and equipment than is required for telecommunications systems installations by chapter 19.28 RCW and this chapter.

**Inspection move on buildings and structures.**

(9) All buildings or structures relocated into or within the state:

(a) Other than residential, wired inside the United States (U.S.) must be inspected to ensure compliance with current requirements of chapter 19.28 RCW and the rules developed by the department.

(b) Wired outside the U.S. or Canada must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department.

(10) Residential buildings or structures wired in the U.S., to NEC requirements, and moved into or within a county, city, or town must be inspected to ensure compliance with the NEC requirements in effect at the time and place the original wiring was made. The building or structure must be inspected to ensure compliance with all current requirements of chapter 19.28 RCW and the rules developed by the department if:

(a) The original occupancy classification of the building or structure is changed as a result of the move; or

(b) The building or structure has been substantially remodeled or rehabilitated as a result of the move.

(11) Residential buildings or structures wired in Canada to Canadian Electrical Code (CEC) standards and moved into or within a county, city, or town, must be inspected to ensure compliance with the following minimum safety requirements:

(a) Service, service grounding, and service bonding must comply with the current chapter 19.28 RCW and rules adopted by the department.

(b) Canadian Standards Association (CSA) listed Type NMD cable is allowed with the following qualifications:

(i) CSA listed Type NMD cable, American Wire Gauge #10 and smaller installed after 1964 utilizing an equipment grounding conductor smaller than the phase conductors, must be:

(A) Replaced with a cable utilizing a full-size equipment grounding conductor; or

(B) Protected by a ground fault circuit interrupter protection device.

(ii) CSA listed Type NMD cable, #8 AWG and larger, must:

(A) Utilize an equipment grounding conductor sized according to the requirements of the NEC in effect at the time of the installation;

(B) Be protected by a ground fault circuit interrupter protection device; or

(C) Be replaced.

(c) Other types of wiring and cable must be:

(i) Replaced with wiring listed or field evaluated in accordance with U.S. standards by a laboratory approved by the department; or

(ii) Protected by a ground fault circuit interrupter protection device and arc fault circuit protection device.

(d) Equipment, other than wiring or panelboards, manufactured and installed prior to 1997 must be listed and identified by laboratory labels approved by the department or CSA labels.

(e) All panelboards must be listed and identified by testing laboratory labels approved by the department with the following qualifications:

(i) CSA listed panelboards labeled "suitable for use as service equipment" will be considered to be approved as "suitable for use only as service equipment."

(ii) CSA listed panelboards used as panelboards as described in the NEC, must meet all current requirements of the NEC and this chapter.

(f) Any wiring or panelboards replaced or changed as a result of the move must meet current requirements of chapter 19.28 RCW and this chapter.

(g) The location, type, and ground fault circuit interrupter protection of receptacles and equipment in a bathroom, kitchen, basement, garage, or outdoor area must meet the Washington requirements in effect at the time the wiring was installed.

(h) 4, 15-ampere, kitchen small appliance circuits will be accepted in lieu of 2, 20-ampere, kitchen small appliance circuits. Receptacles will not be required to be added on kitchen peninsular or island counters.

(i) Spacing requirements for all other receptacles must meet the Washington requirements in effect at the time the wiring was installed.

(j) Receptacles installed above baseboard or fixed wall space heaters must be removed and the outlet box covered with a blank cover. The receptacle is required to be relocated as closely as possible to the existing location.

(k) Lighting outlet and switch locations must meet the Washington requirements in effect at the time the wiring was installed.

(l) Dedicated 20-ampere small appliance circuits are not required in dining rooms.

(m) Electric water heater branch circuits must be adequate for the load.

(n) The location, type, and circuit protection of feeders must meet the Washington requirements in effect at the time the wiring was installed.

#### **Wiring methods for designated building occupancies.**

(12) Wiring methods in educational or institutional facilities as defined in this chapter must be metallic or nonmetallic raceways, MI, MC, or AC cable. Places of assembly located within these facilities must comply with NEC 518.4(A).

(13) Assisted living facility generator systems may be wired and installed per NEC 517.

(14) Lawfully installed existing electrical installations that do not comply with the provisions of this chapter and remain in compliance with the code at the time of the installation, will be permitted to be continued without change (i.e., without circuitry or occupancy change). Additions, alterations, modifications, or repairs to the electrical system must conform to the current requirements of this chapter.

(15) See WAC 296-46B-406R for tamper-resistant receptacle requirements in psychiatric patient care facilities.

#### **Traffic management systems.**

(16) The department or city authorized to do electrical inspections will perform the electrical inspection and acceptance of traffic management systems within its jurisdiction. A traffic management system includes:

(a) Traffic illumination systems;

(b) Traffic signal systems;

(c) Traffic monitoring systems;

(d) The electrical service cabinet and all related components and equipment installed on the load side of the service cabinet supplying electrical power to the traffic management system; and

(e) Signalization system(s) necessary for the operation of a light rail system.

A traffic management system can provide signalization for controlling vehicular traffic, pedestrian traffic, or rolling stock.

(17) The department or city authorized to do electrical inspections recognizes that traffic signal conductors, pole and bracket cables, signal displays, traffic signal controllers/cabinets and associated components used in traffic management systems are acceptable for the purpose of meeting the requirements of chapter 19.28 RCW provided they conform with the following standards or are listed on the Washington state department of transportation (WSDOT) qualified products list.

(a) WSDOT/APWA standard specifications and plans;

(b) WSDOT *Design Manual*;

(c) International Municipal Signal Association (IMSA);

(d) National Electrical Manufacturer's Association (NEMA);

(e) Federal Standards 170/Controller Cabinets;

(f) Manual for *Uniform Road, Bridge, and Municipal Construction*;

(g) Institute of Transportation Engineers (ITE); or

(h) Manual of *Uniform Traffic Control Devices (MUTCD)*.

(18) Associated induction detection loop or similar circuits will be accepted by the department or city authorized to do electrical inspections without inspection.

(19) For the licensing requirements of chapter 19.28 RCW, jurisdictions will be considered owners of traffic management systems when doing electrical work for another jurisdiction(s) under a valid interlocal agreement, as permitted by chapter 39.34 RCW. Interlocal agreements for traffic management systems must be filed with the department or city authorized to do electrical inspections prior to work being performed for this provision to apply.

(20) Jurisdictions, with an established electrical inspection authority, and WSDOT may perform electrical inspection on their rights of way for each other by interlocal agreement. They may not perform electrical inspection on other rights of way except as allowed in chapter 19.28 or 39.34 RCW.

(21) Underground installations.

(a) In other than open trenching, raceways will be considered "fished" according to the NEC and do not require visual inspection.

(b) The department or city authorized to do electrical inspections will conduct inspections in open trenching within its jurisdiction. The electrical work permit purchaser must coordinate the electrical inspection. A written request (e.g., letter, email, fax, etc.) for inspection, made to the department or city authorized to do electrical inspections office having the responsibility to perform the inspection, must be made a minimum of two working days prior to the day inspection is needed (e.g., two working days 10:00 a.m. Tuesday request

for a 10:00 a.m. Thursday inspection, excluding holidays and weekends).

If, after proper written request, the department or city authorized to do electrical inspections fails to make an electrical inspection at the time requested, underground conduit may be covered after inspection by the local government jurisdiction's project inspector/designee. Written documentation of a local government jurisdiction inspection must be provided to the department or city authorized to do electrical inspections when requested. Written documentation will include:

(i) Date and time of inspection;

(ii) Location;

(iii) Installing firm;

(iv) Owner;

(v) Type of conduit;

(vi) Size of conduit;

(vii) Depth of conduit; and

(viii) Project inspector/designee name and contact information.

(22) Identification of traffic management system components. Local government jurisdictions or WSDOT may act as the certifying authority for the safety evaluation of all components.

(a) An electrical service cabinet must contain only listed components. The electrical service cabinet enclosure is not required to be listed but will conform to the standards in subsection (17) of this section.

(b) The local government jurisdiction must identify, as acceptable, the controller cabinet or system component(s) with an identification plate. The identification plate must be located inside the cabinet and may be attached with adhesive.

(23) Conductors of different circuits in same cable, enclosure, or raceway. All traffic management system circuits will be permitted to occupy the same cable, enclosure, or raceway without regard to voltage characteristics, provided all conductors are insulated for the maximum voltage of any conductor in the cable, enclosure, or raceway.

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-100 General definitions.** All definitions listed in the National Electrical Code and chapter 19.28 RCW are recognized in this chapter unless other specific definitions are given in this chapter and chapter 19.28 RCW. The definitions in this section apply to all parts of this chapter. Some sections may have definitions specific to that section.

"Accreditation" is a determination by the department that a laboratory meets the requirements of this chapter and is therefore authorized to evaluate electrical products that are for sale in the state of Washington.

"Administrative law judge" means an administrative law judge (ALJ) appointed pursuant to chapter 34.12 RCW and serving in board proceedings pursuant to chapter 19.28 RCW and this chapter.

"ANSI" means American National Standards Institute. Copies of ANSI standards are available from the National Conference of States on Building Codes and Standards, Inc.

"Appeal" is a request for review of a department action by the board as authorized by chapter 19.28 RCW.

"Appellant" means any person, firm, partnership, corporation, or other entity that has filed an appeal or request for board review.

"Appliance" means household appliance.

"ASTM" means the American Society for Testing and Materials. Copies of ASTM documents are available from ASTM International.

"AWG" means American Wire Gauge.

"Basement" means that portion of a building that is partly or completely below grade plane. A basement will be considered as a story above grade plane and not a basement where the finished surface of the floor above the basement is:

(a) More than 6 feet above grade plane;

(b) More than 6 feet above the finished ground level for more than 50% of the total building perimeter; or

(c) More than 12 feet above the finished ground level at any point. Also see "mezzanine" and "story."

"Board" means the electrical board established and authorized under chapter 19.28 RCW.

"Category list" is a list of manufacturing safety standards or product types determined by the department.

A "certified electrical product" is an electrical product to which a laboratory, accredited by the state of Washington, has the laboratory's certification mark attached.

A "certification mark" is a specified laboratory label, symbol, or other identifying mark that indicates the manufacturer produced the product in compliance with appropriate standards or that the product has been tested for specific end uses.

"Certificate of competency" includes the certificates of competency for master journey level electrician, master specialty electrician, journey level, and specialty electrician.

A laboratory "certification program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority, regulating the evaluation of electrical products for certification marking by an electrical products certification laboratory.

A "complete application" includes the submission of all appropriate fees, documentation, and forms.

"Chapter" means chapter 296-46B WAC unless expressly used for separate reference.

"Construction," for the purposes of chapter 19.28 RCW, means electrical construction.

"Coordination (selective)" as defined in NEC 100 must be determined and documented by a professional engineer registered under chapter 18.43 RCW.

"Department" means the department of labor and industries of the state of Washington.

"Director" means the director of the department, or the director's designee.

"Egress - Unobstructed (as applied to NEC 110.26 (C)(2)(a))" means an egress path that allows a worker to travel to the exit from any other area in the room containing the equipment described in NEC 110.26 (C)(2) without having to pass through that equipment's required working space.

"Electrical equipment" includes electrical conductors, conduit, raceway, apparatus, materials, components, and other electrical equipment not exempted by RCW 19.28.006

(9). Any conduit/raceway of a type listed for electrical use is considered to be electrical equipment even if no wiring is installed in the conduit/raceway at the time of the conduit/raceway installation.

An "electrical products certification laboratory" is a laboratory or firm accredited by the state of Washington to perform certification of electrical products.

An "electrical products evaluation laboratory" is a laboratory or firm accredited by the state of Washington to perform on-site field evaluation of electrical products for safety.

"Field evaluated" means an electrical product to which a field evaluation mark is attached. Field evaluation must include job site inspection unless waived by the department, and may include component sampling and/or laboratory testing.

"Field evaluation mark" is a specified laboratory label, symbol, or other identifying mark indicating the manufacturer produced the product in essential compliance with appropriate standards or that the product has been evaluated for specific end uses.

A "field evaluation program" is a specified set of testing, inspection, and quality assurance procedures, including appropriate implementing authority regulating the testing and evaluation of electrical products for field evaluation marking.

The "filing" is the date the document is actually received in the office of the chief electrical inspector.

"Final judgment" means any money that is owed to the department under this chapter, including fees and penalties, or any money that is owed to the department as a result of an individual's or contractor's unsuccessful appeal of a citation.

"Fished wiring" is when cable or conduit is installed within the finished surfaces of an existing building or building structure (e.g., wall, floor or ceiling cavity).

"Household appliance" means utilization equipment installed in a dwelling unit that is built in standardized sizes or types and is installed or connected as a unit to perform one or more household functions such as food preparation, cooking, and cleaning. Includes appliances typically installed in a dwelling unit kitchen, clothes washing, drying, and water heating appliances, portable room air conditioning units and portable heaters, etc. Fixed electric space-heating equipment covered in NEC 424 (furnaces, baseboard and wall heaters, electric heat cable, etc.) and fixed air-conditioning/heat pump equipment (NEC 440) are not household appliances. Household appliance does not mean any utilization equipment that:

(a) Supplies electrical power, other than Class 2, to other utilization equipment; or

(b) Receives electrical power, other than Class 2, through other utilization equipment.

HVAC/refrigeration specific definitions:

(a) "HVAC/refrigeration" means heating, ventilation, air conditioning, and refrigeration.

(b) "HVAC/refrigeration component" means electrical power and limited energy components within the "HVAC/refrigeration system," including, but not limited to: Pumps, compressors, motors, heating coils, controls, switches, thermostats, humidistats, low-voltage damper controls, outdoor sensing controls, outside air dampers, stand-alone duct smoke detectors, air monitoring devices, zone control valves and equipment for monitoring of HVAC/ refrigeration con-

trol panels and low-voltage connections. This definition excludes equipment and components of non-"HVAC/refrigeration control systems."

(c) "HVAC/refrigeration control panel" means an enclosed, manufactured assembly of electrical components designed specifically for the control of a HVAC/refrigeration system. Line voltage equipment that has low voltage, NEC Class 2 control or monitoring components incidental to the designed purpose of the equipment is not an HVAC/refrigeration control panel (e.g., combination starters).

(d) "HVAC/refrigeration control system" means a network system regulating and/or monitoring a HVAC/refrigeration system. Equipment of a HVAC/refrigeration control system includes, but is not limited to: Control panels, data centers, relays, contactors, sensors, and cables related to the monitoring and control of a HVAC/refrigeration system(s).

(e) "HVAC/refrigeration equipment" means the central unit primary to the function of the "HVAC/refrigeration system." HVAC/refrigeration includes, but is not limited to: Heat pumps, swamp coolers, furnaces, compressor packages, and boilers.

(f) "HVAC/refrigeration system" means a system of HVAC/refrigeration: Wiring, equipment, and components integrated to generate, deliver, or control heated, cooled, filtered, refrigerated, or conditioned air. This definition excludes non-HVAC/refrigeration control systems (e.g., fire alarm systems, intercom systems, building energy management systems, and similar non-HVAC/refrigeration systems).

"IBC" means the International Building Code. Copies of the IBC are available from the International Code Council.

An "individual" or "party" or "person" means an individual, firm, partnership, corporation, association, government subdivision or unit thereof, or other entity.

An "installation" includes the act of installing, connecting, repairing, modifying, or otherwise performing work on an electrical system, component, equipment, or wire except as exempted by WAC 296-46B-925. An installation is not the passive testing or operational programming of an electrical system, component, equipment, or wire. See "passive testing."

An "identification plate" is suitable for the environment and is a printed or etched adhesive label approved by the department or a phenolic or metallic plate or other similar material engraved in block letters at least 1/4 inch high unless specifically required to be larger by this chapter, suitable for the environment and application. The letters and the background must be in contrasting colors. Screws, rivets, permanent adhesive, or methods specifically described in this chapter must be used to affix an identification plate to the equipment or enclosure.

"Job site" means a specific worksite having a single address or specific physical location (e.g., a single-family residence, a building, a structure, a marina, an individual apartment building with a specific address, etc.).

"Journey level electrician" means a person who has been issued a journey level electrician certificate of competency by the department. The terms "journey level" and "journey-person" in chapter 19.28 RCW are synonymous.

"Labeled" means an electrical product that bears a certification mark issued by a laboratory accredited by the state of Washington.

A "laboratory" may be either an electrical product(s) certification laboratory or an electrical product(s) evaluation laboratory.

A "laboratory operations control manual" is a document to establish laboratory operation procedures and may include a laboratory quality control manual.

"License" means a license required under chapter 19.28 RCW.

"Like-in-kind" means having the same overcurrent protection requirements and similar characteristics such as voltage requirement, current draw, short circuit characteristics, and function within the system and being in the same location. Like-in-kind also includes any equipment component authorized by the manufacturer as a suitable component replacement part.

For the purpose of WAC 296-46B-940, a "lineworker" is a person employed by a serving electrical utility or employed by a licensed general electrical contractor who carries, on their person, evidence that they:

(a) Have graduated from a department-approved lineworker's apprenticeship course; or

(b) Are currently registered in a department-approved lineworker's apprenticeship course and are working under the direct one hundred percent supervision of a journey level electrician or a graduate of a lineworker's apprenticeship course approved by the department. The training received in the lineworker's apprenticeship program must include training in applicable articles of the currently adopted National Electrical Code.

"Listed" means equipment has been listed and identified by a laboratory approved by the state of Washington for the appropriate equipment standard per this chapter.

"Low voltage" means:

(a) NEC, Class 1 power limited circuits at 30 volts maximum.

(b) NEC, Class 2 circuits powered by a Class 2 power supply as defined in NEC 725.121(A).

(c) NEC, Class 3 circuits powered by a Class 3 power supply as defined in NEC 725.121(A).

(d) Circuits of telecommunications systems as defined in chapter 19.28 RCW.

"Member of the firm" means the member(s) on file with the department of licensing for sole proprietorships/partnerships or with the secretary of state for corporations.

"Mezzanine" is the intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room or space in which the level or levels are located. Also see "basement" and "story."

"NEC" means National Electrical Code. Copies of the NEC are available from the National Fire Protection Association.

"NEMA" means National Electrical Manufacturer's Association. Copies of NEMA standards are available from the National Electrical Manufacturer's Association.

"NEC" means National Electrical Safety Code. Copies of the NEC are available from the Institute of Electrical and Electronics Engineers, Inc.

"NETA" means International Electrical Testing Association, Inc. Copies of the NETA standards and information are available from the International Electrical Testing Association, Inc.

"NFPA" means the National Fire Protection Association. Copies of NFPA documents are available from the National Fire Protection Association.

"NRTL" means Nationally Recognized Testing Laboratory accredited by the federal Occupational Safety and Health Administration (OSHA) after meeting the requirements of 29 C.F.R. 1910.7.

A "new building" for the purposes of RCW 19.28.261 includes the setting of a manufactured, mobile, or modular building.

"Passive testing" (e.g., pressing of test buttons, use of testing equipment like voltage testers, clamp-on meters, removal of a device head where the wiring is terminated on a separate base plate, etc.) means testing that does not require any:

(a) Physical modification to the electrical system wiring; or

(b) Wiring to be disconnected or terminated, except as necessary for an approved electrical testing laboratory or approved engineer performing an equipment evaluation.

"Point of contact" or "point of connection" means the service point.

"Proceeding" means any matter regarding an appeal before the board including hearings before an administrative law judge.

"Public area or square" is an area where the public has general, clear, and unrestricted access.

A "quality control manual" is a document to maintain the quality control of the laboratory's method of operation. It consists of specified procedures and information for each test method responding to the requirements of the product standard. Specific information must be provided for portions of individual test methods when needed to comply with the standard's criteria or otherwise support the laboratory's operation.

"RCW" means the Revised Code of Washington. Copies of electrical RCW are available from the department and the office of the code reviser.

"Readily accessible" means the definition as defined in NEC 100. In addition, it means that, except for keys, no tools or other devices are necessary to gain access (e.g., covers secured with screws, etc.).

"Service" or "served" means that as defined in RCW 34.05.010(19) when used in relation to department actions or proceedings.

A "sign," when required by the NEC, for use as an identification method (e.g., legibly marked, legible warning notice, marked, field marked, permanent plaque/directory, etc.) means "identification plate."

A "stand-alone amplified sound or public address system" is a system that has distinct wiring and equipment for audio signal generation, recording, processing, amplification,

and reproduction. This definition does not apply to telecommunications installations.

"Story" is that portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. Next above means vertically and not necessarily directly above. Also see "basement" and "mezzanine."

"Structure," for the purposes of this chapter and in addition to the definition in the NEC, means something constructed either in the field or factory that is used or intended for supporting or sheltering any use or occupancy as defined by the IBC.

"Supervision" for the purpose of supervising electrical trainees, means that the appropriately certified supervising electrician is on the same job site as the trainee being supervised. The trainee is not considered to be on the same job site if the supervising electrician and the trainee are working:

(a) In separate buildings at a single address (e.g., a campus, multibuilding industrial complex, multibuilding apartment complex, etc.) except for a single-family residence; or

(b) On an outdoor project (e.g., irrigation system, farm, street lighting, traffic signalization, etc.) where the trainee is more than 1000 feet from the supervising electrician or where the trainee is more than 200 feet from the supervising electrician and out of sight.

"System design review" means a set of design documents that include the manufacturer's installation information, a legible one-line diagram of the system design, and calculations used to determine voltage and current within the system. The one-line diagram must show the system equipment, devices, overcurrent protection, conductor sizing, grounding, ground fault protection if required, and any system interconnection points. The review must be available to the inspector during all inspections.

A "telecommunications local service provider" is a regulated or unregulated (e.g., by the Federal Communications Commission or the utilities and transportation commission as a telephone or telecommunications provider) firm providing telecommunications service ahead of the telecommunications network demarcation point to an end-user's facilities.

"TIA/EIA" means the Telecommunications Industries Association/Electronic Industries Association which publishes the TIA/EIA Telecommunications Building Wiring Standards. Standards and publications are adopted by TIA/EIA in accordance with the American National Standards Institute (ANSI) patent policy.

A "training school" is a Washington public community or technical college or not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

"Under the control of a utility" for the purposes of RCW 19.28.091 and 19.28.101 is when electrical equipment is not owned by a utility and:

(a) Is located in a vault, room, closet, or similar enclosure that is secured by a lock or seal so that access is restricted to the utility's personnel; or

(b) The utility is obligated by contract to maintain the equipment and the contract provides that access to the equipment is restricted to the utility's personnel or other qualified personnel.



"UL" means Underwriters Laboratory.

"Utility" means an electrical utility.

"Utility system" means electrical equipment owned by or under the control of a serving utility that is used for the transmission or distribution of electricity from the source of supply to the point of contact and is defined in section 90.2 (b)(5) of the National Electrical Code, 1981 edition (see RCW 19.28.010(1)).

"Utilization voltage" means the voltage level employed by the utility's customer for connection to lighting fixtures, motors, heaters, or other electrically operated equipment other than power transformers.

"Variance" is a modification of the electrical requirements as adopted in chapter 19.28 RCW or any other requirements of this chapter that may be approved by the chief electrical inspector if assured that equivalent objectives can be achieved by establishing and maintaining effective safety.

"WAC" means the Washington Administrative Code. Copies of this chapter of the WAC are available from the department and the office of the code reviser.

**AMENDATORY SECTION** (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

**WAC 296-46B-110 General—Requirements for electrical installations.**

**003 Examination, identification, installation, and use of equipment.**

(1) Listed electrical conduit can only be installed and used in accordance with its listing (i.e., as an electrical raceway for electrical conductors). If used as a sleeve for electrical conductors or other listed electrical conduits, the installation of a listed electrical conduit will be assumed to be for use as an electrical raceway and must be installed as allowed by chapter 19.28 RCW and this chapter (e.g., owner exemption, electrical contractor, etc.).

**EXCEPTION:** Electrical nonmetallic elbow fittings may be connected to piping other than electrical conduit for the purposes of enclosing mechanical piping systems provided the elbows are distinctively marked to indicate their use as nonelectrical fittings prior to installation. For underground installations outside of buildings, elbows used for purposes other than electrical must be substantially painted to match the color of piping to which they are connected.

**011 Deteriorating agents.**

(2) Electrical equipment and wiring that has been submerged or exposed to water must comply with the following:

(a) All breakers, fuses, controllers, receptacles, lighting switches/dimmers, electric heaters, and any sealed device/equipment (e.g., relays, contactors, etc.) must be replaced.

(b) All other electrical equipment (e.g., wiring, breaker panelboards, disconnect switches, switchgear, motor control centers, boiler controls, HVAC/R equipment, electric motors, transformers, appliances, water heaters, and similar appliances) must be replaced or reconditioned by the original manufacturer or by its approved representative.

**022 Identification of disconnecting means.**

(3) For the purposes of legibly marking a disconnecting means, as required in NEC 110.22, an identification plate is

required unless the disconnect is a circuit breaker/fused switch installed within a panelboard and the circuit breaker/fused switch is identified by a panelboard schedule. In other than dwelling units, the identification plate must include the identification designation of the circuit source panelboard that supplies the disconnecting means.

**030 Over 1000 volts - General.**

(4) Each cable operating at over 1000 volts and installed on customer-owned systems must be legibly marked in a permanent manner at each termination point and at each point the cable is accessible. The required marking must use phase designation, operating voltage, and circuit number if applicable.

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-210 Wiring and protection—Branch circuits.**

**008(A) Dwelling units GFCI requirements.**

(1) In a garage or unfinished basement, a red receptacle, with a red cover plate, supplying a fire alarm system is not required to have ground-fault circuit-interrupter protection. The receptacle must be identified for use only with the fire alarm system by an identification plate or engraved cover with letters at least 1/4 inch high.

(2) All fixed electrical equipment with exposed grounded metal parts within an enclosed shower area or within 5 feet of the top inside edge of a bathtub must have ground fault circuit interrupter protection.

**008(B) Other than dwelling units - GFCI requirements.**

(3) GFCI requirements. GFCI protection for personnel will not be required for:

(a) Three-phase receptacles unless specifically required elsewhere in the NEC; or

(b) Receptacles other than 125-volt, single phase, 15- or 20-ampere used for: Recreational vehicle supply equipment or for attachment of a mobile home supply cord ((~~other than 125 volt, single phase, 15- or 20 ampere receptacles~~)).

For the purposes of NEC 210.8(B), kitchen means any area where utensils, dishes, etc., are cleaned or where food or beverages are prepared or cooked.

**011 Branch circuits.**

(4) A raceway system or one dedicated 15-ampere minimum, 120 volt circuit must be taken to all unfinished space areas adaptable to future dwelling unit living areas that are not readily accessible to the service or branch circuit panelboard. One circuit or raceway is required for each 480 square feet or less of unfinished space area. If the total adjacent unfinished space area is less than 480 square feet, the circuit can be an extension of an existing circuit. The circuits must terminate in a suitable box(es). The box must contain an identification of the intended purpose of the circuit(s). The branch circuit panelboard must have adequate space and capacity for the intended load(s).

**013 Ground fault protection of equipment.**

(5) Equipment ground fault protection systems required by the NEC must be tested prior to being placed into service to verify proper installation and operation of the system as

determined by the manufacturer's published instructions. A firm having qualified personnel and proper equipment must perform the tests required. A copy of the manufacturer's performance testing instructions and a written performance acceptance test record signed by the person performing the test must be available at the time of inspection. The performance acceptance test record must include test details including, but not limited to, all trip settings and measurements taken during the test.

#### **025 Common area branch circuits.**

(6) For the purpose of NEC 210.25, loads for septic or water well systems that are shared by no more than two dwelling units may be supplied from either of the two dwelling units if approved by the local building official and local health department.

#### **052 (A)(2) Dwelling unit receptacle outlets.**

(7) For the purpose of NEC 210.52 (A)(2)(1), "similar openings" include the following configurations that are a permanent part of the dwelling configuration or finish:

(a) Window seating; and

(b) Bookcases or cabinets that extend from the floor to a level at least 5 feet 6 inches above the floor.

Any outlets eliminated by such window seating, bookcases, or cabinets must be installed elsewhere within the room.

#### ~~(052(C) Countertops:~~

~~(8) A receptacle in a wall countertop space shall be permitted to serve as the receptacle for a peninsular countertop space where the spaces are contiguous and the receptacle is located within 8 feet of the outside edge of the peninsular countertop.)~~

AMENDATORY SECTION (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

### **WAC 296-46B-220 Wiring and protection—Branch circuit, feeder, and service calculations.**

#### **012 Lighting load calculations.**

In determining feeder and service entrance conductor sizes and equipment ratings, a building that is designed and constructed to comply with the currently adopted Washington state energy code unit lighting power allowance table and footnotes may be used in lieu of NEC 220.12. The requirements of NEC 220.12 (~~(Exception No. 1)~~) (B), items 1, 2, and 3 do not apply.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

### **WAC 296-46B-225 Wiring and protection—Outside branch circuits and feeders.**

#### **019 Clearances from buildings for conductors.**

(1) Add the following exception to NEC 225.19(A): Where the voltage between conductors does not exceed 300 and the roof area is guarded or isolated, a reduction in clearance to 3 feet shall be permitted.

#### ~~(030 Number of supplies:~~

~~(2) For the purposes of NEC 225.30(A) and this section, a building/structure that is supplied from a remote service,~~

~~may be supplied by no more than six feeders originating from the service equipment and with each feeder terminating in a single disconnecting means at the building/structure. The service equipment must contain overcurrent protection appropriate to each feeder. The building disconnecting means required by NEC 225.32 must be grouped, within sight, and all be within 10' of each other.)~~

#### **032 Location of outside feeder disconnecting means.**

~~((3))~~ (2) The disconnecting means required by NEC 225.32 must be provided to disconnect all ungrounded conductors that supply or pass through a building/structure in accordance with the requirements of NEC 225.32 with the following exceptions.

(a) Outside location: A feeder disconnecting means, including that required by NEC 700, 701, or 702 for a generator, is considered in the building if installed on the outside of the building/structure or within sight and within fifteen feet of the building/structure. The building disconnecting means may supply only one building/structure unless the secondary building(s)/structure(s) has a separate building disconnecting means meeting the requirements of the NEC and this subsection. The disconnecting means must have an identification plate with at least one-half-inch high letters identifying:

(i) The building/structure served; and

(ii) Its function as the building/structure main disconnect(s).

(b) Inside location: The feeder disconnecting means may be installed anywhere inside a building or structure when there is a feeder disconnecting means, located elsewhere on the premises, with overcurrent protection sized for the feeder conductors.

#### **036 Suitable for use as service equipment.**

~~((4))~~ (3) A generator disconnecting means installed per subsection ~~((3))~~ (2)(a) or (b) of this section, is not required to be suitable for use as service equipment.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

### **WAC 296-46B-250 Wiring and protection—Grounding and bonding.**

#### **028 (D)(3) Separately derived system with more than one enclosure.**

(1) NEC 250.28 (D)(3) is amended to read: Where a separately derived system supplies more than a single enclosure, the system bonding jumper for each enclosure shall be sized in accordance with 250.28 (D)(1) based on the largest ungrounded feeder/tap conductor serving that enclosure, or a single system bonding jumper shall be installed at the source and sized in accordance with 250.28 (D)(1) based on the equivalent size of the largest supply conductor determined by the largest sum of the areas of the corresponding conductors of each set.

#### **052 Grounding electrodes.**

(2) Except for mobile/manufactured homes, a concrete encased grounding electrode must be installed and used at each new building or structure that is built upon a permanent concrete foundation. The electrode must comply with NEC 250.52 (A)(3). Inspection of the electrode may be accomplished by the following methods:

(a) At the time of inspection of other work on the project, providing the concrete encased electrode is accessible for a visual inspection;

(b) At the time of the service inspection providing the installer has provided a method so the inspector can verify the continuity of the electrode conductor along its entire length, with a minimum 20 foot linear span between testing points (e.g., attaching a length of copper wire to one end of the electrode that reaches the location of the grounding electrode conductor that will enable the inspector to measure the resistance with a standard resistance tester). The concrete encased electrode does not have to be accessible for a visual inspection; or

(c) Other method when prior approval, on a job site basis, is given by the inspector.

If a special inspection trip is required to inspect a grounding electrode conductor, a trip fee will be charged for that inspection in addition to the normal permit fee.

**Exception:** If the concrete encased grounding electrode is not available for connection, a ground ring must be installed per NEC 250 or other grounding electrode installed per NEC 250 verified to measure 25 ohms or less to ground. Resistance verification testing must be performed by an independent firm having qualified personnel and proper equipment. A copy of the testing procedures used and a written resistance test record signed by the person performing the test must be available at the time of inspection. The resistance test record must include test details including, but not limited to, the type of test equipment used, the last calibration date of the test equipment, and all measurements taken during the test.

### **053 (A)(2) Resistance of rod, pipe, and plate electrodes.**

(3) For rod, pipe, and plate electrodes other than those installed in accordance with the exception in subsection (2) of this section, if a ground resistance test is not performed to ensure a resistance to ground of 25 ohms or less, two or more electrodes as specified in NEC 250.52 must be installed a minimum of 6 feet apart. A temporary construction service is not required to have more than one made electrode.

(4) For services only, when multiple buildings or structures are located adjacent, but structurally separate from each other, any installed rod, pipe, or plate electrodes used for those services must be installed so that each building's or structure's electrodes are not less than 6 feet apart from the adjacent building's or structure's electrodes.

### **064 Grounding electrode conductor installation - Physical protection.**

(5) Grounding electrode conductors will be considered to be not exposed to physical damage when the conductor(s) are:

(a) Buried more than 12 inches deep in the earth outside the building's footprint;

(b) Encased or covered by 2 inches of concrete or asphalt;

(c) Located inside the building footprint and protected by the building's structural elements or when inside and determined, by the inspector, to not be subject to physical damage; or

(d) Enclosed by a metal or nonmetallic raceway or enclosure. The raceway or enclosure must be approved to protect

from severe physical damage if it is not protected by appropriate physical barriers from contact with vehicles, lawn mowers, and other equipment that might damage the conductor or enclosure.

#### **068 Accessibility.**

(6) The termination point of a grounding electrode conductor tap to the grounding electrode conductor must be accessible unless the connection is made using an exothermic or irreversible compression connection.

#### **090 Bonding.**

(7) Metallic stubs or valves used in nonmetallic plumbing systems are not required to be bonded to the electrical system unless required by an electrical equipment manufacturer's instructions.

(8) Hot and cold water plumbing lines are not required to be bonded together if, at the time of inspection, the inspector can determine the lines are mechanically and electrically joined by one or more metallic mixing valves.

#### **104(B) Bonding - Other metal piping.**

(9) For flexible metal gas piping, installed new or extended from an existing rigid metal piping system, either:

(a) Provide a copy of the manufacturer's bonding instructions to the inspector at the time of inspection and follow those instructions; or

(b) The bonding conductor for the gas system must:

(i) Be a minimum 6 AWG copper; and

(ii) Terminate at:

(A) An accessible location at the gas meter end of the gas piping system on either a solid iron gas pipe or a cast flexible gas piping fitting using a listed grounding connector; and

(B) Either the service equipment enclosure, service grounding electrode conductor or electrode, or neutral conductor bus in the service enclosure.

#### **184 Solidly grounded neutral systems over 1000 volts.**

(10) In addition to the requirements of NEC 250.184(A), the following applies for:

(a) Existing installations.

(i) The use of a concentric shield will be allowed for use as a neutral conductor for extension, replacement, or repair, if all of the following are complied with:

(A) The existing system uses the concentric shield as a neutral conductor;

(B) Each individual conductor contains a separate concentric shield sized to no less than thirty-three and one-half percent of the ampacity of the phase conductor for three-phase systems or one hundred percent of the ampacity of the phase conductor for single-phase systems;

(C) The new or replacement cable's concentric shield is enclosed inside an outer insulating jacket; and

(D) Existing cable (i.e., existing cable installed directly in the circuit between the work and the circuit's overcurrent device) successfully passes the following tests:

- A cable maintenance high potential dielectric test. The test must be performed in accordance with the cable manufacturer's instruction or the ((2011)) 2019 ANSI/NETA maintenance test specifications; and

- A resistance test of the cable shield. Resistance must be based on the type, size, and length of the conductor used as the cable shield using the conductor properties described in NEC Table 8 Conductor Properties.

An electrical engineer must provide a specific certification to the electrical plan review supervisor in writing that the test results of the maintenance high potential dielectric test and the resistance test have been reviewed by the electrical engineer and that the cable shield is appropriate for the installation. The electrical engineer must stamp the certification document with the engineer's stamp and signature. The document may be in the form of a letter or electrical plans.

Testing results are valid for a period of seven years from the date of testing. Cable will not be required to be tested at a shorter interval.

(ii) A concentric shield used as a neutral conductor in a multigrounded system fulfills the requirements of an equipment grounding conductor.

(b) New installations.

(i) New installations do not include extensions of existing circuits.

(ii) The use of the concentric shield will not be allowed for use as a neutral conductor for new installations. A listed separate neutral conductor meeting the requirements of NEC 250.184(A) must be installed.

AMENDATORY SECTION (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

**WAC 296-46B-334 Wiring methods and materials—Nonmetallic-sheathed cable.**

**010 Nonmetallic-sheathed cable.**

(1) The building classification, for subsections (2), (3), and (4) of this section, will be as determined by the building official. For the purposes of this section, Type III, IV-HT and V may be as defined in the International Building Code adopted in the state of Washington. The installer must provide the inspector documentation substantiating the type of building construction and finish material rating(s) prior to any electrical inspection.

(2) This section replaces NEC 334.10(2). In multifamily dwellings, Type NM, Type NMC, and Type NMS cable(s) may be used in structures of Types III, IV-HT, and V construction except as prohibited in NEC 334.12.

(3) This section replaces NEC 334.10(3). In all other structures, Type NM, Type NMC, and Type NMS cable(s) may be used in structures of Types III, IV-HT, and V construction except as prohibited in NEC 334.12. All cable(s) must be concealed within walls, floors, or ceilings that provide a thermal barrier of material that has at least a 15-minute finish rating as identified in listings of fire-rated assemblies.

(4) This section replaces NEC 334.10(4). Cable trays in structures of Types III, IV-HT, and V construction, where the cable(s) is identified for the use, except as prohibited in NEC 334.12.

**015 Exposed work.**

(5) Where Type NMC cable is installed in shallow chases in plaster, masonry, concrete, adobe or similar material, the cable must be protected against nails or screws by:

(a) A steel plate at least 1/16 inch thick and covered with plaster, adobe, or similar finish; or

(b) Being recessed in a chase at least 2 3/4 inches deep, as measured from the finished surface, and covered with plas-

ter, adobe, or similar finish. The cable(s) must be at least 1/2 inches from the finished surface.

(6) The requirements for nonmetallic sheathed cable protection in NEC 334.15(C) do not apply in crawl spaces.

AMENDATORY SECTION (Amending WSR 18-11-115, filed 5/22/18, effective 7/1/18)

**WAC 296-46B-555 Special occupancies—Marinas, boatyards, floating buildings, and commercial and non-commercial docking facilities.** (1) ~~((Until September 1, 2019, the ground fault protection level specified in 2017 NEC 555.3 is amended to allow a maximum of: 100 mA for overcurrent devices supplying feeder conductors not supplying primary windings of transformers; and 30 mA for overcurrent devices supplying branch circuit conductors, outlets, and feeder conductors supplying primary windings of transformers. On September 1, 2019, ground fault protection for marinas, boatyards, and commercial and noncommercial docking facilities will be as published in the 2020 NEC.~~

~~((2))~~ (2) For the purposes of NEC ~~((555.5))~~ 555.7, transformer terminations must be located a minimum of 12 inches above the deck of a dock (datum plane requirements do not apply for this section).

~~((3))~~ (3) For the purposes of NEC ~~((555.7))~~ 555.4, adjacent means within sight.

~~((4))~~ (4) For the purposes of NEC ~~((555.9))~~ 555.30, all electrical connections must be installed a minimum of 12 inches above the deck of a pier unless the connections are ~~((approved for wet locations))~~ within junction boxes identified for wet locations, utilizing sealed wire connector systems listed and identified for submersion (datum plane requirements do not apply for this section).

~~((5))~~ (5) For the purposes of NEC ~~((555.10))~~ 555.31, all enclosures must be corrosion resistant. All gasketed enclosures must be arranged with a weep hole to discharge condensation.

~~((6))~~ (6) For the purposes of NEC ~~((555.11))~~ 555.32, gasketed enclosures are only required for wet locations.

~~((7))~~ (7) For the purposes of NEC ~~((555.13))~~ 555.34, the following wiring methods are allowed:

(a) All wiring installed in a damp or wet location must be suitable for wet locations.

(b) Extra-hard usage portable power cables rated not less than 75°C, 600 volts, listed for wet locations and sunlight resistance and having an outer jacket rated for the environment are permitted. Portable power cables are permitted as a permanent wiring method under or within docks and piers or where provided with physical protection. The requirements of NEC ~~((555.13-(B)(4)(b)))~~ 555.34 (B)(3)(b) do not apply.

(c) Overhead wiring must be installed at the perimeter of areas where boats are moored, stored, moved, or serviced to avoid possible contact with masts and other parts of boats. NEC Article 398 open wiring on insulators is not an approved wiring method in or above any portion of a marina or docking facility.

(d) For the purposes of NEC ~~((555.13-(B)(5)))~~ 555.34 (B)(4), the wiring methods of Chapter 3 NEC will be permitted.

~~((8))~~ (7) For the purposes of NEC ~~((555.49))~~ 555.33, receptacles must be mounted not less than 12 inches above the deck surface of the pier or dock (datum plane requirements do not apply for this section). Shore power receptacles that provide shore power for boats must be rated not less than 20 amperes and must be single outlet type and must be of the locking and grounding type or pin and sleeve type.

**Floating buildings.**

(8) Where shore power is provided, a disconnecting means must be located within sight of each floating building or similar facility. The disconnecting means must be installed adjacent to but not in or on the floating building or similar facility.

(9) NEC 555.53 is amended to read: The overcurrent protective device(s) that supply the floating building shall have ground-fault protection not exceeding 30 mA.

(10) Conductors operating in excess of 600 volts, nominal may not be installed on floating portions of a floating building or similar facility.

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-705 Interconnected electric power production sources.** (1) For utility interactive systems, any person making interconnections between a power production source and the utility distribution network must consult the serving utility and is required to meet all additional utility standards.

~~((031 Location of overcurrent protection.))~~ **011 Supply side source connections.**

(2) In addition to the requirements of NEC ~~((705.31))~~ 705.11, electric power production source conductors connected to the supply side of the service disconnecting means must be installed using wiring methods specified for service conductors in WAC 296-46B-230(7). The disconnecting means providing overcurrent protection for the electric power production source conductors must comply with NEC 230.82(6). This disconnect is not required to be grouped with the service disconnecting means for the building or structure. Grounding and bonding must be in accordance with ~~((all applicable requirements for an additional service disconnect))~~ NEC 250.25.

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-901 General—Electrical work permits and fees.**

**General.**

(1) When an electrical work permit is required by chapter 19.28 RCW or this chapter, inspections may not be made, equipment must not be energized, or services connected unless:

(a) A valid electrical work permit is obtained and posted per subsection (5) of this section;

(b) The classification or type of facility to be inspected and the exact scope and location of the electrical work to be performed are clearly shown on the electrical work permit;

(c) The address where the inspection is to be made is clearly identifiable from the street, road or highway that serves the premises; and

(d) Driving directions are provided for the inspectors' use.

(2) Except as allowed for annual permits and two-family dwellings, an electrical work permit is valid for only one specific job site address.

**Permit - Responsibility for.**

(3) Each person, firm, partnership, corporation, or other entity must furnish a valid electrical work permit for the installation, alteration, or other electrical work performed or to be performed solely by that entity. When the original purchaser is replaced, another entity may request, in writing, written approval from the chief electrical inspector to take responsibility for the work of the original installing entity under the original permit. If permission is not granted the entity must obtain a new permit for the remaining work.

Two or more entities may never work under the same permit. Each electrical work permit application must be signed by the electrical contractor's administrator (or designee) or the person, or authorized representative of the firm, partnership, corporation, or other entity that is performing the electrical installation or alteration. Permits purchased electronically do not require a handwritten signature. An entity designated to sign electrical permits must provide written authorization of the purchaser's designation when requested by the department or city that is authorized to do electrical inspections.

(4) Permits to be obtained by customers. Whenever a serving electrical utility performs work for a customer under one of the exemptions in WAC 296-46B-925 and the work is subject to inspection, the customer is responsible for obtaining all required permits.

(5) Except as allowed for Class B permits, where an electrical work permit is required, the work permit must be obtained and posted at the job site or the electrical work permit number must be conspicuously posted and identified as the electrical work permit number on or adjacent to the electrical service or feeder panel supplying power to the work prior to beginning any electrical work and at all times until the electrical inspection process is completed.

Exceptions:

(a) For an owner, an electrical work permit for emergency like-in-kind repairs to an existing electrical system(s) must be obtained no later than the next business day after the work is begun.

(b) For an electrical contractor, in a city's jurisdiction where the city is authorized to do electrical inspections and does not have a provisional permit system, an electrical work permit for emergency like-in-kind repairs to an existing electrical system(s) must be obtained and posted, per the city's requirements at the job site no later than the next business day after the work is begun.

(6) Fees must be paid in accordance with the inspection fee schedule in Part C of this chapter. The amount of the fee due is calculated based on the fee effective at the date payment is made. If the project is required to have an electrical plan review, the plan review fees will be based on the fees effective at the date the plans are received by the department

for review. In a city where the department is doing inspections as the city's contractor, a supplemental fee may apply.

**Permit - Requirements for.**

(7) As required by chapter 19.28 RCW or this chapter, an electrical work permit is required for the installation, alteration, or maintenance of all electrical systems or equipment except for:

- (a) Travel trailers;
- (b) Class A basic electrical work which includes:

(i) The **like-in-kind replacement** of lamps; a single set of fuses; a single battery smaller than 150 amp hour; contactors, relays, timers, starters, circuit boards, or similar control components; one household appliance; circuit breakers; single-family residential luminaires and line voltage smoke or carbon monoxide alarms; a maximum of five snap switches, dimmers, receptacle outlets, thermostats, heating elements, luminaire ballasts or drivers/power supplies for single LED luminaires with an exact same ballast or driver/power supply; component(s) of electric signs, outline lighting, or skeleton neon tubing when replaced on-site by an appropriate electrical contractor and when the sign, outline lighting or skeleton neon tubing electrical system is not modified; one ten horsepower or smaller motor.

For the purposes of this section, "circuit breaker" means a circuit breaker that is used to provide overcurrent protection only for a branch circuit, as defined in NEC 100.

(ii) Induction detection loops described in WAC 296-46B-300(2) and used to control gate access devices;

(iii) Heat cable repair; and

(iv) Embedding premanufactured heat mats in tile grout where the mat is listed by an approved testing laboratory and comes from the manufacturer with preconnected lead-in conductors. All listing marks and lead-in conductor labels must be left intact and visible for evaluation and inspection by the installing electrician and the electrical inspector.

(v) The disconnection of electrical circuits from their overcurrent protection device for the specific purpose of removing the electrical wiring or equipment for disposal.

Unless specifically noted, the exemptions listed do not include: The replacement of an equipment unit, assembly, or enclosure that contains an exempted component or combination of components (e.g., an electrical furnace/heat pump, industrial milling machine, etc.) or any appliance/equipment described in this section for Class B permits.

In the department's jurisdiction, a provisional electrical work permit label may be posted in lieu of an electrical work permit. If a provisional electrical work permit label is used, an electrical work permit must be obtained within two working days after posting the provisional electrical work permit label. See WAC 296-46B-907(2) for provisional label requirements.

(c) The following types of systems and circuits are considered exempt from the requirements for licensing and permitting described in chapter 19.28 RCW. The electrical failure of these systems does not inherently or functionally compromise safety to life or property.

(i) Low-voltage thermocouple derived circuits;

(ii) Low-voltage circuits for residential: Garage doors and built-in vacuum systems;

(iii) Low-voltage circuits for underground: Landscape sprinkler systems, landscape lighting, and antennas for wireless animal containment fences.

For these types of systems and circuits to be considered exempt, the following conditions must be met:

(A) The power supplying the installation must be derived from a listed Class 2 power supply;

(B) The installation and termination of line voltage equipment and conductors supplying these systems is performed by appropriately licensed and certified electrical contractors and electricians;

(C) The conductors of these systems do not pass through fire-rated walls, fire-rated ceilings or fire-rated floors in other than residential units; and

(D) Conductors or luminaires are not installed in installations covered by the scope of Article 680 NEC (swimming pools, fountains, and similar installations).

(8) An electrical work permit is required for all installations of telecommunications systems on the customer side of the network demarcation point for projects greater than ten telecommunications outlets. All backbone installations regardless of size and all telecommunications cable or equipment installations involving penetrations of fire barriers or passing through hazardous locations require permits and inspections. For the purposes of determining the inspection threshold for telecommunications projects greater than ten outlets, the following will apply:

(a) An outlet is the combination of jacks and mounting hardware for those jacks, along with the associated cable and telecommunications closet terminations, that serve one workstation. In counting outlets to determine the inspection threshold, one outlet must not be associated with more than six standard four-pair cables or more than one twenty-five-pair cable. Therefore, installations of greater than sixty standard four-pair cables or ten standard twenty-five-pair cables require permits and inspections. (It is not the intent of the statute to allow large masses of cables to be run to workstations or spaces serving telecommunications equipment without inspection. Proper cable support and proper loading of building structural elements are safety concerns. When considering total associated cables, the telecommunications availability at one workstation may count as more than one outlet.)

(b) The installation of greater than ten outlets and the associated cables along any horizontal pathway from a telecommunications closet to work areas during any continuous ninety-day period requires a permit and inspection.

(c) All telecommunications installations within the residential dwelling units of single-family, duplex, and multi-family dwellings do not require permits or inspections. In residential multifamily dwellings, permits and inspections are required for all backbone installations, all fire barrier penetrations, and installations of greater than ten outlets in common areas.

(d) No permits or inspections are required for installation or replacement of cord and plug connected telecommunications equipment or for patch cord and jumper cross-connected equipment.

(e) Definitions of telecommunications technical terms will come from chapter 19.28 RCW, this chapter, TIA/EIA standards, and NEC.

**Inspection and approval.**

(9) Requests for inspections.

(a) Requests for inspections must be made no later than three working days after an entity completes its electrical/telecommunications installation or one working day after any part of the installation has been energized, whichever occurs first.

(b) Requests for after hours, weekend inspections, or temporary installations that will be energized for less than 48 hours must be made by contacting the local electrical inspection supervisor at least three working days prior to the requested date of inspection. The portal-to-portal inspection fees required for after hours or weekend inspections are in addition to the cost of the original electrical work permit.

(c) Inspections for annual electrical maintenance permits and annual telecommunications permits may be done on a regular schedule arranged by the permit holder with the department.

(10) Inspections will not be made until all permit fees are paid in full.

**Permit - Duration/refunds.**

(11) Electrical work permits will expire one year after the date of purchase unless permission is granted by the chief electrical inspector or when the permit is closed or completed by the inspector. Refunds are not available for:

(a) Expired electrical work permits;

(b) Electrical work permit fee items, within the department's jurisdiction, where the electrical installation has begun or an inspection requested for that work; or

(c) The first twenty-five dollars of each permit purchase - Application fee.

All refund requests must be made using the Request for Refund application form.

**Permit - Annual telecommunications.**

(12) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of telecommunications installations to be purchased by a building owner or licensed electrical/telecommunications contractor. The owner's full-time telecommunications maintenance staff, or a licensed electrical/telecommunications contractor(s) can perform the work done under this annual permit. The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all the telecommunications work performed and the valid electrical or telecommunications contractor's license numbers for all contractors working under the permit. Upon request, the chief electrical inspector may allow the annual permit to be used for multiple worksites or addresses.

**Permit - Annual electrical.**

(13) The chief electrical inspector or city that is authorized to do electrical inspections can allow annual permits for the inspection of electrical installations to be purchased by a building owner or licensed electrical contractor. This type of permit is available for commercial/industrial locations employing a full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical con-

tractor. Upon request, the chief electrical inspector may allow the annual permit to be used for multiple worksites or addresses.

The permit holder is responsible for correcting all installation deficiencies. The permit holder must make available, to the electrical inspector, all records of all electrical work performed.

This type of electrical permit may be used for retrofit, replacement, maintenance, repair, upgrade, and alterations to electrical systems at a plant or building location. This type of permit does not include new or increased service or new square footage.

**Permit - Temporary construction project installations.**

(14) For temporary electrical installations, the department will consider a permit applicant to be the owner per RCW 19.28.261 under the conditions below:

Any person, firm, partnership, corporation, or other entity registered as a general contractor under chapter 18.27 RCW will be permitted to install a single electrical service per address for the purposes of temporary power during the construction phase of a project, when all of the following conditions are met:

(a) The installation is limited to the mounting and bracing of a preassembled pole or pedestal mounted service, the installation of a ground rod or ground plate, and the connection of the grounding electrode conductor to the ground rod or plate;

(b) The total service size does not exceed 200 amperes, 250 volts nominal;

(c) The service supplies no feeders;

(d) Branch circuits not exceeding 50 amperes each are permitted, provided such branch circuits supply only receptacles that are either part of the service equipment or are mounted on the same pole;

(e) The general contractor owns the electrical equipment;

(f) The general contractor has been hired by the property owner as the general contractor for the project;

(g) The general contractor must purchase an electrical work permit for the temporary service, request inspection, and obtain approval prior to energizing the service.

**Posting of corrections.**

(15) Electrical installations found to be not in compliance with approved standards must be corrected within fifteen calendar days of notification by the department as required in RCW 19.28.101(3). The notifications will be posted electronically on the electrical permit inspection results. A printed copy of the correction notification will be posted by the inspector at the job site for permits not purchased electronically.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-906 Inspection fees.** To calculate inspection fees, the amperage is based on the conductor ampacity or the overcurrent device rating. The total fee must not be less than the number of progress inspection (one-half

hour) units times the progress inspection fee rate from subsection (8) of this section, PROGRESS INSPECTIONS.

The amount of the fee due is calculated based on the fee effective at the date of a department assessed fee (e.g., plan review or fee due) or when the electrical permit is purchased.

**(1) Residential.**

**(a) Single- and two-family residential (New Construction).**

**Notes:**

- (1) Square footage is the area included within the surrounding exterior walls of a building exclusive of any interior courts. (This includes any floor area in an attached garage, basement, or unfinished living space.)
- (2) "Inspected with the service" means that a separate service inspection fee is included on the same electrical work permit.
- (3) "Inspected at the same time" means all wiring is to be ready for inspection during the initial inspection trip.
- (4) An "outbuilding" is a structure that serves a direct accessory function to the residence, such as a pump house or storage building. Outbuilding does not include buildings used for commercial type occupancies or additional dwelling occupancies.

(i) First 1300 sq. ft.	\$94.20
Each additional 500 sq. ft. or portion of	\$30.10
(ii) Each outbuilding or detached garage - Inspected at the same time as a dwelling unit on the property	\$39.20
(iii) Each outbuilding or detached garage - Inspected separately	\$62.00
(iv) Each swimming pool - Inspected with the service	\$62.00
(v) Each swimming pool - Inspected separately	\$94.20
(vi) Each hot tub, spa, or sauna - Inspected with the service	\$39.20
(vii) Each hot tub, spa, or sauna - Inspected separately	\$62.00
(viii) Each septic pumping system - Inspected with the service	\$39.20
(ix) Each septic pumping system - Inspected separately	\$62.00

**(b) Multifamily residential and miscellaneous residential structures, services and feeders (New Construction).**

Each service and/or feeder

Ampacity	Service/Feeder	Additional Feeder
0 to 200	\$101.60	\$30.10
201 to 400	\$126.30	\$62.00
401 to 600	\$173.50	\$86.30
601 to 800	\$222.70	\$118.60
801 and over	\$317.60	\$238.20

**(c) Single or multifamily altered services or feeders including circuits.**

(i) Each altered service and/or altered feeder

Ampacity	Service/Feeder
0 to 200	\$86.30
201 to 600	\$126.30
601 and over	\$190.40

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$46.70

**(d) Single or multifamily residential circuits only (no service inspection).**

**Note:**

Altered or added circuit fees are calculated per panelboard. Total cost of the alterations in an individual panel should not exceed the cost of a complete altered service or feeder of the same rating, as shown in subsection (1) RESIDENTIAL (c) (table) of this section.

(i) 1 to 4 circuits (see note above)	\$62.00
(ii) Each additional circuit (see note above)	\$6.60

**(e) Mobile homes and modular homes.**

(i) Mobile home or modular home service or feeder only	\$62.00
(ii) Mobile home service and feeder	\$101.60

**(f) Mobile home park sites and RV park sites.**

**Note:**

For master service installations, see subsection (2) COMMERCIAL/INDUSTRIAL of this section.

(i) First site service or site feeder	\$62.00
(ii) Each additional site service; or additional site feeder inspected at the same time as the first service or feeder	\$39.20

**(2) Commercial/industrial.**

**(a) New service or feeder, and additional new feeders inspected at the same time (includes circuits).**

**Note:**

For large COMMERCIAL/INDUSTRIAL projects that include multiple feeders, "inspected at the same time" can be interpreted to include additional inspection trips for a single project. The additional inspections must be for electrical work specified on the permit at the time of purchase. The permit fee for such projects must be calculated using this section. However, the total fee must not be less than the number of progress inspection (one-half hour) units times the progress inspection fee rate from subsection (8) PROGRESS INSPECTIONS of this section.

Ampacity	Service/Feeder	Additional Feeder
0 to 100	\$101.60	\$62.00
101 to 200	\$123.70	\$79.00
201 to 400	\$238.20	\$94.20
401 to 600	\$277.60	\$110.80
601 to 800	\$359.10	\$151.00
801 to 1000	\$438.40	\$182.70
1001 and over	\$478.30	\$255.00

**(b) Altered services/feeders (no circuits).**

(i) Service/feeder

Ampacity	Service/Feeder
0 to 200	\$101.60
201 to 600	\$238.20
601 to 1000	\$359.10
1001 and over	\$398.90

(ii) Maintenance or repair of a meter or mast (no alterations to the service or feeder) \$86.30

**(c) Circuits only.**

**Note:**

Altered/added circuit fees are calculated per panelboard. Total cost of the alterations in a panel (or panels) should not exceed the cost of a new feeder (or feeders) of the same rating, as shown in subsection (2) COMMERCIAL/INDUSTRIAL (2)(a)(table) above.

(i) First 5 circuits per branch circuit panel	\$79.00
(ii) Each additional circuit per branch circuit panel	\$6.60



- (d) Over 600 volts surcharge per permit. \$79.00
- (3) Temporary service(s).

**Notes:**

(1) See WAC 296-46B-590 for information about temporary installations.  
 (2) Temporary stage or concert inspections requested outside of normal business hours will be subject to the portal-to-portal hourly fees in subsection (11) OTHER INSPECTIONS. The fee for such after hours inspections will be the greater of the fee from this subsection or the portal-to-portal fee.

**Temporary services, temporary stage or concert productions.**

Ampacity	Service/Feeder	Additional Feeder
0 to 60	\$54.30	\$27.80
61 to 100	\$62.00	\$30.10
101 to 200	\$79.00	\$39.20
201 to 400	\$94.20	\$46.80
401 to 600	\$126.30	\$62.00
601 and over	\$143.30	\$71.30

**(4) Irrigation machines, pumps, and equipment.**

**Irrigation machines.**

- (a) Each tower - When inspected at the same time as a service and feeder from (2) COMMERCIAL/INDUSTRIAL \$6.60
- (b) Towers - When not inspected at the same time as a service and feeder - 1 to 6 towers \$94.20
- (c) Each additional tower \$6.60

**(5) Miscellaneous - Commercial/industrial and residential.**

- (a) **A Class 2 low-voltage thermostat** and its associated cable controlling a single piece of utilization equipment or a single furnace and air conditioner combination.
  - (i) First thermostat \$46.80
  - (ii) Each additional thermostat inspected at the same time as the first \$14.50
- (b) **Class 2 or 3 low-voltage systems and telecommunications systems.** Includes all telecommunications installations, fire alarm, nurse call, energy management control systems, industrial and automation control systems, lighting control systems, and similar Class 2 or 3 low-energy circuits and equipment not included in WAC 296-46B-908 for Class B work.
  - (i) First 2500 sq. ft. or less \$54.30
  - (ii) Each additional 2500 sq. ft. or portion thereof \$14.50

**(c) Signs and outline lighting.**

- (i) First sign (no service included) \$46.80
- (ii) Each additional sign inspected at the same time on the same building or structure \$22.10

**(d) Berth at a marina or dock.**

**Note:**

Five berths or more will be permitted to have the inspection fees based on appropriate service and feeder fees from section (2) COMMERCIAL/INDUSTRIAL above.

- (i) Berth at a marina or dock \$62.00
- (ii) Each additional berth inspected at the same time \$39.20

**(e) Yard pole, pedestal, or other meter loops only.**

- (i) Yard pole, pedestal, or other meter loops only \$62.00
- (ii) Meters installed remote from the service equipment and inspected at the same time as a service, temporary service or other installations \$14.50

**(f) Inspection appointment requested for outside of normal working hours.**

Regular fee plus surcharge of: \$118.60

**(g) Generators.**

**Note:**

Permanently installed generators: Refer to the appropriate residential or commercial new/altered service or feeder section.

Portable generators: Permanently installed transfer equipment for portable generators \$86.30

**(h) Electrical - Annual permit fee.**

**Note:**

See WAC 296-46B-901(13).

For commercial/industrial location employing full-time electrical maintenance staff or having a yearly maintenance contract with a licensed electrical contractor. Note, all yearly maintenance contracts must detail the number of contractor electricians necessary to complete the work required under the contract. This number will be used as a basis for calculating the appropriate fee. Each inspection is based on a 2-hour maximum.

	Inspections	Fee
1 to 3 plant electricians	12	\$2,284.20
4 to 6 plant electricians	24	\$4,571.00
7 to 12 plant electricians	36	\$6,856.20
13 to 25 plant electricians	<del>((52))</del> 48	\$9,143.00
More than 25 plant electricians	52	\$11,429.80

**(i) Telecommunications - Annual permit fee.**

**Notes:**

(1) See WAC 296-46B-901(12).  
 (2) Annual inspection time required may be estimated by the purchaser at the rate for "OTHER INSPECTIONS" in this section, charged portal-to-portal per hour.

For commercial/industrial location employing full-time telecommunications maintenance staff or having a yearly maintenance contract with a licensed electrical/telecommunications contractor.

2-hour minimum \$188.80  
 Each additional hour, or portion thereof, of portal-to-portal inspection time \$94.20

**(j) Permit requiring ditch cover inspection only.**

Each 1/2 hour, or portion thereof \$46.80

**(k) Cover inspection for elevator/conveyance installation. This item is only available to a licensed/registered elevator contractor.**

**(6) Carnival inspections.**

**(a) First carnival field inspection each calendar year.**

- (i) Each ride and generator truck \$22.10
- (ii) Each remote distribution equipment, concession, or gaming show \$6.60
- (iii) If the calculated fee for first carnival field inspection above is less than \$100.50, the minimum inspection fee will be: \$118.60

**(b) Subsequent carnival inspections.**

- (i) First ten rides, concessions, generators, remote distribution equipment, or gaming show \$118.60
- (ii) Each additional ride, concession, generator, remote distribution equipment, or gaming show \$6.60

**(c) Concession(s) or ride(s) not part of a carnival.**

- (i) First field inspection each year of a single concession or ride, not part of a carnival \$94.20
- (ii) Subsequent inspection of a single concession or ride, not part of a carnival \$62.00

**(7) Trip fees.**

(a) Requests by property owners to inspect existing installations. (This fee includes a maximum of one hour of inspection time. All inspection time exceeding one hour will be charged at the rate for progressive inspections.)	\$94.20
(b) Submitter notifies the department that work is ready for inspection when it is not ready.	\$46.80
(c) Additional inspection required because submitter has provided the wrong address or incomplete, improper or illegible directions for the site of the inspection.	\$46.80
(d) More than one additional inspection required to inspect corrections; or for repeated neglect, carelessness, or improperly installed electrical work.	\$46.80
(e) Each trip necessary to remove a noncompliance notice.	\$46.80
(f) Corrections that have not been made in the prescribed time, unless an exception has been requested and granted.	\$46.80
(g) Installations that are covered or concealed before inspection.	\$46.80
<b>(8) Progress inspections.</b>	
<b>Note:</b>	
The fees calculated in subsections (1) through (6) of this section will apply to all electrical work. This section will be applied to a permit where the permit holder has requested additional inspections beyond the number supported by the permit fee calculated at the rate in subsections (1) through (6) of this section.	
<b>On partial or progress inspections, each 1/2 hour.</b>	\$46.80
<b>(9) Plan review.</b>	
(a) Plan review fee is 35% of the electrical work permit fee as determined by WAC 296-46B-906.	35%
(b) Plan review submission fee .	\$79.00
(c) Supplemental submissions of plans per hour or fraction of an hour of review time.	\$94.20
(d) Plan review handling fee.	\$22.10
<b>(10) Out-of-state inspections.</b>	
(a) Permit fees will be charged according to the fees listed in this section.	
(b) Travel expenses:	
All travel expenses and per diem for out-of-state inspections are billed following completion of each inspection(s). These expenses can include, but are not limited to: Inspector's travel time, travel cost and per diem at the state rate. Travel time is hourly based on the rate in subsection (11) of this section.	
<b>(11) Other inspections.</b>	
Inspections not covered by above inspection fees must be charged portal-to-portal per hour:	\$94.20
<b>(12) Variance request processing fee.</b>	
Variance request processing fee. This fee is nonrefundable once the transaction has been validated.	\$94.20
<b>(13) Class B basic electrical work labels.</b>	
(a) Block of twenty Class B basic electrical work labels (not refundable).	\$258.70
(b) Reinspection of Class B basic electrical work to assure that corrections have been made (per 1/2 hour timed from leaving the previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	\$46.80
(c) Reinspection of Class B basic electrical work because of a failed inspection of another Class B label (per 1/2 hour from previous inspection until the reinspection is completed). See WAC 296-46B-908(5).	\$46.80

<b>(14) Provisional electrical work permit labels.</b>	
Block of twenty provisional electrical work permit labels.	\$258.70

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-908 Class B permits.**

**Class B electrical work permit - Use.**

(1) The Class B basic electrical random inspection process (Class B process) may only be used by:

(a) Licensed electrical/telecommunication contractors;

or

(b) Health care, commercial, or industrial facilities using an employee(s) who is an appropriately certified electrician(s) after requesting, in writing, and receiving permission from the chief electrical inspector.

Each entity doing work must use a separate label.

(2) The Class B random inspection process is only available if the label is validated and the label or label number is posted before beginning the work.

(a) For Class B labels obtained after February 28, 2013:

(i) Prior to, or immediately upon posting the Class B label/number, the purchaser must use the department's online Class B system to enter the job site information for an unused Class B label obtained by the purchaser. If the posting occurs on a weekend or a federal/state holiday, the purchaser must use the online system to enter the information no later than the first business day after posting the label/number;

(ii) The person identified as the installer on the Class B label must post the Class B label or label number, in a conspicuous permanent manner, at the:

(A) Main service/feeder location supplying the structure or system; or

(B) Purchaser's equipment, or on the equipment conductors if the equipment is not in place.

(iii) The Class B label is valid immediately upon the purchaser completing the job site information in the department's online Class B system, and posting of the Class B label or label number per (a)(ii) of this subsection.

(b) For Class B labels obtained before March 1, 2013:

(i) The purchaser must fully enter the job site information on the job site and contractor portions of the Class B label.

(ii) The person identified as the installer on the Class B label must post the completed job site copy, in a conspicuous permanent manner, at the:

(A) Main service/feeder location supplying the structure or system;

(B) Purchaser's equipment, or on the conductors if the equipment is not available.

(iii) The purchaser must return the contractor copy to the Department of Labor and Industries, Electrical Section, Chief Electrical Inspector, P.O. Box 44460, Olympia, WA 98504-4460 within fifteen working days after the job site portion of the Class B installation label is affixed.

(iv) The Class B label is valid immediately upon posting on the job site.

(3) Class B labels will be sold in blocks and are nonrefundable and nontransferable.

(4) Class B label installations will be inspected on a random basis as determined by the department.

(5) A progress inspection fee is required for any inspection required when a correction(s) is issued as a result of the inspection of a Class B label.

(6) Any entity using the Class B process may be audited for compliance with the provisions for purchasing, inspection, reporting of installations, and any other requirement of usage.

(7) A separate label is required for each line item listed below in subsection (10) of this section. For example, if the work includes an item under subsection (10)(a) and (b)(i) of this section, two labels are required.

(8) An entity using a Class B basic inspection label is restricted to using no more than two labels per week per job site.

(9) All Class B work must be completed within fifteen days after the label is validated. If the work is not completed, another Class B may be posted.

Except that, in a one- or two-family residential structure, a label is valid for ninety days after the label is validated, so long as all work described on the label is performed by the purchaser.

(10) Class B work includes the following:

(a) Extension of not more than one branch electrical circuit limited to 120 volts and 20 amps each where:

(i) No cover inspection is necessary. For the purposes of this section, cover inspection does not include work covered by any surface that may be removed for inspection without damaging the surface; and

(ii) The extension does not supply more than two outlets as defined by the NEC.

(b) Single like-in-kind replacement of:

(i) A motor larger than 10 horsepower; or

(ii) The internal wiring of a furnace, air conditioner, refrigeration unit or household appliance; or

(iii) An electric/gas/oil furnace not exceeding 240 volts and 100 amps and associated Class 2 low voltage wiring (i.e., altered and/or new low-voltage control wiring from the furnace to an existing and/or new thermostat, heat pump, air conditioner, condenser, etc.), when the furnace is connected to an existing branch circuit. For the purposes of this section, a boiler is not a furnace; or

(iv) An individually controlled electric room heater (e.g., baseboard, wall, fan forced air, etc.), air conditioning unit, heat pump unit, or refrigeration unit not exceeding 240 volts, 40 minimum circuit amps and associated Class 2 low voltage wiring when the unit is connected to an existing branch circuit; or

(v) Circuit modification required to install not more than five residential load control devices in a residence where installed as part of an energy conservation program sponsored by an electrical utility and where the circuit does not exceed 240 volts and 40 amps; or

(vi) A single, line-voltage flexible supply whip associated with (b)(i), (iii), or (iv) of this subsection, not over 6 feet in length, provided there are no modifications to the branch circuit/feeder load being supplied by the whip. May be done on the same Class B label with the replacement unit if done at the same time.

(c) The following low voltage systems:

(i) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in one- and two-family dwellings; or

(ii) Repair and replacement of devices not exceeding 100 volt-amperes in Class 2, Class 3, or power limited low voltage systems in other buildings, provided the equipment is not for fire alarm or nurse call systems and is not located in an area classified as hazardous by the NEC; or

(iii) The installation of Class 2 or 3 device(s) or wiring for thermostat, audio, security, burglar alarm, intercom, amplified sound, public address, or access control systems where the installation does not exceed twenty devices or five thousand square feet. This does not include fire alarm, nurse call, lighting control, industrial automation/control or energy management systems; or

(iv) Telecommunications cabling and equipment requiring inspection in RCW 19.28.470 where the installation does not exceed twenty devices or five thousand square feet;

(d) The replacement of not more than ten standard receptacles with GFCI ((~~GF~~)), AFCI, or dual function AFCI/GFCI receptacles;

(e) The conversion of not more than ten snap switches to dimmers or occupancy sensors for the use of controlling a luminaire(s) conversion;

(f) The like-in-kind replacement of a maximum of twenty: Paddle fans, luminaires not exceeding 277 volts and 20 amperes; snap switches, dimmers, receptacle outlets, line voltage thermostats, heating elements, luminaire ballasts, or drivers/power supplies for single LED luminaires;

(g) The replacement of not more than two luminaires with paddle fans if a listed fan box has been previously installed to support the luminaires;

(h) The replacement of not more than four batteries rated not larger than 150 amp hours each that supply power to a single unit of equipment (e.g., uninterruptable power supply, photovoltaic storage system, control panel, etc.);

(i) The installation or repair of equipment powered by a stand-alone solar photovoltaic source where the:

(i) Electrical equipment requires no field assembly except for the attachment and electrical connection of the solar photovoltaic source to the equipment, the installation and attachment to a grounding electrode, and the placement of the equipment on a pad, pole, or other structure;

(ii) Solar photovoltaic source and the equipment operates at less than 15 volts DC;

(iii) Solar photovoltaic source is the only source of external power; and

(iv) Equipment and the solar photovoltaic source are appropriately labeled as a single unit. The label must be by an approved electrical testing laboratory or for equipment used for traffic control labeled according to WAC 296-46B-010(21).

(j) The installation or replacement of a single electric sign on an existing single 120-volt, 20-amp maximum branch circuit;

(k) The like-in-kind replacement of output cables consisting of a length of flexible EV cable and an electric vehicle connector when connected to fixed in place electric vehicle supply equipment.

(11) Class B basic electrical work does not include any work in:

- (a) Areas classified as Class I, Class II, Class III, or Zone locations per NEC 500; or
- (b) Areas regulated by NEC 517 or 680; or
- (c) Any work where electrical plan review is required; or
- (d) Fire alarm, nurse call, lighting control, industrial automation/control or energy management systems.

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-915 Civil penalty schedule.**

**Notes:** Each day that a violation occurs on a job site may be a separate offense.

Once a violation of chapter 19.28 RCW or chapter 296-46B WAC becomes a final judgment, any additional violation within three years becomes a "second" or "additional" offense subject to an increased penalty as set forth in the following tables.

In case of serious noncompliance or a serious violation of the provisions of chapter 19.28 RCW or as described in WAC 296-46B-990, the department may double the penalty amount, up to ten thousand dollars shown in subsections (1) through ~~((13))~~ (14) of this section.

A person, firm, partnership, corporation or other entity who violates a provision of chapter 19.28 RCW or chapter 296-46B WAC is liable for a civil penalty based upon the following schedule.

**(1) Offering to perform, submitting a bid for, advertising, installing or maintaining cables, conductors or equipment:**

- (a) That convey or utilize electrical current without having a valid electrical contractor's license; or
- (b) Used for information generation, processing, or transporting of signals optically or electronically in telecommunications systems without having a valid telecommunications contractor's license.

First offense:	\$1,000
Second offense:	\$2,000
Third offense:	\$3,000
Each offense thereafter:	\$10,000

**(2) Employing an individual for the purposes of chapter 19.28 RCW who does not possess a valid certificate of competency or training certificate to do electrical work.**

First offense:	\$250
Each offense thereafter:	\$500

**(3) Performing electrical work without having a valid certificate of competency or electrical training certificate.**

- (a) Failing to visibly display a certificate (must possess a valid, active certificate).

First offense:	\$50
Each offense thereafter:	\$100

- (b) Performing electrical work while not possessing a valid certificate or working outside the scope of a certificate.

First offense:	\$250
Each offense thereafter:	\$500

**(4) Employing electricians and electrical trainees for the purposes of chapter 19.28 RCW in an improper ratio. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.**

First offense:	\$250
Each offense thereafter:	\$500

**(5) Failing to provide proper supervision to an electrical trainee as required by chapter 19.28 RCW. Contractors found to have violated this section three times in a three-year period must be the subject of an electrical audit in accordance with WAC 296-46B-975.**

First offense:	\$250
Each offense thereafter:	\$500

**(6) Working as an electrical trainee without proper supervision as required by chapter 19.28 RCW.**

First offense:	\$50
Second offense:	\$250
Each offense thereafter:	\$500

**(7) Offering, bidding, advertising, or performing electrical or telecommunications installations, alterations or maintenance outside the scope of the firm's specialty electrical or telecommunications contractors license.**

First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000

**(8) Selling or exchanging electrical equipment associated with spas, hot tubs, swimming pools or hydromassage bathtubs which are not listed by an approved laboratory.**

First offense:	\$500
Second offense:	\$1,000
Each offense thereafter:	\$2,000

**Definition:**

The sale or exchange of electrical equipment associated with hot tubs, spas, swimming pools or hydromassage bathtubs includes to: "Sell, offer for sale, advertise, display for sale, dispose of by way of gift, loan, rental, lease, premium, barter or exchange."

**(9) Covering or concealing installations prior to inspection.**

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

**(10) Failing to make corrections within fifteen days of notification by the department.**

**Exception:**

Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

**(11) Failing to get an inspection or obtain an electrical/telecommunications work permit or post a provisional electrical work permit label prior to beginning the electrical/telecommunications installation or alteration.**

**Exception:**

In cases of emergency repairs, for owners, to existing electrical/telecommunications systems, this penalty will not be charged if the permit is obtained and posted no later than the business day following beginning work on the emergency repair.

- (a) Standard/provisional permit offenses:

First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000

(b) Class B offenses:	
Failure to post a Class B label or number for Class B eligible work:	
First offense:	\$100
Second offense:	\$250
Each offense thereafter:	\$1,000
(c) For other Class B offenses:	
First offense:	\$100
Second offense:	\$250
Each offense thereafter:	\$1,000
<b>(12) Violating chapter 19.28 RCW duties of the electrical/telecommunications administrator or master electrician.</b>	
(a) Failing to be a member of the firm or a supervisory employee and must be available during working hours to carry out the duties of an administrator or master electrician.	
First offense:	\$1,000
Second offense:	\$1,500
Each offense thereafter:	\$3,000
(b) Failing to ensure that all electrical work complies with the electrical installation laws and rules of the state.	
First offense:	\$100
Second offense:	\$250
Third offense:	\$1,000
Each offense thereafter:	\$3,000
(c) Failing to ensure that the proper electrical safety procedures are used.	
First offense:	\$500
Second offense:	\$1,500
Each offense thereafter:	\$3,000
(d) Failing to ensure that inspections are obtained and that all electrical labels, permits, and certificates required to perform electrical work are used.	
Standard/provisional permit offenses:	
First offense:	\$250
Each offense thereafter:	\$500
Class B offenses:	
First offense:	\$100
Second offense:	\$250
Each offense thereafter:	\$1,000
(e) Failing to ensure that all electrical licenses, required to perform electrical work are used (i.e., work performed must be in the allowed scope of work for the contractor).	
First offense:	\$500
Second offense:	\$1,500
Third offense:	\$3,000
Each offense thereafter:	\$6,000
(f) Failing to see that corrective notices issued by an inspecting authority are complied with within fifteen days.	
Exception: Where an extension has been requested and granted, this penalty applies to corrections not completed within the extended time period.	
First offense:	\$250
Second offense:	\$1,000
Each offense thereafter:	\$2,000
(g) Failing to notify the department in writing within ten days if the master electrician or administrator terminates the relationship with the electrical contractor.	
First offense:	\$500

Second offense:	\$1,000
Each offense thereafter:	\$3,000
<b>(13) Causing or failing to correct a serious violation.</b>	
A serious violation is a violation of chapter 19.28 RCW or 296-46B WAC that creates a hazard of fire or a danger to life safety.	
First offense:	\$1,000
Second offense:	\$3,000
Each offense thereafter:	\$5,000
<b>(14) Violating any of the provisions of chapter 19.28 RCW or chapter 296-46B WAC which are not identified in subsections (1) through (12) of this section.</b>	
(a) RCW 19.28.161 through 19.28.271 and the rules developed pursuant to them.	
First offense:	\$250
Each offense thereafter:	\$500
(b) All other chapter 19.28 RCW provisions and the rules developed pursuant to them.	
First offense:	\$250
Second offense:	\$750
Each offense thereafter:	\$2,000

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-920 Electrical/telecommunications license/certificate types and scope of work. (1) General electrical (01):** A general electrical license and/or certificate encompasses all phases and all types of electrical and telecommunications installations and minor plumbing under RCW 18.106.150. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater).

Specialties.

(2) All specialties listed in this subsection may perform the electrical work described within their specific specialty as allowed by the occupancy and location described within the specialty's scope of work. Except for residential (02), the scope of work for these specialties does not include plumbing work regulated under chapter 18.106 RCW. See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty. For the purposes of RCW 18.106.150, the like-in-kind replacement includes the appliance or any component part of the appliance (e.g., such as, but not limited to, the thermostat in a water heater). **Specialty** (limited) electrical licenses and/or certificates are as follows:

(a) **Residential (02):** Limited to the telecommunications, low voltage, and line voltage wiring of one- and two-family dwellings, or multifamily dwellings of types III, IV or V construction when there are not more than six stories of multifamily dwellings of types III, IV or V construction above grade or above types I or II construction. All wiring is limited to nonmetallic sheathed cable, except for services and/or feeders, exposed installations where physical protection is required, and for wiring buried below grade.

(i) This specialty also includes the wiring for ancillary structures located on the same property and under the same ownership as the dwelling structure(s) such as, but not lim-

ited to: Appliances, equipment, swimming pools, septic pumping systems, domestic water systems, limited energy systems (e.g., doorbells, intercoms, fire alarm, burglar alarm, energy control, HVAC/refrigeration, etc.), multifamily complex offices/garages, site lighting when supplied from the residence or ancillary structure, and other structures directly associated with the functionality of the residential units.

(ii) This specialty does not include wiring of:

(A) Any portion of any occupancy of types I or II construction; or

(B) Occupancies defined in WAC 296-46B-900(1), or commercial occupancies such as: Motels, hotels, offices, assisted living facilities, or stores; or

(C) Services, generators, HVAC/refrigeration equipment, fire pumps or other equipment that serve other than one- and two-family dwellings, or multifamily dwellings of types III, IV, or V construction or ancillary structures; or

(D) Interconnected electric power production sources not connected to equipment that supplies one- and two-family dwellings, or multifamily dwellings of types III, IV or V construction, or ancillary structures; or

(E) Any portion of wiring for conveyances regulated under chapter 70.87 RCW serving more than one residential dwelling unit.

(iii) For the purposes of this section, classification of types of construction are as determined by the local building official.

(iv) See RCW 18.106.150 for plumbing exceptions for the residential (02) specialty.

(b) **Pump and irrigation (03):** Limited to the electrical connection of circuits, feeders, controls, low voltage, related telecommunications, and services to supply: Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls, and irrigation water pumps, circular irrigating system's pumps and pump houses.

This specialty may also perform the work defined in (c) of this subsection.

Also see RCW 18.106.010 (10)(c).

(c) **Domestic pump (03A):** Limited to the extension of a branch circuit, which is supplied and installed by others, to signaling circuits, motor control circuits, motor control devices, and pumps which do not exceed 7 1/2 horsepower at 250 volts AC single phase input power, regardless of motor controller output or motor voltage/phase, used in residential potable water or residential sewage disposal systems. Domestic water systems and public water systems include but are not limited to pumps, pressurization, filtration, treatment, or other equipment and controls.

Also see RCW 18.106.010 (10)(c).

(d) **Signs (04):** Limited to placement and connection of signs and outline lighting, the electrical supply, related telecommunications, controls and associated circuit extensions thereto; and the installation of a maximum 60 ampere, 120/240 volt single phase service to supply power to a remote sign only. This specialty may service, maintain, repair, or install retrofit kits within housings of existing exterior luminaires that are mounted on a pole or other structure with like-in-kind or retrofit kit components.

(i) Electrical licensing/certification is not required to:

(A) Clean the nonelectrical parts of an electric sign;

(B) Form or pour a concrete pole base used to support a sign;

(C) Operate machinery used to assist an electrician in mounting an electric sign or sign supporting pole; or

(D) Assemble the structural parts of a billboard.

(ii) Electrical licensing/certification is required to: Install, modify, or maintain a sign, sign supporting pole, sign face, sign ballast, lamp socket, lamp holder, disconnect switch, or any other part of a listed electric sign.

(e) **Limited energy system (06):** Limited to the installation of signaling and power limited circuits and related equipment. This specialty is restricted to low-voltage circuits. This specialty includes the installation of telecommunications, HVAC/refrigeration low-voltage wiring, fire protection signaling systems, intrusion alarms, energy management and control systems, industrial and automation control systems, lighting control systems, commercial and residential amplified sound, public address systems, and such similar low-energy circuits and equipment in all occupancies and locations.

(i) For the purposes of this section, when a line voltage connection is removed and reconnected to a replacement component located inside the control cabinet, the replacement must be like-in-kind or replaced using the equipment manufacturer's authorized replacement component. The line voltage circuit is limited to 120 volts 20 amps maximum and must have a means of disconnect.

(ii) The limited energy systems (06) specialty may repair or replace line voltage connections terminated inside the cabinet to power supplies internal to the low voltage equipment provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the circuit.

(iii) The limited energy systems (06) specialty may not replace or modify the line voltage circuit or cabling or alter the means of connection of the line voltage circuit to the power supply or to the control cabinet.

Limited energy electrical contractors may perform all telecommunications work under their specialty (06) electrical license and administrator's certificate.

(f) **HVAC/refrigeration systems:**

(i) See WAC 296-46B-100 for specific HVAC/refrigeration definitions.

(ii) For the purposes of this section when a component is replaced, the replacement must be like-in-kind or made using the equipment manufacturer's authorized replacement component.

(iii) The HVAC/refrigeration specialties described in (f)(v) and (vi) of this subsection may:

(A) Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all residential occupancies;

(B) Install, repair, replace, and maintain line voltage components within HVAC/refrigeration equipment. Such line voltage components include product illumination luminaires installed within and powered from the HVAC/refrigeration system (e.g., reach-in beverage coolers, frozen food cases, produce cases, etc.) and new or replaced factory authorized accessories such as internally mounted outlets;

(C) Repair, replace, or maintain the internal components of the HVAC/refrigeration equipment disconnecting means or controller so long as the disconnecting means or controller is not located within a motor control center or panelboard;

(D) Install, repair, replace, and maintain short sections of raceway to provide physical protection for low-voltage cables. For the purposes of this section a short section cannot mechanically interconnect two devices, junction boxes, or other equipment or components; and

(E) Repair, replace, or maintain line voltage flexible supply whips not over six feet in length, provided there are no modifications to the characteristics of the branch circuit/feeder load being supplied by the whip other than a reduction in the HVAC unit's rated maximum overcurrent protection size. There is no limitation on the whip raceway method (e.g., metallic replaced by nonmetallic).

(iv) The HVAC/refrigeration specialties described in (f) (v) and (vi) of this subsection may not:

(A) Install line voltage controllers or disconnect switches external to HVAC/refrigeration equipment;

Exception: If HVAC/R equipment is being replaced, this specialty may remove and replace a disconnecting means enclosure mounted on the surface of the HVAC/R equipment with a like-in-kind disconnecting means enclosure rated not more than 20 amperes and 120 volts using the existing wiring method. When performing this work, this specialty may install up to ten feet of raceway to provide physical protection for nonmetallic cables, but the raceway may not terminate in a panelboard.

(B) Install, repair, replace, or maintain:

- Integrated building control systems, other than HVAC/refrigeration systems;
- Single stand-alone line voltage equipment or components (e.g., heat cable, wall heaters, radiant panel heaters, baseboard heaters, contactors, motor starters, and similar equipment) unless the equipment or component:

Is exclusively controlled by the HVAC/refrigeration system and requires the additional external connection to a mechanical system(s) (e.g., connection to water piping, gas piping, refrigerant system, ducting for the HVAC/refrigeration system, gas fireplace flume, ventilating systems, etc. (i.e., as in the ducting connection to a bathroom fan)). The external connection of the equipment/component to the mechanical system must be required as an integral component allowing the operation of the HVAC/refrigeration system; or

Contains a HVAC/refrigeration mechanical system(s) (e.g., water piping, gas piping, refrigerant system, etc.) within the equipment (e.g., "through-the-wall" air conditioning units, self-contained refrigeration equipment, etc.);

- Luminaires that serve as a building or structure lighting source, even if mechanically connected to a HVAC/refrigeration system (e.g., troffer luminaire used as a return air device, lighting within a walk-in cooler/freezer used for personnel illumination);

- Raceway/conduit systems;

- Line voltage: Service, feeder, or branch circuit conductors. However, if a structure's feeder/branch circuit supplies HVAC/refrigeration equipment containing a supplementary overcurrent protection device(s), this specialty may install

the conductors from the supplementary overcurrent device(s) to the supplemental HVAC/refrigeration equipment if the supplementary overcurrent device and the HVAC/refrigeration equipment being supplied are located within sight of each other; or

- Panelboards, switchboards, or motor control centers external to HVAC/refrigeration system.

(v) HVAC/refrigeration **(06A)**:

(A) This specialty is not limited by voltage, phase, or amperage.

(B) No unsupervised electrical trainee can install, repair, replace, or maintain any part of a HVAC/refrigeration system that contains any circuit rated over 600 volts whether the circuit is energized or deenergized.

(C) This specialty may:

- Install HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies:

That have no more than three stories on/above grade; or  
Regardless of the number of stories above grade if the installation:

~~((Does not pass between stories;))~~

- Is made in a previously occupied and wired space; and
- Is restricted to the HVAC/refrigeration system;
- Repair, replace, and maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in all occupancies regardless of the number of stories on/above grade.

- Install a bonding conductor for metal gas piping to an existing accessible grounding electrode conductor or grounding electrode only when terminations can be made external to electrical panelboards, switchboards, or other distribution equipment.

(D) This specialty may not install, repair, replace, or maintain: Any electrical wiring governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations) located outside the HVAC/refrigeration equipment.

(vi) HVAC/refrigeration - Restricted **(06B)**:

(A) This specialty may not perform any electrical work where the primary electrical power connection to the HVAC/refrigeration system exceeds: 250 volts, single phase, or 120 amps.

(B) This specialty may install, repair, replace, or maintain HVAC/refrigeration: Telecommunications, Class 2 low-voltage control circuit wiring/components in other than residential occupancies that have no more than three stories on/above grade.

(C) This specialty may not install, repair, replace, or maintain:

- The allowed telecommunications/low-voltage HVAC/refrigeration wiring in a conduit/raceway system; or

- Any electrical work governed under article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

(g) **Nonresidential maintenance (07)**: Limited to maintenance, repair and replacement of like-in-kind existing electrical equipment and conductors. This specialty does not include maintenance activities in residential dwellings defined in (a) of this subsection for the purposes of accumu-

lating training experience toward qualification for the residential (02) specialty electrician examination.

(i) This specialty includes the installation and connections of temporary conductors and equipment for the purpose of load testing, not to exceed 600 volts.

(ii) For the purposes of replacement of electrical equipment, where the new equipment has a lower ampere rating than the equipment being replaced and there are no modifications to the ampacity rating of the existing conductors, this specialty may replace a device(s) that provides overcurrent or overload protection for the new equipment with a device(s) having a lower ampere rating in accordance with the nameplate rating of the new equipment.

(iii) This specialty may perform the work defined in (h), (i), (j), (k), and (l) of this subsection.

(h) **Nonresidential lighting maintenance and lighting retrofit (07A):** Limited to working within the housing of existing nonresidential luminaires for work related to repair, service, maintenance of luminaires and installation of energy efficiency lighting retrofit upgrades. This specialty includes replacement of ((lamps,)) ballasts, sockets, and the installation of listed lighting retrofit reflectors and kits. All work is limited to the luminaire body, except remote located ballasts may be replaced or retrofitted with approved products. This specialty does not include installing new luminaires or branch circuits; moving or relocating existing luminaires; or altering existing branch circuits.

(i) **Residential maintenance (07B):** This specialty is limited to residential dwellings as defined in WAC 296-46B-920 (2)(a), multistory dwelling structures with no commercial facilities, and the interior of dwelling units in multistory structures with commercial facilities. This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-901.

This specialty is limited to equipment and circuits to a maximum of 250 volts, 60 amperes, and single phase maximum.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit or whip.

For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(j) **Restricted nonresidential maintenance (07C):** This specialty may maintain, repair, or replace (like-in-kind) existing electrical utilization equipment, and all permit exempted work as defined in WAC 296-46B-901 except for the replacement or repair of circuit breakers.

This specialty is limited to equipment and circuits to a maximum of 277 volts and 20 amperes for lighting branch circuits only and/or maximum 250 volts and 60 amperes for other circuits.

The replacement of luminaires is limited to in-place replacement required by failure of the luminaire to operate. Luminaires installed in suspended lay-in tile ceilings may be relocated providing: The original field installed luminaire

supply whip is not extended or relocated to a new supply point; or if a manufactured wiring assembly supplies luminaire power, a luminaire may be relocated no more than eight feet providing the manufactured wiring assembly circuiting is not changed.

This specialty may disconnect and reconnect low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit. For the purpose of this specialty, "electrical equipment" does not include electrical conductors, raceway or conduit systems external to the equipment or whip.

This specialty may perform the work defined in (h) and (i) of this subsection.

This specialty cannot perform any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(k) **Appliance repair (07D):** Servicing, maintaining, repairing, or replacing household appliances, small commercial/industrial appliances, and other small electrical utilization equipment.

(i) For the purposes of this subsection:

(A) The appliance or electrical utilization equipment must be self-contained and built to standardized sizes or types. The appliance/equipment must be connected as a single unit to a single source of electrical power limited to a maximum of 250 volts, 60 amperes, single phase.

(B) Appliances and electrical utilization equipment include, but are not limited to: Ovens, office equipment, vehicle repair equipment, commercial kitchen equipment, self-contained hot tubs and spas, grinders, and scales.

(C) Appliances and utilization equipment do not include systems and equipment such as: Alarm/energy management/similar systems, luminaires, furnaces/heaters/air conditioners/heat pumps, sewage disposal equipment, door/gate/similar equipment, or individual components installed so as to create a system (e.g., pumps, switches, controllers, etc.).

(ii) This specialty includes:

(A) The in-place like-in-kind replacement of the appliance or equipment if the same unmodified electrical circuit is used to supply the equipment being replaced. This specialty also includes the like-in-kind replacement of electrical components within the appliance or equipment;

(B) The disconnection and reconnection of low-voltage control and line voltage supply whips not over six feet in length provided there are no modifications to the characteristics of the branch circuit; and

(C) The installation of an outlet box and outlet at an existing appliance or equipment location when converting the appliance from a permanent electrical connection to a plug and cord connection. Other than the installation of the outlet box and outlet, there can be no modification to the existing branch circuit supplying the appliance or equipment.

(iii) This specialty does not include:

(A) The installation, repair, or modification of branch circuits conductors, services, feeders, panelboards, disconnect switches, or raceway/conductor systems interconnecting



multiple appliances, equipment, or other electrical components.

(B) Any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations).

(C) Any plumbing work regulated under chapter 18.106 RCW.

(l) **Equipment repair (07E):** Servicing, maintaining, repairing, or replacing utilization equipment.

See RCW 19.28.095 for the equipment repair scope of work and definitions. This specialty cannot perform any plumbing work regulated under chapter 18.106 RCW.

(m) **Telecommunications (09):** Limited to the installation, maintenance, and testing of telecommunications systems, equipment, and associated hardware, pathway systems, and cable management systems.

(i) This specialty includes:

(A) Installation of open wiring systems of telecommunications cables.

(B) Surface nonmetallic raceways designated and used exclusively for telecommunications.

(C) Optical fiber innerduct raceway.

(D) Underground raceways designated and used exclusively for telecommunications and installed for additions or extensions to existing telecommunications systems not to exceed fifty feet inside the building.

(E) Incidental short sections of circular or surface metal raceway, not to exceed ten feet, for access or protection of telecommunications cabling and installation of cable trays and ladder racks in telecommunications service entrance rooms, spaces, or closets.

(F) Audio or paging systems where the amplification is integrated into the telephone system equipment.

(G) Audio or paging systems where the amplification is provided by equipment listed as an accessory to the telephone system equipment and requires the telephone system for the audio or paging system to function.

(H) Closed circuit video monitoring systems if there is no integration of line or low-voltage controls for cameras and equipment. Remote controlled cameras and equipment are considered (intrusion) security systems and must be installed by appropriately licensed electrical contractors and certified electricians.

(I) Customer satellite and conventional antenna systems receiving a telecommunications service provider's signal. All receiving equipment is on the customer side of the telecommunications network demarcation point.

(ii) This specialty does not include horizontal cabling used for fire protection signaling systems, intrusion alarms, access control systems, patient monitoring systems, energy management control systems, industrial and automation control systems, HVAC/refrigeration control systems, lighting control systems, and stand-alone amplified sound or public address systems. Telecommunications systems may interface with other building signal systems including security, alarms, and energy management at cross-connection junctions within telecommunications closets or at extended points of demarcation. Telecommunications systems do not include the installation or termination of premises line voltage service, feeder, or branch circuit conductors or equipment. Horizontal

cabling for a telecommunications outlet, necessary to interface with any of these systems outside of a telecommunications closet, is the work of the telecommunications contractor.

(n) **Door, gate, and similar systems (10):** This specialty may install, service, maintain, repair, or replace door/gate/similar systems electrical operator wiring and equipment.

(i) For the purposes of this subsection, door/gate/similar systems electrical operator systems include electric gates, doors, windows, awnings, movable partitions, curtains and similar systems. These systems include, but are not limited to: Electric gate/door/similar systems operators, control push buttons, key switches, key pads, pull cords, air and electric treadle, air and electric sensing edges, coil cords, take-up reels, clocks, photo electric cells, loop detectors, motion detectors, remote radio and receivers, antenna, timers, lock-out switches, stand-alone release device with smoke detection, strobe light, annunciator, control panels, wiring and termination of conductors.

(ii) This specialty includes:

(A) Low-voltage, NEC Class 2, door/gate/similar systems electrical operator systems where the door/gate/similar systems electrical operator system is not connected to other systems.

(B) Branch circuits originating in a listed door/gate/similar systems electric operator control panel that supplies only door/gate/similar systems system components providing: The branch circuit does not exceed 600 volts, 20 amperes and the component is within sight of the listed door/gate/similar systems electric operator control panel.

(C) Reconnection of line voltage power to a listed door/gate/similar systems electric operator control panel is permitted provided:

- There are no modifications to the characteristics of the branch circuit/feeder;

- The circuit/feeder does not exceed 600 volts, 20 amperes; and

- The conductor or conduit extending from the branch circuit/feeder disconnecting means or junction box does not exceed six feet in length.

(iii) This specialty does not include any work governed under Article(s) 500, 501, 502, 503, 504, 505, 510, 511, 513, 514, 515, or 516 NEC (i.e., classified locations). This specialty may not install, repair, or replace branch circuit (line voltage) conductors, services, feeders, panelboards, or disconnect switches supplying the door/gate/similar systems electric operator control panel.

(3) A specialty electrical contractor, other than the (06) limited energy specialty electrical contractor, may only perform telecommunications work within the equipment or occupancy limitations of their specialty electrical contractor's license. Any other telecommunications work requires a telecommunications contractor's license.

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-925 Electrical/telecommunications contractor's license.**

**General.**

(1) The department will issue an electrical/telecommunications contractor's license that will expire twenty-four months following the date of issue to a person, firm, partnership, corporation or other entity that complies with requirements for such license in chapter 19.28 RCW. An electrical/telecommunications contractor's license will not be issued to or renewed for a person, firm, or partnership unless the Social Security number, date of birth, and legal address of each member(s) (see WAC 296-46B-100 definition for member), are submitted with the application. The department may issue an electrical/telecommunications contractor's license for a period greater or less than twenty-four months for the purpose of equalizing the number of electrical contractor's licenses that expire each month. The department may prorate the electrical/telecommunications contractor's license fee according to the license period.

The applicant, upon application and renewal, must provide the department with the Social Security number, date of birth, and legal address of each member(s).

(2) Combination specialty contractor's license. The department may issue a combination specialty contractor's license to a firm that qualifies for more than one specialty electrical contractor's license. The assigned administrator must be certified in all specialties applicable to the combination specialty contractor's license. The license will plainly indicate the specialty licenses' codes included in the combination license. An administrator assigned to a telecommunications contractor must be certified as a telecommunications administrator. A combination license will not be issued for telecommunications **(09)**.

(3) See RCW 19.28.041(7) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

(4) The department may deny application, renewal, change of assignment of administrator/master electrician, reinstatement, or issuance of an electrical/telecommunications contractor's license if a firm, an owner, partner, member, or corporate officer owes money as a result of an outstanding final judgment(s) under chapter 19.28 RCW.

#### **Electrical/telecommunications contractor bond, cash or securities deposit.**

(5) Bond, cash, or securities deposit.

(a) The electrical/telecommunications contractor may furnish the department with a cash or security deposit to meet the bond requirements in lieu of posting a bond. A cash or security deposit assigned to the department for bond requirements will be held in place for one year after the contractor's license is expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as an electrical/telecommunications contractor. Upon written request, the cash or security deposit will then be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

(b) See RCW 19.28.041(7) for a contractor doing domestic pumping work as defined in RCW 18.106.010 (10)(c).

#### **Telecommunications contractor insurance.**

(6) To obtain a telecommunications contractor's license, the applicant must provide the department with an original

certificate of insurance naming the department of labor and industries, electrical section as the certificate holder. Insurance coverage must be no less than twenty thousand dollars for injury or damages to property, fifty thousand dollars for injury or damage including death to any one person, and one hundred thousand dollars for injury or damage including death to more than one person. The insurance will be considered a continuing obligation unless canceled by the insurance company. The insurance company must notify the department in writing ten days prior to the effective date of said cancellation or failure to renew.

(7) The telecommunications contractor may furnish the department with an assigned account to meet the insurance requirements in lieu of a certificate of insurance. An account assigned to the department for insurance requirements will be held in place for three years after the contractor's license is expired, revoked, or the owner notifies the department in writing that the company is no longer doing business in the state of Washington as a telecommunications contractor. Upon written request, the account then will be released by the department providing there is no pending legal action against the contractor under chapter 19.28 RCW of which the department has been notified.

#### **Electrical/telecommunications contractor exemptions.**

(8) The following types of systems and circuits are considered exempt from the requirements for licensing and permitting described in chapter 19.28 RCW. The electrical failure of these systems does not inherently or functionally compromise safety to life or property.

Low-voltage thermocouple derived circuits and low-voltage circuits for:

(a) ~~((Built-in))~~ Residential: Garage doors and built-in vacuum systems ((and garage doors)); and

(b) Underground: Landscape sprinkler systems, landscape lighting, and antennas for wireless animal containment fences.

For these types of systems and circuits to be considered exempt, the following conditions must be met:

(c) The power supplying the installation must be derived from a listed Class 2 power supply;

(d) The installation and termination of line voltage equipment and conductors supplying these systems is performed by appropriately licensed and certified electrical contractors and electricians;

(e) The conductors of these systems do not pass through fire-rated walls, fire-rated ceilings or fire-rated floors in other than residential units; and

(f) Conductors or luminaires are not installed in installations covered by the scope of Article 680 NEC (swimming pools, fountains, and similar installations).

(9) Firms who clean and/or replace lamps in luminaires are not included in the requirements for licensing in chapter 19.28 RCW. This exemption does not apply to electric signs as defined in the NEC.

(10) Firms who install listed plug and cord connected utilization equipment are not included in the requirements for licensing in chapter 19.28 RCW. The plug and cord must be a single listed unit consisting of a molded plug and cord and not exceeding 250 volt 60 ampere single phase. The plug and cord can be field installed per the manufacturer's instructions

and the product listing requirements. The utilization equipment must be a single manufactured unit, including the plug and cord, that does not require any electrical field assembly except for the installation of the plug and cord and is allowed to be plug and cord connected by the NEC. Firms who perform field electrical servicing, maintaining, or repairing of plug and cord connected utilization equipment other than household appliances are not included in this exemption.

(11) Firms regulated by the Federal Communications Commission or the utilities and transportation commission, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(12) Unregulated firms, supplying telecommunications service to an end-user's property, are not required to be licensed as a telecommunications contractor under chapter 19.28 RCW for telecommunications installations made ahead of the telecommunications network demarcation point.

(13) Leaseholders. For electrical installations, maintenance, or alterations to existing buildings only, any person, firm, partnership, corporation, or other entity holding a valid, signed lease from the property owner authorizing the leaseholder to perform electrical work, on the property the leaseholder occupies, will be allowed to purchase an electrical permit(s) and do electrical work on or within the property described in the lease. The lessee and/or his or her regularly employed employees must perform the electrical installation, maintenance and alteration.

The lessee who performs the electrical maintenance or installation work must be the sole occupant of the property or space. Property owners or leaseholders cannot perform electrical work on new buildings for rent, sale, or lease, without the proper electrical licensing and certification. For the purposes of this section, electrical work associated with setting a manufactured, mobile, or modular building is considered electrical work on a new building. Refer to RCW 19.28.261 for exemptions from licensing and certification.

(14) Assisting a householder. A friend, neighbor, relative, or other person (including a certified electrician) may assist a householder, at his/her residence in the performance of electrical work on the condition that the householder is present when the work is performed and the person assisting the householder does not accept money or other forms of compensation for the volunteer work. For the purposes of this subsection, a residence is a single-family residence.

(15) Volunteering to do electrical work. There are no exceptions from the electrical contractor's license or electrician certification requirements to allow persons to perform volunteer electrical work for anyone other than a householder or a nonprofit organization as allowed by RCW 19.28.091(7). For the purpose of this section, volunteer means that there is no remuneration or receiving of goods or services in return for electrical installations performed.

(16) Farms or place of business. See RCW 19.28.261 for licensing/certification exemptions allowed for the owner(s) of a farm or other place of business and for the employees of the owner.

(17) The licensing and certification requirements of chapter 19.28 RCW do not apply to persons or firms who remove electrical wiring and/or equipment for the purpose of disposal when all conductors, raceways, and equipment to be disposed of have been physically separated from the source of power by a properly certified electrician employed by a licensed electrical contractor, or person(s) meeting the exemptions listed in RCW 19.28.261. Removal of a component or only a portion of an equipment unit is considered electrical maintenance and does not qualify for this exemption.

#### **Exemptions - Electrical utility and electrical utility's contractor.**

(18) Electrical utility exemptions.

(a) Utility system exemption - RCW 19.28.010(1) and 19.28.091(1).

(i) Neither a serving electrical utility nor a contractor or subcontractor employed by the serving electrical utility is required to have an electrical contractor's license for work on the "utility system" or on service connections or on meters or other apparatus used to measure the consumption of electricity.

(ii) Exemption from inspection. The work of a serving electrical utility and its contractor(s) on the work exempted by NEC 90.2 (b)(5), 1981 edition, is not subject to inspection.

(b) Street/area lighting exemption - RCW 19.28.091 (2)

(a).

(i) On:

(A) Publicly owned streets, parks, athletic/play fields, beaches, and similar areas where the public has general, clear, and unrestricted access; or

(B) Outside area lighting installed on a utility owned pole(s) that is used to support the utility's electric distribution wiring or equipment that supplies a private property owner's property, the serving electrical utility is considered to be an owner and is not required to have an electrical contractor's license or electrical permit to install or work on wiring or equipment, owned by the utility and used in the lighting of those streets/areas.

(ii) On other privately or publicly owned property (e.g., private streets, parking lots, businesses, schools, etc.), the serving utility is not required to have an electrical contractor's license or electrical permit to install or work on outside street/area lighting where the light(s) is supplied directly from the utility system and installed according to the NESC or NEC.

This work is considered to be utility type work.

An electric utility is not allowed to install or work on street/area lighting:

(A) When the area is privately or publicly owned and the public does not have general, clear, and otherwise unrestricted access such as: Industrial property, residential property, or other property where the public's access is restricted in any manner.

(B) Where the lighting is supplied from a source of power derived from a customer-owned electrical system.

(C) Where the lighting or wiring is attached to a building or other customer-owned structure.

(D) If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

(c) Customer-owned equipment exemption - RCW 19.28.091 (2)(b). A serving electrical utility is not required to have an electrical contractor's license to work on electrical equipment owned by a commercial, industrial, or public institution customer if:

(i) The utility has not solicited such work; and

(ii) Such equipment:

(A) Is located outside a building or structure; and

(B) The work performed is ahead of the secondary side of the customer's transformer(s) which supplies power at the customer's utilization voltage.

If the utility does not directly perform the installation or work, it may only contract the work to an appropriately licensed electrical contractor(s). See RCW 19.28.091(3).

This work is considered to be utility type work.

The owner will provide the electrical work permit and be responsible for requesting inspections and for ensuring the work is installed per chapter 19.28 RCW and this chapter.

**Exemptions - Electrical utility telecommunications transition equipment installations, maintenance and repair.**

(19) No license, inspection or other permit will be required by the department of any electric utility or, of any person, firm, partnership or corporation or other entity employed or retained by an electric utility or its contractor, because of work in connection with the installation, maintenance, or repair of telecommunications transition equipment located ahead of the utility's telecommunications network demarcation point on the outside of a building or other structure when the work is performed by a qualified person consistent with the requirements of the National Electric Code (NEC) except as provided in (a) and (b) of this subsection:

(a) The following exceptions to the NEC will be permitted:

(i) An additional service disconnect supplying power to the transition equipment can be connected on the supply side of the main service disconnect supplying general power to the building;

(ii) Service entrance disconnects may be separated when clearly labeled;

(iii) The service disconnect used for supplying power to the transition equipment must be connected to the grounding electrode system using:

(A) #8 AWG copper or larger grounding electrode conductor if protected from physical damage; or

(B) #6 AWG copper or larger grounding electrode conductor if not protected from physical damage;

(iv) Use of equipment or materials that have been listed/field evaluated by a recognized independent testing laboratory or the department;

(v) Low-voltage circuits do not require a separate disconnecting means and may be grounded to the transition equipment grounding system;

(vi) Any other variance to the NEC must be approved by the department.

(b) A variance recommended by a joint utility standards group composed of representatives of both public and private utilities or certified by a professional engineer will be

approved by the department unless the recommendation is inconsistent with meeting equivalent objectives for public safety.

(c) For the purposes of this section, a qualified worker is employed by a utility or its contractor and is familiar with the construction or operation of such lines and/or equipment that concerns his/her position and who is proficient with respect to the safety hazards connected therewith, or, one who has passed a journey status examination for the particular branch of the electrical trades with which he/she may be connected or is in a recognized training or apprenticeship course and is supervised by a journey level person.

(d) Although the utility is responsible for inspection and approval of the installation, including the selection of material and equipment, the department reserves the right to audit worker qualifications and inspect such installations semi-annually for conformance with the requirements of (a), (b) and (c) of this subsection but will not collect a permit fee for such inspection or audit.

(e) If a utility fails to meet the requirements of this section, the department may require the utility to develop and submit a remedial action plan and schedule to attain compliance with this section which may be enforced by the department.

(f) This exemption will be in addition to any other exemption provided in chapter 19.28 RCW, this chapter or other applicable law.

**Exemptions - Independent electrical power production equipment exemption.**

(20) An independent electrical power production entity is not required to have an electrical contractor's license to work on electrical equipment used to produce or transmit electrical power if:

(a) The entity is:

(i) The owner or operator of the generating facility is regulated by the Federal Energy Regulatory Commission (FERC);

(ii) A municipal utility, or other form of governmental electric utility, or by an electrical cooperative or mutual corporation; or

(iii) The owner or operator of the generating facility is an independent electrical power producer and the facility generates electrical power only for sale to one or more:

(A) Electrical utilities regulated by FERC, municipal utility, or other form of governmental utility, or to an electric cooperative or mutual corporation; and

(B) The electrical power generated by the facility is not used for self-generation or any other on- or off-site function other than sale to one or more utilities regulated by FERC or by one or more state public utilities commissions, or to a PUD, municipal utility, or other form of governmental electric utility, or to an electric cooperative or mutual corporation.

(b) The entity must supply the chief electrical inspector a valid master business license issued by the department of licensing, state of Washington so that the entity's status as a revenue generating business can be confirmed.

(c) The entity has entered into an agreement to sell electricity to a utility or to a third party; and

(d) The electrical equipment is used to transmit electricity from the terminals of an electrical generating unit located on premises to the point of interconnection with a utility system.

(e) The electrical power production facility's generation capacity exceeds 100 KVA.

(f) Notwithstanding that a generating facility may be granted an exemption pursuant to this section, the facility will be subject to all the requirements of chapter 19.28 RCW if the facility at any time in the future ceases to comply with the requirements for exemption. All site facilities not exclusively and directly required to generate and/or distribute the electrical power generated on the site are subject to all the licensing and inspection requirements of chapter 19.28 RCW. All facility services, feeders, and circuits not exclusively and directly required to generate and/or distribute the electrical power (e.g., lights, outlets, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection. Facility circuits supplied to equipment required for the function of generation equipment (e.g., block heaters, power supplies, wind generator tower circuits, etc.) must comply with all requirements of chapter 19.28 RCW for licensing and inspection up to and including the equipment termination point.

(g) The generation equipment must not be mounted on or in any building or structure not required for generation of power (e.g., schools, offices, residences, apartment buildings, hospitals, etc.).

**Exemptions - Telegraph and telephone utility and telegraph and telephone utility's contractor.**

(21) Telegraph and telephone utility exempted equipment and installations. No person, firm, partnership, corporation, or other entity is required to have an electrical contractor's license for work on electrical equipment and installations thereof that are exempted by RCW 19.28.151. For the purposes of this exemption, "building or buildings used exclusively for that purpose" may mean any separate building or space of a building where the space is separated from the remainder of the building by a two-hour fire wall. The telecommunications or telegraph equipment within such a space must supply telephone or telegraph service to other customer's buildings (i.e., telecommunications or telegraph equipment cannot solely supply the building containing the telephone/telegraph space).

**Exemptions - Manufacturers of electrical/telecommunications products.**

(22) Manufacturers of electrical/telecommunications systems products will be allowed to utilize a manufacturer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing:

(a) Provided the product:

(i) Has not been previously energized;

(ii) Has been recalled by the Consumer Product Safety Commission;

(iii) Is within the manufacturer's written warranty period, a period not to exceed one year from date of original installation of the new product; or

(iv) The manufacturer is working under the written request and supervision of an appropriately licensed electrical contractor.

(b) Except for the replacement of individual components, as allowed above, this exemption does not include the on-site assembly, installation, removal, or replacement of the electrical product. Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring.

(c) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory.

(d) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

**Premanufactured electric power generation equipment assemblies and control gear.**

(23) Premanufactured electric power generation equipment assemblies and control gear.

(a) Manufacturers of premanufactured electric power generation equipment assemblies and control gear will be allowed to utilize a manufacturer's authorized factory-trained technician to perform initial calibration, testing, adjustment, modification incidental to the startup and checkout of the equipment, or replacement of components within the confines of the specific product, without permit or required licensing, provided:

(i) For transfer equipment, the product has not been previously energized or is within the manufacturer's written warranty period;

(ii) Modifications to the equipment, as designated above, must not include any changes to the original intended configuration nor changes or contact with external or field-connected components or wiring;

(iii) The manufacturer will be responsible for obtaining any required reapproval/recertification from the original listing or field evaluation laboratory; or

(iv) The manufacturer must notify the department if any modifications have been made or reapproval/recertification is required.

(b) Premanufactured electric power generation equipment assemblies are made up of reciprocating internal combustion engines and the associated control gear equipment. Control gear equipment includes control logic, metering, and annunciation for the operation and the quality of power being generated by the reciprocating internal combustion engine and does not have the function of distribution of power.

(c) Modifications of a transfer switch must not include changes to the original intended configuration or changes or contact with externally field-connected components.

(d) For the purposes of this subsection, the following work on premanufactured electric power generation equipment assemblies is not exempt from the requirements of chapter 19.28 RCW:

(i) Installation or connection of conduit or wiring between the power generation unit, transfer switch, control gear;

(ii) Installation of the transfer switch;

(iii) Connections between the power generation unit, transfer switch, control gear, and utility's transmission or distribution systems;

(iv) Connections between the power generation unit, transfer switch, control gear, and any building or structure;

(v) Test connections with any part of:

(A) The utility's transmission or distribution system; or

(B) The building or structure.

(24) The installation, maintenance, or repair of a medical device deemed in compliance with chapter 19.28 RCW is exempt from licensing requirements under RCW 19.28.091, certification requirements under RCW 19.28.161, and inspection and permitting requirements under RCW 19.28.-101. This exemption does not include work providing electrical feeds into the power distribution unit or installation of conduits and raceways. This exemption covers only those factory engineers or third-party service companies with equivalent training who are qualified to perform such service.

(25) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption. For the purposes of RCW 19.28.091(8), the like-in-kind replacement includes the appliance or any component part of the appliance such as, but not limited to, the thermostat in a water heater.

(26) Nothing in this section will alter or amend any other exemptions from or requirement for licensure or inspection, chapter 19.28 RCW or this chapter.

#### **Photovoltaic equipment.**

(27) See WAC 296-46B-690 for specific exemptions related to photovoltaic installations.

#### **Submersible well pump installers.**

(28) Firms that install submersible pumps and associated wiring in well casings, (excluding connection of pump wiring at the top of the wellhead) are not included in the requirements for licensing in chapter 19.28 RCW.

**EXCEPTION:** For testing purposes of a new submersible pump, well drillers and submersible pump installers registered under chapter 18.27 RCW may temporarily connect a submersible well pump to a portable generator with cord and plug output. All temporary wiring and equipment must be removed immediately upon completion of testing.

**AMENDATORY SECTION** (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

#### **WAC 296-46B-935 Administrator certificate.**

##### **General.**

(1) The department will deny application, renewal, change of assignment, reinstatement, or issuance of an administrator or master electrician certificate if an individual owes money as a result of an outstanding final judgment(s) under chapter 19.28 RCW.

(2) For special accommodation see WAC 296-46B-960.

(3) An applicant will not be issued a specialty administrator certificate that is a subspecialty of a certificate the applicant currently holds (i.e., the applicant is not eligible to take the domestic well administrator examination if the applicant currently possesses a pump and irrigation administrator certificate).

#### **Qualifying for examination.**

(4) There are no qualification requirements for taking an administrator certificate examination. Applicants should contact the testing agency directly.

#### **Original - Administrator certificates.**

(5) The scope of work for electrical administrators is described in WAC 296-46B-920. The department will issue an original administrator certificate to a general administrator, or specialty administrator who:

(a) Successfully completes the appropriate administrator examination; and

(b) Submits the appropriate examination passing report from the testing agency with the applicant's: Date of birth, mailing address, and Social Security number; and

(c) Pays all appropriate fees as listed in WAC 296-46B-909.

For an examination report to be considered, all the above must be submitted within ninety days after the completion of the examination. After ninety days, the applicant will be required to successfully retake the complete examination. An individual's original administrator certificate will expire on their birth date at least one year, and not more than three years, from the date of original issue.

#### **Combination - Specialty administrator certificate.**

(6) The department may issue a combination specialty administrator certificate to an individual who qualifies for more than one specialty administrators' certificate. The combination specialty administrators' certificate will plainly indicate the specialty administrator's certificate(s) the holder has qualified for. Telecommunications cannot be issued a combination because the renewal requirements are different from those required for electrical administrators.

#### **Renewal - Administrator certificate.**

(7) An individual must apply for renewal of their administrator certificate on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years, with the exception of telecommunications administrators, who will be renewed for two years.

(8) An individual may renew their administrator certificate within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All renewals received more than ninety days after the expiration date of the certificate will be denied. The administrator will be required to pass the appropriate administrator examination before being recertified.

(10) All applicants for certificate renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees as listed in WAC 296-46B-909; and

(c) Complete the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed.

Telecommunications administrators are not required to provide continuing education information.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** administrators may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew an administrator's certificate if the individual applies for renewal on or before the certificate expires and pays the appropriate renewal fee. However, the certificate will be placed in an inactive status.

When the certificate is placed in inactive status, an assigned administrator will be automatically unassigned from the electrical contractor. The electrical contractor will be notified of the unassignment and has ninety days to replace the administrator. An assignment fee will then be required per WAC 296-46B-909.

The inactive certificate will be returned to current status upon validation, by the department, of the required continuing education requirements. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended administrator's certificate by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period. Before the suspended administrator's certificate can be activated, the holder must pass the appropriate administrator examination in accordance with RCW ~~((19.28.211(2)))~~ 19.28.061 (2)(a).

(13) An individual may not renew a revoked administrator's certificate.

**AMENDATORY SECTION** (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-940 Electrician/certificate of competency required.**

**General.**

(1) The department will deny application, renewal, reinstatement, or issuance of a certificate or permit if an individual owes money as a result of an outstanding final judgment(s) under chapter 19.28 RCW.

(2) The scope of work for electricians is described in WAC 296-46B-920.

**Electrician - Certificate of competency required.**

(3) To work in the electrical construction trade, an individual must possess, wear, and visibly display on the front of the upper body, a current valid:

- (a) Master journey level electrician certificate of competency issued by the department;
- (b) Journey level electrician certificate of competency issued by the department;
- (c) Master specialty electrician certificate of competency issued by the department;
- (d) Specialty electrician certificate of competency issued by the department; or

(e) Electrical training certificate, learning the trade in the proper ratio, per RCW 19.28.161, under the supervision of a certified master journey level electrician, journey level electrician, master specialty electrician working in their specialty, or specialty electrician working in their specialty.

The certificate may be worn inside the outer layer of clothing when outer protective clothing (e.g., rain gear when outside in the rain, arc flash, welding gear, etc.) is required. The certificate must be worn inside the protective clothing so that when the protective clothing is removed, the certificate is visible. A cold weather jacket or similar apparel is not protective clothing.

The certificate may be worn inside the outer layer of clothing when working in an attic or crawl space or when operating equipment (e.g., drill motor, conduit threading machine, etc.) where wearing the certificate may pose an unsafe condition for the individual.

The certificate must be immediately available for examination at all times.

When working as a certified electrician, the electrician must not display a training certificate.

When supervising a trainee(s), the supervising electrician's certificate must be appropriate for the work being performed by the trainee(s). For the purposes of this section, supervising a trainee is considered to be working in the electrical construction trade.

Any person working as an electrician or trainee must also possess a government issued photo identification and immediately present that identification when requested by the inspector.

(4) The department issues master electrician and electrician certificates of competency in the following areas of electrical work:

- (a) General journey level **(01)**;
- (b) Specialties:
  - (i) Residential **(02)**;
  - (ii) Pump and irrigation **(03)**;
  - (iii) Domestic pump **(03A)**;
  - (iv) Signs **(04)**;
  - (v) Limited energy system **(06)**;
  - (vi) HVAC/refrigeration **(06A)**;
  - (vii) HVAC/refrigeration - Restricted **(06B)**;
  - (viii) Nonresidential maintenance **(07)**;
  - (ix) Nonresidential lighting maintenance and lighting retrofit **(07A)**;
  - (x) Residential maintenance **(07B)**;
  - (xi) Restricted nonresidential maintenance **(07C)**;
  - (xii) Appliance repair **(07D)**;
  - (xiii) Equipment repair **(07E)**; and
  - (xiv) Door, gate, and similar systems **(10)**.

**Original certificates of competency.**

(5) The department will issue an original certificate of competency to master, journey level, or specialty electricians who meet the eligibility requirements listed in:

- (a) RCW 19.28.191 (1)(a) or (b) and chapter 19.28 RCW; and
- (i) Submit an application for an original master electrician certificate including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909;

(b) RCW 19.28.191 (1)(d) and (e);

(i) Submit an original master electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909; or

(c) RCW 19.28.191 (1)(f) through (g);

(i) Submit an original electrician certification examination application including: Date of birth, mailing address and Social Security number; and

(ii) Pay all appropriate fees, as listed in WAC 296-46B-909.

(6) An individual's original electrician certificate of competency will expire on their birth date at least two years, and not more than three years, from the date of original issue.

**Renewal - Master electrician, journey level, and specialty electrician certificates of competency.**

(7) An individual must apply for renewal of their electrician certificate of competency on or before the expiration date of the certificate. The individual may not apply for renewal more than ninety days prior to the expiration date. Renewed certificates are valid for three years.

(8) An individual may renew their certificate of competency within ninety days after the expiration date without reexamination if the individual pays the late renewal fee listed in WAC 296-46B-909.

(9) All applications for renewal received more than ninety days after the expiration date of the certificate of competency require that the electrician pass the appropriate competency examination before being recertified.

(10) All applicants for certificate of competency renewal must:

(a) Submit a complete renewal application;

(b) Pay all appropriate fees; and

(c) Complete the continuing education requirements described in WAC 296-46B-970. Continuing education classes are only valid when all the requirements of WAC 296-46B-970 are completed.

Continuing education for pump and irrigation **(03)** and domestic pump **(03A)** electricians may be comprised of fifty percent electrical and fifty percent plumbing instruction.

(11) An individual who has not completed the required hours of continuing education can renew a certificate of competency if the individual applies for renewal before the certificate of competency expires and pays the appropriate renewal fee. However, the certificate of competency will be placed in an inactive status. The inactive certificate of competency will be returned to current status upon validation, by the department, of the required continuing education. If the certificate renewal date occurs during the inactive period, the certificate must be renewed on or before the renewal date to allow the return to current status.

(12) An individual may renew a suspended certificate of competency by submitting a complete renewal application including obtaining and submitting the continuing education required for renewal. However, the certificate will remain in a suspended status for the duration of the suspension period. Before the suspended certificate of competency can be acti-

vated, the holder must pass the appropriate electrician or master electrician competency examination in accordance with RCW 19.28.211(2).

(13) An individual may not renew a revoked certificate of competency.

**Exemptions - Lineworker.**

(14) When performing the work described and allowed in WAC 296-46B-925 (18)(a) or (b)(i), when employed by the serving utility or its contractor or subcontractor(s), a lineworker is exempt from the requirements of chapter 19.28 RCW.

(15) When performing the work described and allowed in WAC 296-46B-925 (18)(b)(ii) or (c), when employed by the serving utility or its licensed electrical contractor or subcontractor(s), a lineworker must meet the requirements of RCW 19.28.261 (5)(b) or be an appropriately certified electrician. See the definition of a lineworker in WAC 296-46B-100.

**Exemptions - Plumbers.**

(16) Coincidental electrical/plumbing work. See RCW 19.28.091(8) for the plumber exemption. For the purposes of RCW 19.28.091(8), the like-in-kind replacement includes the appliance or any component part of the appliance such as, but not limited to, the thermostat in a water heater.

**Exemptions - Submersible well pump installers.**

(17) When performing the work described and allowed in WAC 296-46B-925(28), regular employees of well drillers or pump installers registered under chapter 18.27 RCW are exempt from the electrician certification requirements of chapter 19.28 RCW.

**Reciprocal agreements between Washington and other states.**

~~((17))~~ (18) The department may negotiate reciprocal agreements with states that have equivalent requirements for certification of journey level or specialty electricians. These agreements allow electricians from those reciprocal states to become certified in the state of Washington without examination and allow Washington certified electricians to become certified in the other states without taking competency examinations. An individual may only apply for reciprocity from another state(s) one time in Washington.

~~((18))~~ (19) An individual will be issued a reciprocal electrician certificate of competency if all the following conditions are met:

(a) The department has a valid reciprocal agreement with the other state in the journey level or specialty category requested;

(b) The individual makes a complete application for a reciprocal certificate on the form provided by the department. A complete application includes:

(i) Application for reciprocal certificate of competency;

(ii) Evidence that the individual meets the eligibility requirements listed in RCW 19.28.191, by presenting a current, valid journeyperson or specialty electrician certificate or certified letter from the issuing state attesting to possession of such certificate by the applicant:

(A) Evidence from an apprenticeship training director that any journey level category applicant has successfully



completed an apprenticeship program that is equivalent to an apprenticeship program approved under chapter 49.04 RCW approved by the department for the electrical construction trade in which the applicant worked in the electrical construction trade for a minimum of eight thousand hours; or

(B) Evidence that any journey level category applicant has worked in the electrical construction trade for a minimum of sixteen thousand hours.

(iii) All appropriate fees as listed in WAC 296-46B-909.

(c) The individual obtained the reciprocal state's certificate of competency as a journey level or specialty electrician by examination and the individual held the reciprocal state's certificate for a period of at least one year.

~~((19))~~ (20) An individual is not eligible for a reciprocal electrician certificate of competency if the individual:

(a) Has failed to renew a similar Washington electrician certificate of competency as required in RCW 19.28.211; or

(b) Has a similar Washington electrician certificate of competency in suspended, revoked, or inactive status under this chapter; or

(c) Owes money as a result of an outstanding final judgment(s) to the department; or

(d) Has ever taken and failed a Washington exam for the certificate being applied for; or

(e) Was a resident of the state of Washington at the time the examination was taken in the other state.

**AMENDATORY SECTION** (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

**WAC 296-46B-970 Continuing education and classroom education requirements.** (1) **DEFINITIONS** - For purposes of this section.

"Applicant" means the entity submitting an application for review.

"Application" means a submittal made by an applicant seeking instructor or class approval.

"Calendar day" means each day of the week, including weekends and holidays.

"Class" means continuing education or basic trainee class.

"Currently adopted code," for this section means the code adopted in WAC 296-46B-010(1) or any more recently published National Electric Code.

"Date of notification" means the date of a request for additional information from the department or the approval/denial letter sent to the applicant by the department.

"Electrical theory" means basic principles of electricity such as: Magnetism, ohm's law, and circuit properties such as voltage, current, power, resistance, inductance, capacitance, reactance, impedance, etc., in series, parallel, and combination AC and DC circuits.

"Examination" is any examination required by this section. Each examination must be unique and must provide randomized questions, except for classroom training. Each examination question bank must be at least two times larger than the number of questions in any individual examination. Examinations must not direct or point the individual to a correct answer or reference. Individuals must be responsible to determine the correct answer without the assistance of the

sponsor. No more than twenty percent of an examination's questions may have a true/false answer. Competency is demonstrated by scoring at least seventy-five percent on the examination.

"Individual" means a master electrician, administrator or electrician seeking credit for continuing education or a trainee seeking credit for basic trainee class for renewal or certification.

"Instructor" means an individual who is authorized to instruct an approved continuing education or basic trainee class.

"Working day" means Monday through Friday, excluding state of Washington holidays.

(2) **GENERAL.**

(a) The department and the electrical board have the right to monitor all approved classes without notice and at no charge.

If the department or electrical board determines that the class or instructor does not meet or exceed the minimum requirements for approval, course length, or instructor qualifications, the department may revoke the class and/or instructor approval and/or reduce the number of credited hours for the class.

(b) Department-offered classes and the instructors used for department classes are automatically approved.

(c) Instructors who meet the minimum requirements using subsection (5)(d)(iv) of this section may only instruct classes sponsored by the manufacturer(s) who verified the instructors' qualifications.

(d) An individual will not be given credit for the same approved continuing education class taken more than once. A course sponsor may not submit an individual's name on a roster(s) for multiple classes (i.e., multiple class numbers) when the classes are given simultaneously (e.g., code update, industry related, and/or basic trainee class that have similar class content given during the same class session). Credit will not be granted for a class that is not approved per this section.

(e) Electrical administrators, master electricians, and electricians:

(i) To be eligible for renewal of an administrator certificate, master electrician or electrician certificate of competency, the individual must have completed at least eight hours of approved continuing education for each year of the prior certification period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the currently adopted code.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and/or its related WAC.

(ii) An individual changing an electrical administrator and an electrician certificate of competency into a master electrician's certificate of competency as allowed in RCW 19.28.191 (1)(a) or (b) must have completed at least eight hours of approved continuing education for each year of the electrician's prior certificate period. The individual is not required to take the classes in separate years.

(A) At least eight hours of the total required continuing education must be on the changes in the currently adopted code.

(B) Four hours of the required continuing education must be on the currently adopted chapter 19.28 RCW and/or its related WAC.

(iii) Any portion of a year of a prior administrator or electrician certificate period is equal to one year for the purposes of the required continuing education.

(iv) An individual who has both an electrician certificate and an administrator certification may use the same class to fulfill the requirements for continuing education.

(f) Training certificates: To be eligible for renewal of a training certificate, the individual must have completed:

(i) At least forty-eight hours of approved basic trainee classes. The individual cannot use a basic trainee class as credit for the continuing education requirements for renewing an electrician or administrator certificate(s) when the class is also used to satisfy the training certificate renewal requirements; or

(ii) Equivalent electrical training classes taken as a part of an approved:

- Apprenticeship program under chapter 49.04 RCW; or
- Electrical training program under RCW 19.28.191 (1)

(h).

Equivalent classes must be submitted to and approved by the chief electrical inspector thirty calendar days prior to offering the class.

(g) A continuing or basic trainee class attended or completed by an individual before the class's effective date cannot be used to meet the certificate renewal/certification requirements.

(3) CLASS AND INSTRUCTOR - GENERAL APPROVAL PROCESS.

(a) The department will review the application for completeness and conformance with the requirements in this section.

(b) The department will deny approval of applications that do not meet the minimum requirements.

(c) All applications will be considered to be new applications (i.e., Classes and instructors may not be renewed. All applications must include all information necessary to show conformance with the minimum requirements).

(d) Application process:

(i) The applicant must submit a complete application to the department at least thirty calendar days prior to offering or instructing a class.

(ii) The department will only consider material included with the application when reviewing an application.

(iii) All applications must include:

(A) Applicant's name, address, contact name, email address, and telephone number;

(B) All required fees.

(e) Review process:

(i) When the application is received:

(A) The department must review the application for completeness within seven working days after receipt.

(B) If the application is incomplete, the department must, within two working days, notify the applicant of the status of the review and what additional information is required.

• The applicant must provide any additional information requested by the department within five working days after the date of notification.

• The department will deny the application if the additional required information is not received within the five working days after the date of notification for additional information.

(C) The department must complete the review and approval/denial process within fifteen working days upon receipt of a complete application or additional requested information and within two working days notify the applicant of the approval/denial in writing or electronically.

(ii) A notification of denial must include:

(A) Applicant's name and telephone number;

(B) Date of denial;

(C) Sponsor's name and class title if applicable;

(D) Instructor's name if applicable; and

(E) The reason for denial.

(iii) A notification of approval:

(A) For classes must include:

• Applicant's name and telephone number;

• Sponsor's name and telephone number;

• Sponsor number;

• Class title;

• Class number;

• Number of hours approved for the class. The department may reduce the hours requested in the application if the review shows that the requested number of hours is excessive;

• Effective date for this class;

• Expiration date of class;

• Category for which the class is approved (i.e., code update, RCW/WAC update, industry related, basic trainee class, or pumping industry);

• Type of class (i.e., classroom, correspondence, internet); and

• Whether the class is open to the public.

(B) For instructors, must include:

• Applicant's name and telephone number;

• Instructor's name and telephone number;

• Effective date for the approval; and

• Expiration date of the approval.

(iv) The applicant may request a review, by the electrical board, of the department's denial or modification of the application. The applicant must submit a written request for review to the Secretary of the Electrical Board - Chief Electrical Inspector - Within twenty days of notification of the denial/modification. The request must include a review fee of one hundred nine dollars and fifty cents. The review fee is nonrefundable.

(4) CLASS APPROVAL PROCESS.

(a) Class applications must include:

(i) Sponsor's name, address, contact name, email address, telephone number, and sponsor's number (if a class was previously approved);

(ii) Class title;

(iii) Number of education hours requested for the class;

(iv) Category of class for which approval is sought (e.g., code update, RCW/WAC update, industry related, basic trainee class, or pumping industry);

(v) Statement that all requirements of this section will be complied with;

(vi) Statement of whether the class is open to the public;

(vii) Class syllabus (e.g., presentation method(s), description of the training, specific NEC/RCW/WAC articles taught, theory subjects, time allowed for various subject matter components, examination question samples, etc.) describing how the class meets the minimum requirements, described below, for the type of class being offered;

(viii) The applicant must show that the sponsor regularly employs at least one staff member who meets the requirements for instructors in this section;

(ix) List of resources (e.g., texts, references, etc.).

(b) Class approval will be valid for three years except:

(i) If the class is "code update" and a new NEC is adopted by the department within the class approval period, the class approval will be considered automatically revoked; or

(ii) If the class is modified after the application is approved, the class approval will be considered automatically revoked (i.e., change in syllabus, hours, examination, etc.).

(c) Minimum requirements:

(i) Class length:

(A) The minimum allowed length of a class is two hours; however, the minimum length for a basic trainee class is four hours that may be delivered in multiple classroom components of not less than two hours each.

(B) Class length must be based on two-hour increments (e.g., 2, 4, 6, 8, etc.)

(C) Class length must be based on the following:

• Classroom instruction will be based on the total hours the individual is in the classroom. A continuing education class may be divided into multiple components so long as each component is not less than two hours in length and all components are completed within a one-month period. A basic trainee class may be divided into multiple components so long as each component is not less than two hours in length and all components are completed within a ~~((two))~~ six-month period.

• Distance learning continuing education classes (i.e., correspondence and internet continuing education classes) will be based on clock hours necessary to complete the class if it was presented in a classroom setting.

(ii) Class content:

(A) Industry-related classes must be based on:

• Codes or rules included in the currently adopted National Electrical Code (see definition of currently adopted), the electrical law/rule;

• Electrical theory based on ~~((currently published documents that are))~~ original copyrighted material that is readily available for retail purchase; and/or

• Materials and methods that pertain to electrical construction, building management systems, electrical maintenance, or workplace electrical safety such as *NFPA 70E - ((Handbook)) Standard for Electrical Safety in the Workplace*. First aid type classes must be approved and will be limited to four hours of credit towards the individual's total continuing education requirement.

(B) Code update classes must be based on the currently adopted (see definition) National Electrical Code and must

specify the code articles to be addressed in the class presentation.

(C) RCW/WAC update classes must be based on the latest adopted versions of chapter 19.28 RCW and/or chapter 296-46B WAC.

(D) All basic trainee classes must be classroom instruction only and based upon basic electrical theory based on original copyrighted material that is readily available for retail purchase, currently adopted (see definition for currently adopted) National Electrical Code, and/or use of the electrical laws or rules. Correspondence and internet classes are not allowed. All basic trainee classes must include an appropriate written competency examination(s) to ensure the participant has mastered the basic concepts of the class. The examination must consist of at least five questions per two hours of class credit.

(E) For all pumping industry classes, curriculum must include fifty percent electrical and fifty percent plumbing instruction.

(F) The sponsor of any distance learning class (e.g., correspondence/internet continuing education) must provide the following additional information with the application:

• How the sponsor will provide an orientation session with the instructor or an affiliated representative of the sponsor.

• The application must include a complete description of any hardware, software, or other technology to be used by the provider and needed by the student to effectively engage in the delivery and completion of the class material.

• In the case of internet based continuing education classes, describe how the class software addresses automatic shutdown after a period of inactivity.

• How will the sponsor provide security to ensure that the student who receives credit for the class is the student who enrolled in and completed the class. The approved sponsor and the student must certify that the student has completed the class and the required number of clock hours.

• The application must describe the process and the acceptable methods of how students can contact approved instructors to answer questions regarding the class.

• The application must describe the consistent and regular interactive events appropriate to the delivery method. The interactive elements must be designed to promote student involvement in the learning process and must directly support the student's achievement of the class learning objectives.

• The application must demonstrate that the class includes the same or reasonably similar information content as a course that would otherwise qualify for the requisite number of clock hours of classroom-based instruction.

• The application must demonstrate how the sponsor determined the number of clock hours requested.

• The application must demonstrate how mastery of the material is evaluated (e.g., describing how the material is divided into major learning units and describing how these learning units are divided into modules of instruction, describing how the student's progress toward completion of the mastery requirement will be measured, and describing how the class will provide a mechanism of individual remediation to correct any deficiencies in each module of instruction).

## (5) INSTRUCTOR APPROVAL PROCESS:

(a) Except first-aid training, all instructors must be approved per this section.

(b) The instructor application will include:

(i) Instructor's name, address, telephone number, email address;

(ii) Copies of credentials or other information showing conformance with the instruction minimum qualifications.

(c) Instructor approval will be valid for three years except:

(i) If the instructor's credentials are invalidated (e.g., suspension or revocation by the issuing entity) for any reason, approval will be automatically revoked.

(ii) When the instructor approval expires or is revoked, a new application must be submitted to regain approved instructor status.

(d) Minimum requirements:

The application must show that the instructor meets one of the following:

(i) Has a valid Washington administrator, master electrician, or electrician's certificate and has appropriate knowledge of and experience working as an electrical/electronic trainer; or

(ii) Is currently an instructor in a two-year program in the electrical construction trade licensed by the Washington work force training and education coordinating board. The instructor's normal duties must include providing electrical/electronic education; or

(iii) Is a high school vocational teacher, community college, college, qualified instructor with a state of Washington approved electrical apprenticeship program, or university instructor. The instructor's normal duties must include providing electrical/electronic education; or

(iv) Works for and is approved by a manufacturer of electrical products to teach electrical continuing education; or

(v) Is an electrical engineer registered under chapter 18.43 RCW; or

(vi) Subject matter experts approved by the chief electrical inspector who can demonstrate appropriate knowledge of, and experience in the electrical construction trade and working as an electrical/electronic trainer.

(6) FORMS:

(a) The department will develop an appropriate form(s) for the applicant's use when submitting for instructor or class approval;

(b) Applicants must use the department's form when submitting an application for review.

(7) CLASS ATTENDANCE:

(a) The department is not responsible for providing verification of an individual's continuing education or basic trainee classroom training history with the class sponsor;

(b) Electrical approved classes offered in Washington:

(i) The sponsor must provide the department with an accurate online course attendance/completion roster for each class given. Class attendance will only be verified based on the online attendance/completion roster provided by the sponsor.

(A) Within seven days of a student completing the class, the course sponsor must provide the attendance/completion roster in an internet format provided by the department.

(B) The attendance/completion roster must show each individual's name, Washington certificate number, class number, and date of completion.

(ii) Individuals will not be granted credit for a class unless the sponsor's online attendance/completion roster shows the individual successfully completed the class.

(c) For classes approved under chapter 18.106 RCW for the pumping industry, a class number will be created for electrical continuing education. Sponsors for these classes must verify attendance for the electrical credit using the format described in subsection (b) of this section.

(8) Noncompliance with this section by a course sponsor or instructor.

(a) Before a course sponsor or instructor is revoked or suspended for noncompliance with this section, the course sponsor or instructor will be given written notice of the department's intention to suspend or revoke. The notification will describe the allegations and provide the necessary procedures to request a hearing before the electrical board as described in RCW 19.28.341.

(b) The department may also file a civil penalty action under chapter 19.28 RCW for fraudulent, inaccurate, or material misrepresentation activity.

AMENDATORY SECTION (Amending WSR 17-12-021, filed 5/30/17, effective 7/1/17)

**WAC 296-46B-971 Training schools.** (1) The department must evaluate and approve training school programs in the electrical trade as regulated by chapter 19.28 RCW for equivalency to hours of supervised work experience. Approved training programs must be from a Washington state public community or technical college, or a not-for-profit nationally accredited technical or trade school licensed by the work force training and education coordinating board under chapter 28C.10 RCW.

(2) The minimum total hours for an electrical technical training program must be determined per RCW 19.28.191.

(3) Training school programs must be approved before their graduates may request credit for equivalent work experience hours toward journey level or specialty electrician certification. Until December 31, 2003, existing electrical training programs, in effect after January 1, 2000, may apply for retroactive approval of their program to determine the number of hours that will be credited for the program graduates. After December 31, 2003, all training programs must be approved by the department prior to beginning instruction.

(4) Training schools must submit the curriculum of each journey level or specific specialty electrical training program to the department for approval. The curriculum must include a detailed description of each course that is included in the total training hours required by RCW 19.28.191. The curriculum must be reviewed by the department whenever significant changes in program content or course length are implemented or at an interval not to exceed three years. After department review, the program may be renewed. In evaluating the relevance of the curriculum, the department will consider the following criteria:

(a) Scope of work for the appropriate electrician certification.

(b) Understanding whole systems related to and integrated with electrical equipment installation, maintenance, troubleshooting, and appliance repair (e.g., refrigeration, pumps, hydraulics, thermodynamics, compressed air, and similar systems).

(c) Courses not directly related to electrical technical instruction or specific scope of work, but required to complete the specific training program (i.e., mathematics, technical writing, business, safety, first aid, ergonomics, etc.), must not exceed ten percent of the total student/instructor contact time of the program.

(5) Within thirty days after ~~((beginning a program, the program sponsor must supply the department with a roster of individuals enrolled in the program. The roster must show each student's name, date of enrollment, Washington training or electrician certificate number, and the training program number. Within thirty days after each graduation cycle, approved training school programs must provide the department with a roster of individuals that have successfully completed the program. The roster must show each student's name, date of completion, Washington training or electrician certificate number, and the training program title))~~ one or more students successfully completes an accredited training school program, the program must provide the department with a completion roster in an electronic table format. Each roster must include all of the following:

(a) Name of the accredited training school;

(b) Name of the accredited training school program as referred to in the department's letter of accreditation;

(c) Submitter information:

(i) Name;

(ii) Title;

(iii) Email address; and

(iv) Telephone number.

(d) Student information:

(i) Full name;

(ii) Date of first instruction;

(iii) Date of completion; and

(iv) Washington electrical training certificate number.

(6) All school training activities involving electrical work or appliance repair done outside of in-school lab facilities must be done under a valid Washington electrical contractor's license. All students performing such work must have a valid training certificate and work under a supervising journey level or specialty electrician in a ratio, per RCW 19.28.161, in compliance with RCW 19.28.161.

(7) Individuals in a two-year electrical construction trade training program for journey level electrician must obtain the additional two years of work experience required in new industrial or commercial installation prior to the beginning, or after the completion, of the technical school program.

All student electrical training hours obtained when working for contractors or other employers in intern programs arranged by the school must be evaluated as part of the training program hours. Additional work experience credit gained in an intern program is not allowed.

This does not prohibit trainees in a training program for specialty electricians from having concurrent employment and obtaining additional specialty work experience while attending school. All such concurrent work must be docu-

mented in an affidavit of experience per WAC 296-46B-942 (8).

The following supervision requirements must be met when working as an intern or student:

(a) Intern when working for contractors or other employers as a:

(i) General electrician, there must be not more than one noncertified individual for every certified master journey level electrician or journey level electrician.

(ii) Specialty electrician, there must be not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician.

(b) Student when working for a public community or technical college, or not-for-profit nationally accredited trade or technical school licensed by the work force training and education coordinating board under chapter 28C.10 RCW as a journey level or specialty electrician in the training program, the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journey level electrician, or journey level electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program. All such work will be considered to be an integral part of the training program and work experience credit will not be allowed except as a part of the program.

When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(i) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(ii) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

The public community or technical colleges, or not-for-profit nationally accredited trade or technical schools must be an appropriately licensed electrical contractor when performing work outside the classroom.

(8) The department will use the criteria in this section to evaluate the hours of credit that may be allowed for United States armed forces experience and training in the electrical construction, electrical maintenance, and appliance repair trades. See WAC 296-46B-945.

AMENDATORY SECTION (Amending WSR 19-15-117, filed 7/23/19, effective 8/23/19)

**WAC 296-46B-990 Failure to comply with the electrical contractor licensing, administrator certification, or electrician certification laws.**

**General.**

(1) If the compliance officer or electrical inspector/auditor determines that an individual, employer, or employee has violated chapter 19.28 RCW or this chapter, the department will issue a citation that describes the violation.

**Suspension or revocation - Of an electrical contractor's license, administrator's certificate, master electrician's**

**certificate of competency, electrician's certificate of competency, or training certificate.**

(2) The department may revoke or suspend, for such time as it determines appropriate, an electrical contractor's license, administrator's certificate, master electrician's certificate of competency, electrician's certificate of competency, or training certificate if:

(a) The license, certificate, or permit was obtained through error or fraud;

(b) The license, certificate, or permit holder is judged to be incompetent to work in the electrical construction trade as an electrical contractor, administrator, master electrician, journey level electrician, specialty electrician, electrical technician, or electrical trainee;

(c) For serious noncompliance as described below. See RCW 19.28.241 and 19.28.341 for other grounds and procedures.

(d) The license or certificate holder incompletely or inaccurately reported continuing or basic trainee class education units on an application for renewal; or

(e) The certificate holder falsely, incompletely, or inaccurately reported previous work experience.

The department will deny an application for any license/certificate during the period of revocation or suspension of the same or another license/certificate under chapter 19.28 RCW.

(3) For the purposes of this section, serious noncompliance includes, but is not limited to, any of the following:

(a) Causing or failing to correct a serious violation. A serious violation is a violation of chapter 19.28 RCW or chapter 296-46B WAC that creates a hazard of fire or a danger to life safety. A serious violation is also a violation that presents imminent danger to the public. Imminent danger to the public is present when installations of wire and equipment that convey or utilize electric current have been installed in such a condition that a fire-hazard or a life-safety hazard is present. Imminent danger to the public is also present when unqualified, uncertified, or fraudulently certified electricians or administrators; or unlicensed or fraudulently licensed contractors are continuously or repeatedly performing or supervising the performance of electrical work covered under chapter 19.28 RCW. For the purposes of this section, a certified electrician is considered qualified, provided the electrician is working within his or her certification;

(b) The license or certificate was obtained, used, or allowed to be used through error or fraud;

(c) Submitting a fraudulent document to the department;

(d) Willful, intentional, or continuous noncompliance with the provisions of chapter 19.28 RCW or this chapter. For the purposes of this section, continuous noncompliance will be defined as three or more citations demonstrating a disregard of the electrical law, rules, or regulations within a period of three years, or where it can be otherwise demonstrated that the contractor, master electrician, electrician, or administrator has continuously failed to comply with the applicable electrical standards;

(e) Failure to make any books or records, or certified copies thereof, available to the department for an audit to verify the hours of experience submitted by an electrical trainee;

(f) Making a false statement or material misrepresentation on an application, statement of hours, or signed statement required by the department;

(g) The certificate holder falsely or inaccurately reported continuing or basic trainee class education units on an application for renewal;

(h) Installing a shortened rod/pipe grounding electrode, improper splicing of conductors in conduits/raceways or concealed within walls, or installing a fake equipment grounding conductor;

(i) Refusing to present a government issued photo identification when requested by an electrical inspector while working as an electrician or trainee as required by WAC 296-46B-940(3);

(j) Cheating on an electrical certification examination.

For any act of serious noncompliance, the person, firm, partnership, corporation, or other entity may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

(4) Before a license or certificate is revoked or suspended, the certificate holder will be given written notice of the department's intention to suspend or revoke. Notification will be sent by registered mail to the certificate holder's last known address. The notification will list the allegations against the certificate holder, and provide the certificate holder with the procedures necessary to request a hearing before the electrical board as described in WAC 296-46B-995.

**Confiscation - Of an electrical contractor's license, administrator certificate, electrician certificate of competency, or training certificate.**

(5) The department may confiscate a license or certificate that is counterfeit, revoked, expired, suspended, or altered. The individual may be referred to the county prosecutor for criminal prosecution under chapter 9A.72 RCW. The department may also file a civil action under chapter 19.28 RCW.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-46B-553 Special occupancies—Floating buildings.

**WSR 20-06-061**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
**STATE BOARD OF HEALTH**

[Filed March 3, 2020, 11:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-11-089.

Title of Rule and Other Identifying Information: Chapter 246-101 WAC, Notifiable conditions, proposed changes to

add notification and specimen submission requirements; change notification and specimen submission requirements for existing conditions; clarify notification requirements for suspected cases; revise reporting requirements for veterinarians and the Washington state department of agriculture; update references; and improve clarity and usability of the rule.

Hearing Location(s): On April 8, 2020, at 1:30 p.m., at the Cowlitz County Event Center, 1900 7th Avenue, Longview, WA 98632.

Date of Intended Adoption: April 8, 2020.

Submit Written Comments to: Alexandra Montano, P.O. Box 47811, Olympia, WA 98504-7811, email <https://for.tress.wa.gov/doh/policyreview>, by March 25, 2020.

Assistance for Persons with Disabilities: Contact Alexandra Montano, phone 360-236-4205, TTY 711, email [alexandra.montano@doh.wa.gov](mailto:alexandra.montano@doh.wa.gov), by April 3, 2020.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The purpose [of] the chapter is to provide critical information to public health authorities to aid them in protecting and improving public health through prevention and control of infectious and non-infectious conditions as required under law. Public health authorities use the information gathered under this chapter to take appropriate action, including, but not limited to: Treating ill people; providing preventive therapies for individuals who came into contact with infectious agents; investigating and halting outbreaks; removing harmful health exposures from the environment; assessing broader health-related patterns, including historical trends, geographic clustering, and risk factors; and redirecting program activities and developing policies based on broader health-related patterns. The chapter establishes notification requirements and standards for conditions that pose a threat to public health consistent with this purpose and the authorizing statutes it is adopted under.

The current rules require health care providers, health care facilities, laboratories, veterinarians, food service establishments, child care facilities, and schools to notify public health authorities of cases of notifiable conditions identified in this chapter, cooperate with public health authorities when conducting case investigations, and follow infection control measures when necessary to control the spread of disease.

The proposed rules significantly amend notification requirements applicable to health care providers, health care facilities, laboratories, and veterinarians; create notification requirements for the Washington state department of agriculture; and clarify requirements for food service establishments, schools, child care facilities, and the general public. Proposed changes to the rules include: (1) Adding or revising notification and specimen submission requirements for seventy-four new or existing conditions; (2) eliminating three categories of conditions (other rare diseases of public health significance, emerging conditions with outbreak potential and disease of suspected bioterrorism origin); (3) eliminating notification requirements for veterinarians and clarifying requirements for veterinarians to cooperate with public health authorities during case investigations; (4) establishing notification requirements for the Washington state department of agriculture; (5) updating local health jurisdiction duties to

reflect current technology used for notifying the department of health (department), clarifying existing and establishing new notification timelines, and clarifying notification, case report, and outbreak report content requirements; (6) updating reference to the Security and Confidentiality Guidelines developed by the Centers for Disease Control and Prevention; (7) updating statutory references throughout the chapter; and (8) improving overall clarity and usability of the chapter by merging health care provider and facility rules, repealing unnecessary rules, clarifying requirements for suspected cases of notifiable conditions, and revising language consistent with clear rule writing standards.

**Reasons Supporting Proposal:** The rules were last revised in 2011. Since then, there have been a number of advances and developments which can only be addressed in rule. The state board of health and department have proposed changes to chapter 246-101 WAC to better protect public health by improving our understanding of emerging conditions, allowing more thorough case investigations, and improving the public health response to infectious and non-infectious conditions. The public health goals for these changes are to reduce the risk of transmission of disease and prevent serious complications and fatalities.

**Statutory Authority for Adoption:** RCW 43.20.050, 70.104.055, 43.70.545, 70.24.125, 70.104.030, 70.24.130, 70.24.380, and 70.28.032.

**Statute Being Implemented:** RCW 70.104.055, 43.70.545, 70.28.010, and 70.05.060.

Rule is not necessitated by federal law, federal or state court decision.

**Name of Proponent:** Washington state board of health and Washington state department of health, governmental.

**Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement:** Alexandra Montano, 101 Israel Road S.E., Tumwater, WA, 98504-7990, 360-236-4205.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Alexandra Montano, P.O. Box 47811, Olympia, WA 98504-7811, phone 360-236-4205, TTY 711, email [alexandra.montano@doh.wa.gov](mailto:alexandra.montano@doh.wa.gov).

The proposed rule does impose more-than-minor costs on businesses.

#### Small Business Economic Impact Statement

**Description of the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.**

The purpose of chapter 246-101 WAC, Notifiable conditions, is to provide critical information to public health authorities to aid them in protecting and improving public health through prevention and control of infectious and non-infectious conditions as required under RCW 43.20.050, 70.104.055, and 43.70.545. Public health authorities use the information gathered under this chapter to take appropriate

action, including, but not limited to, treating ill people; providing preventive therapies for individuals who came into contact with infectious agents; investigating and halting outbreaks; removing harmful health exposures from the environment; assessing broader health-related patterns, including historical trends, geographic clustering, and risk factors; and redirecting program activities and developing policies based on broader health-related patterns. The chapter establishes notification requirements and standards for conditions that pose a threat to public health consistent with this purpose and the authorizing statutes it is adopted under.

The current rules require health care providers, health care facilities, laboratories, veterinarians, food service establishments, child care facilities, and schools to notify public health authorities of cases of notifiable conditions identified in chapter 246-101 WAC, cooperate with public health authorities when conducting case investigations, and follow infection control measures when necessary to control the spread of disease.

The rules were last revised in 2011. Since then, there have been a number of advances and developments which can only be addressed in rule. The state board of health (board) and department of health (department), through joint rule making, have proposed changes to Chapter 246-101 WAC, Notifiable conditions, to better protect public health by improving our understanding of emerging conditions, allowing more thorough case investigations, and improving the public health response to infectious and noninfectious conditions. The public health goals for these changes are to reduce the risk of transmission of disease and prevent serious complications and fatalities.

On April 17, 2017, the department and board filed a pre-proposal statement of inquiry (CR-101) to begin joint rule making to consider adopting notification requirements for seven new conditions and classes of conditions, and notification and specimen submission requirements for three conditions identified in the current rules under the definition of "Other Rare Disease of Public Health Significance." After further review by department subject matter experts, the department and board withdrew the original CR-101 and filed a new preproposal statement of inquiry on May 18, 2018, to clarify and expand the scope of rule making. The new CR-101 expanded the list of new conditions and classes of conditions for consideration to twenty-one, and expanded to four the number of specific conditions identified in the definition of "Other Rare Disease of Public Health Significance" considered for adoption.

Over the course of rule development, the department and board consulted with more than fifty subject matter experts at the department of health, department of labor and industries, and Washington state department of agriculture, and formed a technical advisory committee (TAC) to gather information in 2018. Members of the TAC represented a variety of stakeholders including health care providers, health care facilities, laboratories, local health jurisdictions, professional associations, health equity organizations, and state agencies. The draft rules were broadly distributed in May 2019 to gather informal comments from interested parties. Further comments were sought in June and July 2019 from local health jurisdictions. Members of the regulated community and the

TAC were asked to complete a cost questionnaire for the significant changes in the draft rules in November 2019 to complete the proposed rules and required analyses.

If adopted, the proposed rules would significantly amend notification requirements applicable to health care providers, health care facilities, laboratories, and veterinarians; create notification requirements for the Washington state department of agriculture; and clarify requirements for food service establishments, schools, child care facilities, and the general public. Proposed changes to the rules include:

- Adding or revising notification and specimen submission requirements for seventy-four new or existing conditions;
- Eliminating three categories of conditions (other rare diseases of public health significance, emerging conditions with outbreak potential, and disease of suspected bioterrorism origin);
- Eliminating notification requirements for veterinarians and clarifying requirements for veterinarians to cooperate with public health authorities during case investigations;
- Establishing notification requirements for the Washington State Department of Agriculture;
- Updating local health jurisdiction duties to reflect current technology used for notifying the Department, clarifying existing and establishing new notification timelines, and clarifying notification, case report, and outbreak report content requirements;
- Updating reference to the Security and Confidentiality Guidelines developed by the Centers for Disease Control and Prevention;
- Updating statutory references throughout the chapter; and
- Improving overall clarity and usability of the chapter by merging health care provider and facility rules, repealing unnecessary rules, clarifying requirements for suspected cases of notifiable conditions, and revising language consistent with clear rule writing standards.



Businesses identified as required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

Table A:

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of Businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
621111	Offices of physicians (except mental health specialists)	2576	\$19,450.07	\$5,891.42
621112	Offices of physicians; mental health specialists	130	\$2,243.26	\$727.85
621330	Offices of mental health practitioners (except physicians)	235	\$2,665.03	\$351.33
621399	Offices of all other miscellaneous health practitioners	1042	\$1,482.68	\$528.32
621410	Family planning centers	53	\$6,906.27	\$2,106.01
621420	Outpatient mental health and substance abuse centers	329	\$14,653.15	\$1,830.45
621491	HMO medical centers	71	Redacted	\$51,522.51
621492	Kidney dialysis centers	105	\$21,245.21	\$59,055.28
621493	Freestanding ambulatory surgical and emergency centers	58	Redacted	\$12,617.37
621498	All other outpatient care centers	110	\$33,260.62	\$2,370.09
621511	Medical laboratories	192	\$15,104.13	\$17,874.80
621910	Ambulance services	52	\$24,603.63	\$7,390.03
621991	Blood and organ banks	37	\$35,058.86	\$3,564.01
621999	All other miscellaneous ambulatory health care services	59	Redacted	\$4,185.45
622110	General medical and surgical hospitals	147	\$622,801.12	\$156,044.36
622210	Psychiatric and substance abuse hospitals	28	\$41,280.23	\$10,762.16
622310	Specialty (except psychiatric and substance abuse) hospitals	6	\$303,145.51	\$15,972.98
623110	Nursing care facilities (skilled nursing facilities)	258	\$33,681.92	\$7,099.53

**Analysis of the probable cost of compliance. The probable costs to comply with the proposed rule, including: cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.**

**WAC 246-101-101 Notifiable conditions—Health care providers and facilities, and 246-101-201 Notifiable conditions—Laboratories.**

The proposed rules require health care providers, health care facilities, and laboratories to submit case reports and specimens to public health authorities for specified conditions, within specified time frames, with specified information, and using a specified format. The rules do not require health care providers, health care facilities, or laboratories to provide service or conduct laboratory tests that they do not include as a part of their business practices. Table 1 outlines the probable costs by condition (per case) along with the total annual costs by condition. Table 2 outlines the additional probable one-time costs for providers, facilities, and laboratories for training and for updating Standard Operating Procedures, Laboratory Information Management Systems (LIMS), and Electronic Laboratory Reporting (ELR) systems.

**Table 1: Probable Annual Costs (WAC 246-101-101, 246-101-105, 246-101-115, 246-101-201, 246-101-205, 246-101-215, 246-101-225)**

<i>Condition</i>	<b>Providers/Facilities: Added Cost per Case Report<sup>1</sup></b>	<b>Laboratories: Added Cost per Case Report<sup>2</sup></b>	<b>Laboratories: Added Cost per Specimen Submission<sup>3</sup></b>	<b>Assumed Number of Cases per Year<sup>4</sup></b>	<b>Total Annual Cost per Condition</b>
<i>Amoebic meningitis</i>	\$0 - \$82.50	\$0 - \$30.00	\$0 - \$15.00	0 - 1	\$0 - \$127.50
<i>Anaplasmosis</i>	\$0 - 412.50	\$0 - 100.00	\$0 - \$75.00	0 - 5	\$0 - \$587.50
<i>Babesiosis</i>	\$0 - \$247.50	\$0 - \$60.00	\$0 - \$45.00	0 - 3	\$0 - \$352.50
<i>Bacillus cereus (biovar anthracis only)</i>	\$0 - \$82.50	\$0 - \$30.00	\$0	0 - 1	\$0 - \$112.50
<i>Baylisascariasis</i>	\$0 - \$82.50	\$30.00	\$15.00	1	\$0 - \$127.50
<i>Blood lead level (adult between 5 µg/dl and 10 µg/dl)</i>	N/A	\$8,000 - \$10,000	N/A	400 - 500	\$8,000 - \$10,000
<i>Bordetella pertussis</i>	N/A	\$0	\$0	Fewer notifications	\$0
<i>Borrelia burgdorferi or mayonii</i>	N/A	\$0 - \$20.00	\$0 - \$15.00	0 - 1	\$0 - \$35.00
<i>Brucella species</i>	N/A	\$0 - \$20.00	\$0 - \$15.00	0 - 1	\$0 - \$35.00
<i>Burkholderia mallei</i>	N/A	\$0	\$0	Fewer notifications	\$0
<i>Burkholderia pseudo-mallei</i>	N/A	\$0	\$0	Fewer notifications	\$0
<i>California serogroup viruses</i>	N/A	\$0 - \$20.00	\$0 - \$15	0 - 1	\$0 - \$35.00
<i>Campylobacteriosis</i>	\$0 <sup>5</sup>	\$0	\$0	Fewer test results	\$0
<i>Candida auris</i>	\$1,402.50	\$510.00	\$255.00	17	\$2,167.50
<i>Carbapenem-resistant Enterobacteriaceae: Klebsiella species, E. coli, Enterobacter species</i>	\$24,750.00	\$6,000.00	\$4,500.00	300	\$35,250.00
<i>Chagas disease (Trypanosoma cruzi)</i>	\$825.00 - \$1,650.00	\$200 - \$400	\$150 - \$300	10 - 20	\$1,175 - \$3,525
<i>Chikungunya virus</i>	N/A	\$0 - \$100	\$0 - \$75	0 - 5	\$0 - \$175.00
<i>Chlamydia trachomatis</i>	N/A	\$10,000	\$0	500	\$10,000
<i>Chlamydia trachomatis (De-identified negative results)</i>	N/A	\$162,240	\$0	5,408	\$167,648
<i>Coccidioidomycosis (Coccidioides)</i>	\$4,125.00 - \$6,600.00	\$1,000.00 - \$1,600.00	\$750.00 - 1,200.00	-50-80	\$5,875 - \$9,400
<i>Coronavirus: MERS-associated</i>	\$82.50	\$60.00	\$50.00	2	\$192.50

<b>Condition</b>	<b>Providers/Facilities: Added Cost per Case Report<sup>1</sup></b>	<b>Laboratories: Added Cost per Case Report<sup>2</sup></b>	<b>Laboratories: Added Cost per Specimen Submission<sup>3</sup></b>	<b>Assumed Number of Cases per Year<sup>4</sup></b>	<b>Total Annual Cost per Condition</b>
<i>Coronavirus: Novel coronavirus (COVID-19)</i>	\$8,250.00 - \$82,500.00	\$3,000.00 - \$30,000.00	\$2,5000.00 [\$2,500.00] - \$25,000.00	100 - 1000 (estimate based on very limited data)	\$13,750.00 - \$137,500.00
<i>Cryptococcus gattii</i>	\$82.50 - \$825.00	\$20.00 - \$200.00	\$0	1 - 10	\$102.50 - \$1,025.00
<i>Cysticercosis</i>	\$0 - \$165.00	N/A	N/A	0 - 2	\$0 - \$165.00
<i>Dengue viruses</i>	N/A	\$0 - \$60.00	\$0 - \$45.00	0 - 3	\$0 - \$125.00
<i>Diphtheria (Corynebacterium Diphtheria)</i>	N/A	\$0	\$0	Fewer notifications	\$0
<i>Eastern and western equine encephalitis virus</i>	N/A	\$0 - \$20.00	\$0 - \$15.00	0 - 1	\$0 - \$35.00
<i>Echinococcosis (Echinococcus granulosus or multilocularis)</i>	\$0 - \$82.50	\$0.00 - \$20.00	\$0.00 - \$15.00	0 - 1	\$0 - \$117.50
<i>Ehrlichiosis (Ehrlichia species)</i>	\$0 -165.00	\$0 - \$40.00	\$0 - \$30.00	0 - 2	\$0 - \$235.00
<i>Gonorrhea (Neisseria gonorrhoeae)</i>	\$0	\$1,400.00	\$0	70	\$1,400.00
<i>Gonorrhea (Neisseria gonorrhoeae) (De-identified negative results)</i>	N/A	\$106,380	\$0	3,546	\$106,380.00
<i>Haemophilus influenzae (children &lt;5 years of age)</i>	N/A	\$0	\$0	Fewer notifications	\$0
<i>Hantaviral infections</i>	\$0	\$0	\$0 - \$75.00	0 - 5	\$0 - \$75
<i>Hepatitis A virus</i>	N/A	\$60.00 - \$120.00	\$30.00 - \$60.00	2 - 4	\$90.00 - \$180.00
<i>Hepatitis B (chronic)</i>	\$0	N/A	N/A	1,521	\$0
<i>Hepatitis B virus</i>	N/A	\$30,680	N/A	1,547	\$30,680.00
<i>Hepatitis C (acute), (chronic), and (perinatal)</i>	\$0	N/A	N/A	N/A	\$0
<i>Hepatitis C virus</i>	N/A	\$330,848	\$0	7,712 positives and 15,000 nonpositive results for nucleic acid detection tests	\$330,848
<i>Hepatitis C virus (De-identified negative results)</i>	N/A	\$478,590	\$0	145,953	\$478,590.00

<b>Condition</b>	<b>Providers/Facilities: Added Cost per Case Report<sup>1</sup></b>	<b>Laboratories: Added Cost per Case Report<sup>2</sup></b>	<b>Laboratories: Added Cost per Specimen Submission<sup>3</sup></b>	<b>Assumed Number of Cases per Year<sup>4</sup></b>	<b>Total Annual Cost per Condition</b>
<i>Hepatitis D</i>	\$0	\$140	\$0	14	\$140
<i>Histoplasmosis (Histoplasma capsulatum)</i>	\$82.50	\$0.00 - \$20.00	\$0 - \$25.00	0 - 1	\$82.50 - \$127.50.00 [\$127.50]
<i>HIV</i>	N/A	\$61,708	\$0	13,752	\$61,708.00
<i>HIV (De-identified negative results)</i>	N/A	\$419,940	\$0	13,998	\$419,940.00
<i>Human prion disease</i>	N/A	\$400.00	\$500.00	20	\$900.00
<i>Hypersensitivity Pneumonitis, Occupational</i>	\$1567.50 - \$2392.50	N/A	N/A	19 - 29	\$1567.50 - \$2392.50
<i>Japanese encephalitis virus</i>	N/A	\$0 - \$20.00	\$0 - \$15.00	0 - 1	\$0 - \$35.00
<i>La Crosse encephalitis virus</i>	N/A	\$0 - \$20.00	\$0 - \$15.00	0 - 1	\$0 - \$35.00
<i>Listeriosis (Listeria monocytogenes)</i>	N/A	\$0	\$0	Fewer notifications	\$0
<i>Malaria (Plasmodium species)</i>	N/A	\$0	\$0	Fewer notifications	\$0
<i>Mumps virus</i>	N/A	\$0	\$0	No change in number of notifications	\$0
<i>Powassan virus</i>	N/A	\$0.00 - \$20.00	\$0 - \$15.00	0 - 1	\$0 - \$35.00
<i>Psittacosis (Chlamydia psittaci)</i>	N/A	\$0	\$0	Fewer notifications	\$0
<i>Relapsing fever (Borrelia hermsii, miyamotoi, or recurrentis)</i>	\$0	\$0 - \$20.00	\$0 - \$15.00	0 - 1	\$0 - \$35.00
<i>Rickettsia infection (Rickettsia species)</i>	\$0 - \$412.50	\$100.00	\$75.00	0 - 5	\$0 - \$587.50
<i>Rubella</i>	N/A	\$0 - \$60.00	\$0 - \$30.00	0 - 2	\$0 - \$90.00
<i>Rubeola (Measles virus)</i>	N/A	\$0	\$0	No change in number of notifications	\$0
<i>Silicosis</i>	\$82.50 - \$660	N/A	N/A	1 - 8	\$82.50 to \$660
<i>Smallpox (Variola virus)</i>	N/A	\$0.00 - \$150.00	\$0 - \$75.00	0 - 5	\$0 - \$225.00
<i>St. Louis encephalitis virus</i>	N/A	\$0.00 - \$20.00	\$0 - \$15.00	0 - 1	\$0 - \$35.00
<i>Syphilis (Treponema pallidum)</i>	N/A	\$120.00	\$0	6	\$120.00

<i>Condition</i>	<b>Providers/Facilities: Added Cost per Case Report<sup>1</sup></b>	<b>Laboratories: Added Cost per Case Report<sup>2</sup></b>	<b>Laboratories: Added Cost per Specimen Submission<sup>3</sup></b>	<b>Assumed Number of Cases per Year<sup>4</sup></b>	<b>Total Annual Cost per Condition</b>
<i>Syphilis (Treponema pallidum) (De-identified negatives)</i>	N/A	\$42,980	\$0	14,766	\$42,980.00
<i>Taenia solium</i>	See Cysticercosis and Taeniasis	\$400.00	\$300.00	20	\$700.00
<i>Taeniasis</i>	\$0 - \$412.50	N/A	N/A	0 - 5	\$0 - \$412.50
<i>Tick paralysis</i>	\$0 - \$165.00	N/A	N/A	0 - 2	\$0 - \$165.00
<i>Trichinellosis (Trichinella species)</i>	N/A	\$0	\$0	Fewer notifications	\$0
<i>Tuberculosis (Mycobacterium tuberculosis complex)</i>	\$0	\$0	\$0	Fewer notifications	\$0
<i>Typhus</i>	\$82.50	N/A	N/A	1	\$82.50
<i>Vaccinia (vaccine-acquired smallpox)</i>	N/A	\$0 - \$150.00	\$0 - \$125.00	0 - 5	\$0 - \$275.00
<i>West Nile virus</i>	N/A	\$0	\$0	Fewer notifications	\$0
<i>Yellow fever virus</i>	N/A	\$0	\$0	Fewer notifications	\$0
<i>Zika virus</i>	N/A	\$0 - \$1,380.00	\$0 - \$1,035.00	0 - 69	\$0 - \$2,415.00
<i>RANGE OF TOTAL PROBABLE COSTS FOR ALL REGULATED ENTITIES IN THE STATE COMBINED</i>	\$1,720,451.50 - \$1,860,721.50				

- 1 Costs are for staff time to prepare the case report.
- 2 Costs are for staff time to prepare the case report.
- 3 Costs are for staff time to prepare documentation to accompany specimens and packaging materials.
- 4 For rare conditions, such as anthrax, that have not occurred in Washington state, the department assumed a single case per year to provide a cost estimate in the event a case of the condition ever occurs.
- 5 New condition for health care facilities only.

Cost Description	Providers/Facilities	Laboratories:
Update electronic laboratory reporting	N/A	74 conditions X \$60 = \$4,440
Create deidentified annual summary report in LIMS	N/A	5 conditions X \$800 = \$40,000
<b>Total Cost Per Regulated Entity</b>	<b>\$0</b>	<b>\$49,768</b>

**Table 2: Probable One-time Costs (WAC 246-101-101, 246-101-105, 246-101-115, 246-101-201, 246-101-205, 246-101-215, 246-101-225)**

Cost Description	Providers/Facilities	Laboratories:
Update standard operating procedures	N/A	74 conditions X \$12 = \$888
Update laboratory information management systems	N/A	74 conditions X \$60 = \$4,440

**WAC 246-101-105: Duties: Health care providers and facilities, 246-101-115: Content of Case Reports: Health care providers and health care facilities, and 246-101-205: Duties: Laboratory directors:** The proposed rules amend multiple sections in order to establish consistent content of health care provider, facility, and laboratory case reports and specimen submission forms. The only exception to this proposed standard is WAC 246-101-118, content of case reports for occupational traumatic injury hospitalizations: Health care facilities. The costs of these changes are included in Table 1: Probable Annual Costs (WAC 246-101-101, 246-101-105, 246-101-115, 246-101-201, 246-101-205, 246-101-215, 246-101-225), and Table 2: Probable One-time

Costs (WAC 246-101-101, 246-101-105, 246-101-115, 246-101-201, 246-101-205, 246-101-215, 246-101-225) above.

**WAC 246-101-110, Means of notification: Health care providers and health care facilities:** The proposed rule requires all case reports be type written. This change would eliminate hand-written case reports. The department assumes that by providing electronic forms on its website, the proposed change is cost neutral for health care providers and facilities.

**WAC 246-101-205, Duties: Laboratory directors:** The proposed rule requires laboratories to submit presumptive and final test results to the department of health for a patient residing outside and visiting Washington state. The department assumes the probable cost for a laboratory to prepare and submit case reports for patients visiting Washington state are included in costs identified in Table 1 and Table 2 for updating laboratory LIMS and ELR systems, updating standard operating procedures for each notifiable condition, and confirming receipt for case reports for conditions notifiable immediately or within twenty-four hours.

**WAC 246-101-220, Means of notification: Laboratory directors:** The proposed rule requires all presumptive and final test results be submitted via secure electronic data transmission. This change would eliminate hand-written presumptive and final test results, and nonelectronic mail submission (e.g. USPS, FedEx, UPS, etc.). The department assumes that by providing electronic forms on its website, the proposed change to eliminate hand-written test results is cost neutral for health care providers and facilities. The department also assumes the proposed requirement to use secure electronic data submission of test results is the standard for laboratories to share sensitive data and the probable cost for this change is negligible.

**WAC 246-101-405, Duties: Veterinarians and the state department of agriculture:** The proposed rule eliminates the requirement for veterinarians to notify the department of suspected human cases of specifically named zoonotic diseases that poses a high risk of transmission to humans. The department has historically received no case reports from veterinarians under this requirement and assumes there will be no increased or decreased cost for this proposed change.

**Probable Benefit and Cost Conclusion:** The department of health and state board of health evaluated the qualitative [quantitative] and qualitative costs and benefits of the proposed rules, taking into account the general goals and specific objectives of the statute being implemented.

**Benefit Summary:** The proposed rules establish a surveillance system that includes notification, investigation, and collection and distribution of data related to infectious and noninfectious conditions. This data is critical to local health jurisdictions, the department, and other public health authorities tasked with preventing and controlling the spread of disease. Public health authorities also use the data to assess broader patterns, including historical trends and geographic clustering of disease. Based on these assessments, officials are able to take appropriate actions such as conducting outbreak investigations, redirecting program activities, and developing new policies to prevent and control infectious and noninfectious conditions.

Public health surveillance plays an essential role in disease control by providing public health authorities with information and data necessary to take public health action. Surveillance provides data and information to assess the burden and distribution of adverse health events, prioritize public health actions, implement disease control measures to reduce the number and severity of cases, monitor the impact of control measures, identify reservoirs or vectors of disease, identify emerging health conditions that may have a significant impact upon population health, and contribute to surveillance activities at the national and international level to implement more effective control measures on a broader scale<sup>6</sup>.

6 Groseclose SL, Buckeridge DL. Public health surveillance systems: recent advances in their use and evaluation. *Ann Rev Public Health.* 2017;38:57-79

Public health surveillance plays a key role in identifying, controlling, and preventing the spread of zoonotic disease and can also play a role in promoting equity. Many of the new conditions in the proposed rules disproportionality [disproportionately] impact subpopulations who are already experiencing health disparities as documented in this analysis.

The proposed rules establish notification requirements for new conditions and revised notification and specimen submission requirements for some current conditions. These changes help to avoid the costs associated with the burden on an individual with a case of a condition, the public health system, and the population as a whole.

**Cost Summary:** The proposed rules impose new costs for health care providers, health care facilities, and laboratories for new requirements related to case reports and specimens submitted under the proposed rules. Below is a summary of the costs described in the preceding section-by-section analysis.

The probable one-time cost per entity is \$0 for providers/facilities and \$49,768 for non-CLIA waived laboratories (Table 2). The estimate for each laboratory is likely inflated due to the fact that some laboratories do not test for many of the conditions and will not include the one-time costs of updating their systems. In addition, some one-time costs are specific to laboratories using ELR (not exclusively, but primarily large labs). The department assumes that some laboratories will incur zero one-time costs associated with the proposed amendments, with any one lab incurring no more than \$49,768 in one-time costs.

In addition to these one-time costs, the probable annual costs for all regulated entities in Washington state combined (Table 1) range from \$1,720,451.50 - \$1,860,721.50. No one entity will absorb all of these costs. As noted above, the department assumes some regulated entities (e.g. laboratories who do not test for notifiable conditions, or health care providers who do not diagnose notifiable conditions) will incur zero costs. The annual costs of the rules statewide will be distributed among the remaining businesses, with larger entities likely to incur the largest costs due to higher testing volumes. Three healthcare providers/facilities provided annual cost estimates in the cost questionnaires. These estimates were \$72.80, \$100 (respondent did not indicate number of employees), and \$574 annually. One laboratory (>5000 employees) estimated that the proposed changes would cost them

\$12,000 - \$15,000 in one-time costs and \$2,500 - \$5,000 in annual costs.

**Analysis of whether the proposed rule may impose more than minor costs on businesses in the industry:** Based on the minor cost thresholds and the summary of costs identified above, the department and board assume that the proposed rules will impose more than minor costs on the businesses in the industry.

**Determination of whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule:** Based on the minor cost thresholds and the summary of costs identified above, the department and board assume that the proposed rules will have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest required to comply with the proposed rules.

**The steps taken to reduce the costs of the rule on small businesses include:**

**Electronic Laboratory Reporting (ELR)**

**Alternative 1: Mandatory Electronic Laboratory Reporting using HL7 Messaging with Mitigating Measures for Small Laboratories:** The board and department considered mandating laboratory submission of test results using HL7 messaging, and including mitigating measures for small laboratories that allow those businesses to submit results using a less costly method. The benefit of this approach is that it would move a majority of the reporting to HL7 messaging, which would improve timelines of reporting and reduce the burden on local health jurisdictions and the department, freeing up limited public health resources to promote public health. This approach would simultaneously mitigate the costs for small laboratories that do not have capacity to acquire and maintain a costly HL7 system.

However, there are a number of barriers to using this approach. This alternative would require the board and department to define a small laboratory based on income or number of employees. This is not necessarily a proxy for the number of notifiable conditions a laboratory reports each year, so this approach could require a laboratory to invest in an expensive ELR system even if they only submit a small number of notifiable conditions each year. In addition, some laboratories are part of hospitals which have a large number of employees, but the board and department heard from the TAC that this does not mean that the laboratory itself has a large staff or operating budget. Using the number of notifiable conditions reported each year as a way to define small laboratories versus large laboratories would be an inaccurate measure of a laboratory's budget and their ability to absorb the costs of mandatory HL7 as a small lab could report a large number of cases each year. Using number of case reports to define laboratory size is not only inaccurate and unenforceable (because the decentralized reporting system in Washington state makes it challenging to track how many cases are submitted by any one laboratory to determine if they meet the definition of a large business), but also creates a potential incentive for labs to underreport in order to stay below the large laboratory threshold. The fact that health care providers and others conducting rapid screening tests (RST) are also

laboratories under the rule further complicates this alternative.

**Alternative 2: Mandatory Electronic Laboratory Reporting with Three Reporting Options:** In order to maintain the benefits outlined above while addressing the challenges, the board and department considered allowing all laboratories to choose reporting methods from the following options:

- **Option A:** HL7 according to the most recent HL7 national guidelines, or
- **Option B:** Department created and maintained web-submitter that would convert the data into HL7, or
- **Option C (for blood lead RST results only):** A [an] Excel spreadsheet or similar electronic format allowing RST results to be submitted via secure electronic data transmission.

While this alternative would provide a less costly option for small laboratories or laboratories who report a small number of cases each year, there was no way to guarantee that the web-submitter would be operational by the time the rule went into effect. Without the web-submitter, this alternative would not have provided adequate mitigation for small businesses.

**Alternative 3: Maintain the Status Quo:** The status quo allows laboratories to submit case reports using HL7 or using other formats (e.g. postal service). While this would be the least burdensome alternative for laboratories, this option would not allow the public health benefits outlined above (e.g. increased timelessness and accuracy of reporting) and would continue to allow hand-written case reports, which create issues with legibility and increased risk of data entry errors. This alternative does not provide the needed public health benefits.

**Alternative 4: Remove Secure Facsimile, Postal Mail, and Handwritten Case Report as Options for Submitting Case Reports, but Do Not Mandate Electronic Lab Reporting Using HL7 Messaging:** This option has potential to improve timeliness of notification and data accuracy for laboratory reports, particularly for those submitting RST results, (e.g., fewer legibility issues and manual data entry errors; more complete information; more usable and consistent information due to the use of department standardized tools) and to reduce the burden on local health jurisdictions and the department of processing paper reports thereby freeing up limited public health resources to promote public health.

However, we learned that many laboratories who have not already moved to ELR through HL7, including the state public health laboratories and those reporting using RST (such as ECEAP programs which submit large volumes of lead tests) still rely heavily on facsimile to submit case reports. The lead program at the department has had great success in helping laboratories move away from facsimile toward other electronic methods of submission (e.g. secure email using a standardized spreadsheet format provided by the department) through relationship-building and technical assistance. There are opportunities to work with laboratories to help them voluntarily move away from facsimile, and to continue to pursue a web-submitter resource, before removing this frequently used reporting method through rule. The board and department determined that removing the postal mail and handwritten case reports as options at this time, but

allowing the continued use of secure facsimile, was the least burdensome alternative that still created the benefits of increased timeliness and accuracy of reporting.

**Description of how small businesses were involved in the development of the proposed rule:** The department and board requested participation from small business on the TAC that provided professional expertise and recommendations for revision of the chapter. In addition, the Association of Community and Migrant Health Centers and the commission on Hispanic affairs participated in the TAC.

The department and board also requested comments and cost estimates on the draft rules from licensed health care providers, health care facilities, and laboratories. In addition, staff contacted small laboratories and facilitates via email and phone in an effort to receive feedback on the rules, both content and cost.

**The estimated number of jobs that will be created or lost as the result of compliance with the proposed rule:** The department and board estimate no jobs will be created or lost as the result of compliance with the proposed rules.

A copy of the statement may be obtained by contacting Alexandra Montano, P.O. Box 47811, Olympia, WA 98504-7811, phone 360-236-4205, TTY 711, email alexandra.monano@doh.wa.gov.

February 28, 2020  
Michelle A. Davis and  
Jessica Todorovich  
for John Wiesman  
State Board of Health Executive  
Director and Chief of Staff  
for Secretary of Health

## PART I: GENERAL PROVISIONS

**AMENDATORY SECTION** (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

**WAC 246-101-005 Purpose ((of notifiable conditions reporting)) and scope.** (1) The purpose of ((notifiable conditions reporting)) this chapter is to provide ((the information necessary for public health officials to protect the public's health by tracking communicable diseases and other conditions. These data are critical to local health departments and the departments of health and labor and industries in their efforts to prevent and control the spread of diseases and other conditions. Public health officials take steps to protect the public, based on these notifications. Treating persons already ill, providing preventive therapies for individuals who came into contact with infectious agents, investigating and halting outbreaks, and removing harmful health exposures are key ways public health officials protect the public. Public health workers also use these data to assess broader patterns, including historical trends and geographic clustering. By analyzing the broader picture, officials are able to take appropriate actions, including outbreak investigation, redirection of program activities, or policy development)) critical information to public health authorities to aid them in protecting and improving the public's health through prevention and control of infectious and noninfectious conditions. Public health

authorities use the information gathered under this chapter to take appropriate action including, but not limited to:

- (a) Treating ill persons;
  - (b) Providing preventive therapies for individuals who came into contact with infectious agents;
  - (c) Investigating and halting outbreaks;
  - (d) Removing harmful health exposures from the environment;
  - (e) Assessing broader health-related patterns, including historical trends, geographic clustering, and risk factors; and
  - (f) Redirecting program activities and developing policies based on broader health-related patterns.
- (2) This chapter establishes notification requirements and standards for conditions that pose a threat to public health consistent with the purpose as established in this section.

**AMENDATORY SECTION** (Amending WSR 14-11-009, filed 5/8/14, effective 6/8/14)

**WAC 246-101-010 Definitions ((within the notifiable conditions regulations)), abbreviations, and acronyms.** The ((following)) definitions, abbreviations, and acronyms in this section apply ((in the interpretation and enforcement of)) throughout this chapter unless the context clearly requires otherwise:

(1) "Animal case" means an animal, alive or dead, with a diagnosis or suspected diagnosis of a notifiable condition in Table Agriculture-1 of WAC 246-101-805 made by a veterinarian licensed under chapter 18.92 RCW, veterinary medical facility licensed under chapter 18.92 RCW, or veterinary laboratory as defined under chapter 16.70 RCW based on clinical criteria, or laboratory criteria, or both.

(2) "Associated death" means a death resulting directly or indirectly from ((the confirmed condition of influenza or varicella. There should be)) a confirmed case of the specified condition, with no period of complete recovery between the ((illness)) onset of the condition and death.

((2)) (3) "Blood lead level" means a measurement of lead content in whole blood.

((3)) (4) "Board" means the Washington state board of health.

((4)) (5) "Business day" means any day that the department is open for business.

(6) "Carrier" means a person harboring a specific infectious agent without developing symptoms and serving as a potential source of infection to others.

((5)) (7) "Case" means a person, alive or dead, ((diagnosed)) with a ((particular disease or)) diagnosis or suspected diagnosis of a condition made by a health care provider ((with diagnosis)), health care facility, or laboratory based on clinical criteria, or laboratory criteria, or both, such as the Centers for Disease Control and Prevention, National Notifiable Diseases Surveillance System, Council of State and Territorial Epidemiologists case definitions.

((6) "Child day care facility" means an agency regularly providing care for a group of children for less than twenty-four hours a day and subject to licensing under chapter 74.15 RCW.

(7) "Condition notifiable within three business days" means a notifiable condition that must be reported to the local



health officer or the department within three business days following date of diagnosis. For example, if a condition notifiable within three business days is diagnosed on a Friday afternoon, the report must be submitted by the following Wednesday.)

(8) "Communicable disease" means ~~((a))~~ an infectious disease ((caused by an infectious agent)) that can be transmitted from ~~((one))~~ a person, animal, or object to ~~((another))~~ a person by direct or indirect means including, but not limited to, transmission through an intermediate host or vector, food, water, or air.

(9) ~~("Contact" means a person exposed to an infected person, animal, or contaminated environment that may lead to infection.~~

~~((10))~~ "Condition" means an infectious or noninfectious condition as these terms are defined in this chapter.

~~((10))~~ "Department" or "DOH" means the Washington state department of health.

~~((11))~~ "Disease of suspected bioterrorism origin" means a disease caused by viruses, bacteria, fungi, or toxins from living organisms that are used to produce death or disease in humans, animals, or plants. Many of these diseases may have nonspecific presenting symptoms. The following situations could represent a possible bioterrorism event and should be reported immediately to the local health department:

~~((a))~~ A single diagnosed or strongly suspected case of disease caused by an uncommon agent or a potential agent of bioterrorism occurring in a patient with no known risk factors;

~~((b))~~ A cluster of patients presenting with a similar syndrome that includes unusual disease characteristics or unusually high morbidity or mortality without obvious etiology; or

~~((c))~~ Unexplained increase in a common syndrome above seasonally expected levels.

~~((12))~~ "Elevated blood lead level" means blood lead levels equal to or greater than 10 micrograms per deciliter for persons aged fifteen years or older, or equal to or greater than 5 micrograms per deciliter in children less than fifteen years of age.

~~((13))~~ "Emerging condition with outbreak potential" means a newly identified condition with potential for person-to-person transmission.

~~((14))~~ "Food service establishment" means a place, location, operation, site, or facility where food is manufactured, prepared, processed, packaged, dispensed, distributed, sold, served, or offered to the consumer regardless of whether or not compensation for food occurs.

~~((15))~~ "Health care-associated infection" means an infection acquired from contaminated products, devices, or food products in a health care facility.

~~((16))~~ "Health care facility" means:

(a) Any assisted living facility licensed under chapter 18.20 RCW; birthing center licensed under chapter 18.46 RCW; nursing home licensed under chapter 18.51 RCW; hospital licensed under chapter 70.41 RCW; adult family home licensed under chapter 70.128 RCW; ambulatory surgical facility licensed under chapter 70.230 RCW; or private establishment licensed under chapter 71.12 RCW;

(b) Clinics, or other settings where one or more health care providers practice; and

(c) In reference to a sexually transmitted ~~((disease))~~ infection, other settings as defined in chapter 70.24 RCW.

~~((17))~~ "Health care provider" means any person having direct or supervisory responsibility for the delivery of health care whose scope of practice allows for diagnosis and treatment of notifiable conditions and who is:

(a) Licensed or certified in this state under Title 18 RCW; or

(b) Military personnel providing health care within the state regardless of licensure.

~~((18))~~ "Health care services to the patient" means treatment, consultation, or intervention for patient care.

~~((19))~~ "Health carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020.

~~((20))~~ "HIV testing" means conducting a laboratory test or sequence of tests to detect the human immunodeficiency virus (HIV) or antibodies to HIV performed in accordance with requirements to WAC 246-100-207. To assure that the protection, including, but not limited to, pre- and post-test counseling, consent, and confidentiality afforded to HIV testing as described in chapter 246-100 WAC also applies to the enumeration of CD4 + (T4) lymphocyte counts (CD4 + counts) and CD4 + (T4) percents of total lymphocytes (CD4 + percents) when used to diagnose HIV infection, CD4 + counts and CD4 + percents will be presumed HIV testing except when shown by clear and convincing evidence to be for use in the following circumstances:

~~((a))~~ Monitoring previously diagnosed infection with HIV;

~~((b))~~ Monitoring organ or bone marrow transplants;

~~((c))~~ Monitoring chemotherapy;

~~((d))~~ Medical research; or

~~((e))~~ Diagnosis or monitoring of congenital immunodeficiency states or autoimmune states not related to HIV.

The burden of proving the existence of one or more of the circumstances identified in (a) through (e) of this subsection shall be on the person asserting the existence.

~~((21))~~ "Immediately ((notifiable condition))" means ((a notifiable condition of urgent public health importance, a case or suspected case of which must be reported to the local health officer or the department)) without delay, twenty-four hours a day, seven days a week.

(a) For health care providers and health care facilities, immediately means at the time ((of diagnosis or suspected diagnosis, twenty-four hours a day, seven days a week)) a case is identified;

(b) For laboratories, immediately means upon receiving a presumptive or final test result; or

(c) For state agencies and local health jurisdictions, immediately means upon receiving notification of a case.

~~((22))~~ "Infection control measures" means the management of an infected person(s), or of a person suspected to be infected, and others in a manner to prevent transmission of the infectious agent. Infection control measures include, but are not limited to, isolation and quarantine.

(16) "Infectious condition" means a disease caused by a pathogenic organism such as bacteria, virus, fungus, or parasite, and includes communicable disease and zoonotic disease.

(17) "Influenza, novel" or "influenza virus, novel" means a human infection with an influenza A virus subtype that is different from currently circulating human influenza subtypes. Novel subtypes include, but are not limited to, H2, H5, H7, and H9 subtypes.

~~((23))~~ (18) "Institutional review board" ((means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects)) has the same meaning as defined in RCW 70.02.010.

~~((24))~~ (19) "Isolation" means the separation ((or restriction of activities of infected individuals, or of persons suspected to be infected, from other persons to prevent transmission of the infectious agent)) of infected or contaminated persons or animals from others to prevent or limit the transmission of the infectious agent or contaminant from those infected or contaminated to those who are susceptible to disease or who may spread the infectious agent or contaminant to others.

~~((25))~~ (20) "Laboratory" means any facility licensed as a test site or medical test site under chapter 70.42 RCW and chapter 246-338 WAC, including any laboratory that is granted a Clinical Laboratory Improvement Amendment (CLIA)-Waiver.

~~((26))~~ (21) "Laboratory director" means the ((director or manager,)) person, or person's designee, by whatever title known, having the administrative responsibility ((in any licensed medical test site)) for a laboratory.

~~((27))~~ (22) "Local health ((department" means the city, town, county, or district agency providing public health services to persons within the area, established under chapters 70.05, 70.08, and 70.46 RCW)) jurisdiction" or "LHJ" means a county health department under chapter 70.05 RCW, city-county health department under chapter 70.08 RCW, or health district under chapter 70.46 RCW.

~~((28))~~ (23) "Local health officer" means the ((individual having been appointed under chapter 70.05 RCW as the health officer for the local health department, or having been appointed under chapter 70.08 RCW as the director of public health of a combined city-county health department.

(29) "Member of the general public" means any person present within the boundary of the state of Washington.

(30) "Monthly notifiable condition" means a notifiable condition which must be reported to the local health officer or the department within one month of diagnosis.

(31)) legally qualified physician who has been appointed as the health officer for the local health jurisdiction under chapter 70.05 RCW, or their designee.

(24) "MERS" means Middle East respiratory syndrome.

(25) "Noninfectious condition" means a disease or health concern caused by nonpathogenic factors.

(26) "Notifiable condition" means a ((disease or)) condition ((of public health importance)) identified in Table HC-1 of WAC 246-101-101, Table Lab-1 of WAC 246-101-201, and Table Agriculture-1 of WAC 246-101-805, or designated by the local health officer as notifiable under chapter 70.05 RCW, a case of which((, and for certain diseases, a suspected

ease of which, must be brought to the attention of the local health officer or the state health officer.

~~(32)~~ "Other rare diseases of public health significance" means a disease or condition, of general or international public health concern, which is occasionally or not ordinarily seen in the state of Washington including, but not limited to, spotted fever rickettsiosis, babesiosis, tick paralysis, anaplasmosis, and other tick borne diseases. This also includes public health events of international concern and communicable diseases that would be of general public concern if detected in Washington.

~~(33))~~ requires notification to public health authorities under this chapter; or a condition designated by the local health officer as notifiable under chapter 70.05 RCW. Notifiable condition does not include provisional conditions as defined under WAC 246-101-015.

~~(27)~~ "Outbreak" means the occurrence ((of cases or suspected cases)) of a ((disease or)) condition in ((any)) an area over a given period of time in excess of the expected number of ((cases)) occurrences including, but not limited to, food-borne disease, waterborne disease, and health care-associated infection.

~~((34)~~ "Patient" means a case, suspected case, or contact.

~~(35))~~ (28) "Pesticide poisoning" means the disturbance of function, damage to structure, or illness in humans resulting from the inhalation, absorption, ingestion of, or contact with any pesticide.

~~((36))~~ (29) "Presumptive" means a preliminary test result that has not yet been confirmed as a definitive result.

(30) "Principal health care provider" means the attending health care provider recognized as primarily responsible for diagnosis or treatment of a patient, or in the absence of such, the health care provider initiating diagnostic testing or treatment for the patient.

~~((37))~~ (31) "Provisional condition" means a condition the department has requested be reported under WAC 246-101-105.

(32) "Public health authorities" ((means)) includes local health ((departments)) jurisdictions, the ((state health)) department, ((and)) the department of labor and industries ((personnel charged with administering provisions of this chapter.

(38)) the department of agriculture, sovereign tribal nations, and tribal epidemiology centers.

(33) "Quarantine" means the ((separation or restriction on activities of an individual having been exposed to or infected with an infectious agent, to prevent disease transmission.

(39)) limitation of freedom of movement of persons or domestic animals that have been exposed to, or are suspected to have been exposed to, an infectious agent:

(a) For a period of time not longer than the longest usual incubation period of the infectious agent; and

(b) In a way to prevent effective contact with those not exposed.

(34) "Rapid screening test" or "RST" means a U.S. Food and Drug Administration-approved test that provides same day results and is suitable for obtaining presumptive test results. RST includes point-of-care testing.

(35) "Reference laboratory" means a laboratory licensed inside or outside of Washington state that receives a specimen from another licensed laboratory and performs one or more tests on that specimen.

(36) "School" ((means a facility for programs of education as defined)) has the same meaning as in RCW 28A.210-070 ((pre-school and kindergarten through grade twelve)).

((40)) (37) "SARS" means severe acute respiratory syndrome.

(38) "Secretary" means the secretary of the Washington state department of health.

(39) "Secure electronic data transmission" means electronic communication and accounts developed and maintained to prevent unauthorized access, loss, or compromise of sensitive information including, but not limited to, secure file transfer, secure email, secure facsimile, a health information exchange authorized under RCW 41.05.039, and secure electronic disease surveillance system.

(40) "Secure electronic disease surveillance system" means the secure electronic data transmission system maintained by the department and used by local health jurisdictions to submit notifications, case reports, and outbreak reports under this chapter.

(41) "Sexually transmitted disease ((STD))" or "sexually transmitted infection" means a bacterial, viral, fungal, or parasitic disease or condition which is usually transmitted through sexual contact, including:

- (a) Acute pelvic inflammatory disease;
- (b) Chancroid;
- (c) *Chlamydia trachomatis* infection;
- (d) Genital and neonatal Herpes simplex;
- (e) Genital human papilloma virus infection;
- (f) Gonorrhea;
- (g) Granuloma inguinale;
- (h) Hepatitis B infection;
- (i) Human immunodeficiency virus (HIV) infection and acquired immunodeficiency syndrome (AIDS);
- (j) Lymphogranuloma venereum;
- (k) Nongonococcal urethritis (NGU); and
- (l) Syphilis.

((41)) (42) "Specimen" means material associated or suspected to be associated with a notifiable condition including, but not limited to, isolates, blood, serum, stool, urine, tissue, respiratory secretions, swab, other body fluid, or an environmental sample.

(43) "State health officer" means the person ((designated)) appointed by the secretary ((of the department)) under RCW 43.70.020 to serve as statewide health officer(, or, in the absence of this designation, the person having primary responsibility for public health matters in the state.

(42) "Suspected case" means a person whose diagnosis is thought likely to be a particular disease or condition with suspected diagnosis based on signs and symptoms, laboratory evidence, or both.

(43) "Third party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction including a health care service contractor and health maintenance organization, an employee welfare benefit plan, or a state or federal health benefit program as defined in RCW 70.02.010.

(44) "Unexplained critical illness or death" means cases of illness or death with infectious hallmarks but no known etiology, in previously healthy persons one to forty-nine years of age excluding those with chronic medical conditions (e.g., malignancy, diabetes, AIDS, cirrhosis)).

((45)) (44) "Veterinarian" means an individual licensed and practicing under provisions of chapter 18.92 RCW((; Veterinary medicine, surgery, and dentistry)).

(45) "Zoonotic disease" means an infectious condition of animals that can cause disease when transmitted to humans.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-015 Provisional ((condition)) notification and submission of specimen. ((This section describes how conditions can become notifiable; what period of time conditions are provisionally notifiable; what analyses must be accomplished during provisional notification status; the transition from provisionally notifiable condition to permanently notifiable condition or deletion of notification requirements. The department's goal for provisionally notifiable conditions is to collect enough information to determine whether requiring notification improves public health.

(1) The state health officer may:

(a) Request reporting of cases and suspected cases of disease and conditions in addition to those required in Tables HC 1 of WAC 246-101-101, Lab 1 of WAC 246-101-201, and HF 1 of WAC 246-101-301 on a provisional basis for a period of time less than forty-eight months when:

(i) The disease or condition is newly recognized or recently acknowledged as a public health concern;

(ii) Epidemiological investigation based on notification of cases may contribute to understanding of the disease or condition;

(iii) There is reason to expect that the information acquired through notification will assist the state and/or local health department to design or implement intervention strategies that will result in an improvement in public health; and

(iv) Written notification is provided to all local health officers regarding:

(A) Additional reporting requirements; and

(B) Rationale or justification for specifying the disease or condition as notifiable.

(b) Request laboratories to submit specimens indicative of infections in addition to those required in Table Lab 1 of WAC 246-101-201 on a provisional basis for a period of time less than forty-eight months, if:

(i) The infection is of public health concern;

(ii) The department has a plan for using data gathered from the specimens; and

(iii) Written notification is provided to all local health officers and all laboratory directors explaining:

(A) Actions required; and

(B) Reason for the addition.

(2) Within forty months of the state health officer's designation of a condition as provisionally notifiable in subsection (1)(a) of this section, or requests for laboratories to submit specimens indicative of infections in subsection (1)(b) of

this section, the department will conduct an evaluation for the notification requirement that:

(a) Estimates the societal cost resulting from the provisionally notifiable condition;

(i) Determine the prevalence of the provisional notifiable condition; and

(ii) Identify the quantifiable costs resulting from the provisionally notifiable condition; and

(iii) Discuss the qualitative costs resulting from the provisionally notifiable condition.

(b) Describes how the information was used and how it will continue to be used to design and implement intervention strategies aimed at combating the provisionally notifiable condition;

(c) Verifies the effectiveness of previous intervention strategies at reducing the incidence, morbidity, or mortality of the provisional notifiable condition;

(d) Identifies the quantitative and qualitative costs of the provisional notification requirement;

(e) Compares the costs of the provisional notification requirement with the estimated cost savings resulting from the intervention based on the information provided through the provisional notification requirement;

(f) Describes the effectiveness and utility of using the notifiable conditions process as a mechanism to collect these data; and

(g) Describes that a less burdensome data collection system (example: Biennial surveys) would not provide the information needed to effectively establish and maintain the intervention strategies.

(3) Based upon the evaluation in subsection (2) of this section, the board will assess results of the evaluation after the particular condition is notifiable or the requirement for laboratories to submit specimens indicative of infections has been in place for no longer than forty months. The board will determine based upon the results of the evaluation whether the provisionally notifiable condition or the requirement for laboratories to submit specimens indicative of infections should be:

(a) Permanently notifiable in the same manner as the provisional notification requirement;

(b) Permanently notifiable in a manner that would use the evaluation results to redesign the notification requirements; or

(c) Deleted from the notifiable conditions system.

(4) The department shall have the authority to declare an emergency and institute notification requirements under the provisions of RCW 34.05.350.) (1) The state health officer may request additional notification, submission of laboratory test results, or submission of specimens for notifiable conditions.

(2) The state health officer may request notification, submission of laboratory test results, and submission of specimens for a condition they determine should be provisionally reported.

(3) The state health officer may request information under subsection (1) of this section when they:

(a) Determine additional information in case reports or additional submission of specimens for a notifiable condition

is needed in order to properly prevent and control the condition; and

(b) Determine that provisional notification or submission of laboratory test results or specimens for a condition other than a notifiable condition is likely to contribute to understanding the condition, provide information necessary to prevent and control the condition, and improve public health.

(4) The state health officer shall notify the board, local health officers, health care providers, laboratory directors, health care facilities, and the department of agriculture of the request, as applicable. The notification must include the:

(a) Determination required under subsection (3) of this section including documentation supporting the determination; and

(b) As applicable, the requested:

(i) Test results;

(ii) Timeline for notification;

(iii) Public health authority to be notified;

(iv) Content of notification;

(v) Means of notification;

(vi) Specimen submission;

(vii) Timeline for specimen submission; and

(viii) Specimen submittal documentation for the condition.

(5) Within forty months of the state health officer's designation of a provisional condition or additional information for a notifiable condition, the state health officer shall:

(a) Discontinue notification, submission of laboratory test results, or submission of specimens for the condition; or

(b) Request that the board consider revising this chapter to require notification, submission of laboratory tests, and submission of specimens for the condition and provide an estimate of the probable benefits and probable costs.

(6) If the state health officer chooses to discontinue notification, submission of laboratory test results, or submission of specimens for the condition, the state health officer shall notify the board, local health officers, health care providers, laboratory directors, health care facilities, and the department of agriculture that the applicable provisional condition or requested changes to the notifiable condition has been discontinued.

(7) If the board directs the state health officer to discontinue notification, submission of laboratory test results, or submission of specimens for the condition, the state health officer shall notify local health officers, health care providers, laboratory directors, health care facilities, and the department of agriculture that the applicable provisional condition or requested changes to the notifiable condition has been discontinued.

## PART II: NOTIFIABLE CONDITIONS—HEALTH CARE PROVIDERS AND HEALTH CARE FACILITIES

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

WAC 246-101-101 Notifiable conditions ((and the))= Health care providers and health care facilities. ((This section describes the conditions that Washington's health

care providers must notify public health authorities of on a statewide basis. The board finds that the conditions in Table HC-1 of this section are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington.

(1) Principal health care providers shall notify public health authorities of the conditions identified in Table HC-1 of this section as individual case reports following the requirements in WAC 246-101-105, 246-101-110, 246-101-115, and 246-101-120.

(2) Other health care providers in attendance, other than the principal health care provider, shall notify public health authorities of the conditions identified in Table HC-1 of this section unless the condition notification has already been made.

(3) Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

Table HC-1 (Conditions Notifiable by Health Care Providers)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Acquired Immunodeficiency Syndrome (AIDS)	Within 3 business days	✓	
Animal Bites (when human exposure to rabies is suspected)	Immediately	✓	
Anthrax	Immediately	✓	
Arboviral Disease (acute disease only including, but not limited to, West Nile virus, eastern and western equine encephalitis, dengue, St. Louis encephalitis, La Crosse encephalitis, Japanese encephalitis, and Powassan)	Within 3 business days	✓	
Asthma, occupational	Monthly		✓
Birth Defects—Autism Spectrum Disorders	Monthly		✓
Birth Defects—Cerebral Palsy	Monthly		✓
Birth Defects—Alcohol Related Birth Defects	Monthly		✓
Botulism (foodborne, infant, and wound)	Immediately	✓	
Brucellosis ( <i>Brucella</i> species)	Within 24 hours	✓	
<i>Burkholderia mallei</i> (Glanders) and <i>pseudomallei</i> (Meliodosis)	Immediately	✓	
Campylobacteriosis	Within 3 business days	✓	
Chaneroid	Within 3 business days	✓	
<i>Chlamydia trachomatis</i> infection	Within 3 business days	✓	
Cholera	Immediately	✓	
Cryptosporidiosis	Within 3 business days	✓	
Cyclosporiasis	Within 3 business days	✓	
Diphtheria	Immediately	✓	
Disease of suspected bioterrorism origin	Immediately	✓	
Domoic acid poisoning	Immediately	✓	
<i>E. coli</i> —Refer to "Shiga toxin-producing <i>E. coli</i> "	Immediately	✓	
Emerging condition with outbreak potential	Immediately	✓	
Giardiasis	Within 3 business days	✓	
Gonorrhea	Within 3 business days	✓	
Granuloma inguinale	Within 3 business days	✓	
<i>Haemophilus influenzae</i> (invasive disease, children under age 5)	Immediately	✓	
Hantavirus pulmonary syndrome	Within 24 hours	✓	
Hepatitis A (acute infection)	Within 24 hours	✓	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
Hepatitis B (acute infection)	Within 24 hours	✓	
Hepatitis B surface antigen + pregnant women	Within 3 business days	✓	
Hepatitis B (chronic infection) – Initial diagnosis, and previously unreported prevalent cases	Monthly	✓	
Hepatitis C (acute infection)	Within 3 business days	✓	
Hepatitis C (chronic infection)	Monthly	✓	
Hepatitis D (acute and chronic infection)	Within 3 business days	✓	
Hepatitis E (acute infection)	Within 24 hours	✓	
Herpes simplex, neonatal and genital (initial infection only)	Within 3 business days	✓	
Human immunodeficiency virus (HIV) infection	Within 3 business days	✓	
Influenza, novel or unsubtypeable strain	Immediately	✓	
Influenza associated death (lab confirmed)	Within 3 business days	✓	
Legionellosis	Within 24 hours	✓	
Leptospirosis	Within 24 hours	✓	
Listeriosis	Within 24 hours	✓	
Lyme Disease	Within 3 business days	✓	
Lymphogranuloma venereum	Within 3 business days	✓	
Malaria	Within 3 business days	✓	
Measles (rubeola) – Acute disease only	Immediately	✓	
Meningococcal disease (invasive)	Immediately	✓	
Monkeypox	Immediately	✓	
Mumps (acute disease only)	Within 24 hours	✓	
Outbreaks of suspected foodborne origin	Immediately	✓	
Outbreaks of suspected waterborne origin	Immediately	✓	
Paralytic shellfish poisoning	Immediately	✓	
Pertussis	Within 24 hours	✓	
Pesticide poisoning (hospitalized, fatal, or cluster)	Immediately		✓
Pesticide poisoning (all other)	Within 3 business days		✓
Plague	Immediately	✓	
Poliomyelitis	Immediately	✓	
Prion disease	Within 3 business days	✓	
Psittacosis	Within 24 hours	✓	
Q-Fever	Within 24 hours	✓	
Rabies (Confirmed Human or Animal)	Immediately	✓	
Rabies, suspected human exposure (suspected human rabies exposures due to a bite from or other exposure to an animal that is suspected of being infected with rabies)	Immediately	✓	
Relapsing fever (borreliosis)	Within 24 hours	✓	
Rubella (including congenital rubella syndrome) (acute disease only)	Immediately	✓	
Salmonellosis	Within 24 hours	✓	

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to State Department of Health
SARS	Immediately	✓	
Serious adverse reactions to immunizations	Within 3 business days	✓	
Shiga toxin-producing <i>E. coli</i> infections (enterohemorrhagic <i>E. coli</i> including, but not limited to, <i>E. coli</i> O157:H7)	Immediately	✓	
Shigellosis	Within 24 hours	✓	
Smallpox	Immediately	✓	
Syphilis	Within 3 business days	✓	
Tetanus	Within 3 business days	✓	
Trichinosis	Within 3 business days	✓	
Tuberculosis	Immediately	✓	
Tularemia	Immediately	✓	
Vaccinia transmission	Immediately	✓	
Vancomycin-resistant <i>Staphylococcus aureus</i> (not to include vancomycin intermediate)	Within 24 hours	✓	
Varicella-associated death	Within 3 business days	✓	
Vibriosis	Within 24 hours	✓	
Viral hemorrhagic fever	Immediately	✓	
Yellow fever	Immediately	✓	
Yersiniosis	Within 24 hours	✓	
Other rare diseases of public health significance	Within 24 hours	✓	
Unexplained critical illness or death	Within 24 hours	✓	

(✓) Indicates which agency should receive case and suspected case reports:)

(1) For the purposes of this section:

(a) "Local health jurisdiction" means where the patient resides, or, in the event the patient residence cannot be determined, the local health jurisdiction in which the patient received treatment.

(b) "Unexplained critical illness or death" means a severe illness or death with infectious hallmarks, but no known etiology, in a previously healthy person one to forty-nine years of age excluding those with chronic medical conditions such as malignancy, diabetes, AIDS, or cirrhosis.

(2) The conditions identified in Table HC-1 are notifiable to public health authorities under this table and this chapter.

Table HC-1 (Conditions Notifiable by Health Care Providers and Health Care Facilities)

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
Acquired immunodeficiency syndrome (AIDS)		Within 3 business days	DOH (for facilities) and LHJ (for providers)	Both
Amoebic meningitis		Immediately	LHJ	Both
Anaplasmosis		Within 3 business days	LHJ	Both
<u>Anthrax (<i>Bacillus anthracis</i> and confirmed <i>Bacillus cereus</i> biovar <i>anthracis</i> only - Do not report all <i>Bacillus cereus</i>)</u>	Yes	Immediately	LHJ	Both

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Arboviral disease (acute disease only) including, but not limited to:</u> <u>Chikungunya</u> <u>Dengue</u> <u>Eastern and western equine encephalitis</u> <u>Japanese encephalitis</u> <u>La Crosse encephalitis</u> <u>Powassan virus infection</u> <u>St. Louis encephalitis</u> <u>West Nile virus infection</u> <u>Zika virus infection</u> See also "Yellow fever"		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Asthma, occupational</u>		<u>Within 30 days</u>	<u>Washington state department of labor and industries (L&amp;I)</u>	<u>Both</u>
<u>Babesiosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Baylisascariasis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Birth defects - Abdominal wall defects (inclusive of gastroschisis and omphalocele)</u>		<u>Within 30 days</u>	<u>LHJ</u>	<u>Facilities</u>
<u>Birth defects - Autism spectrum disorders</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Both</u>
<u>Birth defects - Cerebral palsy</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Both</u>
<u>Birth defects - Down syndrome</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Birth defects - Alcohol related birth defects</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Both</u>
<u>Birth defects - Hypospadias</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Birth defects - Limb reductions</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Birth defects - Neural tube defects (inclusive of anencephaly and spina bifida)</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Birth defects - Oral clefts (inclusive of cleft lip with/without cleft palate)</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Blood lead level RST results (See WAC 246-101-200)</u>		<u>Providers and facilities performing blood lead level RST shall report as a laboratory and comply with the requirements of WAC 246-101-201 through 246-101-230.</u>		
<u>Botulism, foodborne, infant, and wound</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Brucellosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Campylobacteriosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Cancer (See chapter 246-102 WAC)</u>				



<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Candida auris infection or colonization</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Carbapenem-resistant Enterobacteriaceae infections limited to:</u> <u>Klebsiella species</u> <u>E. coli</u> <u>Enterobacter species</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Chagas disease</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Chancroid</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Chlamydia trachomatis infection</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Cholera (Vibrio cholerae O1 or O139)</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Coccidioidomycosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Coronavirus infection (severe communicable)</u> <u>SARS-associated coronavirus</u> <u>MERS-associated coronavirus</u> <u>Novel coronavirus (COVID-19)</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Cryptococcus gattii or undifferentiated Cryptococcus species (i.e., Cryptococcus not identified as C. neoformans)</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Cryptosporidiosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Cyclosporiasis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Cysticercosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Diphtheria</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Domoic acid poisoning</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>E. coli (See "Shiga toxin-producing E. coli")</u>				
<u>Echinococcosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Ehrlichiosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Giardiasis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Glanders (Burkholderia mallei)</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Gonorrhea</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Granuloma inguinale</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Gunshot wounds (nonfatal)</u>		<u>Within 30 days</u>	<u>DOH</u>	<u>Facilities</u>
<u>Haemophilus influenzae (invasive disease, children under 5 years of age)</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Hantaviral infection</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis A (acute infection)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis B (acute infection)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis B, report pregnancy in hepatitis B virus infected patients (including carriers)</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis B (chronic infection) - Initial diagnosis, and previously unreported prevalent cases</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis B (perinatal) - Initial diagnosis, and previously unreported cases</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis C (acute infection)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis C (acute infection) RTS results (See WAC 246-101-200)</u>		<u>Providers and facilities performing hepatitis C (acute infection) RST shall report as a laboratory and comply with the requirements of WAC 246-101-201 through 246-101-230.</u>		
<u>Hepatitis C (chronic infection)</u>	<u>Yes</u>	<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis C (perinatal) - Initial diagnosis, and previously unreported cases</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis C (chronic infection) RST results (See WAC 246-101-200)</u>		<u>Providers and facilities performing hepatitis C (chronic infection) RST shall report as a laboratory and comply with the requirements of WAC 246-101-201 through 246-101-230.</u>		
<u>Hepatitis D (acute and chronic infection)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Hepatitis E (acute infection)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Herpes simplex, neonatal and genital (initial infection only)</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Providers</u>
<u>Histoplasmosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Human immunodeficiency virus (HIV) infection</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Human immunodeficiency virus (HIV) infection RST results (See WAC 246-101-200)</u>		<u>Providers and facilities performing HIV infection RST shall report as a laboratory and comply with the requirements of WAC 246-101-201 through 246-101-230.</u>		
<u>Human prion disease</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Hypersensitivity pneumonitis, occupational</u>		<u>Within 30 days</u>	<u>L&amp;I</u>	<u>Both</u>
<u>Influenza, novel or unsubtypeable strain</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Influenza-associated death (laboratory confirmed)</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Legionellosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Leptospirosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Listeriosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Lyme disease</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Lymphogranuloma venereum</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Malaria</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Measles (rubeola) - Acute disease only</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Melioidosis (<i>Burkholderia pseudomallei</i>)</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Meningococcal disease, invasive</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Monkeypox</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Mumps, acute disease only</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Outbreaks and suspected outbreaks</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Paralytic shellfish poisoning</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Pertussis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Pesticide poisoning (hospitalized, fatal, or cluster)</u>		<u>Immediately</u>	<u>DOH</u>	<u>Both</u>
<u>Pesticide poisoning (all other)</u>		<u>Within 3 business days</u>	<u>DOH</u>	<u>Both</u>
<u>Plague</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Poliomyelitis</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Pregnancy in patient with hepatitis B virus</u>		<u>See "Hepatitis B, report pregnancy in hepatitis B virus infected patients (including carriers)"</u>		
<u>Psittacosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Q fever</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Rabies (confirmed human or animal)</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Rabies, suspected human exposure (suspected human rabies exposures due to a bite from or other exposure to an animal that is suspected of being infected with rabies)</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Relapsing fever (borreliosis)</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Rickettsia infection</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Rubella, acute disease only (including congenital rubella syndrome)</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Salmonellosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Serious adverse reactions to immunizations</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Shiga toxin-producing <i>E. coli</i> (STEC) infections/enterohemorrhagic <i>E. coli</i> infections</u>	<u>Yes</u>	<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Shigellosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Smallpox</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Syphilis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Taeniasis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Tetanus</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Tick paralysis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Trichinosis</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Tuberculosis disease (confirmed or highly suspicious, i.e., initiation of empiric treatment)</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Tularemia</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Typhus</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Vaccinia transmission</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Vancomycin-resistant <i>Staphylococcus aureus</i> (not to include vancomycin-intermediate)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Varicella-associated death</u>		<u>Within 3 business days</u>	<u>LHJ</u>	<u>Both</u>
<u>Vibriosis (<i>Vibrio</i> species not including <i>Vibrio cholerae</i> O1 or O139) See Cholera (<i>Vibrio cholerae</i> O1 or O139)</u>	<u>Yes</u>	<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>
<u>Viral hemorrhagic fever</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Yellow fever</u>		<u>Immediately</u>	<u>LHJ</u>	<u>Both</u>
<u>Yersiniosis</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>

<u>Notifiable Condition (Agent)</u>	<u>Laboratory Confirmation Required Before Submitting Case Report</u>	<u>Time Frame for Notification from Identification of a Case</u>	<u>Who Must Be Notified</u>	<u>Who Must Report: Health Care Providers (Providers) or Health Care Facilities (Facilities)</u>
<u>Unexplained critical illness or death</u>		<u>Within 24 hours</u>	<u>LHJ</u>	<u>Both</u>

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-105 Duties (~~of the~~)—Health care providers and health care facilities.** (~~Health care providers shall:~~

~~(1) Notify the local health department where the patient resides, or, in the event that patient residence cannot be determined, the local health department in which the health care providers practice, regarding:~~

~~(a) Cases or suspected cases of notifiable conditions specified as notifiable to local health departments in Table HC-1 of WAC 246-101-101;~~

~~(b) Cases of conditions designated as notifiable by the local health officer within that health officer's jurisdiction;~~

~~(c) Outbreaks or suspected outbreaks of disease including, but not limited to, suspected or confirmed outbreaks of varicella, influenza, viral meningitis, health care-associated infection suspected due to contaminated food products or devices, or environmentally related disease;~~

~~(d) Known barriers which might impede or prevent compliance with orders for infection control or quarantine; and~~

~~(e) Name, address, and other pertinent information for any case, suspected case or carrier refusing to comply with prescribed infection control measures.~~

~~(2) Notify the department of conditions designated as notifiable to the local health department when:~~

~~(a) A local health department is closed or representatives of the local health department are unavailable at the time a case or suspected case of an immediately notifiable condition occurs;~~

~~(b) A local health department is closed or representatives of the local health department are unavailable at the time an outbreak or suspected outbreak of communicable disease occurs.~~

~~(3) Notify the department of pesticide poisoning that is fatal, causes hospitalization or occurs in a cluster.~~

~~(4) Notify the department regarding cases of notifiable conditions specified as notifiable to the department in Table HC-1 of WAC 246-101-101.~~

~~(5) Assure that positive preliminary test results and positive final test results for notifiable conditions of specimens referred to laboratories outside of Washington for testing are correctly notified to the local health department of the patient's residence or the department as specified in Table Lab-1 of WAC 246-101-201. This requirement can be satisfied by:~~

~~(a) Arranging for the referral laboratory to notify either the local health department, the department, or both; or~~

~~(b) Forwarding the notification of) (1) Unless a health care facility has assumed the notification duties of the principal health care provider under subsection (4) of this section, the principal health care provider shall submit individual case reports:~~

~~(a) To the required public health authority under Table HC-1 of WAC 246-101-101 and the requirements of WAC 246-101-110 and 246-101-115, and this section;~~

~~(b) To the local health jurisdiction as required by the local health officer within that health officer's jurisdiction.~~

~~(2) A health care facility shall submit individual case reports:~~

~~(a) To the required public health authority under Table HC-1 of WAC 246-101-101 and the requirements of WAC 246-101-110 and 246-101-115, and this section that occur or are treated in their facilities.~~

~~(b) To the local health jurisdiction as required by the local health officer within that health officer's jurisdiction.~~

~~(3) This section does not require a health care provider or a health care facility to confirm the absence of cases of conditions listed in Table HC-1 of WAC 246-101-101.~~

~~(4) A health care facility may assume the notification requirements established in this chapter for a health care provider practicing within the health care facility.~~

~~(5) A health care facility shall not assume the notification requirements established in this chapter for a laboratory that is a component of the health care facility.~~

~~(6) Health care providers and health care facilities shall:~~

~~(a) Provide the laboratory with the following information for each test ordered for a notifiable condition:~~

~~(i) Patient's first and last name;~~

~~(ii) Patient's physical address including zip code;~~

~~(iii) Patient's date of birth;~~

~~(iv) Patient's sex;~~

~~(v) For hepatitis B tests only, pregnancy status (pregnant/not pregnant/unknown) of patients twelve to fifty years of age only;~~

~~(vi) Patient's best contact telephone number;~~

~~(vii) Patient's medicaid status, for blood lead level tests for patients less than seventy-two months of age only;~~

~~(viii) Requesting health care provider's name;~~

~~(ix) Requesting health care provider's phone number;~~

~~(x) Address where patient received care;~~

~~(xi) Specimen type;~~

~~(xii) Specimen collection date; and~~

~~(xiii) Condition being tested for.~~

~~(b) For specimens associated with a notifiable condition sent to a laboratory outside of Washington state, provide the laboratory with the information under (a) of this subsection, Table Lab-1 of WAC 246-101-201, and WAC 246-101-220 and 246-101-225.~~

(c) If the presumptive or final test results are consistent with Table Lab-1 of WAC 246-101-201, the health care provider or health care facility shall either:

(i) Confirm the laboratory submitted the case report consistent with WAC 246-101-220 and 246-101-225; or

(ii) Submit the ((test result)) presumptive and final test results from the ((referral)) out-of-state laboratory ((to the local health department, the department, or both.

(6)) with the case report according to the requirements of this chapter.

(d) Cooperate with public health authorities during investigation of:

((a) Circumstances of a case or suspected) (i) A case of a notifiable condition ((or other communicable disease)); and

((b)) (ii) An outbreak or suspected outbreak ((of disease)).

((7)) (e) Maintain an infection control program as described in WAC 246-320-176 for hospitals and WAC 246-330-176 for ambulatory surgical facilities;

(f) Provide adequate and understandable instruction in disease control measures to each patient who has been diagnosed with a case of a communicable disease, and to contacts who may have been exposed to the disease((-

(8) Maintain responsibility for deciding date of discharge for hospitalized tuberculosis patients.

(9) Notify the local health officer of intended discharge of tuberculosis patients in order to assure appropriate outpatient arrangements are arranged.

(10) By July 1, 2011, when ordering a laboratory test for a notifiable condition as identified in Table HC-1 of WAC 246-101-101, providers must provide the laboratory with the following information for each test order:

(a) Patient name;

(b) Patient address including zip code;

(c) Patient date of birth;

(d) Patient sex;

(e) Name of the principal health care provider;

(f) Telephone number of the principal health care provider;

(g) Type of test requested;

(h) Type of specimen;

(i) Date of ordering specimen collection.); and

(g) Notify the local health jurisdiction of:

(i) Known barriers that might impede or prevent compliance with infection control measures; and

(ii) Name, address, and other pertinent information for any case or carrier refusing to comply with infection control measures.

(7) Health care providers and health care facilities may provide health information, demographic information, or infectious or noninfectious condition information in addition to the information required under this chapter when the provider or facility determines that the additional information will aid the public health authority in protecting and improving the public's health through prevention and control of infectious and noninfectious conditions.

(8) When a health care provider or health care facility submits information under subsection (7) of this section, they shall submit the information under the requirements of WAC 246-101-110.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-110 Means of notification—Health care providers and health care facilities.** Health care providers ((shall adhere to the following timelines and procedures:

(1) Conditions designated as immediately notifiable must be reported to the local health officer or the department, as specified in Table HC-1 of WAC 246-101-101, immediately as the time of diagnosis or suspected diagnosis. This applies twenty-four hours a day, seven days a week. Each local health jurisdiction, as well as the department, maintains after hours emergency phone contacts for this purpose. A party sending a report by secure facsimile copy or secure electronic transmission during normal business hours must confirm immediate receipt by a live person.

(2) Conditions designated as notifiable within twenty-four hours must be reported to the local health officer or the department, as specified in Table HC-1 of WAC 246-101-101, within twenty-four hours of diagnosis or suspected diagnosis, seven days a week. Reports during normal public health business hours may be sent by secure electronic transmission, telephone, or secure facsimile copy of a case report. A party sending a report outside of normal public health business hours must use the after-hours emergency phone contact for the appropriate jurisdiction.

(3) Conditions designated as notifiable within three business days must be reported to the local health officer or department, as specified in Table HC-1 of WAC 246-101-101, within three business days. Notification may be sent by written case report, secure electronic transmission, telephone, or secure facsimile copy of a case report; and

(4) Conditions designated as notifiable on a monthly basis must be reported to the local health officer or the department, as specified in Table HC-1 of WAC 246-101-101, on a monthly basis. Notification may be sent by written case report, secure electronic transmission, telephone, or secure facsimile copy of a case report)) and health care facilities shall:

(1) Submit a case report for each case under Table HC-1 of WAC 246-101-101, 246-101-115, and this section by secure electronic data transmission;

(2) Submit a case report to the department instead of the local health jurisdiction when:

(a) The local health jurisdiction is closed or representatives of the local health jurisdiction are unavailable;

(i) For immediately notifiable conditions; or

(ii) At the time an outbreak or suspected outbreak of a communicable disease occurs.

(b) The patient who is the subject of the case report resides outside Washington state and is a visitor to Washington state;

(3) Call the public health authority designated for the condition in Table HC-1 of WAC 246-101-101 immediately and confirm receipt of a case report for conditions designated as:

(a) Immediately notifiable; or

(b) Notifiable within twenty-four hours if the case report is submitted outside of the local health jurisdiction's normal business hours.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-115 Content of ~~((notifications))~~ case reports—Health care providers and health care facilities.**

(1) ~~((For each condition listed in Table HC-1 of WAC 246-101-101,))~~ Health care providers and health care facilities shall provide the following information ~~((for))~~ in each case ~~((or suspected case))~~ report for a notifiable condition, excluding occupational traumatic injury hospitalizations:

- ~~(a) Patient's first and last name;~~
- ~~(b) Patient's physical address including zip code;~~
- ~~(c) ~~((Patient telephone number;~~~~
- ~~((d))~~ Patient's date of birth;
- ~~((e))~~ (d) Patient's sex;
- ~~((f))~~ (e) For hepatitis B acute or chronic infection case reports, pregnancy status (pregnant/not pregnant/unknown) of patients twelve to fifty years of age:

- ~~(f) Patient's best contact telephone number;~~
- ~~(g) Name of the principal health care provider;~~
- ~~(h) Telephone number of the principal health care provider;~~

- ~~(i) Address where patient received care;~~
- ~~(j) Name of the person providing the report;~~
- ~~(k) Telephone number of the person providing the report;~~
- ~~(l) Diagnosis or suspected diagnosis of ~~((disease or))~~ the condition; and~~

~~((g))~~ (m) Pertinent laboratory ~~((data))~~ results, if available;

- ~~(h) Name of the principal health care provider;~~
- ~~(i) Telephone number of the principal health care provider;~~
- ~~(j) Address of the principal health care provider;~~
- ~~(k) Name and telephone number of the person providing the report; and~~
- ~~(l) Other information as the department may require on forms generated by the department).~~

(2) The local health officer ~~((or))~~ and the state health officer may ~~((require other))~~ request additional information of epidemiological or public health value when conducting a case investigation or to otherwise prevent and control a specific notifiable condition.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-120 Handling ~~((of case reports and medical))~~ confidential information—Health care providers and health care facilities.** (1) All records and specimens ~~((containing))~~ related to a case that contain or are accompanied by patient identifying information are confidential. Patient identifying information includes information that can directly or indirectly identify a patient.

(2) Health care providers, health care facilities, and health care facility personnel shall maintain the confidentiality of patient health care information consistent with chapter 70.02 RCW and any other applicable confidentiality laws.

(3) Health care providers and health care facilities shall:  
 (a) Establish and implement policies and procedures to maintain confidentiality of health care information under this section, and chapters 70.02 and 70.24 RCW.

~~((2))~~ Health care providers who know of a person with a notifiable condition, other than a sexually transmitted disease, shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease, including the local health department.

(3) ~~Health care providers with knowledge of a person with sexually transmitted disease, and following the basic principles of health care providers, which respect the human dignity and confidentiality of patients:~~

(a) ~~May disclose the identity of a person or release identifying information only as specified in RCW 70.24.105; and~~

(b) ~~Shall under RCW 70.24.105(6), use only the following customary methods for exchange of medical information:~~

(i) ~~Health care providers may exchange medical information related to HIV testing, HIV test results, and confirmed HIV or confirmed STD diagnosis and treatment in order to provide health care services to the patient. This means that information shared impacts the care or treatment decisions concerning the patient; and the health care provider requires the information for the patient's benefit.~~

(ii) ~~Health care providers responsible for office management are authorized to permit access to a patient's medical information and medical record by medical staff or office staff to carry out duties required for care and treatment of a patient and the management of medical information and the patient's medical record.~~

~~(e) Health care providers~~ (b) When conducting a clinical HIV research project ~~((shall))~~, report the identity of an individual participating in the project unless:

(i) The project has been approved by an institutional review board; and

(ii) The project has a system in place to remind referring health care providers of ~~((their reporting obligations))~~ notification requirements under this chapter.

~~((4))~~ Health care providers shall establish and implement policies and procedures to maintain confidentiality related to a patient's medical information.

**PART III: NOTIFIABLE CONDITIONS—LABORATORIES AND LABORATORY DIRECTORS**

NEW SECTION

**WAC 246-101-200 Rapid screening testing.** An individual or entity including, but not limited to, health care providers and health care facilities, that conduct an RST for any of the following conditions, meets the definition of a laboratory under this chapter, and shall comply with WAC 246-101-201 through 246-101-230:

- (1) Blood lead level testing;
- (2) Hepatitis C (acute infection);
- (3) Hepatitis C (chronic infection); or
- (4) HIV infection.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-201 Notifiable conditions ~~((and))~~ Laboratories.** ~~((This section describes the conditions about~~

which Washington's laboratories must notify public health authorities of on a statewide basis. The board finds that the conditions in Table Lab-1 of this section are notifiable for the prevention and control of communicable and noninfectious diseases and conditions in Washington. The board also finds that submission of specimens for many of these conditions will further prevent the spread of disease.

(1) Laboratory directors shall notify public health authorities of positive preliminary test results and positive

final test results of the conditions identified in Table Lab-1 of this section as individual case reports and provide specimen submissions following the requirements in WAC 246-101-205, 246-101-210, 246-101-215, 246-101-220, 246-101-225, and 246-101-230.

(2) Local health officers may require additional conditions to be notifiable within the local health officer's jurisdiction.

Table Lab-1 (Conditions Notifiable by Laboratory Directors)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
Arboviruses (West Nile virus, eastern and western equine encephalitis, dengue, St. Louis encephalitis, La Crosse encephalitis, Japanese encephalitis, Powassan, California serogroup, Chikungunya) Acute: IgM positivity PCR positivity Viral isolation	2 business days	✓		On request
<i>Bacillus anthracis</i> (Anthrax)	Immediately	✓		Culture (2 business days)
Blood Lead Level	Elevated Levels – 2 business days Nonelevated Levels – Monthly		✓	
<i>Bordetella pertussis</i> (Pertussis)	Within 24 hours	✓		Culture, when available (2 business days)
<i>Borrelia burgdorferi</i> (Lyme disease)	2 business days	✓		On request
<i>Borrelia hermsii</i> or <i>recurrentis</i> (Relapsing fever, tick- or louse-borne)	Within 24 hours	✓		On request
<i>Brucella</i> species (Brucellosis)	Within 24 hours	✓		Cultures (2 business days)
<i>Burkholderia mallei</i> and <i>pseudomallei</i>	Immediately	✓		Culture (2 business days); additional specimens when available
<i>Campylobacter</i> species (Campylobacteriosis)	2 business days	✓		On request
CD4+ (T4) lymphocyte counts and/or CD4+ (T4) (patients aged thirteen or older)	Monthly	Only when the local health department is designated by the Department of Health	✓ (Except King County)	
<i>Chlamydomphila psittaci</i> (Psittacosis)	Within 24 hours	✓		On request



Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
<i>Chlamydia trachomatis</i>	2 business days	✓		
<i>Clostridium botulinum</i> (Botulism)	Immediately	✓		Serum and/or stool; any other specimens available (i.e., foods submitted for suspected food-borne case; debrided tissue submitted for suspected wound botulism) (2 business days)
<i>Corynebacterium diphtheriae</i> (Diphtheria)	Immediately	✓		Culture (2 business days)
<i>Coxiella burnetii</i> (Q fever)	Within 24 hours	✓		Culture (2 business days)
<i>Cryptococcus non v. neoformans</i>	N/A	N/A		Culture (2 business days) or other specimens upon request
<i>Cryptosporidium</i> (Cryptosporidiosis)	2 business days	✓		On request
<i>Cyclospora cayentanensis</i> (Cyclosporiasis)	2 business days	✓		Specimen (2 business days)
<i>E. coli</i> – Refer to "Shiga toxin-producing <i>E. coli</i> "	Immediately	✓		
<i>Francisella tularensis</i> (Tularemia)	Immediately	✓		Culture or other appropriate clinical material (2 business days)
<i>Giardia lamblia</i> (Giardiasis)	2 business days	✓		On request
<i>Haemophilus influenzae</i> (children < 5 years of age)	Immediately	✓		Culture, from sterile sites only, when type is unknown (2 business days)
Hantavirus	Within 24 hours	✓		On request
Hepatitis A virus (acute) by IgM positivity (Hepatoellular enzyme levels to accompany report)	Within 24 hours	✓		On request
Hepatitis B virus (acute) by IgM positivity	Within 24 hours	✓		On request
Hepatitis B virus – HBsAg (Surface antigen) – HBeAg (E antigen) – HBV DNA	Monthly	✓		
Hepatitis C virus	Monthly	✓		
Hepatitis D virus	2 business days	✓		On request
Hepatitis E virus	Within 24 hours	✓		On request

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
Human immunodeficiency virus (HIV) infection (for example, positive Western Blot assays, P24 antigen or viral culture tests)	2 business days	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Human immunodeficiency virus (HIV) infection (II viral load detection test results—detectable and undetectable)	Monthly	Only when the local health department is designated by the Department of Health	√ (Except King County)	
Influenza virus, novel or unsubtype strain	Immediately	√		Isolate or clinical specimen (2 business days)
<i>Legionella</i> species (Legionellosis)	Within 24 hours	√		Culture (2 business days)
<i>Leptospira</i> species (Leptospirosis)	Within 24 hours	√		On request
<i>Listeria monocytogenes</i> (Listeriosis)	Within 24 hours	√		Culture (2 business days)
Measles virus (rubeola) Acute: IgM positivity PCR positivity	Immediately	√		Isolate or clinical specimen associated with positive result (2 business days)
Mumps virus Acute: IgM positivity PCR positivity	Within 24 hours	√		Isolate or clinical specimen associated with positive result (2 business days)
<i>Mycobacterium tuberculosis</i> (Tuberculosis)	2 business days		√	Culture (2 business days)
<i>Mycobacterium tuberculosis</i> (Tuberculosis) (Antibiotic sensitivity for first isolates)	2 business days		√	
<i>Neisseria gonorrhoeae</i> (Gonorrhea)	2 business days	√		
<i>Neisseria meningitidis</i> (Meningococcal disease)	Immediately	√		Culture (from sterile sites only) (2 business days)
<i>Plasmodium</i> species (Malaria)	2 business days	√		On request
Poliovirus Acute: IgM positivity PCR positivity	Immediately	√		Isolate or clinical specimen associated with positive result (2 business days)
Rabies virus (human or animal)	Immediately	√ (Pathology Report Only)		Clinical specimen associated with positive result (2 business days)
<i>Salmonella</i> species (Salmonellosis)	Within 24 hours	√		Culture (2 business days)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department	Notifiable to Department of Health	Specimen Submission to Department of Health (Type & Timing)
SARS-associated coronavirus	Immediately	√		Isolate or clinical specimen associated with positive result (2 business days)
Shiga toxin-producing <i>E. coli</i> (enterohemorrhagic <i>E. coli</i> including, but not limited to, <i>E. coli</i> O157:H7)	Immediately	√		Culture (2 business days) or specimen if no culture is available
<i>Shigella</i> species (Shigellosis)	Within 24 hours	√		Culture (2 business days)
<i>Treponema pallidum</i> (Syphilis)	2 business days	√		Serum (2 business days)
<i>Trichinella</i> species	2 business days	√		On request
Vancomycin-resistant <i>Staphylococcus aureus</i>	Within 24 hours	√		Culture (2 business days)
Variola virus (smallpox)	Immediately	√		Isolate or clinical specimen associated with positive result (2 business days)
<i>Vibrio cholerae</i> O1 or O139 (Cholera)	Immediately	√		Culture (2 business days)
<i>Vibrio</i> species (Vibriosis)	Within 24 hours	√		Culture (2 business days)
Viral hemorrhagic fever: Arenaviruses Bunyaviruses Filoviruses Flaviviruses	Immediately	√		Isolate or clinical specimen associated with positive result (2 business days)
Yellow fever virus	Immediately	√		Serum (2 business days)
<i>Yersinia enterocolitica</i> or <i>pseudotuberculosis</i>	Within 24 hours	√		On request
<i>Yersinia pestis</i> (Plague)	Immediately	√		Culture or other appropriate clinical material (2 business days)

(√) Indicates which agency should receive case and suspected case reports.

(3) The local health department may request laboratory reporting of additional test results pertinent to an investigation of a notifiable condition (e.g., hepatocellular enzyme levels for hepatitis or negative stool test results on salmonellosis rescreening).

(4) Laboratory directors may notify the local health department, the department, or both of other laboratory results:)) (1) For the purposes of Table Lab-1:

(a) "At least annually" means deidentified negative screening results may be submitted in a single report no less than once per year, but may be submitted more frequently as a single report or as individual screening results.

(b) "Deidentified negative screening result" means an initial test result that indicates the absence of disease, and that has personally identifiable information removed from it using the Health Insurance Portability and Accountability Act of 1996 Safe Harbor method defined in 45 C.F.R. 164.514. A deidentified negative screening result does not include a negative test result associated with a previous positive test result, such as a negative nucleic acid or viral load test that is performed after a positive antibody or antigen test.

(c) "LHJ" means where the patient resides, or, in the event that patient residence cannot be determined, the local health jurisdiction in which the ordering health care provider practices, or the local health jurisdiction in which the laboratory operates.

(d) "Within two business days" means specimens must be in transit to the Washington state public health laboratories within two business days of:

(i) Completing a test and the specimen being ready for packaging; or

(ii) Receiving a request from a local health jurisdiction or the department, provided the specimen is still available at the time of the request.

(2) This chapter does not require a laboratory to:

(a) Test for agents (conditions) or speculate if the laboratory does not perform the test as part of its normal work. A laboratory director shall only report a case of a condition if it is identified as part of their normal testing protocols; or

(b) Retain specimens indefinitely in anticipation of a request from a local health jurisdiction or the department.

(3) The agents (conditions) in Table Lab-1 are notifiable by a laboratory director as indicated in Table Lab-1 and this chapter.

Table Lab-1 (Conditions Notifiable by Laboratory Directors)

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Amoebic meningitis</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Specimen associated with positive result, if available</u>	<u>Within 2 business days</u>
<u>Anaplasma species (Anaplasmosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result, if available</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Babesia species (Babesiosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result, if available</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Bacillus anthracis (Anthrax)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Bacillus cereus, biovar anthracis subspecies only</u>	<u>Confirmed positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Do not ship specimen</u>	<u>Do not ship specimen</u>
<u>Baylisascaris (Baylisascariasis)</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result, if available</u>	<u>Within 2 business days</u>
<u>Blood lead level</u>	<u>Elevated results equal to or greater than 5 micrograms per deciliter for:</u> <u>RST</u> <u>Venous</u>	<u>Within 2 business days to DOH</u>	<u>N/A</u>	<u>N/A</u>
	<u>Nonelevated results less than 5 micrograms per deciliter for:</u> <u>RST</u> <u>Venous</u>	<u>Within 30 days to DOH</u>		

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u><i>Bordetella pertussis</i></u> (Pertussis)	Positive results by: <u>Culture</u> <u>Nucleic acid detection</u> (nucleic acid testing (NAT)) or (nucleic acid amplification testing (NAAT))	Within 24 hours to LHJ	<u>Isolate</u>  <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>  <u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Borrelia burgdorferi</i> or <i>Borrelia mayonii</i></u> (Lyme disease)	Positive result by any <u>method</u>	Within 2 business days to LHJ	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Borrelia hermsii, parkeri, turicatae, miyamotoi, or recurrentis</i></u> (Relapsing fever, tick- or louse-borne)	Positive result by any <u>method</u>	Within 2 business days to LHJ	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Brucella</i> species (Brucellosis)</u>	Positive result by any <u>method excluding Immunoglobulin G (IgG)</u>	Within 24 hours to LHJ	<u>Isolate, excluding confirmed positive <i>B. melitensis, B. abortus, or B. suis</i></u>  <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u><i>Burkholderia mallei</i></u> (Glanders)	Positive result by any <u>method excluding IgG</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u>  <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u><i>Burkholderia pseudomallei</i></u> (Melioidosis)	Positive result by any <u>method excluding IgG</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u>  <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>California serogroup viruses, acute (Arbovirus)</u>	Positive result by any <u>method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Campylobacter</i> species (Campylobacteriosis)</u>	Positive result by: <u>Culture</u> <u>Nucleic acid detection (NAT or NAAT)</u> <u>Antigen detection</u>	<u>Within 2 business days to LHJ</u>	<u>Isolate</u>  <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Candida auris</i></u>	Positive result by any <u>method</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u>	<u>Within 2 business days</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
			If no isolate available, specimen associated with positive result	
<u>Carbapenem-resistant Enterobacteriaceae:</u> <u><i>Klebsiella</i> species</u> <u><i>E. coli</i></u> <u><i>Enterobacter</i> species</u>	<u>Positive for known carbapenemase resistance gene (including, but not limited to, KPC, NDM, VIM, IMP, OXA-48) demonstrated by nucleic acid detection (NAT or NAAT), or whole genome sequencing</u>  <u>Positive on a phenotypic test for carbapenemase production including, but not limited to, Metallo-B-lactamase test, modified Hodge test (MHT) (for <i>E. coli</i> and <i>Klebsiella</i> species only), CarbaNP, Carbapenem Inactivation Method (CIM) or modified CIM (mCIM)</u>  <u>Resistant to any carbapenem including, but not limited to, doripenem, ertapenem, imipenem or meropenem</u>	<u>Within 2 business days to LHJ</u>	<u>Isolate</u>  <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>CD4 + counts<sup>1</sup>, or CD4 + percents<sup>2</sup>, or both (patients aged thirteen or older)</u>	<u>All results</u>	<u>Within 30 days to DOH except in King County where this is notifiable to the LHJ</u>	<u>N/A</u>	<u>N/A</u>
<u>Chikungunya virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding Immunoglobulin G (IgG)</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Chlamydia psittaci</i> (Psittacosis)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Chlamydia trachomatis</i></u>	<u>Positive and indeterminate result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>N/A</u>	<u>N/A</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u><i>Chlamydia trachomatis</i></u>	<u>Deidentified negative screening result</u>	<u>At least annually to DOH</u>	<u>N/A</u>	<u>N/A</u>
<u><i>Clostridium botulinum</i> (Botulism)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u><i>Coccidioides</i> (Coccidioidomycosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u> <u>Within 2 business days of request by LHJ or DOH</u>
<u>Coronavirus</u> <u>SARS-associated coronavirus</u> <u>MERS-associated coronavirus</u> <u>Novel coronavirus (COVID-19)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate, if no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Corynebacterium diphtheriae</i> (Diphtheria)</u>	<u>Positive result by: Culture</u> <u>Nucleic acid detection (NAT or NAAT)</u>	<u>Immediately to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u> <u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Coxiella burnetii</i> (Q fever)</u>	<u>Positive result by any method</u>	<u>Within 24 hours LHJ</u>	<u>Specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Crimean-Congo hemorrhagic fever virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u><i>Cryptococcus gattii</i> or undifferentiated <i>Cryptococcus</i> species (i.e., <i>Cryptococcus</i> not identified as <i>C. neoformans</i>)</u>	<u>Positive results by any method excluding cryptococcal antigen</u>	<u>Within 2 business days to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result (excluding serum)</u> <u>Serum</u>	<u>Within 2 business days</u> <u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Cryptosporidium</i> (Cryptosporidiosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Cyclospora cayentanensis (Cyclosporiasis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Dengue virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>E. coli - Refer to "Shiga toxin-producing E. coli"</u>				
<u>Eastern and western equine encephalitis virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Ebola virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive specimen</u>	<u>Within 2 business days</u>
<u>Echinococcus granulosus or E. multilocularis (Echinococcosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Ehrlichia species (Ehrlichiosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Francisella tularensis (Tularemia)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Giardia duodenalis, G. lamblia, G. intestinalis (Giardiasis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Guanarito virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Haemophilus influenzae (children &lt; 5 years of age)</u>	<u>Positive result for specimen from a normally sterile site by:</u> <u>Culture</u> <u>Nucleic acid detection (NAT or NAAT)</u>	<u>Immediately to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>



<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Hantavirus including, but not limited to:</u> <u>Andes virus</u> <u>Bayou virus</u> <u>Black Creek Canal virus</u> <u>Dobrava-Belgrade virus</u> <u>Hantaan virus</u> <u>Seoul virus</u> <u>Sin nombre virus</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Hepatitis A virus</u>	<u>Positive results for:</u> <u>IgM</u> <u>Nucleic acid detection (NAT or NAAT)</u> <u>Hepatocellular enzyme levels to accompany report, if available, for positive IgM results</u>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Hepatitis B virus</u>	<u>Positive results for:</u> <u>IgM anti-HBc</u> <u>HBsAg</u> <u>HBeAg</u> <u>HBV Nucleic acid detection (NAT or NAAT) either qualitative or quantitative, for example PCR or genotyping</u> <u>If associated with a positive result listed above, and available:</u> <u>Hepatocellular enzyme levels</u> <u>Pregnancy status</u> <u>Negative IgM anti-HBc result</u>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Hepatitis C virus</u>	<p><u>Positive result by any method</u></p> <p><u>Positive and nonpositive results for:</u>  <u>HCV nucleic acid detection (NAT or NAAT) for qualitative, quantitative, and genotype tests</u></p> <p><u>If associated with a positive result and available:</u>  <u>Hepatocellular enzyme levels</u>  <u>Pregnancy status</u>  <u>Negative result for IgM anti-HAV</u>  <u>Negative result for IgM anti-HBc</u></p>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Hepatitis C virus</u>	<u>Deidentified negative screening result</u>	<u>At least annually to DOH</u>	<u>N/A</u>	<u>N/A</u>
<u>Hepatitis D virus</u>	<p><u>Positive result by any method</u></p> <p><u>If associated with a positive result and available:</u>  <u>Hepatocellular enzyme levels</u></p>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Hepatitis E virus</u>	<p><u>Positive result by any method</u></p> <p><u>If associated with a positive result and available:</u>  <u>Hepatocellular enzyme levels</u></p>	<u>Within 24 hours to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Histoplasma capsulatum (histoplasmosis)</u>	<u>Positive result by any method</u>	<u>Within 2 business days to LHJ</u>	<p><u>Isolate</u></p> <p><u>Serum</u></p>	<p><u>Within 2 business days</u></p> <p><u>Within 2 business days of request by LHJ or DOH</u></p>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Human immunodeficiency virus (HIV)</u>	Positive and indeterminate results and subsequent negative results associated with those positive or indeterminate results for the tests below: <u>Antibody detection tests (including RST)</u> <u>Antigen detection tests (including RST)</u> <u>Viral culture</u> <u>All HIV nucleic acid detection (NAT or NAAT) tests:</u> <u>Qualitative and quantitative</u> <u>Detectable and undetectable</u> <u>HIV antiviral resistance testing genetic sequences</u>	<u>Within 2 business days to DOH except in King County where this is notifiable to the LHJ</u>	<u>N/A</u>	<u>N/A</u>
<u>Human immunodeficiency virus (HIV)</u>	<u>Deidentified negative screening result</u>	<u>At least annually to DOH</u>	<u>N/A</u>	<u>N/A</u>
<u>Human prion disease</u>	<u>Positive result by any method excluding Tau protein</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Influenza virus, novel or untypable strain</u>	<u>Positive novel and untypable result</u>	<u>Immediately to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Japanese encephalitis virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Junin virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>La Crosse encephalitis, virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Lassa virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Legionella species (Legionellosis)</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available but respiratory specimen available and associated with a positive test (as in the case of a PCR positive), respiratory specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Leptospira species (Leptospirosis)</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Listeria monocytogenes (Listeriosis)</u>	<u>Positive result for specimen from a normally sterile site by:</u> <u>Culture</u> <u>Nucleic acid detection (NAT or NAAT)</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Lujo virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Machupo virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Marburg virus (Viral hemorrhagic fever)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Measles virus - See "Rubeola (measles virus)"</u>				
<u>Mumps virus</u>	Positive result for: <u>Culture</u> <u>Nucleic acid detection (NAT or NAAT)</u> <u>IgM</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u> <u>Specimen associated with positive IgM</u>	<u>Within 2 business days</u>  <u>Within 2 business days of request by LHJ or DOH</u>
<u>Mycobacterium tuberculosis complex (Tuberculosis)</u>	Positive result for: <u>Culture</u> <u>Nucleic acid detection (NAT or NAAT)</u> <u>Drug susceptibilities (molecular and culture based)</u>	<u>Within 2 business days to DOH</u>	<u>Mycobacterium tuberculosis complex positive isolate (earliest available isolate for the patient)</u>	<u>Within 2 business days</u>
<u>Neisseria gonorrhoeae (Gonorrhea)</u>	Positive and indeterminate result by any method	<u>Within 2 business days to LHJ</u>	<u>N/A</u>	<u>N/A</u>
<u>Neisseria gonorrhoeae (Gonorrhea)</u>	<u>Deidentified negative screening result</u>	<u>At least annually to DOH</u>	<u>N/A</u>	<u>N/A</u>
<u>Neisseria meningitidis (Meningococcal disease)</u>	Positive result for specimen from a normally sterile site by any method	<u>Immediately to LHJ</u>	<u>Isolate from a normally sterile site</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>  <u>Within 2 business days of request by LHJ or DOH</u>
<u>Plasmodium species (Malaria)</u>	Positive results for: <u>Nucleic acid detection (NAT or NAAT)</u> <u>Malaria-specific antigens by rapid diagnostic test</u> <u>PCR</u> <u>Microscopy (thick or thin smear)</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Poliovirus (Poliomyelitis)</u>	<u>IgM positivity; PCR positivity</u>	<u>Immediately to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days</u>
<u>Powassan virus, acute (Arbovirus)</u>	Positive result by any method excluding IgG	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u>Rabies virus</u>	Positive result by any method	<u>Immediately to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days</u>

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Rickettsia species including, but not limited to:</u> <u><i>Rickettsia rickettsii</i></u> <u><i>Rickettsia africae</i></u> <u><i>Rickettsia conorii</i></u> <u><i>Rickettsia typhi</i></u> <u><i>Rickettsia parkeri</i></u> <u><i>Rickettsia philipii</i></u>	Positive results by any method	Within 2 business days to LHH	Specimen associated with positive result	Within 2 business days of request by LHH or DOH
<u>Rubella</u>	Positive result by: <u>Culture</u> <u>IgM</u> <u>Nucleic acid detection (NAT or NAAT)</u>	<u>Immediately to LHH</u>	<u>Isolate</u>	<u>Within 2 business days</u>
			<u>If no isolate available, specimen associated with positive result</u>	
			<u>Other specimen</u>	<u>Within 2 business days of request by LHH or DOH</u>
<u>Rubeola (measles virus)</u>	Positive result by: <u>Culture</u> <u>IgM</u> <u>Nucleic acid detection (NAT or NAAT)</u>	<u>Immediately to LHH</u>	<u>Isolate and specimen associated with positive culture</u>	<u>Within 2 business days</u>
			<u>Isolate and specimen association with positive NAT or NAAT result</u>	
			<u>Specimen associated with positive IgM</u>	<u>Within 2 business days of request by LHH or DOH</u>
			<u>Other specimen</u>	
<u>Sabia virus (Viral hemorrhagic fever)</u>	Positive result by any method	<u>Immediately to LHH</u>	<u>Presumptive positive isolate</u>	<u>Within 2 business days</u>
			<u>If no isolate available, specimen associated with presumptive positive result</u>	
<u>Salmonella species (Salmonellosis, typhoid fever)</u>	Positive result by any method	<u>Within 24 hours to LHH</u>	<u>Isolate</u>	<u>Within 2 business days</u>
			<u>If no isolate available, specimen associated with positive result</u>	
<u>Shiga toxin-producing E. coli/enterohemorrhagic E. coli (STEC)</u>	Positive result by any method	<u>Immediately to LHH</u>	<u>Isolate</u>	<u>Within 2 business days</u>
			<u>If no isolate available, specimen associated with positive result</u>	

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u><i>Shigella</i> species (Shigellosis)</u>	Positive result by any method	Within 24 hours to LHJ	Isolate  If no isolate available, specimen associated with positive result	Within 2 business days
<u>St. Louis encephalitis virus, acute (Arbovirus)</u>	Positive result by any method excluding IgG	Within 2 business days to LHJ	Specimen associated with positive result	Within 2 business days of request by LHJ or DOH
<u><i>Taenia solium</i> (Taeniasis or Cysticercosis)</u>	Positive result by any method	Within 2 business days to LHJ	Specimen associated with positive result	Within 2 business days of request by LHJ or DOH
<u><i>Treponema pallidum</i> (Syphilis)</u>	Positive and indeterminate result by any method	Within 2 business days to LHJ	Specimen associated with positive result	Within 2 business days
<u><i>Treponema pallidum</i> (Syphilis)</u>	Deidentified negative screening result	At least annually to DOH	N/A	N/A
<u><i>Trichinella</i> species (Trichinellosis)</u>	Positive serologic test for <i>Trichinella</i>	Within 2 business days to LHJ	Specimen associated with positive result	Within 2 business days of request by LHJ or DOH
<u><i>Trypanosoma cruzi</i> (Chagas disease)</u>	Positive result by any method	Within 2 business days to LHJ	Specimen associated with positive result	Within 2 business days
<u>Vaccinia (vaccine-acquired smallpox)</u>	Any request for testing associated with a suspect case	Immediately to LHJ	Any specimen collected from a suspect case	Immediately
<u>Vancomycin-resistant <i>Staphylococcus aureus</i></u>	Resistance to vancomycin	Within 24 hours to LHJ	Isolate  If no isolate available, specimen associated with positive result	Within 2 business days
<u>Variola virus (smallpox)</u>	Any request for testing associated with a suspect case	Immediately to LHJ	Specimen collected from a suspect case	Immediately
<u><i>Vibrio cholerae</i> O1 or O139 (Cholera)</u>	Positive result by any method	Immediately to LHJ	Isolate  If no isolate available, specimen associated with positive result	Within 2 business days
<u><i>Vibrio</i> species (Vibriosis) not including <i>Vibrio cholerae</i> O1 or O139 (Cholera) See "<i>Vibrio cholerae</i> O1 or O139 (Cholera)"</u>	Positive result by any method	Within 24 hours to LHJ	Isolate  If no isolate available, specimen associated with positive result	Within 2 business days
<u>West Nile virus, acute (Arbovirus)</u>	Positive result by any method excluding IgG	Within 2 business days to LHJ	Specimen associated with positive result	Within 2 business days of request by LHJ or DOH

<u>Agent (Condition)</u>	<u>Notification of Results</u>		<u>Specimen Submission to the Washington State Public Health Laboratories</u>	
	<u>What to Submit in a Case Report</u>	<u>When and Whom to Notify Upon Receiving Presumptive or Final Test Result</u>	<u>What to Submit</u>	<u>When to Submit</u>
<u>Yellow fever virus (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Immediately to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days</u>
<u><i>Yersinia enterocolitica</i>, <i>Y. pseudotuberculosis</i>, <i>Y. intermedia</i>, <i>Y. fredericksonii</i>, or <i>Y. kristensenii</i> (Yersiniosis)</u>	<u>Positive result by any method</u>	<u>Within 24 hours to LHJ</u>	<u>Isolate</u> <u>If no isolate available, specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>
<u><i>Yersinia pestis</i> (Plague)</u>	<u>Positive result by any method</u>	<u>Immediately to LHJ</u>	<u>Presumptive positive isolate</u> <u>If no isolate available, specimen associated with presumptive positive result</u>	<u>Within 2 business days</u>
<u>Zika virus, acute (Arbovirus)</u>	<u>Positive result by any method excluding IgG</u>	<u>Within 2 business days to LHJ</u>	<u>Specimen associated with positive result</u>	<u>Within 2 business days of request by LHJ or DOH</u>

1 "CD4 + counts" means CD4 + (T4) lymphocyte counts.  
 2 "CD4 + percents" means CD4 + (T4) percents of total lymphocytes.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-205 ((Responsibilities and) Duties ((of the))—Laboratory directors.** (1) A laboratory director((s)) shall:

(a) ((Notify the local health department where the patient resides, or, in the event that patient residence cannot be determined, the local health department in which the ordering health care provider practices, or the local health department in which the laboratory operates, regarding:

(i) Positive preliminary test results and positive final test results of notifiable conditions specified as notifiable to the local health department in Table Lab-1.

(ii) Positive preliminary test results and positive final test results of conditions specified as notifiable by the local health officer within that health officer's jurisdiction.)) Submit case reports:

(i) To the local health jurisdiction or the department as required in Table Lab-1 of WAC 246-101-201, and under the requirements of WAC 246-101-220, 246-101-225, and this section; and

(ii) To the local health jurisdiction as required by the local health officer within that health officer's jurisdiction.

(b) Notify the department of conditions designated as notifiable to the local health ((department)) jurisdiction when:

(i) A local health ((department)) jurisdiction is closed or representatives of the local health ((department)) jurisdiction

are unavailable at the time a ((positive preliminary test result or positive)) presumptive or final test result of an immediately notifiable condition occurs; or

(ii) ((A local health department is closed or representatives of the local health department are unavailable at the time an outbreak or suspected outbreak of communicable disease occurs.

(e) Notify the department of positive preliminary test results or positive final test results for conditions designated notifiable to the department in Table Lab-1.

(d) Notify the department of nonelevated blood lead levels on a monthly basis.

(e) Submit specimens for conditions noted in Table Lab-1 to the Washington state public health laboratories or other laboratory designated by the state health officer for diagnosis, confirmation, storage, or further testing.

(f) Ensure that positive preliminary test results and positive final test results for notifiable conditions of specimens referred to other laboratories for testing are correctly notified to the correct local health department or the department. This requirement can be satisfied by:

(i) Arranging for the referral laboratory to notify either the local health department, the department, or both; or

(ii) Forwarding the notification of the test result from the referral laboratory to the local health department, the department, or both.

(g)) The notifiable test result pertains to a patient who resides outside of and is visiting Washington state as indicated by information provided by the requesting health care provider or health care facility.

(c) Submit specimens required in Table Lab-1 of WAC 246-101-201 under the requirements of WAC 246-101-210 and 246-101-215, and this section;



(d) Cooperate with public health authorities during investigation of:

(i) ~~The circumstances of a case ((or suspected case)) of a notifiable condition ((or other communicable disease)); ((and)) or~~

(ii) An outbreak or suspected outbreak of disease.

(2) A laboratory director((s)) may designate responsibility for working and cooperating with public health authorities to certain employees as long as designated employees are:

(a) Readily available; and

(b) Able to provide requested information in a timely manner.

(3) ~~((By July 1, 2011, when referring))~~ A laboratory director may refer a specimen of a notifiable condition to a reference laboratory for testing.

(4) ~~When a laboratory director refers a specimen ((to another)) of a notifiable condition to a reference laboratory for ((a test for a notifiable condition)) testing, the laboratory director((s)) shall:~~

(a) Provide the reference laboratory with Table Lab-1 of WAC 246-101-201, and WAC 246-101-220 and 246-101-225; and the following information for each ~~((test referral))~~ specimen:

~~((a) Patient name;~~

~~(b) Full address of patient, or patient zip code at a minimum, when available in laboratory database;~~

~~(c) Date of birth or age of patient, when available in laboratory database;~~

~~(d) Sex of patient, when available in laboratory database;~~

~~(e) Name of the principal health care provider;~~

~~(f) Telephone number of the principal health care provider;~~

~~(g) Address of the principal health care provider, when available;~~

~~(h) Type of test requested;~~

~~(i) Type of specimen; and~~

~~(j) Date of specimen collection.~~

~~(4) By January 1, 2013, laboratory databases must have the ability to receive, store, and retrieve all of the data elements specified in subsection (3)(a) through (j) of this section.))~~

~~(i) Patient's first and last name;~~

~~(ii) Patient's physical address including zip code;~~

~~(iii) Patient's date of birth;~~

~~(iv) Patient's sex;~~

~~(v) For hepatitis B virus case reports, pregnancy status (pregnant, not pregnant, or unknown) of patients twelve to fifty years of age;~~

~~(vi) Patient's best contact telephone number;~~

~~(vii) Patient's medicaid status, for blood lead level tests for patients less than seventy-two months of age only;~~

~~(viii) Requesting health care provider's name;~~

~~(ix) Requesting health care provider's phone number;~~

~~(x) Address where patient received care;~~

~~(xi) Name of submitting laboratory;~~

~~(xii) Telephone number of submitting laboratory;~~

~~(xiii) Specimen type;~~

~~(xiv) Specimen collection date;~~

~~(xv) Date laboratory received specimen; and~~

~~(xvi) Test method requested.~~

(b) Ensure the case report is submitted appropriately either by:

(i) Arranging for the reference laboratory to submit the case report under Table Lab-1 of WAC 246-101-201, and WAC 246-101-220 and 246-101-225; or

(ii) Submitting the case report under Table Lab-1 of WAC 246-101-201, and WAC 246-101-220 and 246-101-225.

(4) A laboratory director may provide health information, demographic information, or infectious or noninfectious condition information in addition to the information required under this chapter when the provider or facility determines that the additional information will aid the appropriate public health authority in protecting and improving the public's health through prevention and control of infectious and non-infectious conditions.

(5) When a laboratory director submits information under subsection (4) of this section, they shall submit the information under the requirements of WAC 246-101-220.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-210 Means of specimen submission—Laboratory directors and laboratories.** (1) ~~((When submitting specimens as indicated in Table Lab-1 of WAC 246-101-201, laboratories shall adhere to the following timelines and procedures:~~

~~(a) Specimens designated for submission within two business days must be in transit within two business days from the time the specimen is ready for packaging;~~

~~(b) Specimens designated for submission on request may be requested by the local health departments or the department. The laboratory shall ship a requested specimen within two business days of receiving the request, provided the specimen is still available at the time of the request. This is not intended to require laboratories to save specimens indefinitely in anticipation of a request.~~

~~(2) Local health jurisdictions may temporarily waive specimen submission for circumstances at their discretion by communication with individual laboratories.)) A laboratory director shall submit specimens under Table Lab-1 of WAC 246-101-201 and this chapter.~~

(2) For test results notifiable to local health jurisdictions, the local health officer may temporarily waive specimen submission requirements and notify laboratories, including the Washington state public health laboratories, of the basis for the waiver, which requirements are being waived and how long the waiver will be in effect.

(3) ~~((Laboratories))~~ A laboratory shall forward ~~((all))~~ required specimens ~~((submissions))~~ to:

Washington State Public Health Laboratories  
Washington State Department of Health  
1610 N.E. 150th Street  
Shoreline, WA 98155

(4) The state health officer may designate additional laboratories as public health ~~((referral))~~ reference laboratories.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-215 Content of documentation accompanying specimen submission—Laboratory directors.**

((For each condition listed in Table Lab-1 of WAC 246-101-201,)) Δ laboratory director((s)) shall provide the following information with each specimen ((~~submission~~):

- (1) Type of specimen tested;
- (2) Name of reporting laboratory;
- (3) Telephone number of reporting laboratory;
- (4) Date of specimen collection;
- (5) Requesting health care provider's name;
- (6) Requesting health care provider's phone number;
- (7) Requesting health care provider's address, when available;
- (8) Test result;
- (9) Name of patient;
- (10) Sex of patient, when available in laboratory database;
- (11) Date of birth or age of patient, when available in laboratory database;
- (12) Full address of patient, or patient zip code at a minimum, when available in laboratory database;
- (13) Telephone number of patient, when available in laboratory database;
- (14) Other information of epidemiological value, when available)) submitted under this chapter to the Washington state public health laboratories:

- (1) Patient's first and last name;
- (2) Patient's physical address including zip code;
- (3) Patient's date of birth;
- (4) Patient's sex;
- (5) For hepatitis B virus, pregnancy status (pregnant, not pregnant, or unknown) of patients twelve to fifty years of age;
- (6) Patient's best contact telephone number;
- (7) Requesting health care provider's name;
- (8) Requesting health care provider's phone number;
- (9) Address where patient received care;
- (10) Name of submitting laboratory;
- (11) Telephone number of submitting laboratory;
- (12) Specimen type;
- (13) Specimen collection date;
- (14) Date laboratory received specimen;
- (15) Test method used; and
- (16) Test result.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-220 Means of notification ((~~for positive preliminary test results and positive final test results~~))—Laboratory directors.** Δ laboratory director((s)) shall ((adhere to the following timelines and procedures:

(1) Conditions designated as immediately notifiable must be reported to the local health officer or the department, as specified in Table Lab-1 of WAC 246-101-201, immediately at the time of positive preliminary test result or positive final test result. This applies twenty-four hours a day, seven days a week. Each local health jurisdiction, as well as the

department, maintains after-hours emergency telephone contacts for this purpose. A party sending notification by secure facsimile copy or secure electronic transmission during normal business hours must confirm immediate receipt by a live person.

(2) Conditions designated as notifiable within twenty-four hours must be reported to the local health officer or the department, as specified in Table Lab-1 of WAC 246-101-201, within twenty-four hours of positive preliminary test result or positive final test result, seven days a week. Reports during normal public health business hours may be sent by secure electronic transmission, telephone, or secure facsimile copy of a case report. A party sending a report outside of normal public health business hours must use the after-hours emergency phone contact for the appropriate jurisdiction.

(3) Conditions designated as notifiable within two business days must be reported to the local health officer or the department, as specified in Table Lab-1 of WAC 246-101-201, within two business days. Notification may be sent by secure electronic transmission, telephone, or secure facsimile copy of a case report; and

(4) Conditions designated as notifiable on a monthly basis must be reported to the local health officer or the department, as specified in Table Lab-1 of WAC 246-101-201, on a monthly basis. Notification may be sent by written case report, secure electronic transmission, telephone, or secure facsimile copy of a case report));

(1) Submit case reports as required under this chapter by secure electronic data transmission.

(2) Call the local health jurisdiction in which the case occurred immediately and confirm receipt of a presumptive or final test result for a condition designated as:

- (a) Immediately notifiable; or
- (b) Notifiable within twenty-four hours when submitting the test result outside the local health jurisdiction's normal business hours.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-225 Content of ((~~notifications for positive preliminary test results and positive final test results~~)) case reports—Laboratory directors.** (1) ((For each condition listed in Table Lab-1 of WAC 246-101-201,))

Δ laboratory director((s ~~must~~)) shall provide the following information ((~~for~~)) in each ((~~positive culture or suggestive test result~~)) case report required under this chapter:

- ((a) Type of specimen tested;
- (b) Name of reporting laboratory;
- (c) Telephone number of reporting laboratory;
- (d) Date of specimen collection;
- (e) Date specimen received by reporting laboratory;
- (f) Requesting health care provider's name;
- (g) Requesting health care provider's phone number;
- (h) Requesting health care provider's address, when available;
- (i) Test result;
- (j) Name of patient;
- (k) Sex of patient, when available in laboratory database;

- (l) Date of birth or age of patient, when available in laboratory database; and
  - (m) Full address of patient, or patient zip code at a minimum, when available in laboratory database.)) (a) Patient's first and last name;
  - (b) Patient's physical address including zip code;
  - (c) Patient's date of birth;
  - (d) Patient's sex;
  - (e) For hepatitis B virus, pregnancy status (pregnant, not pregnant, or unknown) of patients twelve to fifty years of age;
  - (f) Patient's best contact telephone number;
  - (g) Patient's medicaid status, for blood lead tests for patients less than seventy-two months of age only;
  - (h) Requesting health care provider's name;
  - (i) Requesting health care provider's phone number;
  - (j) Address where patient received care;
  - (k) Name of submitting laboratory;
  - (l) Telephone number of submitting laboratory;
  - (m) Specimen type;
  - (n) Specimen collection date;
  - (o) Date laboratory received specimen;
  - (p) Test method used; and
  - (q) Test result.
- (2) The local health ((officers and)) officer or the state health officer may ((require laboratory directors to report other)) request additional information of epidemiological or public health value when conducting a case investigation or otherwise for prevention and control of a specific notifiable condition.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-230 Handling ((of case reports and medical)) confidential information—Laboratory directors.** (1) All records and specimens ((containing)) related to a case that contain or are accompanied by patient identifying information are confidential. ((The Washington state public health laboratories, other laboratories approved as public health referral laboratories, and any persons, institutions, or facilities submitting specimens or records containing patient-identifying information)) Patient identifying information includes information that can directly or indirectly identify a patient.

(2) A laboratory shall maintain the confidentiality of ((identifying information accompanying submitted laboratory specimens)) health information consistent with chapter 70.02 RCW and any other applicable confidentiality laws.

((2)) (3) A laboratory director((s)) shall establish and implement policies and procedures to maintain confidentiality related to ((a patient's medical)) health information.

((3) Laboratory directors and personnel working in laboratories who know of a person with a notifiable condition, other than a sexually transmitted disease, shall release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease.

(4) Laboratory directors and personnel working in laboratories with knowledge of a person with sexually transmitted disease, and following the basic principles of health care providers, which respect the human dignity and confidentiality of patients:

(a) May disclose identity of a person or release identifying information only as specified in RCW 70.24.105; and

(b) Shall under RCW 70.24.105(6), use only the following customary methods for exchange of medical information:

(i) Laboratory directors and personnel working in laboratories may exchange medical information related to HIV testing, HIV test results, and confirmed HIV or confirmed STD diagnosis and treatment in order to provide health care services to the patient. This means that information shared impacts the care or treatment decisions concerning the patient; and the laboratory director or personnel working in the laboratory require the information for the patient's benefit.

(ii) Laboratory directors are authorized to permit access to a patient's medical information and medical record by laboratory staff or office staff to carry out duties required for care and treatment of a patient, the management of medical information, and the management of the patient's medical record.))

**PART IV: NOTIFIABLE CONDITIONS—DUTIES OF OTHERS**

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-405 ((Responsibilities of)) Duties—Veterinarians.** (1) A veterinarian((s)) shall((:

(a) Notify the local health officer of the jurisdiction in which the human resides of any suspected human case or suspected human outbreak based on the human's exposure to a confirmed animal case of any disease listed in Table V-1 of this section:

Table V-1 (Conditions Notifiable by Veterinarians)

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department
Anthrax	Immediately	✓
Arboviral Disease	Within 24 hours	✓
Brucellosis ( <i>Brucella</i> species)	Within 24 hours	✓
<i>Burkholderia mallei</i> (Glanders)	Immediately	✓

Notifiable Condition	Time Frame for Notification	Notifiable to Local Health Department
Disease of suspected bioterrorism origin (including but not limited to anthrax)	Immediately	✓
<del>E. coli—Refer to "Shiga toxin-producing E. coli"</del>	Immediately	✓
Emerging condition with outbreak potential	Immediately	✓
Influenza virus, novel or unsubtypeable strain	Immediately	✓
Leptospirosis	Within 24 hours	✓
Plague	Immediately	✓
Psittacosis	Within 24 hours	✓
Q Fever	Within 24 hours	✓
Rabies (suspected human or animal)	Immediately	✓
Shiga toxin-producing <i>E. coli</i> infections (enterohemorrhagic <i>E. coli</i> including, but not limited to, <i>E. coli</i> O157:H7)	Immediately	✓
Tularemia	Immediately	✓

(✓) Indicates that the condition is notifiable to the local health department.

~~(b)) cooperate with public health authorities in ((the)) their:~~

~~(a) Investigation of human and animal cases, ((suspected cases,)) outbreaks, ((and)) suspected outbreaks, and clusters of zoonotic disease(:~~

~~(c) Cooperate with public health authorities in the implementation of infection control measures including isolation and quarantine.~~

~~(d) Comply with requirements in chapter 16-70 WAC for submitting positive specimens and isolates for specific diseases, and provide information requested by the department or local health jurisdiction.~~

~~(2) The department of health shall:~~

~~(a) Coordinate with the state veterinarian at the department of agriculture to develop, maintain, and implement a procedure for notifying the department of animal cases of the conditions listed in Table V-1 of this section.~~

~~(b) Notify the local health jurisdiction of reported animal cases of the conditions in Table V-1 of this section); and~~

~~(b) Implementation of infection control measures.~~

~~(2) Cooperation with public health authorities includes, but is not limited to:~~

~~(a) Providing information requested by the department or local health jurisdiction; and~~

~~(b) Following infection control measures for:~~

~~(i) Humans under chapter 246-100 WAC;~~

~~(ii) Dogs, cats, ferrets, and hybrids under WAC 246-100-197; and~~

~~(iii) Other animals under chapter 16.36 RCW.~~

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-410 ((Responsibilities of food service)) Duties—Food establishments.** The person in charge of a food ((service)) establishment shall:

(1) For the purposes of this section "food establishment" has the same meaning as defined and referenced under WAC 246-215-01115.

(2) Notify the local health ((department)) jurisdiction of potential foodborne disease as required in WAC ((246-215-260)) 246-215-02215.

~~((2)) (3) Cooperate with public health authorities in ((the)) their investigation and control of cases, ((suspected cases,)) outbreaks, and suspected outbreaks ((of foodborne or waterborne disease)). This includes, but is not limited to, the release of the name and other pertinent information about food handlers diagnosed with a notifiable condition or other communicable disease ((as it relates to a foodborne or waterborne disease investigation)).~~

~~((3)) (4) Not release information about food handlers with a notifiable condition or other communicable disease to other employees or the general public.~~

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-415 ((Responsibilities of child day)) Duties—Child care facilities.** (1) For the purposes of this section "child care facility" means an agency that regularly provides early childhood education and early learning services for a group of children for less than twenty-four hours a day and is subject to licensing under chapter 74.15 or 43.216 RCW, or both.

(2) A child ((day)) care ((facilities)) facility shall:

~~((1)) (a) Notify the local health ((department)) jurisdiction of cases, ((suspected cases,)) outbreaks, and suspected outbreaks of notifiable conditions in Table HC-1 of WAC 246-101-101 that may be associated with the child ((day)) care facility.~~

~~((2)) (b) Consult with a health care provider or the local health ((department)) jurisdiction for information about the control and prevention of infectious ((or communicable disease)) conditions, as necessary.~~

~~((3)) (c) Cooperate with public health authorities in ((the)) their investigation and control of cases, ((suspected~~

cases,) outbreaks, and suspected outbreaks ((of disease)) that may be associated with the child ((day)) care facility.

((4)) (d) Establish and implement policies and procedures to maintain confidentiality related to ((medical)) health information in their possession.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-420 ((Responsibilities of)) Duties—Schools.** A school((s)) shall:

(1) Notify the local health ((department)) jurisdiction of cases, ((suspected cases,)) outbreaks, and suspected outbreaks of ((disease)) notifiable conditions in Table HC-1 of WAC 246-101-101 that may be associated with the school.

(2) Cooperate with the local health ((department)) jurisdiction in monitoring influenza.

(3) Consult with a health care provider or the local health ((department)) jurisdiction for information about the control and prevention of infectious ((or communicable disease)) conditions, as necessary.

(4) Cooperate with public health authorities in ((the)) their investigation and control of cases, ((suspected cases,)) outbreaks, and suspected outbreaks ((of disease)) that may be associated with the school.

(5) Release identifying information only to other individuals responsible for protecting the health and well-being of the public through control of disease consistent with applicable confidentiality laws.

(6) ((Schools shall)) Establish and implement policies and procedures to maintain confidentiality related to ((medical)) health information in their possession.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-425 ((Responsibilities of)) Duties—The general public.** (1) Members of the general public shall cooperate with:

(a) ((Cooperate with)) Public health authorities in ((the)) their investigation and control of cases, ((suspected cases,)) outbreaks, and suspected outbreaks ((of notifiable conditions or other communicable diseases)); and

(b) ((Cooperate with the)) Implementation of infection control measures((, including isolation and quarantine)).

(2) Members of the general public may notify the local health ((department)) jurisdiction of any case, ((suspected case,)) outbreak, or ((potential)) suspected outbreak ((of communicable disease)).

**PART V: NOTIFIABLE CONDITIONS ((AND))—LOCAL HEALTH JURISDICTIONS ((AND THE DEPARTMENT))**

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-505 Duties ((of the))—Local health officer or the local health ((department)) jurisdiction.** (1) A local health officer((s)) or ((the)) local health ((department)) jurisdiction shall:

(a) Review and determine appropriate action for:

(i) Each ((reported)) case ((or suspected case)) of a notifiable condition submitted to the local health jurisdiction;

(ii) Any ((disease or)) condition considered a threat to public health; and

(iii) Each ((reported)) outbreak or suspected outbreak of disease ((, requesting)) submitted to the local health jurisdiction, and request assistance from the department in carrying out any of these investigations when necessary.

(b) Establish a system at the local health ((department)) jurisdiction for maintaining confidentiality of ((written)) records ((and written and telephoned notifiable conditions case reports)) under WAC 246-101-515;

(c) Notify health care providers, laboratories, and health care facilities within the ((jurisdiction of the)) local health ((department)) jurisdiction of requirements in this chapter;

(d) Notify the department of cases of ((any)) conditions notifiable to the local health ((department (except animal bites) upon completion of the case investigation)) jurisdiction under WAC 246-101-510 and 246-101-513;

(e) ((Distribute appropriate notification forms to persons responsible for reporting;

(f)) Notify the principal health care provider named in the case report, if possible, prior to initiating a case investigation ((by the local health department));

((g)) Carry out the HIV partner notification requirements of WAC 246-100-072;

((h)) ((f)) Allow laboratories to contact the health care provider ordering the diagnostic test before initiating patient contact if requested and the delay is unlikely to jeopardize public health; and

((i)) ((g)) Conduct investigations and institute infection control measures in accordance with chapter 246-100 WAC.

(2) The local health ((department)) jurisdiction may:

(a) Adopt alternate arrangements for meeting the ((reporting)) requirements under this chapter through cooperative agreement between the local health ((department)) jurisdiction and any health care provider, laboratory, or health care facility((s)). The alternative must provide the same level of public health protection as the reporting requirement for which an alternative is sought;

(b) Receive health information, demographic information, and infectious or noninfectious condition information in addition to that required under this chapter from health care providers, health care facilities, laboratories, the department of agriculture, and the department of labor and industries when the entity submitting the information determines that the additional information will aid the public health authority in protecting and improving the public's health through prevention and control of infectious and noninfectious conditions.

(3) When the local health jurisdiction receives information under subsection (2)(b) of this section, the local health jurisdiction shall handle the information under the requirements of WAC 246-101-515.

(4) Each local health officer has the authority under chapter 70.05 RCW to:

(a) Carry out additional steps ((determined to be)) necessary to verify a diagnosis reported by a health care provider;

(b) Require any person suspected of having a notifiable condition to submit to examinations ~~((required))~~ necessary to determine the presence or absence of the condition;

(c) Investigate any case ~~((or suspected case))~~ of a ~~((reportable disease or))~~ notifiable condition or other ~~((illness, communicable or otherwise))~~ infectious or noninfectious condition, if deemed necessary; and

(d) Require the notification of additional conditions of public health importance occurring within the jurisdiction of the local health officer.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-510 Means of notification—Local health officer or local health jurisdiction.** (1) A local health ~~((departments))~~ jurisdiction shall:

(a) Maintain a twenty-four-hour telephone number to receive confirmation calls of case reports submitted under this chapter for:

(i) Immediately notifiable conditions; and

(ii) Conditions designated as notifiable within twenty-four hours.

(b) Notify the department immediately ~~((by telephone or secure electronic data transmission of any case or suspected case of:~~

(a) Botulism;

(b) Cholera;

(c) Diphtheria;

(d) Disease of suspected bioterrorism origin (including, but not limited to, anthrax);

(e) Emerging condition with outbreak potential;

(f) Influenza, novel strain;

(g) Measles;

(h) Paralytic shellfish poisoning;

(i) Plague;

(j) Poliomyelitis;

(k) Rabies, human;

(l) SARS;

(m) Smallpox;

(n) Tularemia;

(o) Viral hemorrhagic fever; and

(p) Yellow fever.

(2) Immediate notifications of cases and suspected cases shall include:

(a) Patient name;

(b) Patient's notifiable condition; and

(c) Condition onset date.

(3) For each case of any condition notifiable to the local health department, submit to the department case report either on a form provided by the department or in a format approved by the department. Case reports must be sent by secure electronic transmission or telephone within seven days of completing the case investigation. If the case investigation is not complete within twenty one days of notification, pertinent information collected from the case investigation must be sent to the department and shall include:

(a) Patient name;

(b) Patient's notifiable condition or suspected condition;

(c) Source or suspected source; and

(d) Condition onset date.

(4) Local health officials will report asymptomatic HIV infection cases to the department according to a standard code developed by the department.

(5) When notified of an outbreak or suspected outbreak of illness due to an infectious agent or toxin, the local health department shall:

(a) Notify the department immediately by telephone or secure electronic data transmission.

(b) Include in the initial notification:

(i) Organism or suspected organism;

(ii) Source or suspected source; and

(iii) Number of persons affected.

(c) Within seven days of completing the outbreak investigation, submit)) using either telephone or secure electronic data transmission:

(i) Upon receiving a case report for a condition that is immediately notifiable to the local health jurisdiction under this chapter, excluding Meningococcal disease, invasive (Neisseria meningitidis); Shiga toxin-producing E. coli (STEC)/ enterohemorrhagic E. coli; and Vaccinia (vaccine-acquired smallpox); and

(ii) Of an outbreak or suspected outbreak within their jurisdiction;

(c) Notify the department using a secure electronic disease surveillance system within three business days of receiving a case report for a condition that is not immediately notifiable to the local health jurisdiction under this chapter;

(d) If after submitting a notification to the department, the local health officer determines no further investigation is necessary, indicate in the secure electronic disease surveillance system that no further investigation is warranted within three business days of the determination.

(e) Immediately reassign cases to the department upon determining the patient who is the subject of the case:

(i) Is a resident of another local health jurisdiction; or

(ii) Resides outside Washington state.

(f) Submit a case report to the department using a secure electronic disease surveillance system for each case report received by the local health jurisdiction for which the local health officer determined an investigation was necessary:

(i) Within seven days of completing the investigation for any condition notifiable to the local health jurisdiction; or

(ii) Within twenty-one days of receiving the case report if the investigation is not complete.

(g) Submit an outbreak report to the department ((a report on forms provided by the department or in a format approved by the department)) using secure electronic data transmission within seven days of completing an outbreak investigation. The department may waive this requirement if ((telephone or secure electronic data transmission)) notification under (b)(ii) of this subsection provided ((pertinent)) sufficient information.

(2) The local health officer shall confirm that each case is based on clinical criteria, or laboratory criteria, or both prior to submitting the case report to the department. This criteria includes, but is not limited to, the Centers for Disease Control and Prevention, National Notifiable Diseases Surveillance System, Council of State and Territorial Epidemiologists case definitions.

NEW SECTION

**WAC 246-101-513 Content of notifications, case reports, and outbreak reports—Local health officer.** A local health officer shall provide the following information for each notification, case report, and outbreak report submitted under WAC 246-101-510:

- (1) Notifications must include:
  - (a) Patient's first and last name;
  - (b) Patient's notifiable condition;
  - (c) Date local health jurisdiction was notified;
  - (d) Condition symptom onset date (preferred), or alternatively, diagnosis date;
  - (e) Patient's date of birth; and
  - (f) Patient's sex.
- (2) Case reports must include:
  - (a) Patient's first and last name;
  - (b) Patient's date of birth;
  - (c) Patient's race (if available);
  - (d) Patient's ethnicity (if available);
  - (e) For hepatitis B acute or chronic infection case reports, pregnancy status (pregnant, not pregnant, or unknown) of patients twelve to fifty years of age;
  - (f) Investigation start date;
  - (g) Investigation completion date;
  - (h) Initial notification source;
  - (i) Hospitalization status of patient;
  - (j) Whether the patient died during this illness;
  - (k) Probable geographic region of exposure (i.e., county, state, or country other than the United States of America);
  - (l) Travel out of the country (as applicable);
  - (m) Whether the case is associated with an ongoing outbreak investigation; and
  - (n) The data used to verify the case meets clinical criteria, or laboratory criteria, or both. This includes, but is not limited to, the Centers for Disease Control and Prevention, National Notifiable Diseases Surveillance System, Council of State and Territorial Epidemiologists case definitions.
- (3) Outbreak reports must include:
  - (a) Organism or suspected organism;
  - (b) Source or suspected source; and
  - (c) Number of persons infected and potentially exposed.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-515 Handling ~~(of case reports and medical)~~ confidential information—Local health officers and local health jurisdictions.** (1) All records and specimens related to a case, that contain or are accompanied by patient identifying information are confidential. Patient identifying information includes information that can directly or indirectly identify a patient.

(2) Local health officers and local health jurisdiction employees shall maintain the confidentiality of health information consistent with chapter 70.02 RCW and RCW 42.56.-360(2).

(3) Local health officers or local health ~~(departments)~~ jurisdictions shall establish and ~~(maintain)~~ implement confidentiality policies and procedures related to employee handling of ~~(all reports of cases and suspected cases, prohibiting~~

disclosure of report information identifying an individual case or suspected cases except:

(a) To employees of the local health department, another local health department, or other official agencies needing to know for the purpose of administering public health laws and these regulations;

(b) To health care providers, designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for disease prevention and control;

~~(2))~~ health information under this chapter and chapters 70.02 and 70.24 RCW and RCW 42.56.360(2).

(4) Local health officers shall ~~(require and maintain signed confidentiality agreements with)~~:

(a) Require all local health ~~(department)~~ jurisdiction employees with access to ~~(identifying)~~ health information ~~(related to a case or suspected case of a person diagnosed with a notifiable condition. The agreements will be renewed)~~ to sign confidentiality agreements;

(b) Retain current signed confidentiality agreements;

(c) Reference in confidentiality agreements the penalties for violation of chapter 70.24 RCW and administrative actions that may be taken by the local health jurisdiction if the confidentiality agreement is violated; and

(d) Renew confidentiality agreements at least annually ~~(and will include reference to criminal and civil penalties for violation of chapters 70.02 and 70.24 RCW and other administrative actions that may be taken by the local health department.~~

~~(3) Local health departments may release statistical summaries and epidemiological studies based on individual case reports if no individual is identified or identifiable).~~

AMENDATORY SECTION (Amending WSR 06-16-117, filed 8/1/06, effective 9/1/06)

**WAC 246-101-520 Special conditions—AIDS and HIV—Local health officers and local health jurisdictions.**

(1) The local health officer and local health ~~(department)~~ jurisdiction personnel shall maintain individual case reports for AIDS and HIV as confidential records consistent with the requirements of this section.

(2) The local health officer and local health ~~(department)~~ jurisdiction personnel ~~(must)~~ shall:

(a) Use identifying information ~~(on)~~ of HIV-infected individuals only:

(i) ~~(For purposes of contacting)~~ To contact the HIV-positive individual to provide test results and post-test counseling or referring the individual to social and health services; or

(ii) To contact persons who have experienced substantial exposure, including sex and injection equipment-sharing partners, and spouses; or

(iii) To link with other name-based public health disease registries when doing so will improve ability to provide needed care services and counseling and disease prevention, provided that the identity or identifying information of the HIV-infected person is not disclosed outside of the local health jurisdiction; or

(iv) As specified in WAC 246-100-072; or

(v) To provide case reports to the ~~((state health))~~ department; or

~~(vi) To conduct investigations under RCW 70.24.022 or 70.24.024.~~

(b) Destroy case report identifying information on asymptomatic HIV-infected individuals received as a result of this chapter within ~~((three months))~~ ninety days of receiving a complete case report, or maintain HIV case reports in secure systems ~~((that meet the following standards and are))~~ consistent with the ~~((2006))~~ 2011 Data Security and Confidentiality Guidelines ((developed)) for HIV, Viral Hepatitis, Sexually Transmitted Disease, and Tuberculosis Programs: Standards to Facilitate Sharing and Use of Surveillance Data for Public Health Action published by the Centers for Disease Control and Prevention.

(3) The local health officer shall:

~~((i))~~ (a) Describe the secure systems ~~((must be described))~~ in written policies ~~((that are reviewed))~~ and review the policies annually ((by the local health officer));

~~((ii))~~ (b) Limit access to case report information ~~((must be limited))~~ to local health ~~((department))~~ jurisdiction staff who need ~~((it))~~ the information to perform their job duties ~~((and))~~;

(c) Maintain a current list of ((these)) local health jurisdiction staff ((must be maintained by the local health officer)) with access to case report information;

~~((iii))~~ (d) Enclose physical locations containing electronic or paper copies of surveillance data ~~((must be enclosed))~~ in a locked, secured area with limited access and not accessible by window;

~~((iv))~~ (e) Store paper copies or electronic media containing surveillance information ~~((must be housed))~~ inside locked file cabinets that are in the locked, secured area;

~~((v))~~ (f) Destroy information by either shredding it with a crosscut shredder ~~((must be available for destroying information and))~~ or appropriately sanitizing electronic media ~~((must be appropriately sanitized))~~ prior to disposal;

~~((vi))~~ (g) Store files or databases containing confidential information ~~((must reside))~~ on either stand-alone computers with restricted access or on networked drives with proper access controls, encryption software, and firewall protection;

~~((vii))~~ (h) Protect electronic communication of confidential information ~~((must be protected))~~ by encryption standards ~~((that are reviewed annually by the local health officer))~~ and review the standards annually; and

~~((viii))~~ (i) Make available locking briefcases ~~((must be available))~~ for transporting confidential information~~((;~~

~~((e))~~);

(4) The local health officer and local health jurisdiction staff shall:

(a) If maintaining identifying information on asymptomatic HIV-infected individuals more than ninety days following receipt of a completed case report, cooperate with the department ~~((of health))~~ in biennial review of system security measures described in subsection (2)(b) of this ((subsection)) section.

~~((d))~~ (b) Destroy documentation of referral information established in WAC 246-100-072 containing identities and identifying information on HIV-infected individuals and at-risk partners of those individuals immediately after notifying

partners or within ~~((three months))~~ ninety days, whichever occurs first, unless such documentation is being used in an investigation of conduct endangering the public health or of behaviors presenting an imminent danger to the public health ~~((pursuant to))~~ under RCW 70.24.022 or 70.24.024.

~~((e))~~ (c) Not disclose identifying information received as a result of this chapter unless:

(i) Explicitly and specifically required to do so by state or federal law; or

(ii) Authorized by written patient consent.

~~((2))~~ Local health department personnel are authorized to use HIV identifying information obtained as a result of this chapter only for the following purposes:

(a) Notification of persons with substantial exposure, including sexual or syringe-sharing partners;

(b) Referral of the infected individual to social and health services;

(c) Linkage to other public health databases, provided that the identity or identifying information on the HIV-infected person is not disclosed outside of the health department; and

~~((d))~~ Investigations pursuant to RCW 70.24.022 or 70.24.024.

~~((3))~~ Public health databases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or databases maintained by law enforcement officials.

(4) Local health officials will report HIV infection cases to the state health department.

~~((5))~~ Local health officers must require and maintain signed confidentiality agreements with all health department employees with access to HIV identifying information. These agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapter 70.24 RCW and other administrative actions that may be taken by the department.

~~((6))~~ (5) Local health officers ~~((must))~~ shall investigate potential breaches of the confidentiality of HIV identifying information by health ~~((department))~~ jurisdiction employees. The local health officer shall report all breaches of confidentiality ~~((must be reported))~~ to the state health officer ~~((or their designee))~~ for review and appropriate action.

~~((7))~~ Local health officers and local health department personnel must assist the state health department to reascertain the identities of previously reported cases of HIV infection.)

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

**WAC 246-101-525 Special condition—Influenza—Local health jurisdictions.** A local health ~~((departments))~~ jurisdiction shall:

(1) Maintain a surveillance system for influenza during the ~~((appropriate))~~ influenza season which may include:

(a) Monitoring of excess school absenteeism;

(b) ~~((Sample check with))~~ Requesting information from health care providers~~((, clinics, nursing homes, and hospitals))~~ and health care facilities regarding influenza-like illnesses; and



(c) Monitoring ~~((of))~~ workplace absenteeism and other mechanisms.

(2) ~~((Encourage))~~ Request submission of appropriate clinical specimens from a sample of patients with influenza-like illness to the Washington state public health laboratories or other laboratory approved by the state health officer.

## PART VI: NOTIFIABLE CONDITIONS— DEPARTMENT OF HEALTH

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-605 Duties ~~((of the))~~—Department ~~((of health))~~.** (1) The department shall:

(a) Upon request, provide consultation and technical assistance to local health ~~((departments and))~~ jurisdictions, the department of labor and industries, and the department of agriculture when they are investigating notifiable conditions ~~((reports upon request))~~.

(b) Upon request, provide consultation and technical assistance to health care providers, laboratories, health care facilities, and others required to ~~((make notifications to public health authorities of notifiable conditions upon request))~~ comply with this chapter.

(c) Develop, maintain, and make available for local health ~~((departments))~~ jurisdictions guidance on investigation and control measures for notifiable ~~((communicable disease))~~ conditions.

(d) ~~((Develop and))~~ Make case report forms available ~~((forms for the submission of notifiable conditions data))~~ to local health ~~((departments))~~ jurisdictions, health care providers, laboratories, health care facilities, and others required to ~~((make notifications to public health authorities of notifiable conditions))~~ comply with this chapter.

(e) Maintain a twenty-four hour telephone number ~~((for reporting notifiable conditions))~~ to receive:

(i) Confirmation calls for immediately notifiable condition case reports; and

(ii) Notification of immediately notifiable case reports or outbreaks and suspected outbreaks from local health jurisdictions.

(f) Develop routine data dissemination mechanisms that describe and analyze notifiable conditions case investigations and data ~~((These may include annual and monthly reports and other mechanisms for data dissemination as developed by the department))~~ in accordance with WAC 246-101-615.

(g) Conduct investigations and institute infection control measures as necessary.

(h) Document the known environmental, human, and other variables associated with a case ~~((or suspected case))~~ of pesticide poisoning.

(i) Report the results of the pesticide poisoning investigation to the principal health care provider named in the case report ~~((form))~~ and to the local health officer in whose jurisdiction the ~~((exposure has))~~ case occurred.

(2) The department may:

(a) Negotiate ~~((alternate arrangements))~~ alternatives for meeting ~~((reporting))~~ requirements under this chapter through cooperative agreement between the department and

any health care provider, laboratory, ~~((or))~~ health care facility, or state agency. An alternative must provide the same level of public health protection as the reporting requirement for which an alternative is sought.

(b) ~~((Consolidate reporting for notifiable conditions from any))~~ Under an approved cooperative agreement, relieve a health care provider, laboratory, or health care facility ~~((, and relieve that health care provider, laboratory, or health care facility from reporting directly to each))~~ of the duty to notify a local health ~~((department))~~ jurisdiction, if the department can ~~((provide the report))~~ consolidate and submit notifications to the local health ~~((department))~~ jurisdiction within the ~~((same time as the local health department would have otherwise received it))~~ time frame for notification required under Table HC-1 of WAC 246-101-101 and Table Lab-1 of WAC 246-101-201.

(c) Receive health information, demographic information, and infectious or noninfectious condition information in addition to that required under this chapter from health care providers, health care facilities, laboratories, and public health authorities.

(3) When the department receives information under subsection (2)(c) of this section, the department shall handle the information under the requirements of WAC 246-101-610.

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-610 Handling of ~~((case reports and medical))~~ confidential information and information exempt from public disclosure—State health officer and department.** (1) All records and specimens related to a case that contain or are accompanied by patient identifying information are confidential. Patient identifying information includes information that can directly or indirectly identify a patient.

(2) The state health officer and department employees shall maintain the confidentiality of health information in accordance with chapter 70.02 RCW and RCW 42.56.360(2).

(3) The state health officer ~~((or designee))~~ shall establish and ~~((maintain))~~ implement confidentiality policies and procedures related to employee handling of ~~((all reports of cases and suspected cases, prohibiting disclosure of report information identifying an individual case or suspected cases except:~~

(a) To employees of the local health department, other local health departments, or other official agencies needing to know for the purpose of administering public health laws and these regulations:

(b) To health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for disease prevention and control:

(c) For research approved by an institutional review board as indicated under chapter 42.48 RCW. The institutional review board applies federal and state privacy laws to research requests for confidential information:

(2)) health information under this chapter and in accordance with chapters 70.02 and 70.24 RCW and RCW 42.56.-360(2).

(4) The state health officer or department shall:

(a) Require all department employees, contractors, and others with access to ((identifying)) health information ((related to a case or suspected case of a person diagnosed with a notifiable condition shall be required)) to sign ((a)) confidentiality agreements((-The));

(b) Retain current signed confidentiality agreements;

(c) Reference in confidentiality agreements the penalties for violation of chapter 70.24 RCW and administrative actions that may be taken by the department if the confidentiality agreement is violated; and

(d) Renew confidentiality agreements ((shall be renewed)) at least annually ((and shall include reference to criminal and civil penalties for violation of chapters 70.02 and 70.24 RCW and other administrative actions that may be taken by the department)).

AMENDATORY SECTION (Amending WSR 11-02-065, filed 1/4/11, effective 2/4/11)

**WAC 246-101-615 ((Requirements for)) Data dissemination and notification—Department.** The department shall:

(1) Distribute periodic epidemiological summary reports and an annual review of public health issues to local health officers ((and)), local health ((departments)) jurisdictions, and the department of labor and industries.

(2) ~~((Upon execution of a data sharing agreement,))~~ Make available ((any data or other)) case investigation documentation ((in its possession regarding)) for notifiable conditions reported directly to the department to local health officers or ((their designees within two days of a request)) the department of labor and industries within twenty-four hours of receipt by the department.

(3) Make other data necessary to conduct case investigations or epidemiological summaries available within two business days of a request from a public health authority.

~~((3))~~ (4) Periodically distribute statistical summaries and epidemiological studies based on individual case reports if no ~~((individual))~~ patient is identified or identifiable.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

**WAC 246-101-630 Special condition—Antibiotic resistant disease—Department.** The department shall~~((=~~

~~((=))~~ maintain a surveillance system for monitoring antibiotic resistant disease ((that may include)) including, but not limited to:

~~((a))~~ (1) Development of a sentinel network of laboratories to provide information regarding antibiotic resistant disease; and

~~((b))~~ (2) Sample checks with health care providers~~((=~~ clinics, and hospitals)) and health care facilities regarding antibiotic resistant disease.

~~((c))~~ Encourage submission of appropriate clinical)) (3) Request the health care providers and laboratories submit specimens from a sample of patients with antibiotic resistant disease to the Washington state public health laboratories or other laboratory approved by the state health officer.

AMENDATORY SECTION (Amending WSR 06-16-117, filed 8/1/06, effective 9/1/06)

**WAC 246-101-635 Special conditions—AIDS and HIV—Department.** The following provisions apply ~~((for))~~ to the use of AIDS and HIV notifiable conditions case reports, related information, and data and is in addition to the requirements established under WAC 246-101-610:

(1) Department personnel ~~((must))~~ shall not disclose identifying information ~~((received as a result of receiving information regarding a notifiable conditions report of))~~ related to a case of AIDS or HIV unless:

(a) Explicitly and specifically required to do so by state or federal law; or

(b) Authorized by written patient consent.

(2) Department personnel ~~((are authorized to))~~ may use HIV identifying information ~~((received as a result of receiving information regarding a notifiable conditions report of))~~ related to a case of AIDS or HIV only for the following purposes:

(a) Notification of persons with substantial exposure, including sexual or syringe-sharing partners;

(b) Referral of the infected individual to social and health services; and

(c) Linkage to other public health databases, provided that the identity or identifying information ~~((on))~~ of the HIV-infected person is not disclosed outside ~~((of))~~ the ~~((health))~~ department.

~~((3))~~ For the purposes of this chapter, public health databases do not include health professions licensing records, certifications or registries, teacher certification lists, other employment rolls or registries, or databases maintained by law enforcement officials.

~~((4))~~ The state health officer ~~((must))~~ shall require and maintain signed confidentiality agreements with all department employees with access to HIV identifying information. The state health officer shall ensure these agreements ~~((will be))~~ are renewed at least annually and include reference to ~~((criminal and civil))~~ penalties for violation of chapter 70.24 RCW and ~~((other))~~ administrative actions that may be taken by the department.

~~((5))~~ (4) The state health officer ~~((must))~~ shall investigate potential breaches of the confidentiality of HIV identifying information by department employees. All breaches of confidentiality shall be reported to the state health officer or their authorized representative for review and appropriate action.

~~((6))~~ (5) The department ~~((must))~~ shall maintain all HIV case reports in a name-based surveillance system solely for the purpose of complying with HIV reporting guidelines from the ~~((federal))~~ Centers for Disease Control and Prevention, and ~~((must))~~ shall not disclose or otherwise use any information contained in that system for any other purpose, except as expressly permitted by this section.

~~((7))~~ Authorized representatives of the department must review available records to reascertain the identities of previously reported cases of asymptomatic HIV infection and retain those cases in a confidential name-based system.

~~((8))~~ (6) The department ~~((must))~~ shall:

(a) Maintain HIV case reports in secure systems that meet the following standards and are consistent with the

~~((2006))~~ 2011 Data Security and Confidentiality Guidelines ~~((developed))~~ for HIV, Viral Hepatitis, Sexually Transmitted Disease, and Tuberculosis Programs: Standards to Facilitate Sharing and Use of Surveillance Data for Public Health Action published by the Centers for Disease Control and Prevention~~((~~

~~((a))~~;

~~((b))~~ Describe secure systems ~~((must be described))~~ in written policies ~~((that are reviewed))~~ and review the policies annually ~~((by the overall responsible party))~~;

~~((c))~~ ~~((b))~~ Limit access to case report information ~~((must be limited))~~ to ~~((health))~~ department staff who need it to perform their job duties ~~((and))~~;

~~((d))~~ Maintain a current list of ~~((these))~~ department staff ~~((must be maintained by the overall responsible party))~~ with access to case report information;

~~((e))~~ ~~((c))~~ Enclose all physical locations containing electronic or paper copies of surveillance data ~~((must be enclosed))~~ in a locked, secured area with limited access and not accessible by window;

~~((f))~~ ~~((d))~~ Store paper copies or electronic media containing surveillance information ~~((must be housed))~~ inside locked file cabinets that are in the locked, secured area;

~~((g))~~ ~~((e))~~ Destroy information by either shredding it with a crosscut shredder ~~((must be available for destroying information and))~~ or appropriately sanitizing electronic media ~~((must be appropriately sanitized))~~ prior to disposal;

~~((h))~~ ~~((f))~~ Store files or databases containing confidential information ~~((must reside))~~ on either stand-alone computers with restricted access or on networked drives with proper access controls, encryption software, and firewall protection;

~~((i))~~ ~~((g))~~ Protect electronic communication of confidential information ~~((must be protected))~~ by encryption standards ~~((that are reviewed))~~ and review the standards annually ~~((by the overall responsible party))~~;

~~((j))~~ ~~((h))~~ Use locking briefcases ~~((must be available))~~ for transporting confidential information.

~~((7))~~ ~~((9))~~ The state health officer ~~((or designee must))~~ shall conduct a biennial review of local health jurisdictions system security measures described in WAC 246-101-520 ~~((1)(b) at local health jurisdictions))~~ that are maintaining records by name.

~~((8))~~ ~~((10))~~ (8) When providing technical assistance to a local health ~~((department))~~ jurisdiction, authorized representatives of the department may temporarily, and subject to the time limitations in WAC 246-101-520, receive the names of reportable cases of HIV infection for the purpose of partner notification, or special studies. Upon completion of the activities by representatives of the ~~((state health))~~ department, named information will be provided to the local health ~~((department))~~ jurisdiction subject to the provisions of WAC 246-101-520.

~~((11))~~ By December 2007, the state health officer, in cooperation with local health officers, will report to the board on:

~~((a))~~ The ability of the HIV reporting system to meet surveillance performance standards established by the federal Centers for Disease Control and Prevention;

~~((b))~~ The cost of the reporting system for state and local health departments;

~~((c))~~ The reporting system's effect on disease control activities;

~~((d))~~ The impact of HIV reporting on HIV testing among persons at increased risk of HIV infection; and

~~((e))~~ The availability of anonymous HIV testing in the state.

~~((12))~~ (9) The state health officer ~~((must))~~ shall provide a report to the state board of health if federal policy no longer requires that HIV surveillance systems be name-based.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

#### **WAC 246-101-640 Special condition—Birth defects.**

The department shall enter into a data sharing agreement with the office of the superintendent of public instruction ~~((the superintendent))~~ to access data from databases maintained by the superintendent containing student health information for the purpose of identifying cases of autism or other conditions of public health interest.

### **PART VII: NOTIFIABLE CONDITIONS— DEPARTMENT OF LABOR AND INDUSTRIES**

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

**WAC 246-101-705 Duties ~~((of the))~~—Department of labor and industries.** (1) The department of labor and industries shall:

~~((a))~~ ~~((b))~~ Be responsible for the investigation of cases identified as notifiable to the department of labor and industries under this chapter;

~~((b))~~ Provide consultation and technical assistance to local health ~~((departments))~~ jurisdictions and the department investigating ~~((notifiable conditions reports))~~ cases;

~~((c))~~ ~~((b))~~ Upon request, provide consultation and technical assistance to health care providers, laboratories, health care facilities, and others required to ~~((make notifications to public health authorities of notifiable conditions upon request))~~ notify and cooperate with public health authorities under this chapter;

~~((d))~~ ~~((e))~~ Provide technical assistance to businesses and labor organizations for understanding the use of notifiable conditions data collected and analyzed by the department of labor and industries; and

~~((e))~~ ~~((d))~~ Develop routine data dissemination mechanisms that describe and analyze notifiable conditions case investigations and data. These may include annual and monthly reports and other mechanisms for data dissemination as developed by the department of labor and industries.

(2) The department of labor and industries may:

~~((a))~~ Receive data through ~~((any))~~ cooperative ~~((relationship))~~ agreement negotiated by the department of labor and industries and ~~((any))~~ a health care provider, laboratory, or health care facility;

~~((b))~~ Receive health information, demographic information, and infectious or noninfectious condition information in addition to that required under this chapter from health care providers and health care facilities.

(3) When the department of labor and industries receives information under this section, the department of labor and industries shall handle the information under the requirements of WAC 246-101-710.

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

**WAC 246-101-710 Handling of ~~((case reports and medical information)) confidential information—Department of labor and industries.~~** (1) ~~((The department of labor and industries shall establish and maintain confidentiality procedures related to employee handling of all reports of cases and suspected cases, prohibiting disclosure of report information identifying an individual case or suspected cases except:~~

~~((a) To employees of the local health department, the department, or other official agencies needing to know for the purpose of administering public health laws and these regulations; and~~

~~((b) To health care providers, specific designees of health care facilities, laboratory directors, and others for the purpose of collecting additional information about a case or suspected case as required for occupational condition prevention and control.~~

~~((2)) All records and specimens related to a case that contain or are accompanied by patient identifying information are confidential. Patient identifying information includes information that can directly or indirectly identify a patient.~~

~~((2) The director of the department of labor and industries and department of labor and industries employees shall maintain the confidentiality of health information consistent with chapter 70.02 RCW and RCW 42.56.360(2).~~

~~((3) The director of the department of labor and industries shall ~~((require and maintain signed confidentiality agreements with)):~~~~

~~((a) Require all employees, contractors, and others with access to ~~((identifying)) health information ~~((related to a case or suspected case of a person diagnosed with a notifiable condition. Such agreements will be renewed at least annually and include reference to criminal and civil penalties for violation of chapter 70.02 RCW, other chapters of pertinent state law, and other administrative actions that may be taken by the department of labor and industries.~~~~~~

~~((3) The department of labor and industries may release statistical summaries and epidemiological studies based on individual case reports if no individual is identified or identifiable), to sign confidentiality agreements;~~

~~((b) Retain signed confidentiality agreements;~~

~~((c) Reference in confidentiality agreements the administrative actions that may be taken by the department of labor and industries if the confidentiality agreement is violated; and~~

~~((d) Renew confidentiality agreements at least annually.~~

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

**WAC 246-101-715 ~~((Requirements for)) Data dissemination and notification—Department of labor and industries.~~** The department of labor and industries shall:

(1) Distribute periodic epidemiological summary reports and an annual review of public health issues to local health officers ~~((and)), local health ~~((departments)) jurisdictions, and the department.~~~~

(2) Make available case investigation documentation for notifiable conditions reported directly to the department of labor and industries, data necessary to conduct case investigations, or epidemiological summaries to local health officers or ~~((their designees upon execution of a data sharing agreement)) the department within two business days of a request.~~

AMENDATORY SECTION (Amending WSR 00-23-120, filed 11/22/00, effective 12/23/00)

**WAC 246-101-730 Special condition—Hospitalized burns.** The department of labor and industries shall maintain a surveillance system for monitoring hospitalized burn~~((s)) patients~~ that may include:

(1) Development of a sentinel network of burn treatment centers and hospitals to provide information regarding hospitalized burn~~((s)) patients~~; and

(2) Sample checks with health care providers~~((, clinics,)) and ~~((hospitals)) health care facilities~~ regarding hospitalized burn~~((s)) patients.~~~~

## PART VIII: NOTIFIABLE CONDITIONS— DEPARTMENT OF AGRICULTURE

### NEW SECTION

**WAC 246-101-805 Duties—Department of agriculture.** (1) For the purposes of this section, "new, emerging, or unusual animal diseases or disease clusters with potential public health significance" means zoonotic or potentially zoonotic diseases in animals that have never or rarely been observed in Washington state (new or emerging); or appear in a new species or show evidence of higher pathogenicity than expected (unusual); or appear in a higher than expected number of animals clustered in time or space (cluster).

(2) The department of agriculture shall:

(a) Submit an individual case report for each animal case of a condition identified in Table Agriculture-1 to the department immediately upon being notified of the animal case using secure electronic data transmission under this table and this chapter.

(b) Call the department and confirm receipt immediately after submitting a case report for the following conditions:

(i) Anthrax (*Bacillus anthracis* or *Bacillus cereus* biovar *anthracis*);

(ii) Influenza virus in swine, influenza H5 and H7 (avian);

(iii) Livestock exposed to toxic substances which may threaten public health;

(iv) Plague (*Yersinia pestis*);

(v) Rabies (suspected human or animal);

(vi) Transmissible Spongiform Encephalopathy; and

(vii) Tularemia (*Francisella tularensis*).

Table Agriculture-1 (Conditions Notifiable by the Department of Agriculture)

Notifiable Condition (Agent)
Anthrax ( <i>Bacillus anthracis</i> or <i>B. cereus</i> biovar <i>anthracis</i> )
Arboviral Diseases
California serogroup
Chikungunya
Dengue
Eastern equine encephalitis
Japanese encephalitis
La Crosse encephalitis
Powassan
St. Louis encephalitis
Western equine encephalitis
West Nile virus
Zika
Brucellosis ( <i>Brucella</i> species)
Coccidioidomycosis ( <i>Coccidioides</i> species)
<i>Cryptococcus gattii</i> or undifferentiated <i>Cryptococcus</i> species (i.e., <i>Cryptococcus</i> not identified as <i>C. neoformans</i> )
Cysticercosis ( <i>Taenia solium</i> )
Echinococcosis ( <i>Echinococcus</i> species)
Ehrlichiosis ( <i>Ehrlichia</i> species)
Glanders ( <i>Burkholderia mallei</i> )
Influenza virus in swine, influenza H5 and H7 (avian)
Leptospirosis ( <i>Leptospira</i> species)
Livestock exposed to toxic substances which may threaten public health
Psittacosis ( <i>Chlamydia psittaci</i> )
Plague ( <i>Yersinia pestis</i> )
Q Fever ( <i>Coxiella burnettii</i> )
Rabies (suspected human or animal)
Shiga toxin-producing <i>E. coli</i> infections/enterohemorrhagic <i>E. coli</i> infections
Transmissible Spongiform Encephalopathy
Trichinosis ( <i>Trichinella spiralis</i> )
Tuberculosis
Tularemia ( <i>Francisella tularensis</i> )
Vancomycin-resistant ( <i>Staphylococcus aureus</i> )
Zoonotic Viral Hemorrhagic Fever
New, emerging, or unusual animal diseases or disease clusters with potential public health significance.

(3) The department of agriculture may provide additional health information, demographic information, or infectious or noninfectious condition information than is required under this chapter to the department, local health jurisdiction, or both when it determines that the additional information will aid the public health authority in protecting and improving the public's health through prevention and control of infectious and noninfectious conditions.

(4) When the department of agriculture submits information under subsection (3) of this section, they shall submit the information using secure electronic data transmission.

(5) The department shall:

- (a) Consult with the department of agriculture on all animal cases; and
- (b) Notify the local health jurisdiction of animal cases submitted to the department.

NEW SECTION

**WAC 246-101-810 Content of case reports—Department of agriculture.** (1) The state department of agriculture shall provide the following information for each animal case required under WAC 246-101-805:

- (a) Animal species;
- (b) Animal county of current residence;
- (c) Diagnosis or suspected diagnosis of the condition;
- (d) Contact name;
- (e) Contact address;
- (f) Contact telephone number;
- (g) Pertinent laboratory data, if available; and
- (h) Other information of public health significance collected under chapter 16-70 WAC.

(2) The local health officer or state health officer may request additional information of epidemiological or public health value when conducting a case investigation or for control of a notifiable condition.

(3) The state health officer and local health officer shall handle all information received under this chapter including, but not limited to, information collected under this subsection and WAC 246-101-805 and information collected during case investigations or for investigation or control of a notifiable condition, consistent with WAC 246-101-515, 246-101-610, and RCW 42.56.380.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-101-001 Provisions of general applicability.
- WAC 246-101-301 Notifiable conditions and health care facilities.
- WAC 246-101-305 Duties of the health care facility.
- WAC 246-101-310 Means of notification.
- WAC 246-101-315 Content of notifications.
- WAC 246-101-320 Handling of case reports and medical information.
- WAC 246-101-401 Notifiable conditions and the responsibilities and duties of others.
- WAC 246-101-501 Notifiable conditions and local health departments.
- WAC 246-101-601 Notifiable conditions and the department of health.
- WAC 246-101-620 Requirements for notification to the department of labor and industries.
- WAC 246-101-625 Content of notifications to the department of labor and industries.
- WAC 246-101-701 Notifiable conditions and the department of labor and industries.
- WAC 246-101-720 Requirements for notification to local health departments.

WAC 246-101-725 Requirements for notification to the department of health.

**WSR 20-06-062****PROPOSED RULES****HEALTH CARE AUTHORITY**

[Filed March 3, 2020, 11:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-20-106.

Title of Rule and Other Identifying Information: WAC 182-550-8000 Hospital safety net assessment (HSNA) program—Purpose and 182-550-8100 Assessment notices—Process and timelines.

Hearing Location(s): On April 7, 2020, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal Conference Room, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than April 8, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by April 7, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication relay services 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by March 27, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is establishing rules for the hospital safety net assessment program. The proposed rules:

- Describe the payment due date and the notifications sent out by the agency.
- Describe how and when the agency offsets amounts from scheduled payments to a hospital when that hospital has not timely paid its assessment.
- Establish a process to appeal the agency's action to offset amounts from scheduled payments.

Reasons Supporting Proposal: This rule making is authorized by RCW 74.60.050.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 74.60.050.

Statute Being Implemented: RCW 41.05.021, 41.05.160; chapter 74.60 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1408; Implementation and Enforcement: Clinton Fridley, P.O. Box 45510, Olympia, WA 98504-5510, 360-725-1577.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

March 3, 2020  
Wendy Barcus  
Rules Coordinator

#### NEW SECTION

**WAC 182-550-8000 Hospital safety net assessment (HSNA) program—Purpose.** Chapter 74.60 RCW establishes the hospital safety net assessment (HSNA) program. The HSNA program imposes an assessment on certain Washington state hospitals that is used solely to increase funding from all other sources and support additional payments to hospitals for authorized medicaid services. The medicaid agency has authority to issue rules associated with the HSNA program under RCW 41.05.021 (1)(m)(iv) and 74.60.050(1).

#### NEW SECTION

**WAC 182-550-8100 Assessment notices—Process and timelines.** (1) **Notification.** The medicaid agency sends hospital safety net assessment (HSNA) notices on or about thirty calendar days prior to the end of each quarter as required by RCW 74.60.030 (1)(a).

(2) **Payment due date.** Each hospital must pay its assessment in full by the due date listed in the HSNA notice.

(3) **First past-due notification.** If a hospital does not pay its HSNA assessment in full by the due date, the agency sends the hospital a past-due notice. The past-due notice informs the hospital of the actions the agency may take if the hospital's assessment becomes ninety calendar days past due.

(4) **Final past-due notification.** If a hospital does not pay its assessment in full within ninety calendar days of its due date stated in the HSNA notice, the agency sends the hospital a final past-due notice.

(a) The final past-due notice informs the hospital of the actions the agency takes, as required by RCW 74.60.050(2), to offset funds from the agency's scheduled payments to the hospital.

(b) The agency does not offset funds from managed care capitation payments, as described in RCW 74.60.130.

(5) **Appeal.** A hospital may appeal the actions the agency takes to offset funds by following the process outlined in WAC 182-502-0050.

**WSR 20-06-066**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(By the Code Reviser's Office)  
[Filed March 3, 2020, 1:33 p.m.]

WAC 208-620-720, proposed by the department of financial institutions in WSR 19-17-084, appearing in issue 19-17 of the Washington State Register, which was distributed on September 4, 2019, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 20-06-067**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
(By the Code Reviser's Office)  
[Filed March 3, 2020, 1:33 p.m.]

WAC 208-660-355, proposed by the department of financial institutions in WSR 19-17-090, appearing in issue 19-17 of the Washington State Register, which was distributed on September 4, 2019 is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 20-06-075**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**  
[Filed March 4, 2020, 7:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-01-127.

Title of Rule and Other Identifying Information: Amending WAC 308-409-020 Application process to license as an appraisal management company, 308-409-030 Licensure and renewal, 308-409-050 Fees and charges; and adding new WAC 308-409-075 Standards of practice.

Hearing Location(s): On April 7, 2020, at 1:30 p.m., at the Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Building #2, Conference Room #2108, Olympia, WA 98502.

Date of Intended Adoption: April 8, 2020.

Submit Written Comments to: Dee Sharp, Department of Licensing, Appraisal Management Company Program, P.O. Box 9021, Olympia, WA 98507, email [dolbpdamc@dol.wa.gov](mailto:dolbpdamc@dol.wa.gov), fax 360-586-0998, by April 6, 2020.

Assistance for Persons with Disabilities: Dee Sharp, phone 360-664-6504, fax 360-570-4981, TTY 711, email dolbpdamc@dol.wa.gov, by April 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: All updates and adoptions are being proposed for Washington state to remain in compliance with state (chapter 18.310 RCW) and federal rules under section 1124 to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) as modified by section 1473 of the Dodd-Frank Act.

The proposed updates and adoptions will update existing licensure period to one year to accommodate for 2019 legislative changes; will modify existing rules to allow for the collection and transmission of Appraisal Management Company National Registry data and fees to the Appraisal Subcommittee as required by Title XI, and will adopt a new rule pertaining to standards of practice as required by the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation

Reasons Supporting Proposal: Rule modifications and adoptions are proposed to comply with the final federal rules pertaining to state's requirements to supervise Appraisal Management Companies in compliance with the amendments made to Title XI by the Dodd-Frank Act.

Statutory Authority for Adoption: RCW 18.310.020 (1) and (11).

Statute Being Implemented: None.

Rule is necessary because of federal law, 12 U.S.C. § 3353(d); 12 C.F.R. § 226.28. If changes are not adopted as required, the Appraisal Management Company program would not be in compliance with state and federal laws and could be decertified by the Appraisal Subcommittee which would prohibit Appraisal Management Companies from conducting business pertaining to real property lending transactions in Washington state.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dee Sharp, 2000 4th Avenue West, Olympia, WA 98507, 360-664-6504.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required because the changes are required for compliance with state and federal statutes (RCW 34.05.328(5)[(b)](v)).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 12 U.S.C. § 3353(d); 12 C.F.R. § 226.28. If changes are not adopted as required, the Appraisal Management Company program would not be in compliance with state and federal laws and could be decertified by the Appraisal Subcommittee which would prohibit Appraisal Management Companies

from conducting business pertaining to real property lending transactions in Washington state.

Is exempt under RCW 19-85-020(3).

Explanation of exemptions: Exempt under RCW 19.85-020(3), this rule affects only individual licensees (applies to all above proposed rules).

March 4, 2020.

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-21-061, filed 10/14/16, effective 11/14/16)

**WAC 308-409-020 Application process to license as an appraisal management company.** (1) An entity applying for licensure as an appraisal management company shall present to the department:

(a) A completed licensure application form that complies with RCW 18.310.060;

(b) Completed registration forms for the owner(s) of ten percent or more of the company and controlling persons, including a designated controlling person;

(c) Fingerprint background checks that are identified to the appraisal management company program, for owner(s) of ten percent or more of the company and controlling person(s);

(i) An application submitted without the required fingerprint background check is considered incomplete.

(ii) If a fingerprint submission is rejected, the owner or controlling person must follow the department's authorized vendor's procedures for resubmitting fingerprints within twenty-one calendar days of the date the department notifies the applicant.

(iii) Failure to follow the vendor's fingerprint procedures within twenty-one days may result in a suspension of the appraisal management company license until the vendor's fingerprint procedures are followed. The applicant will be responsible for any fingerprinting fees due to the department's authorized vendor.

(iv) If the fingerprint submission is rejected, the applicant must pay a new fee for fingerprinting and background processing. After three failed submissions, the program may use other sources/methods to satisfy the background check requirement.

(d) Proof of surety bond; and

(e) Appropriate fees.

(2) A change in ownership or controlling person(s) of the appraisal management company will require the new owner(s) or controlling person(s) to submit owner or controlling person registration form(s) to the department together with fingerprint background check(s), that are identified to the appraisal management company program within fourteen business days of change.

(3) Appraisal management company applications for licensure and renewal must include:

(a) A certification under penalty of perjury to the department to include:

(i) Has the appraisal management company overseen a panel of sixteen or more licensed appraisers in Washington within one year immediately preceding application;



(ii) Has the appraisal management company overseen a panel of twenty-five or more licensed appraisers in more than one state within one year immediately preceding application;

(iii) Is the appraisal management company a federally regulated AMC.

(b) A report to the department providing the actual number of appraisers the appraisal management company has overseen on their panel within the one year immediately preceding the application; and

(c) A report to the department providing the number of appraisers on their appraisal management company panel that performed appraisals for covered transactions within one year immediately preceding the application. Covered transactions are any appraisals that were performed for consumer credit transactions secured by the consumer's principal dwelling unit.

AMENDATORY SECTION (Amending WSR 16-21-061, filed 10/14/16, effective 11/14/16)

**WAC 308-409-030 Licensure and renewal.** (1) ~~((Appraisal management companies must be licensed by January 1, 2012.~~

~~(2))~~ (2) Each original and renewal license issued under chapter 18-310 RCW shall expire ~~((two))~~ one year~~((s))~~ from date of issue.

~~((3))~~ (2) To be renewed as an appraisal management company, the holder of a valid license shall submit an application to include the information required in WAC 308-409-020(3) and pay the prescribed fee to the director no earlier than one hundred twenty days prior to the expiration date.

~~((4))~~ (3) If a company fails to renew a license prior to its expiration and no more than one year has passed since the company last held a valid license, the company may obtain a renewed license by paying the renewal fee and late renewal penalty fee.

~~((5))~~ (4) The director shall cancel the license of any company whose renewal fee is not received within one year from the date of expiration. A company may obtain a new license by applying for original licensure as an appraisal management company.

AMENDATORY SECTION (Amending WSR 16-21-061, filed 10/14/16, effective 11/14/16)

**WAC 308-409-050 Fees and charges.** The following fees shall be paid under the provisions of chapter 18.310 RCW:

Title of Fee	Fee
Original licensure	<del>\$(2,400.00)</del> <u>1,200.00</u>
Renewal	<del>\$(1,200.00)</del> <u>600.00</u>
Late renewal <del>((penalty))</del>	38.00
Duplicate license	30.00
Fingerprint processing	per vendor schedule*

Title of Fee	Fee
<u>Appraisal management company national registry</u>	<u>25.00 per appraiser on the AMC panel who performed an appraisal in a covered transaction as defined in WAC 308-409-020 (2)(c) **</u>

\*Fees for the category marked with an asterisk are determined by contract with an outside vendor.

\*\*Fees are initial licensure and renewal fees for an appraisal management company national registry in an amount determined by the appraisal subcommittee to be submitted by the state. Title XI requires each state to submit a roster listing of licensed appraisal management companies to the appraisal subcommittee.

NEW SECTION

**WAC 308-409-075 Standards of practice.** The standard of practice governing real estate appraisal activities coordinated by appraisal management companies will be the edition of the *Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation* in effect on the date of the appraisal report. Appraisals coordinated by real estate appraisal management companies must comply with these standards of practice. A copy of the Uniform Standards of Professional Appraisal Practice is available for review and inspection at the office of the Real Estate Appraiser Unit Office, Olympia, Washington. The Uniform Standards of Professional Appraisal Practice is a copyright document. Copy of the full text may be obtained from the appraisal foundation at The Appraisal Foundation, P.O. Box 96734, Washington, DC 20090-6734.

**WSR 20-06-076**

**PROPOSED RULES**

**DEPARTMENT OF LICENSING**

[Filed March 4, 2020, 8:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-24-097.

Title of Rule and Other Identifying Information: WAC 308-30-060 Application fees (notaries public), 308-420-240 Fees and charges (camping resorts), 308-129-110 Seller of travel registration fees, 308-320-050 Registration fees (commercial telephone solicitors), 308-320-060 Annual renewal dates, forms, and fees (commercial telephone solicitors), 308-312-060 Fees (whitewater river outfitters), 308-29-045 Collection agency fees.

Hearing Location(s): On April 7, 2020, at 8:30 a.m., at 405 Black Lake Boulevard S.W., Room 2108, Olympia, WA 98502. Please check in with customer service counter.

Date of Intended Adoption: April 8, 2020.

Submit Written Comments to: Stephanie Sams, 405 Black Lake Boulevard S.W., Olympia, WA 98502, email [ssams@dol.wa.gov](mailto:ssams@dol.wa.gov), by April 6, 2020.

Assistance for Persons with Disabilities: Contact Stephanie Sams, phone 360-664-6567, email ssams@dol.wa.gov, by April 3, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is increasing fees by twenty-five percent across various programs to continue covering the costs to administer these programs as these costs have increased over the years. Fees impacted by this rule making are: Notaries public, camping resorts, timeshare, sellers of travel, commercial telephone solicitors, whitewater river outfitters, and collection agencies.

Reasons Supporting Proposal: The department is required to set fees for each professional, occupational, or business licensing program at a sufficient level to defray the costs of administering that program. Many programs have not had an increase in fees since at least 2008, some dating back to the 1990s.

Statutory Authority for Adoption: RCW 43.42.086 Fee Policy for professions, occupations, and businesses—Determination by rule.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Anticipated date for fee increases are May 8, 2020.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stephanie Sams, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-6567.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These fees are exempt from the requirements in RCW 34.05.328 because they set or adjust fees or rates pursuant to legislative standards, specifically RCW 43.24.086.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

March 4, 2020  
Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-23-159, filed 11/22/11, effective 12/23/11)

**WAC 308-29-045 Collection agency fees.** The following fees will be charged by the business and professions division of the department of licensing:

<b>Title of Fee</b>	<b>Fee</b>
Collection agency—Main office:	
Original application	( <del>(\$850.00)</del> ) <u>\$1,063.00</u>
Renewal	( <del>(\$475.00)</del> ) <u>\$594.00</u>
Reregistration fee after 30 days	( <del>(\$1,325.00)</del> ) <u>\$1,538.00</u>
Branch office (with WA main office):	
Original application	( <del>(\$550.00)</del> ) <u>\$688.00</u>
Renewal	( <del>(\$300.00)</del> ) <u>\$375.00</u>
Reregistration fee after 30 days	( <del>(\$850.00)</del> ) <u>\$988.00</u>
Out-of-state collection agency—Main office:	
Original application	( <del>(\$425.00)</del> ) <u>\$531.00</u>
Renewal	( <del>(\$237.50)</del> ) <u>\$297.00</u>
Reregistration fee after 30 days	( <del>(\$662.50)</del> ) <u>\$768.50</u>
Branch office—With out-of-state main office:	
Original application	( <del>(\$275.00)</del> ) <u>\$344.00</u>
Renewal	( <del>(\$150.00)</del> ) <u>\$188.00</u>
Reregistration fee after 30 days	( <del>(\$425.00)</del> ) <u>\$494.00</u>

AMENDATORY SECTION (Amending WSR 18-12-028, filed 5/29/18, effective 7/1/18)

**WAC 308-30-060 Application fees.** The following fees shall be charged by the department:

<b>Title of Fee</b>	<b>Fee</b>
Application for notary public commission	( <del>(\$30.00)</del> ) <u>\$38.00</u>
Application for electronic records notary public endorsement	\$15.00
Renewal of notary public commission	( <del>(\$30.00)</del> ) <u>\$38.00</u>
Renewal of electronic records notary public endorsement	\$15.00
Duplicate certificate of commission (including name change)	( <del>(\$15.00)</del> ) <u>\$19.00</u>

AMENDATORY SECTION (Amending WSR 07-16-036, filed 7/23/07, effective 9/1/07)

**WAC 308-129-110 Seller of travel registration fees.**

The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Original registration fee	(( <del>\$202.00</del> )) <u>\$253.00</u>
Registration renewal	(( <del>202.00</del> )) <u>253.00</u>
Service of process fee	20.00

Branch offices are subject to a duplicate registration fee. The duplicate registration fee for each branch office shall be an amount equal to the original registration fee.

AMENDATORY SECTION (Amending WSR 98-03-055, filed 1/16/98, effective 2/16/98)

**WAC 308-312-060 Fees.** (1) The following fees apply to the whitewater river outfitter license:

(a) New application, ((~~\$25.00~~)) \$31.00 per business location.

(b) Annual renewal, ((~~\$25.00~~)) \$31.00 per business location.

(2) New and renewal applications are charged the application handling fee listed in RCW 19.02.075.

Delinquent renewal applications may be charged the delinquency fee listed in RCW 19.02.085.

AMENDATORY SECTION (Amending WSR 90-02-060, filed 1/2/90, effective 2/2/90)

**WAC 308-320-050 Registration fees.** The fee for any commercial telephone solicitor required to register in this state shall be ((~~seventy two~~)) ninety dollars for each business location annually. The annual fee shall be proratable and non-refundable.

AMENDATORY SECTION (Amending WSR 90-02-060, filed 1/2/90, effective 2/2/90)

**WAC 308-320-060 Annual renewal dates, forms, and fees.** Registration renewals must be made annually on the form and date required by the department. The fee for annual renewal shall be ((~~seventy two~~)) ninety dollars.

AMENDATORY SECTION (Amending WSR 02-15-168, filed 7/23/02, effective 1/1/03)

**WAC 308-420-240 Fees and charges.** The following fees shall be paid under the provisions of chapter 19.105 RCW:

TITLE OF FEE	FEE
(1) Original registration:	
One camping resort	\$(( <del>3,200.00</del> )) <u>4,000.00</u>

TITLE OF FEE	FEE
Each additional camping resort in this state	1,000.00
(2) Contract fees:	
One to five hundred contracts	500.00
Each additional five hundred contracts, or fraction thereof	100.00
(3) Renewal fees:	
Annual renewal	(( <del>2,000.00</del> )) <u>2,500.00</u>
Each additional camping resort in this state	800.00
Contract fees as described in subsection (2) of this section for each grouping of contracts:	
One to five hundred contracts	500.00
Each additional five hundred contracts, or fraction thereof	100.00
Late renewal penalty	800.00
(4) Fees for amending registration and public offering statements:	
For each amendment of registration or the public offering statement, not requiring an examination of documentation for adding campground or additional contracts to registration	50.00
Amendment for the establishment of an additional campground into the registration for which an examination of documents is required exclusive of any other fees	1,500.00
Penalty fee for failure to file an amendment within thirty days of the occurrence of a material change as defined in WAC 308-420-030 or 308-420-040	100.00
(5) Fees for impounds, escrows, trust and depositories:	
For each initial establishment of impound, escrow, trust or other arrangement requiring agency monitoring	250.00
Each required periodic report	20.00
(6) Advertising filings:	
Each individual advertisement filed with the department	100.00

	TITLE OF FEE	FEE
	Advertisement involving no examination of campground instruments and which are for the purpose of marketing surveys or feasibility studies	75.00
(7)	Salesperson fees:	
	Registration	((150.00)) <u>188.00</u>
	Renewal	((150.00)) <u>188.00</u>
	Transfer	150.00
	Duplicate license	35.00
(8)	Fees for exemptions and exemption applications:	
	Review of application for exemption under RCW 19.105.320(2)	150.00
(9)	All fees are nonrefundable after the application has been received.	
(10)	All fees shall be paid to the order of the Washington state treasurer.	

**WSR 20-06-078**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (Pharmacy Quality Assurance Commission)  
 [Filed March 4, 2020, 11:13 a.m.]

Continuance of WSR 20-03-126.  
 Preproposal statement of inquiry was filed as WSR 18-01-124, 18-09-066, 18-01-123, 18-09-063.

Title of Rule and Other Identifying Information: Chapter 246-945 WAC, the pharmacy quality assurance commission (commission) is proposing a new chapter of rule to consolidate multiple chapters of existing rules into one administrative chapter that covers the practice of pharmacy, including: General provisions, general licensing, professional standards, and operational standards.

Hearing Location(s): On April 16, 2020, at 9:00 a.m., at Highline Community College, 2400 South 240th Street, Des Moines, WA 98198.

Date of Intended Adoption: April 16, 2020.

Submit Written Comments to: Pharmacy Quality Assurance Commission, P.O. 47852, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by March 31, 2020.

Assistance for Persons with Disabilities: Contact Doreen Beebe, phone 360-236-4834, TTY 711, email [doreen.beebe@doh.wa.gov](mailto:doreen.beebe@doh.wa.gov), by April 9, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission had to move the hearing date due to increased activation of

the incident management team at the department of health headquarters in Tumwater in response to the coronavirus outbreak.

Statutory Authority for Adoption: RCW 18.64.005, 18.64.080, 18.130.075, 18.64.043, 18.64.044, 18.64.045, 18.64.046, 18.64.370, 18.64.460, 69.50.310, 18.64.011, 18.64.245, 18.64.470, 18.64.255, 18.64.205, 18.64.253, 18.64.410, 18.64.500, 18.64.590.

Rule is not necessitated by federal law, federal or state court decision.

March 4, 2020  
 Tim Lynch, PharmD, MS, Chair  
 Pharmacy Quality Assurance Commission

**Chapter 246-945 WAC**

**PHARMACY QUALITY ASSURANCE COMMISSION**

**PART 1 - GENERAL PROVISIONS**

NEW SECTION

**WAC 246-945-001 Definitions.** The definitions in chapters 18.64 and 18.64A RCW and those in this section apply throughout this chapter unless otherwise stated.

(1) "ACPE" means accreditation council for pharmacy education.

(2) "Active ingredient" means any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of humans or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in that drug product in a modified form intended to furnish the specified activity or effect.

(3) "Adulterated" refers to a drug that was produced and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with WAC 246-945-550 as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.

(4) "Animal control agency" means any agency authorized by law to euthanize or destroy animals; to sedate animals prior to euthanasia or to engage in chemical capture of animals.

(5) "Approved legend drugs" means any legend drug approved by the commission for use by registered humane societies or animal control agencies for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs.

(6) "Audit trail" means all materials and documents required for the entire process of filling a prescription, which shall be sufficient to document or reconstruct the origin of the prescription, and authorization of subsequent modifications of that prescription.

(7) "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(8) "Blood component" means that part of the blood separated by physical or mechanical means.

(9) "Central fill pharmacy" means a pharmacy contracting with an originating pharmacy, or having the same owner as an originating pharmacy, that provides centralized prescription filling on behalf of the originating pharmacy pursuant to these rules.

(10) "Chemical capture program" means wildlife management programs registered under RCW 69.41.080 and 69.50.320 to use approved legend drugs and controlled substance for chemical capture. Chemical capture includes immobilization of individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes.

(11) "Collaborative drug therapy agreement" or "CDTA" means a written guideline or protocol previously established and approved by a practitioner authorized to prescribe drugs that enables a pharmacist to exercise prescriptive authority.

(12) "Controlled substances" has the same meaning as RCW 69.50.101.

(13) "Controlled substance wholesaler" means a wholesaler licensed under RCW 18.64.046 to possess and sell controlled substances to a licensed pharmacy or other legally licensed or authorized person.

(14) "Commission" means the pharmacy quality assurance commission.

(15) "Counterfeit" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer, or distributor other than the person or persons who in fact manufactured, processed, packed, or distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed or distributed by, such other drug manufacturer, processor, packer, or distributor.

(16) "CPE" means continuing pharmacy education accredited by the ACPE.

(17) "Consultation" means:

(a) A communication or deliberation between a pharmacist and a patient, a patient's agent, or a patient's health care provider in which the pharmacist uses professional judgment to provide advice about drug therapy.

(b) A method by which the pharmacist meets patient information requirements as set forth in WAC 246-945-325.

(18) "Credential" means a license, certification, or registration under the chapters specified in RCW 18.130.040 issued to a person to practice a regulated health care profession. Whether the credential is a license, certification, or registration is determined by the law regulating the profession.

(19) "DEA" means the United States Drug Enforcement Administration.

(20) "Delegated tasks" means tasks that are performed pursuant to a pharmacist's direction, without the exercise of the pharmacy ancillary personnel's own judgment and discretion, and which do not require the pharmacy ancillary personnel's to exercise the independent professional judgment that is the foundation of the practice of the profession of pharmacy.

(21) "Department" means the Washington state department of health.

(22) "Dose" means the amount of drug to be administered at one time.

(23) "Drug(s) of concern" are those drugs identified by the commission as demonstrating a potential for abuse by all professionals licensed to prescribe, dispense, or administer such substances in this state.

(24) "Drug price advertising" means the dissemination of nonpromotional information pertaining to the prices of legend or prescription drugs.

(25) "Drug product" means a finished dosage form (e.g., tablet, capsule, solution) that contains an active drug ingredient generally, but not necessarily, in association with inactive ingredients. The term also includes a finished dosage form that does not contain an active ingredient but is intended to be used as a placebo.

(26) "Drug sample" means a unit of prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

(27) "Drug standard and information sources" means industry recognized reference and resources.

(28) "Drug storage area" means an area where legend drugs, controlled substances, or other restricted items are stored, compounded, or dispensed.

(29) "Drug utilization review" includes, but is not limited to, the following activities:

(a) Evaluation of prescriptions and patient records for known allergies, rational therapy-contraindications, appropriate dose, and route of administration and appropriate directions for use;

(b) Evaluation of prescriptions and patient records for duplication of therapy;

(c) Evaluation of prescriptions and patient records for interactions between drug-drug, drug-food, drug-disease, and adverse drug reactions; and

(d) Evaluation of prescriptions and patient records for proper utilization, including over- or under-utilization, and optimum therapeutic outcomes.

(30) "Electronic means" an electronic device used to send, receive, and/or store prescription information, including computers, facsimile machines, etc.

(31) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.

(32) "Enrolled student" means a student who has accepted an offer of admission in writing and the student has made the appropriate deposit securing admission to an accredited school or college of pharmacy.

(33) "Equivalent manager" means an individual authorized to act on behalf of a pharmaceutical firm not licensed as a pharmacy to serve as the primary contact for the department and is responsible for managing the facility operations which includes, but is not limited to, actively involved in and aware of the daily operations of the facility.

(34) "Export wholesaler" means any wholesaler authorized by the commission to export legend drugs and nonprescription (OTC) drugs to foreign countries.

(35) "FDA" - United States Food and Drug Administration.

(36) "Full-line wholesaler" means a drug wholesale distributor that is licensed under RCW 18.64.046 to possess and sell legend drugs, controlled substance and nonprescription drugs to a licensed pharmacy or other legally licensed or authorized person.

(37) "FPGEC" means foreign pharmacy graduate examination committee.

(38) "FPGEE" means foreign pharmacy graduate equivalency examination.

(39) "Generic substitution" means the act of switching between a branded drug and its therapeutically equivalent generic version.

(40) "Hospital" means any institution licensed under chapter 70.41 or 71.12 RCW or designated under RCW 72.23.020.

(41) "Hospital pharmacy" means that portion of a hospital licensed under RCW 18.64.043 which is engaged in the manufacture, production, preparation, dispensing, sale, or distribution of drugs, components, biologicals, chemicals, devices and other materials used in the diagnosis and treatment of injury, illness and diseases.

(42) "Hospital pharmacy associated clinic" or "HPAC" means an individual practitioner's office or multipractitioner clinic owned, operated, or under common control of a parent hospital or health system, where the physical address of the office or clinic is identified on a hospital pharmacy license.

(43) "Immediate supervision" means supervision by a pharmacist who is immediately available at all times the delegated tasks are being performed; who is aware of delegated tasks being performed; and who provides personal assistance, direction and approval throughout the time the delegated tasks are being performed.

(a) "Immediately available" means the pharmacist and pharmacy ancillary personnel or interns are on the same physical premises, or if not, technology is used to enable real time, two-way communications between the pharmacist and technician(s).

(b) Use of technology: A pharmacist, as an adjunct to assist in the immediate supervision of the pharmacy ancillary personnel or intern, may employ technological means to communicate with or observe the pharmacy ancillary personnel or intern. A pharmacist shall make certain all applicable state and federal laws including, but not limited to, confidentiality, are fully observed when employing technological means of communication and observation. If technology is being used to provide immediate supervision of pharmacy ancillary personnel or intern such technology shall be sufficient to provide the personal assistance, direction and approval required to meet the standard of practice for the delegated tasks.

(44) "Inoperable" means a credential status indicating that an individual cannot practice because he or she is not actively participating or enrolled in a required training program when this condition is a requirement of the credential. Inoperable status is not the result of enforcement action. The health care professional can resume practice when appropriately enrolled in a required training program and the credential is reactivated.

(45) "Internal test assessment" means, but is not limited to, conducting those tests of quality assurance necessary to ensure the integrity of the test.

(46) "Investigational drug" means any article that has an investigational drug application (INDA) has been approved by the FDA.

(47) "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.

(48) "Law enforcement" means any general or limited authority Washington peace officer or federal law enforcement officer or tribal officer.

(49) "Lot" means a batch or a specific identified portion of a batch having uniform character and quality within specified limits, or in the case of a drug product produced by continuous process, it is a specific identified amount produced in a unit of time or quantity in a manner that assures it is having uniform character and quality within specified limits.

(50) "Manual signature" means a printed or wet signature.

(51) "Misbranded" applies to all drugs the package or label of which bears any statement, design or device regarding such article or the ingredients or substances contained therein which is false or misleading in any particular way, and drug product which is falsely branded as to the state, territory or country in which it is manufactured or produced.

(52) "NABP" means the National Association of Boards of Pharmacy.

(53) "NDC" means National Drug Code.

(54) "Nuclear pharmacy" means a pharmacy providing radiopharmaceutical services.

(55) "Nuclear pharmacist" means a pharmacist licensed under RCW 18.64.080 who holds an endorsement that meets the requirements of WAC 246-945-180.

(56) "Originating pharmacy" means a pharmacy that receives a prescription from a patient, the patient's agent, or a prescriber, outsources prescription filling or processing functions to another pharmacy, and ultimately dispenses the prescription drug or device to the patient or the patient's agent. This does not include pharmacies engaged in shared pharmacy services in accordance with RCW 18.64.570.

(57) "Over-the-counter drugs" (OTC) means "nonlegend" or "nonprescription" drugs, and any drugs which may be lawfully sold without a prescription.

(58) "Over-the-counter only wholesaler" means any wholesaler licensed under RCW 18.64.046 to possess and sell OTC drugs to any outlets credentialed for resale.

(59) "Pharmaceutical firm" means a business engaged in the dispensing, delivering, distributing, manufacturing, or wholesaling of prescription drugs or devices within or into Washington state.

(60) "Pharmacy intern" means a person who is registered with the commission under RCW 18.64.080(3) as a pharmacy intern.

(61) "Pharmacy services" means any services provided that meet the definition of the practice of pharmacy, RCW 18.64.011.

(62) "Plan of correction" is a proposal devised by the applicant or credential holder that includes specific corrective actions that must be taken to correct identified unresolved deficiencies with time frames to complete them.

(63) "Precursor drugs" as defined in chapter 69.43 RCW.

(64) "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal statute or regulation to be dispensed only by a prescription, including finished dosage forms and bulk drug substances subject to section 503(b) of the Federal Food, Drug, and Cosmetic Act.

(65) "Protocol" means a written set of procedures, steps or guidance.

(66) "Radiopharmaceutical service" means, but is not limited to:

(a) The preparing, compounding, dispensing, labeling, and delivery of radiopharmaceuticals;

(b) The participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews;

(c) The proper and safe storage and distribution of radiopharmaceuticals;

(d) The maintenance of radiopharmaceutical quality assurance;

(e) The responsibility for advising, where necessary or where regulated, of therapeutic values, hazards and use of radiopharmaceuticals; or

(f) The offering or performing of those acts, services, operations or transactions necessary in the conduct, operation management and control of a nuclear pharmacy.

(67) "Radiopharmaceutical" means any substance defined as a drug in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any nonradioactive reagent kit or nuclide generator which is intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides. The term "radioactive drug" includes a "radioactive biological product."

(68) "Radiopharmaceutical quality assurance" means, but is not limited to, the performance of appropriate chemical, biological and physical tests on radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment authentication of product history and the keeping of proper records.

(69) "Readily retrievable" means a record that is kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that it can be separated out from all other records in a reasonable time.

(70) "License transfer" means the process used by licensed pharmacists to transfer their existing pharmacist license to Washington using NABP's Electronic Licensure Transfer Program® (e-LTP™).

(71) "Reverse distributor" means a pharmaceutical wholesaler that receives drugs for destruction, return credit,

or otherwise disposes of drugs received from a registrant that holds a credential to dispense or possess drugs.

(72) "Secretary" means the secretary of the Washington state department of health.

(73) "Strength" means:

(a) The concentration of the drug product; and/or

(b) The potency, that is, the therapeutic activity of the drug product as indicated by appropriate laboratory tests or by adequately developed and controlled clinical data.

(74) "U.S. jurisdiction" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(75) "USP" means the United States Pharmacopeia.

(76) "Therapeutic substitution" means the act of dispensing an alternative drug that is believed to be therapeutically similar but may be chemically different, in a different category, or with different pharmacokinetic properties. This substitution is based on the premise that the substituted drug will provide similar clinical efficacy, desired outcome, and safety profile.

(77) "TOEFL iBT" means an internet based test which measures the ability to use and understand English. It evaluates the combined use of reading, listening, speaking and writing skills.

(78) "Virtual manufacturer" means an individual or facility that sells his or her own prescription drugs, but never physically possesses the drugs.

(79) "Virtual wholesaler" means an individual or facility that sells a prescription drug and/or device, but never physically possesses the product.

(80) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(a) The sale, purchase, or trade of a drug, an offer to sell, purchase or trade a drug, or the dispensing of a drug pursuant to a prescription;

(b) The lawful distribution of drug samples by manufacturers' representatives or distributors' representatives;

(c) The sale, purchase, or trade of blood and blood components intended for transfusion;

(d) Intracompany sales, being defined as any transaction or transfer between any division, subsidiary, parent and/or affiliated or related company under the common ownership and control of a corporate entity, unless such transfer occurs between a wholesale distributor and a health care entity or practitioner; or

(e) The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug for emergency medical reasons, for purposes of this section, "emergency medical reasons" includes transfers of prescription drugs by retail pharmacy to another retail pharmacy or practitioner to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five percent of the total prescription drug sale revenue of either the transferor or transferee pharmacy during any twelve consecutive month period.

**Subpart A - Commission Operations**NEW SECTION

**WAC 246-945-002 Administrative proceedings and appeals.** (1) The commission adopts the model procedural rules for boards as adopted by the department, and contained in chapter 246-11 WAC, including subsequent amendments.

(2) The commission adopts the administrative procedures and requirements for credentialed health care providers as adopted by the department and contained in chapter 246-12 WAC, including subsequent amendments under chapter 246-12 WAC.

(3) Where there is a conflict between the rules incorporated in subsections (1) and (2) of this section, the commission's rule shall supersede.

NEW SECTION

**WAC 246-945-005 Commission inspections and investigations.** (1) Records subject to commission inspection. A pharmaceutical firm shall make available for inspection upon request by the commission or designee records created, maintained, or retained in compliance with statutes or rules enforced by the commission. It is unlawful to refuse to permit or to obstruct a commission inspection.

(2) Initial inspections. Prior to starting a business, as applicable, and upon presentation of appropriate identification, a pharmaceutical firm shall permit the commission, or its designee, to enter and inspect the premises and to audit the records of each entity for compliance with laws enforced by or under the commission's jurisdiction.

(3) Periodic commission inspection. A pharmaceutical firm is subject to periodic inspections to determine compliance with the laws regulating the practice of pharmacy.

(a) Statement of deficiency.

(i) At the end of the inspection, the commission, or its designee, will conduct an exit meeting with the responsible pharmacy manager, or designee, or equivalent manager, addressing unresolved deficiencies identified during the inspection.

(ii) The commission, or its designee, shall provide a written statement of deficiency to the pharmaceutical firm within ten business days of the exit meeting.

(iii) The statement of deficiency may include unresolved deficiencies identified at the end of a periodic commission inspection, describing the unresolved deficiencies in detail with a reference to all applicable laws.

(b) Plan of correction. A pharmaceutical firm shall submit a plan of correction to the commission, or its designee, addressing each identified unresolved deficiency within ten business days of receipt of a statement of deficiency.

(i) The commission, or its designee, shall notify the pharmacy within ten business days, whether or not a submitted plan of correction adequately addresses the unresolved deficiencies identified in the statement of deficiency.

(ii) Implementation of the corrective action is required within the time frames set in the approved plan of correction, and are subject to verification by the commission, or its designee, which may require the pharmacy to submit a progress

report(s) attesting to the correction of deficiencies, or a follow-up inspection.

(c) Pharmaceutical firms with deficiencies that represent an imminent or immediate risk or threat to public health, safety, or welfare may be subject to summary suspension of the pharmacy license, at the discretion of the commission.

(4) Self-inspections. The responsible pharmacy manager, or equivalent manager, is required to conduct an annual self-inspection of the pharmaceutical firm on the self-inspection worksheet(s) provided by the commission. The self-inspection must be completed within the month of March each year.

(a) The responsible pharmacy manager, or equivalent manager, shall sign and date the completed self-inspection worksheet(s), and maintain completed worksheets for two years from the date of completion.

(b) When a change in responsible pharmacy manager, or equivalent manager occurs, the new responsible pharmacy manager, or equivalent manager, shall conduct a self-inspection as required under this section. The new responsible pharmacy manager, or equivalent manager, shall sign and date the self-inspection worksheet(s) within thirty days of becoming responsible pharmacy manager, or equivalent manager, and maintain completed worksheets for two years from the date of completion.

(5) Inspection informal dispute process.

(a) A pharmaceutical firm may dispute within ten business days:

(i) Any or all deficiencies included on a statement of deficiency issued by the commission;

(ii) The rejection of the first submitted plan of correction;

(iii) The pharmaceutical firm may request a one-time extension.

(b) A pharmaceutical firm shall submit a dispute under this subsection to the commission in writing. The dispute must be in detail and include any supporting documentation for commission consideration.

(c) The commission may review and consider a second rejection of a plan of correction.

(d) The commission shall consider any dispute and notify the pharmaceutical firm of its determination.

(6) Investigations. A pharmaceutical firm shall cooperate with commission investigations conducted to confirm compliance with laws enforced by the commission, to gather information pertinent to a complaint received by the commission, or to enforce disciplinary actions.

**Subpart B - Prescription Labeling, Records, and Advertising**NEW SECTION

**WAC 246-945-010 Prescription and chart order—Minimum requirements.** (1) For the purposes of this section, prescription does not include chart orders as defined in RCW 18.64.011(3).

(2) For the purposes of WAC 246-945-010 through 246-945-013, prescription includes written and electronic prescriptions.



(3) A prescription for a noncontrolled legend drug must include, but is not limited to, the following:

- (a) Prescriber's name;
- (b) Name of patient, authorized entity, or animal name and species;
- (c) Date of issuance;
- (d) Drug name, strength, and quantity;
- (e) Directions for use;
- (f) Number of refills (if any);
- (g) Instruction on whether or not a therapeutically equivalent generic drug or interchangeable biological product may be substituted, unless substitution is permitted under a prior-consent authorization;

(h) Prescriber's manual or electronic signature, or prescriber's authorized agent signature if allowed by law; and

(i) If the prescription is written, it must be written on tamper-resistant prescription pad or paper approved by the commission pursuant to RCW 18.64.500;

(4) A prescription for a controlled substance must include all the information listed in subsection (1) of this section and the following:

- (a) Patient's address;
- (b) Dosage form;
- (c) Prescriber's address;
- (d) Prescriber's DEA registration number; and
- (e) Any other requirements listed in 21 C.F.R., Chapter II.

(5) A chart order must meet the requirements of RCW 18.64.550 and any other applicable requirements listed in 21 C.F.R., Chapter II.

(6) A controlled substance listed in Schedule II can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011 unless there is an "emergency."

(a) For the purposes of this subsection, an "emergency" exists when the immediate administration of the drug is necessary for proper treatment and no alternative treatment is available, and further, it is not possible for the practitioner to provide a written or electronic prescription for the drug at that time.

(b) If a Schedule II drug is dispensed in an emergency, the practitioner must deliver a signed prescription to the dispenser within seven days after authorizing an emergency oral prescription or if delivered by mail it must be postmarked within the seven day period, and further the pharmacist must note on the prescription that it was filled on an emergency basis.

(7) A controlled substance listed in Schedule III, IV, or V, can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a controlled substance listed in Schedule III, IV, or V must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

(8) A noncontrolled legend drug can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a noncontrolled legend drug must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

#### NEW SECTION

**WAC 246-945-011 Prescription validity.** (1) Prior to dispensing and delivering a prescription, a pharmacist shall verify its validity.

(2) A prescription shall be considered invalid if:

(a) At the time of presentation, the prescription shows evidence of alteration, erasure, or addition by any person other than the person who wrote it;

(b) The prescription does not contain the required information as provided in WAC 246-945-010;

(c) The prescription is expired; or

(d) The prescription is for a controlled substance and does not comply with the requirements in RCW 69.50.308.

(3) A prescription is considered expired when:

(a) The prescription is for a controlled substance listed in Schedule II through V and the date of dispensing is more than six months after the prescription's date of issue.

(b) The prescription is for a noncontrolled legend drug or OTC's and the date of dispensing is more than twelve months after the prescription's date of issue.

#### NEW SECTION

**WAC 246-945-012 Prescription refills.** (1) A prescription for a controlled substance listed in Schedule II cannot be refilled.

(2) A prescription for a controlled substance listed in Schedule III, IV, or V may be refilled a maximum of five times as indicated by the prescriber. The prescription will expire six months after the date of issue pursuant to WAC 246-945-011 even if there are refills remaining.

(3) A prescription for a noncontrolled legend drug may be refilled as indicated by the prescriber in accordance with RCW 18.64.520. There is no limit on the number of refills, but the prescription will expire after twelve months from the date of issue pursuant to WAC 246-945-011.

#### NEW SECTION

**WAC 246-945-013 Partial filling of prescriptions.** (1) A pharmacist may partially fill a prescription for noncontrolled legend drugs and controlled substances listed in Schedule III through V provided that:

(a) The partial fill is requested by the patient or the prescriber;

(b) The partial filling is recorded in the same manner as a refilling;

(c) The total quantity dispensed and delivered in all partial fillings must not exceed the total quantity prescribed; and

(d) Partial fills for controlled substances listed in Schedule III through V comply with 21 C.F.R. Sec. 1306.23.

(2) A pharmacist may partially fill a prescription for a controlled substance listed in Schedule II within the limits of RCW 18.64.265, 21 U.S.C. Sec. 829, and 21 C.F.R. Sec. 1306.13.

#### NEW SECTION

**WAC 246-945-015 Minimum requirements for dispensing practitioners.** (1) A practitioner authorized to pre-

scribe or administer a legend drug including a controlled substance, other than a pharmacy, can dispense a legend drug including a controlled substance directly to an ultimate user without a prescription.

(2) All practitioners authorized to prescribe legend drugs and who dispense legend drugs directly to the ultimate user shall affix a label to the prescription container that meets the requirements of RCW 69.41.050.

#### NEW SECTION

**WAC 246-945-016 Prescriptions—Outpatient labels—Minimum requirements.** (1) All licensees of the commission who dispense legend drugs to outpatients shall affix a label to the prescription container that meets the requirements of RCW 69.41.050 and 18.64.246, and shall also include:

- (a) Drug quantity;
- (b) The number of refills remaining, if any;
- (c) The following statement, "Warning: State or federal law prohibits transfer of this drug to any person other than the person for whom it was prescribed.", except when dispensing to an animal, when a warning sufficient to convey "for veterinary use only" may be used;
- (d) The name and species of the patient, if a veterinary prescription; and
- (e) The name of the facility or entity authorized by law to possess a legend drug, if patient is the facility or entity.

(2) In addition to the requirements in subsection (1) of this section, a compounded product must meet the labeling requirements of USP chapters <795>, <797>, <800>, and <825>. For compounded products, the BUD shall be equivalent to the expiration date required by RCW 18.64.246.

(3) For the purposes of determining an expiration date as required in RCW 18.64.246, the dispenser shall take the following factors into account:

- (a) The nature of the drug;
- (b) The container in which it was packaged by the manufacturer and the expiration date;
- (c) The characteristics of the patient's container, if the drug is repackaged for dispensing;
- (d) The expected conditions to which the drug may be exposed;
- (e) The expected length of time of the course of therapy; and
- (f) Any other relevant factors.

#### NEW SECTION

**WAC 246-945-017 Prescriptions—Hospital inpatient labels—Minimum requirements.** (1) All licensees of the commission who dispense legend drugs to hospital inpatients shall ensure all drug containers are labeled clearly, legibly and adequately to show the drug's name (generic and/or trade) and strength, when applicable.

(2) In addition to the requirements in subsection (1) of this section, a compounded product dispensed to a hospital inpatient must meet the labeling requirements of USP chapters <795>, <797>, <800>, and <825>.

#### NEW SECTION

**WAC 246-945-018 Prescriptions—Labeling—Prepackage medications.** Prepackage medications dispensed pursuant to RCW 70.41.480, medications dispensed in unit dose form, medications dispensed by a pharmacy to a long-term care facility must include a label with the following information:

- (1) Drug name;
- (2) Drug strength;
- (3) Expiration date in accordance with WAC 246-945-016(3);
- (4) The manufacturer's name and lot number, if not maintained in a separate record; and
- (5) The identity of the pharmacist or provider responsible for the repackaging, if not maintained in a separate record.

#### NEW SECTION

**WAC 246-945-020 Records retention period and commission access to records.** (1) Unless an alternative standard for a specified record type, form, or format is expressly stated a pharmaceutical firm must maintain and retain records required as evidence of compliance with statutes and rules enforced by the commission in a readily retrievable form and location for at least two years from the date the record was created or received, whichever date is later.

(2) A pharmaceutical firm must allow the commission, or its designee, access to the pharmaceutical firm's records upon request for the purposes of monitoring compliance with statutes and rules enforced by the commission.

#### NEW SECTION

**WAC 246-945-025 Prescription drug price advertising.** (1) A pharmacy may advertise legend or prescription drug prices provided:

- (a) The advertising complies with all state and federal laws, including regulations of the FDA and the Washington State Consumer Protection Act, chapter 19.86 RCW.
- (b) The advertising is solely directed towards providing consumers with drug price information and does not promote the use of a prescription drug or drugs to the public.
- (c) The drug price advertising shall contain all the following information for all drug products or brand names used in the advertisement:
  - (i) The proprietary name of the drug product advertised, if any;
  - (ii) The generic name of the drug product advertised, if any;
  - (iii) The strength of the drug product advertised. If the drug product advertised contains more than one active ingredient and a relevant strength can be associated with it without indicating each active ingredient, the generic name and quantity of each active ingredient is not required; and
  - (iv) The price charged for a specified quantity of the drug product.

(2) Advertising of any generic drug that in any way compares a generic drug to a brand name drug may not in any

manner imply that the brand name drug is the product offered for sale.

(3) A person, partnership, corporation, association, or agency may not advertise controlled substances for sale to the general public in any manner that promotes or tends to promote the use or abuse of those drugs. Controlled substances may not be physically displayed to the public.

(4) Upon request from the patient, no pharmacy shall refuse to disclose the cost to the specific patient of a prescription drug without third-party reimbursement or discounts.

### Subpart C - Legend Drugs and Controlled Substances

#### NEW SECTION

**WAC 246-945-030 Identification of legend drugs for purposes of chapter 69.41 RCW.** (1) Those drugs determined by the FDA to require a prescription under federal law should be classified as legend drugs under state law because their toxicity, potential for harmful effect, methods of use, or collateral measures necessary to their use indicate they are only safe for use under the supervision of a practitioner.

(2) The commission finds that under state law, legend drugs are those drugs designated as legend drugs under federal law, as of the date of adoption of this rule, and listed in at least one of the following publications:

(a) The 39th Edition, including supplements, of the *Approved Drug Products with Therapeutic Equivalence Evaluations "Orange Book"* (available at <https://www.fda.gov/drugs/drug-approvals-and-databases/approved-drug-products-therapeutic-equivalence-evaluations-orange-book>).

(b) The 2019 version, including monthly updates, of the *Approved Animal Drug Products "Green Book"* (available at <https://www.fda.gov/animal-veterinary/products/approved-animal-drug-products-green-book>).

(c) The 2019 *List of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations "Purple Book"* (available at <https://www.fda.gov/drugs/therapeutic-biologics-applications-bla/purple-book-lists-licensed-biological-products-reference-product-exclusivity-and-biosimilarity-or>).

(3) Copies of the reference material listed in subsection (2) of this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

(4) The commission also identifies those ephedrine products specified in WAC 246-945-031 as legend drugs under state law.

(5) There may be changes in the marketing status of drugs after the publication of the above references. Upon application of a manufacturer or distributor, the commission may grant authority for the over-the-counter distribution of certain drugs designated as legend drugs in these references. These determinations will be made after public hearing and will be published as an amendment to this chapter.

#### NEW SECTION

**WAC 246-945-031 Ephedrine prescription restrictions.** (1) The commission, under RCW 69.41.075, identifies ephedrine, or any of its salts in a solid or aqueous form nor-

mally intended for oral administration, in any quantity, as a legend drug subject to the restrictions of RCW 69.41.030.

(2) The following products containing ephedrine or its salts in the amount of 25 mg. or less per solid dosage unit or per 5 ml. of liquid forms in combination with other ingredients in therapeutic amounts are exempt from subsection (1) of this section:

TRADE NAME	EPHEDRINE CONTENT
1. AMESAC capsule (Russ)	25 mg. ephedrine HCL
2. AZMA AID tablet (Various, e.g., Purepac)	24 mg. ephedrine HCL
3. BRONC-EASE PLUS (Natur-Pharma)	25 mg. ephedrine HCL
4. BRONCHODILATOR AND EXPECTORANT (PDK Labs)	25 mg. ephedrine HCL
5. BRONITIN tablet (Whitehall)	24 mg. ephedrine HCL
6. BRONKAID tablet (Breon)	24 mg. ephedrine sulfate
7. BRONKOLIXER (Sterling Winthrop)	12 mg. ephedrine
8. BRONKOTABS tablet (Breon)	24 mg. ephedrine sulfate
9. EFEDRON nasal jelly (Hyrex)	0.6% ephedrine HCL in 20 g.
10. MINI THINS asthma relief (BDI Pharmaceuticals)	25 mg. ephedrine
11. PAZO HEMORRHOID suppository (Bristol-Meyers)	3.86 mg. ephedrine sulfate
12. PAZO HEMORRHOID ointment (Bristol-Meyers)	0.2% ephedrine sulfate
13. PRIMATENE tablet (Whitehall)	24 mg. ephedrine HCL
14. PRIMATENE M tablet (Whitehall)	24 mg. ephedrine HCL
15. PRIMATENE P tablet (Whitehall)	24 mg. ephedrine HCL
16. QUELIDRINE (Abbott)	5 mg. ephedrine HCL
17. TEDRAL tablet (Parke-Davis)	24 mg. ephedrine HCL
18. THEODRINE tablet (Rugby)	25 mg. ephedrine HCL
19. VATRONOL nose drops (Vicks Health Care)	0.5% ephedrine sulfate

(3) Ma Huang or other botanical products of genus ephedra used in their natural state and containing 25 mg. or less of ephedrine per recommended dosage as a preparation for human consumption are not legend drugs for the purposes of this section.

(4) Any reformulation of listed products which increases the ephedrine content to more than 25 mg. of ephedrine per solid dosage unit or per 5 ml. of liquid forms shall negate the exemption. The manufacturers of listed products shall notify

the commission of any reformulation which increases the ephedrine content to more than 25 mg. of ephedrine per solid dosage unit or per 5 ml. of liquid forms prior to distributing that product in the state of Washington.

(5) Manufacturers of products containing 25 mg. or less of ephedrine per solid dosage unit or per 5 ml. of liquid forms in combination with other ingredients in therapeutic amounts may gain exemption from subsection (1) of this section if, prior to the distributing of any such product in the state of Washington, the manufacturer:

(a) Provides the commission with the formulation of any such product;

(b) Provides the commission samples of all dosage forms in which the product is to be marketed in the packaging in which the product is to be marketed; and

(c) Receives the commission's approval to market such product.

#### NEW SECTION

**WAC 246-945-032 Child-resistant containers.** (1) All legend drugs shall be dispensed in a child-resistant container as required by federal law or regulation, including 16 C.F.R., Part 1700, unless:

(a) Authorization is received from the prescriber to dispense in a container that is not child-resistant.

(b) Authorization is obtained from the patient or a representative of the patient to dispense in a container that is not child-resistant.

(2) No pharmacist or pharmacy employee may designate themselves as the patient's agent.

#### NEW SECTION

**WAC 246-945-033 Over-the-counter drugs.** Except as provided in 21 C.F.R. 206.1 et seq., no nonimprinted solid dosage form drug that is intended for OTC sale may be distributed into or sold in the state of Washington unless it has been found by the commission to be exempt from the provisions of this chapter or has received an exemption from the FDA pursuant to 21 C.F.R. 206.7.

#### NEW SECTION

**WAC 246-945-035 Drug sample prohibitions.** (1) Except as provided in subsection (2) of this section, a pharmacy shall not possess, distribute or dispense legend drug samples.

(2) A pharmacy of a licensed hospital or health care entity which receives and distributes drug samples at the request of an authorized practitioner pursuant to RCW 69.45.050 may possess, distribute or dispense legend drug samples.

#### NEW SECTION

**WAC 246-945-037 Regulated steroids.** The following drugs are classified as steroids for the purposes of RCW 69.41.310. The drugs designated shall include the following and any synthetic derivatives or any isomer, ester, salt, or

derivative of the following that act in the same manner on the human body:

- (1) Anabolicum;
- (2) Anadrol;
- (3) Anatrofin;
- (4) Anavar;
- (5) Androxon;
- (6) Andriol;
- (7) Android;
- (8) Bolandiol;
- (9) Bolasterone;
- (10) Boldenone;
- (11) Boldenone undecylenate;
- (12) Bolenol;
- (13) Bolfortan;
- (14) Bolmantalate;
- (15) Cheque;
- (16) Chlorotestosterone;
- (17) Clostebol;
- (18) Deca Durabolin;
- (19) Dehydrochlormethyl-testosterone;
- (20) Delatestyl;
- (21) Dianabol; and
- (22) Dihydroxolone.

#### NEW SECTION

**WAC 246-945-038 Availability and identity of amygdalin.** (1) Amygdalin (laetrile) may be manufactured and distributed through intrastate commerce in Washington in accordance with all applicable state laws and regulations.

(2) Amygdalin (laetrile) imported into the state of Washington shall be imported in conformity with federal regulations or court decisions.

(3) Under the direction of the commission batches of amygdalin (laetrile) must be made with the costs for required testing, including purity and potency, to be borne by the manufacturer and wholesale distributor. The manufacturer and wholesale distributor is responsible for the quality of the drug product, in accordance with RCW 18.64.270.

#### NEW SECTION

**WAC 246-945-040 Uniform Controlled Substance Act.** (1) The commission adopts 21 C.F.R. as its own. The following sections do not apply: Sec. 1301.13, Sec. 1301.33, Sec. 1301.35-.46, Sec. 1303, Sec. 1308.41-.45, and Sec. 1316.31-.67. Any inconsistencies between 21 C.F.R. Sec. 1300 through 1321 and this chapter should be resolved in favor of this chapter. Nothing in this chapter applies to the production, processing, distribution, or possession of marijuana as authorized and regulated by the Washington state liquor and cannabis board.

(2) Registration. A separate registration is required for each place of business, as defined in 21 C.F.R. Sec. 1301.12, where controlled substances are manufactured, distributed, or dispensed. Application for registration must be made on forms supplied by the commission, and all requested information must be supplied unless the information is not applicable, which must be indicated by the applicant. An applicant

for registration must hold the appropriate license provided for in chapter 18.64 RCW.

(3) Recordkeeping and Inventory. Every registrant shall keep and maintain inventory records required by 21 C.F.R. Sec. 1304.04. Registrants are also required to keep a record of receipt and distribution of controlled substances. Records shall include:

(a) Invoices, orders, receipts, or any other document regardless of how titled, establishing the date, supplier, and quantity of drug received, and the name of the drug;

(b) Distribution records, including invoices, or any other document regardless of how titled from wholesalers, manufacturers, or any other entity to which the substances were distributed and prescriptions records for dispensers;

(c) In the event of a significant loss or theft, two copies of DEA 106 (report of theft or loss of controlled substances) must be transmitted to the federal authorities and a copy must be sent to the commission;

(d) For transfers of controlled substances from one dispenser to another, a record of the transfer must be made at the time of transfer indicating the drug, quantity, date of transfer, who it was transferred to, and from whom. Records must be retained by both the transferee and the transferor. These transfers can only be made in emergencies pursuant to 21 C.F.R. Sec. 1307.11.

(4) Credential holders and pharmaceutical firms shall maintain records for Schedule II drugs separately from all other records.

(5) Credential holders and pharmaceutical firms may maintain records for Schedule III, IV, and V drugs either separately or in a form that is readily retrievable from the business records of the registrant.

(6) A federal order form is required for each distribution of a Schedule I or II controlled substance. Credential holders and pharmaceutical firms must keep and make readily available these forms and other records to the commission or its designee.

#### NEW SECTION

**WAC 246-945-043 Designation of nonnarcotic stimulant drugs for the purposes of RCW 69.50.402 (1)(c).** The commission hereby designates, the following Schedule II controlled substances as nonnarcotic stimulants for purposes of RCW 69.50.402 (1)(c):

- (1) Amphetamine sulfate in any of its generic forms.
- (2) Dextroamphetamine sulfate in any of its generic forms and under the following brand names:
  - (a) Dexedrine (SKF);
  - (b) Dexedrine spansules (SKF).
- (3) Dextroamphetamine HCL in any of its generic forms.
- (4) Dextroamphetamine tannate in any of its generic forms.
- (5) Methamphetamine HCL (Desoxyephedrine HCL) in any of its generic forms and under the following brand name: Desoxyn (Abbott).
- (6) Amphetamine complex in any of its generic forms and under the following brand names:
  - (a) Biphphetamine 12 1/2 (Pennwalt);
  - (b) Biphphetamine 20 (Pennwalt).

(7) Combined amphetamines sold under the following brand names: Obetrol-10 and 20 (Obetrol).

(8) Phenmetrazine HCL in any of its generic forms and under the following brand name: Preludin (Boehringer-Ingelheim).

(9) Methylphenidate HCL in any of its generic forms and under the following brand name: Ritalin (Ciba).

(10) Lisdexamfetamine in any of its generic forms and under the following brand name: Vyvanse.

#### NEW SECTION

**WAC 246-945-045 Prescribing, dispensing, or administering of Schedule II nonnarcotic stimulants.** The Schedule II stimulants listed in WAC 246-945-043 may be prescribed, dispensed, or administered to patients for the following disease states or conditions:

- (1) Disease states or conditions listed in RCW 69.50.402 (1)(c)(ii); and
- (2) Moderate to severe binge eating disorder in adults.

#### NEW SECTION

**WAC 246-945-047 Sodium pentobarbital registration disciplinary action.** In addition to any criminal or civil liabilities that may occur, the commission may deny, suspend, or revoke registration upon determination that:

- (1) The registration was procured through fraud or misrepresentation;
- (2) The registrant or any agent or employee of the registrant has violated any of the federal or state laws related to drugs, or has violated any of the rules or regulations of the commission.

#### NEW SECTION

**WAC 246-945-050 Commission authority to control.** Pursuant to the authority granted to the commission in RCW 69.50.201, the commission has considered the following factors with regards to each of the substances listed in this chapter and in chapter 69.50 RCW:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;
- (4) The history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) The risk to the public health;
- (7) The potential of the substance to produce psychic or psychological dependence liability; and
- (8) Whether the substance is an immediate precursor of a substance already controlled under the Uniform Controlled Substances Act (chapter 69.50 RCW).

#### NEW SECTION

**WAC 246-945-051 Schedule I.** The commission finds that the following substances have high potential for abuse and have no accepted medical use in treatment in the United States or that they lack accepted safety for use in treatment

under medical supervision. In addition to the substances scheduled in RCW 69.50.204 the commission places each of the following controlled substances by whatever official name, common or usual name, chemical name, or brand name in Schedule I.

(1) Opiates. Unless specifically exempted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide; some other names: Acetyl fentanyl;

(b) 3,4-Dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: U-47700;

(c) 3,4-dichloro-N-[(1-dimethylamino) cyclohexylmethyl]benzamide; some other names: AH-7921;

(d) Dextrorphan;

(e) N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: Acryl fentanyl and acryloylfentanyl;

(f) N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: Butyryl fentanyl;

(g) N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: Furanyl fentanyl;

(h) N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: 4-fluoroisobutyryl fentanyl and para-fluoroisobutyryl fentanyl;

(i) N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers; some other names: Beta-hydroxythiofentanyl; and

(j) Propheptazine.

(2) Opium derivatives. Unless specifically exempted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: Methylhydromorphine.

(3) Hallucinogenic substances. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation. For purposes of this subsection only, the term "isomer" includes the optical, position, and geometric isomers:

(a) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one; some other names: Butylone and bk-MBDB;

(b) 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one; some other names: Pentylone and bk-MBDP;

(c) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine; some other names: 2C-P;

(d) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine; some other names: 2C-E;

(e) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine; some other names: 2C-D;

(f) 2-(2,5-Dimethoxy-4-nitrophenyl)ethanamine; some other names: 2C-N;

(g) 2-(2,5-Dimethoxyphenyl)ethanamine; some other names: 2C-H;

(h) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine; some other names: 25B-NBOMe and 2C-B-NBOMe;

(i) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine; some other names: 2C-C;

(j) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine; some other names: 25C-NBOMe and 2C-C-NBOMe;

(k) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine; some other names: 2C-I;

(l) 2-(4-Iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine; some other names: 25I-NBOMe and 2C-I-NBOMe;

(m) 2,5-dimethoxyamphetamine; some other names: 2,5-dimethoxy-alpha-methylphenethylamine and 2,5-DMA;

(n) 2-[4-(Ethylthio)-2,5-dimethoxyphenyl]ethanamine; some other names: 2C-T-2;

(o) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine; some other names: 2C-T-4;

(p) 3,4-Methylenedioxy-methcathinone; some other names: Methylone;

(q) 3,4-methylenedioxy-N-ethylamphetamine; some other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)-phenethylamine, N-ethyl MDA, MDE, and MDEA;

(r) 3,4-Methylenedioxypropylvalerone; some other names: MDPV;

(s) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; some other names: 4-bromo-2,5-DMA;

(t) 4-methoxyamphetamine; some other names: 4-methoxy-alpha-methylphenethylamine; paramethoxyamphetamine, PMA;

(u) 4-methyl-2,5-diamethoxyamphetamine;

(v) 4-methyl-2,5-dimethoxy-amphetamine; some other names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; "DOM"; and "STP";

(w) 4-Methylmethcathinone; some other names: Mephedrone;

(x) 5-methoxy-N,N-dimethyltryptamine; some other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole and 5-MeO-DMT;

(y) Alpha-ethyltryptamine; some other names: Etryptamine; monase; a-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; a-ET; and AET;

(z) Beta-keto-N-Methylbenzodioxolylpropylamine; some other names: bk-MBDB and Butylone;

(aa) Ethylamine analog of phencyclidine; some other names: N-ethyl-1phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; and PCE;

(bb) Ibogaine; some other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-

pyrido [1',2':1,2] azepino [5,4-b] indole; and Tabernanthe iboga;

(cc) Marijuana Extract - Meaning an extract containing one or more cannabinoids that has been derived from any plant of the genus *Cannabis*, other than the separated resin (whether crude or purified) obtained from the plant;

(dd) N-hydroxy-3,4-methylenedioxyamphetamine; some other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)-phenethylamine; and N-hydroxy MDA;

(ee) Pyrrolidine analog of phencyclidine; some other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; and PHP;

(ff) Thiophene analog of phencyclidine; some other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine; 2-thienylanalog of phencyclidine; TPCP; TCP.

(4) Stimulants. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) Cathinone; also known as 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone; 2-aminopropiophenone; and norephedrone;

(b) *N,N*-dimethylamphetamine; some other names: *N,N*-alpha-trimethyl-benzeneethanamine; and *N,N*-alpha-trimethylphenethylene.

(5) Cannabimimetic agents and synthetic cannabinoids. Any of the following synthetic cannabimimetics and cannabinoids, commonly known as spice, their salts, isomers, and salts of isomers, unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quality of the following substances, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) (1-pentyl-1H-indol-3-yl) (2,2,3,3-tetramethylcyclopropyl)methanone; some other names: UR-144;

(b) [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: THJ-2201;

(c) [1-(5-fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone; some other names: 5-fluoro-UR-144 and XLR11;

(d) 1-(5-fluoropentyl)-3-(1-naphthoyl)indole; some other names: AM2201;

(e) 1-(5-fluoropentyl)-3-(2-iodobenzoyl)indole; some other names: AM694;

(f) 1-[2-(4-morpholinyl)ethyl]-3-(1-naphthoyl)indole; some other names: JWH-200;

(g) 1-butyl-3-(1-naphthoyl)indole; some other names: JWH-073;

(h) 1-cyclohexylethyl-3-(2-methoxyphenylacetyl)indole; some other names: SR-18 and RCS-8;

(i) 1-hexyl-3-(1-naphthoyl)indole; some other names: JWH-019;

(j) 1-pentyl-3-(1-naphthoyl)indole; some other names: JWH-018 and AM678;

(k) 1-pentyl-3-(2-chlorophenylacetyl)indole; some other names: JWH-203;

(l) 1-pentyl-3-(2-methoxyphenylacetyl)indole; some other names: JWH-250;

(m) 1-pentyl-3-(4-chloro-1-naphthoyl)indole; some other names: JWH-398;

(n) 1-pentyl-3-(4-methyl-1-naphthoyl)indole; some other names: JWH-122;

(o) 1-pentyl-3-[(4-methoxy)-benzoyl]indole; some other names: SR-19 and RCS-4;

(p) 1-pentyl-3-[1-(4-methoxynaphthoyl)]indole; some other names: JWH-081;

(q) 5-(1,1-dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol; some other names: CP-47,497;

(r) 5-(1,1-dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol; some other names: Cannabicyclohexanol or CP-47,497 C8-homolog;

(s) Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: MDMB-FUBINACA;

(t) Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: 5F-ADB; and 5F-MDMB-PINACA;

(u) Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: 5F-AMB;

(v) Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: MDMB-CHMICA; and MMB-CHMINACA;

(w) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide; some other names: APINACA and AKB48;

(x) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: ADB-FUBINACA;

(y) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: MAB-CHMINACA; and ADB-CHMINACA;

(z) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide; some other names: ADB-PINACA;

(aa) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide; some other names: AB-FUBINACA;

(bb) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: AB-CHMINACA;

(cc) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: AB-PINACA;

(dd) N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: 5F-APINACA; and 5F-AKB48;

(ee) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate; some other names: 5-fluoro-PB-22; and 5F-PB-22;

(ff) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate; some other names: PB-22; and QUPIC.

(6) Synthetic cathinones, commonly known as bath salts, and its derivatives. Unless specifically exempted or listed in another schedule, any of the following synthetic cathinone and derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific designation:

(a) 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one; some other names: Naphyrone;

(b) 2-(methylamino)-1-phenylpentan-1-one; some other names: Pentedrone;

(c) 3-fluoro-N-methylcathinone; some other names: 3-FMC;

(d) 4-fluoro-N-methylcathinone; some other names: 4-FMC and flephedrone;

(e) 4-methyl-alpha-pyrrolidinopropiophenone; some other names: 4-MePPP;

(f) 4-methyl-N-ethylcathinone; some other names: 4-MEC;

(g) Alpha-pyrrolidinobutiophenone; some other names: Alpha-PBP;

(h) Alpha-pyrrolidinopentiophenone; some other names: Alpha-PVP;

(i) N-Ethylpentylone, its optical, positional, and geometric isomers, salts, and salts of isomers; some other names: 1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one).

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

#### NEW SECTION

**WAC 246-945-052 Schedule II.** The commission finds that the following substances have a high potential for abuse and have currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions and that the abuse of the following substances may lead to severe psychic or psychological dependence. In addition to the substances listed in RCW 69.50.206, the commission places each of the following drugs and other substances by whatever official name, common or usual name, chemical name, or brand name in Schedule II.

(1) Coca leaves and any salt, compound, derivative, or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including:

(a) Decocainized coca leaves or extractions which do not contain cocaine or ecgonine; or

(b) [123]ioflupane.

(2) Opiates. Unless specifically exempted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levorpropoxyphene exempted: Thiafentanil.

(3) Hallucinogenic substances.

(a) Dronabinol[(-)-delta-9-trans tetrahydrocannabinol] in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration;

(b) Nabilone; some other names: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzol[b,d]pyran-9-one.

(4) Immediate precursors. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances: Immediate precursor to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

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

#### NEW SECTION

**WAC 246-945-053 Schedule II immediate precursors.** The commission finds and designates the following substances as being the principal compound used or produced primarily for use and which are an immediate chemical intermediary used or likely to be used, in the manufacture of a Schedule II controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(1) Unless specifically exempted or listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances or their salts or isomers having potential for abuse associated with the preparation of controlled substances shall be a Schedule II controlled substance.

(a) Anthranilic acid;

(b) Ephedrine;

(c) Hydriodic acid;

(d) Methylamine;

(e) Phenylacetic acid;

(f) Pseudoephedrine;

(g) Methamphetamine;

(h) Lead acetate; and

(i) Methyl formamide.

(2) Any drug or compound containing ephedrine, or any of its salts or isomers, or pseudoephedrine, or any of its salts or isomers that are prepared for dispensing or over-the-counter distribution and are in compliance with the Federal Food, Drug and Cosmetic Act and applicable regulations are not controlled substances for the purpose of this section.

(3) Any cosmetic containing lead acetate that is distributed in compliance with the Federal Food, Drug and Cosmetic Act and applicable regulations are not controlled substances.

#### NEW SECTION

**WAC 246-945-054 Schedule III.** The commission finds that the following substances have a potential for abuse less than the substances listed in Schedule I under RCW 69.50.204 and WAC 246-945-051 and Schedule II under RCW 69.50.206 and WAC 246-945-052, and have currently accepted medical use in treatment in the United States and that the abuse of the substances may lead to moderate or low



physical dependency or high psychological dependency. In addition to substances listed in RCW 69.50.208, the commission places each of the following drugs and other substances by whatever official name, common or usual name, chemical name, or brand name in Schedule III.

(1) Depressants. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system: Perampanel, and its salts, isomers, and salts of isomers.

(2) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone, other than estrogens, progestins, and corticosteroids that promotes muscle growth, and includes:

- (a) 17alpha-methyl-3alpha,17beta-dihydroxy-5alpha-androstane;
- (b) 17alpha-methyl-3beta,17beta-dihydroxy-5alpha-androstane;
- (c) 17alpha-methyl-delta1-dihydrotestosterone (17beta-hydroxy-17alpha-methyl-5alpha-androst-1-en-3-one) some other names: '17-alpha-methyl-1-testosterone';
- (d) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-dine-3,17-dione);
- (e) Norandrostenediol;
- (i) 19-nor-4-androstenediol (3alpha, 17beta-dihydroxyestr-4-ene);
- (ii) 19-nor-4-androstenediol (3beta, 17beta-dihydroxyestr-4-ene);
- (iii) 19-nor-5-androstenediol (3beta, 17beta-dihydroxyestr-5-ene);

(iv) 19-nor-5-androstenediol (3alpha, 17beta-dihydroxyestr-5-ene).

(f) Norandrostenedione:

- (i) 19-nor-4-androstenedione (estr-4-en-3,17-dione);
- (ii) 9-nor-5-androstenedione (estr-5-en-3,17-dione).

(g) Androstenediol:

- (i) 3alpha,17beta-dihydroxy-5alpha-androstane;
- (ii) 3beta,17beta-dihydroxy-5alpha-androstane.

(h) Boldione (androsta-1,4-diene-3,17-dione);

(i) Desoxymethyltestosterone (17alpha-methyl-5alpha-androst-2-en-17beta-ol); some other names: 'madol'.

(j) Mestanolone (17alpha-methyl-17beta-hydroxy-5alpha-androstan-3-one);

(k) Methasterone (2alpha,17alpha-dimethyl-5alpha-androstan-17beta-ol-3-one);

(l) Prostanazol (17beta-hydroxy-5alpha-androstano[3,2-c]pyrazole).

(m) Any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(3) Exempt anabolic steroid products. The following anabolic steroid products in Table A of this subsection containing compounds, mixtures, or preparations are exempt from the recordkeeping, refill restrictions, and other Controlled Substances Act requirements:

**Table A**

Trade Name	Company	Form	Ingredients	Quantity
Andro-Estro 90-4	Rugby Laboratories, Rockville Centre, NY	Vial	Testosterone enanthate; Estradiol valerate	90 mg/mL; 4 mg/mL
Androgyn L.A.	Forest Pharmaceuticals, St. Louis, MO	Vial	Testosterone enanthate; Estradiol valerate	90 mg/mL; 4 mg/mL
Component E-H in process granulation	Ivy Laboratories, Inc., Overland Park, KS	Pail or drum	Testosterone propionate; Estradiol benzoate	10 parts; 1 part
Component E-H in process pellets	Ivy Laboratories, Inc., Overland Park, KS	Pail	Testosterone propionate; Estradiol benzoate	25 mg/2.5 mg/pellet
Component TE-S in process granulation	Ivy Laboratories, Inc., Overland Park, KS	Pail or drum	Trenbolone acetate; Estradiol USP	5 parts; 1 part
Component TE-S in process pellets	Ivy Laboratories, Inc., Overland Park, KS	Pail	Trenbolone acetate; Estradiol USP	120 mg/24 mg/pellet
depANDROGYN	Forest Pharmaceuticals, St. Louis, MO	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Depo-Testadiol	The Upjohn Company, Kalamazoo, MI	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
depTESTROGEN	Martica Pharmaceuticals, Phoenix, AZ	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
DEPTO-T.E.	Quality Research Pharm., Carmel, IN	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL

Trade Name	Company	Form	Ingredients	Quantity
Duomone	Wintec Pharmaceutical, Pacific, MO	Vial	Testosterone enanthate; Estradiol valerate	90 mg/mL; 4 mg/mL
DUO-SPAN II	Primedics Laboratories, Gardena, CA	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
DURATESTRIN	W. E. Hauck, Alpharetta, GA	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Essian	Pharmaceutics International Inc., Hunt Valley, MD	TB	Esterified estrogens; Methyl- testosterone	1.25 mg; 2.5 mg
Essian H.S.	Pharmaceutics International Inc., Hunt Valley, MD	TB	Esterified estrogens; Methyl- testosterone	0.625 mg; 1.25 mg
Esterified Estrogens and Methyltestosterone, USP (0.625 mg/1.25 mg)	Interpharm, Inc.	TB	Esterified estrogens; Methyl- testosterone	0.625 mg; 1.25 mg
Esterified Estrogens and Methyltestosterone, USP (1.25 mg/2.5 mg)	Interpharm, Inc.	TB	Esterified estrogens; Methyl- testosterone	1.25 mg; 2.5 mg
Esterified Estrogens/ Methyl- testosterone, (0.625 mg/1.25 mg) Tablet	ANDAPharm, LLC	TB	Esterified estrogens; Methyl- testosterone	0.625 mg; 1.25 mg
Esterified Estrogens/ Methyl- testosterone, (1.25 mg/2.5 mg) Tablet	ANDAPharm, LLC	TB	Esterified estrogens; Methyl- testosterone	1.25 mg; 2.5 mg
Estratest	Solvay Pharmaceuticals, Marietta, GA	TB	Esterified estrogens; Methyl- testosterone	1.25 mg; 2.5 mg
Estratest H.S.	Solvay Pharmaceuticals, Marietta, GA	TB	Esterified estrogens; Methyl- testosterone	0.625 mg; 1.25 mg
Masculinizing Feed for Fish (Investigational)	Rangen, Inc., Buhl, ID	Plastic Bags	Methyltestosterone	60 mg/kg fish feed
Menogen	Sage Pharmaceuticals, Shreveport, LA	TB	Esterified estrogens; Methyl- testosterone	1.25 mg; 2.5 mg
Menogen H.S.	Sage Pharmaceuticals, Shreveport, LA	TB	Esterified estrogens; Methyl- testosterone	0.625 mg; 1.25 mg
Methyltestosterone and Esterified Estrogens (2.5 mg/1.25 mg)	Lannett Company, Inc.	TB	Esterified estrogens; Methyl- testosterone	1.25 mg; 2.5 mg
Methyltestosterone and Esterified Estrogens (Half Strength) (1.25 mg/0.625 mg)	Lannett Company, Inc.	TB	Esterified estrogens; Methyl- testosterone	0.625 mg; 1.25 mg
PAN ESTRA TEST	Pan American Labs; Covington, LA	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Premarin with Methyltes- tosterone	Ayerst Labs Inc., New York, NY	TB	Conjugated estrogens; Methyl- testosterone	0.625 mg; 5.0 mg
Premarin with Methyltes- tosterone	Ayerst Labs Inc., New York, NY	TB	Conjugated estrogens; Methyl- testosterone	1.25 mg; 10.0 mg
Synovex H in-process bulk pellets	Syntex Animal Health, Palo Alto, CA	Drum	Testosterone propionate; Estradiol benzoate	25 mg; 2.5 mg/pellet

Trade Name	Company	Form	Ingredients	Quantity
Synovex H in-process granulation	Syntex Animal Health, Palo Alto, CA	Drum	Testosterone propionate; Estradiol benzoate	10 parts; 1 part
Synovex Plus in-process bulk pellets	Fort Dodge Animal Health, Fort Dodge, IA	Drum	Trenbolone acetate; Estradiol benzoate	25 mg; 3.5 mg/pellet
Synovex Plus in-process granulation	Fort Dodge Animal Health, Fort Dodge, IA	Drum	Trenbolone acetate; Estradiol benzoate	25 parts; 3.5 parts
Syntest D.S.	Syntho Pharmaceuticals, Inc.	TB	Esterified estrogens; Methyl-testosterone	1.25 mg; 2.5 mg
Syntest H.S.	Syntho Pharmaceuticals, Inc.	TB	Esterified estrogens; Methyl-testosterone	0.625 mg; 1.25 mg
TEST-ESTRO Cypionates	Rugby Laboratories, Rockville Centre, NY	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Testoderm 4 mg/d	Alza Corp., Palo Alto, CA	Patch	Testosterone	10 mg
Testoderm 6 mg/d	Alza Corp., Palo Alto, CA	Patch	Testosterone	15 mg
Testoderm in-process film	Alza Corp., Palo Alto, CA	Sheet	Testosterone	0.25 mg/cm <sup>2</sup>
Testoderm with Adhesive 4 mg/d	Alza Corp., Palo Alto, CA	Patch	Testosterone	10 mg
Testoderm with Adhesive 6 mg/d	Alza Corp., Palo Alto, CA	Patch	Testosterone	15 mg
Testoderm with Adhesive in-process film	Alza Corp., Palo Alto, CA	Sheet	Testosterone	0.25 mg/cm <sup>2</sup>
Testosterone Cyp 50 Estradiol Cyp 2	I.D.E.-Interstate, Amityville, NY	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Testosterone Cypionate/Estradiol Cypionate Injection	Best Generics, North Miami Beach, FL	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Testosterone Cypionate/Estradiol Cypionate Injection	Goldline Labs, Ft. Lauderdale, FL	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Testosterone Cypionate/Estradiol Cypionate Injection	Schein Pharmaceuticals, Port Washington, NY	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL
Testosterone Cypionate/Estradiol Cypionate Injection	Steris Labs Inc., Phoenix, AZ	Vial	Testosterone cypionate; Estradiol cypionate	50 mg/mL; 2 mg/mL

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

#### NEW SECTION

**WAC 246-945-055 Schedule IV.** The commission finds that the following substances have a low potential for abuse relative to substances in Schedule III under RCW 69.50.208 and WAC 246-945-054, and have currently accepted medical use in treatment in the United States and that the abuse of the substances may lead to limited physical dependence or psychological dependence relative to the substances in Schedule III. In addition to substances listed in

RCW 69.50.210, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule IV.

(1) Narcotic drugs. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set in this subsection:

2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers, and salts of these isomers (including tramadol).

(2) Depressants. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Alfaxalone;
- (b) Fospropofol;
- (c) Suvorexant.

(3) Any material, compound, mixture, or preparation which contains any quantity of Lorcaserin, including its salts, isomers, and salts of such isomers, wherever the existence of such salts, isomers, and salts of isomers is possible.

(4) Stimulants. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (a) Cathine ((+) - norpseudephedrine);
- (b) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Other substances. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts: Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl]-2,6-dimethylphenyl]-1-oxopropyl]][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and salts of isomers.

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

#### NEW SECTION

**WAC 246-945-056 Schedule V.** The commission finds that the following substances have low potential for abuse relative to substances in Schedule IV under RCW 69.50.210 and WAC 246-945-055 and have currently accepted medical use in treatment in the United States and that the substances have limited physical dependence or psychological dependence liability relative to the substance in Schedule IV. In addition to the substances listed in RCW 69.50.212, the commission places each of the following drugs and substances by whatever official name, common or usual name, chemical name, or brand name in Schedule V.

Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

(1) Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide); also referred to as BRV; UCB-34714; Briviact;

(2) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester].

(3) Approved cannabidiol drugs. A drug product in finished dosage formulation that has been approved by the U.S. Food and Drug Administration that contains cannabidiol (2-[1R-3-methyl-6R-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-1,3-benzenediol) derived from cannabis and no more than 0.1 percent (w/w) residual tetrahydrocannabinols, also known as Epidiolex.

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

#### NEW SECTION

**WAC 246-945-060 Other controlled substance registrants—Requirements.** (1) All persons and firms, except persons exempt from registration, must register with the commission in order to legally possess or use controlled substances.

(2) Persons or firms which are not classified as pharmacies, wholesalers, manufacturers, or researchers will be classified as other controlled substance registrants. Examples of persons or firms in this classification include analytical laboratories, dog handlers/trainers who use dogs for drug detection purposes, school laboratories and other agencies which have a legitimate need to use precursor chemicals as defined in WAC 246-945-053.

(3) The applicant for a controlled substance registration must complete and return an application form supplied by the commission. A list of the controlled substances to be used, the purpose for such use, and the names of the persons authorized to access the controlled substances must be listed on the application or on an addendum.

(4) All controlled substances must be stored in a substantially constructed locked cabinet. The registrant shall maintain records in sufficient detail in order to account for the receipt, use, and disposition of all controlled substances. The registrant shall inventory all controlled substances in the possession of the registrant every two years on the anniversary of the issuances of the registration and shall maintain the inventory list for two years. The registrant shall return unwanted, outdated, or unusable controlled substances to the source from which it was obtained or surrendered to the DEA.

#### NEW SECTION

**WAC 246-945-063 Precursor definitions.** The definitions in this section apply to WAC 246-945-065 through 246-945-088.

(1) "Registered product" means any nonprescription product containing any detectable quantity of ephedrine, pseudoephedrine, and phenylpropanolamine or their salts or isomers, or salts of isomers.

(2) "Retailer" means a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW that sells, dispenses, or otherwise provides restricted products to purchasers.

(3) "Sale" means the transfer, selling, or otherwise furnishing of any restricted product to any person.

NEW SECTION**WAC 246-945-065 Precursor substance control.** (1)

For the purpose of this chapter, in addition to the substances in RCW 69.43.010, a precursor substance is any of the following substances or their salts or isomers:

- (a) Gamma-butyrolactone (GBL); and
- (b) Hydriodic acid.

(2) A precursor substance defined in subsection (1) of this section does not include any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine or any cosmetic if that drug or cosmetic can be lawfully sold, transferred, or furnished over-the-counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

NEW SECTION**WAC 246-945-070 Reports of precursor receipt.** (1)

Any manufacturer, wholesaler, retailer, or any other person who receives from any source outside the state of Washington any precursor substance listed in WAC 246-945-065 or RCW 69.43.010 shall submit a report of such transaction within fourteen days of the receipt of that substance.

(2) The report shall contain the following information:

- (a) Name of substance;
- (b) Quantity received;
- (c) Date received;
- (d) Name and address of firm or person receiving substance; and
- (e) Name and address of the source selling, transferring, or furnishing the substance.

(3) The report shall be on a form approved by the commission. In lieu of an approved form the commission will accept a copy of an invoice, packing list, or other shipping document which contains the information in subsection (2) of this section. Under this option purchase price information appearing on the document can be deleted.

NEW SECTION**WAC 246-945-072 Precursor substance monthly reporting.** (1) A permit holder who regularly transfers the same precursor substance to the same recipient may apply to the commission for authorization to submit the report of said transactions on a monthly basis. Requests for monthly reporting authorization must be received at the commission office at least thirty days prior to the commission meeting at which the request will be considered. The commission will review each request to determine if the requirements of RCW 69.43.010(4), are met and will notify the permit holder of its decision and the reporting format that will be authorized.

(2) A permit holder may also petition the commission to accept the monthly report on a computer-generated basis. The report may be furnished in hard copy, on commission-approved data storage methods or by computer interface with a commission-operated computer. The permit holder is responsible for the accuracy of the report and the prompt correction of any data entry or transmission errors.

(3) The authorization to use monthly reports or computer-generated monthly reports may be rescinded at the commission's discretion and with thirty days' notice.

NEW SECTION**WAC 246-945-075 Suspicious transactions and reporting requirements.** (1) A manufacturer, wholesaler or distributor who sells, transfers, or furnishes a regulated product to any licensee shall report any suspicious transaction in writing to the commission.

(2) For the purpose of this rule, a regulated product is defined as a product specified in RCW 69.43.010(1) or WAC 246-945-065.

(3) For the purposes of this rule, a "suspicious transaction" is defined as any sale or transfer that meets any of the following criteria:

(a) Any sale or transfer that would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance under chapter 69.50 RCW, based on such factors as:

- (i) The amount of the substance involved;
- (ii) The method of payment;
- (iii) The method of delivery; or
- (iv) Any past dealings with any participant in the transaction.

(b) Any sale or transfer involving payment for a regulated product in cash or money orders in a total amount of more than two hundred dollars.

(c) Any sale or transfer of a regulated product that meets the criteria identifying suspicious orders in the U.S. Department of Justice, Drug Enforcement Administration, Diversion Control Program Report of the Suspicious Orders Task Force. Copies of the publication are available upon request from the board of pharmacy.

(d) Any individual sale or transfer of a regulated product that exceeds ten percent of the nonprescription drugs contained in the order.

(e) Any order which contains regulated products and has no additional nonprescription drugs is considered a suspicious transaction.

(4) The written report of a suspicious transaction shall contain, at a minimum, the following information:

- (a) Name, address, and phone number of the manufacturer and/or wholesaler making the report;
- (b) Washington state license number of the wholesaler;
- (c) Washington state unified business identifier (UBI) number of the recipient of the suspicious transaction;
- (d) Trade/brand name of regulated product;
- (e) Generic name of regulated product's active ingredients;
- (f) Name, address and phone number of the recipient of the suspicious transaction;
- (g) Quantity of substance purchased, transferred, or furnished, by number of units and doses per unit;
- (h) Date of purchase or transfer;
- (i) Method of payment of the substance;
- (j) Lot number if available; and
- (k) National Drug Code number if available.

NEW SECTION

**WAC 246-945-077 Precursor substance requirements for the sale of a restricted product.** Unless exempted in RCW 69.43.110, a retailer must:

- (1) Verify the purchaser's identity by means of acceptable identification as defined in this chapter;
- (2) Ensure that the purchaser is at least eighteen years of age; and
- (3) Record all of the information required in WAC 246-945-078 in the record of transaction before completing the sale.

#### NEW SECTION

**WAC 246-945-078 Record of sales—Electronic methamphetamine precursor tracking.** (1) Unless granted an exemption under RCW 69.43.110 upon the sale or attempted sale of a restricted product, each retailer shall enter and electronically transmit the following information to the methamphetamine precursor tracking system prior to completion of the transaction:

- (a) Sale transaction information including:
  - (i) Date and time of the intended purchase;
  - (ii) Product description;
  - (iii) Quantity of product to be sold including:
    - (A) Total grams of restricted product per box;
    - (B) Number of boxes per transaction.
  - (b) Purchaser's information including:
    - (i) Full name as it appears on the acceptable identification;
    - (ii) Date of birth;
    - (iii) The address as it appears on the photo identification or the current address if the form of photo identification used does not contain the purchaser's address. The address information must include the house number, street, city, state, and zip code;
    - (iv) Form of photo identification presented by the purchaser, including the issuing agency of the acceptable identification, and the identification number appearing on the identification; and
    - (v) Purchaser's signature. If the retailer is not able to secure an electronic signature, the retailer shall maintain a hard copy of a signature logbook consisting of each purchaser's signature and the transaction number provided by the methamphetamine precursor tracking system.
  - (c) The full name or initials of the individual conducting the transaction; and
  - (d) Other information as required by the methamphetamine precursor tracking system database.

(2) If a transaction occurs during a time when the methamphetamine precursor tracking system is temporarily unavailable due to power outage or other technical difficulties, the retailer shall record the information required in this section in a written logbook for entry into the methamphetamine precursor tracking system within seventy-two hours of the system becoming operational.

#### NEW SECTION

**WAC 246-945-080 Acceptable forms of identification.** Acceptable forms of identification are defined as current foreign, federal, state, or tribal government-issued identification which include the person's photograph, name, date of birth, signature, and physical description. Acceptable forms of identification include, but are not limited to:

- (1) A valid driver's license or instruction permit issued by any U.S. state or foreign government. If the purchaser's driver's license has expired, he or she must also show a valid temporary driver's license with the expired card.
- (2) A United States Armed Forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents.
- (3) A merchant marine identification card issued by the United States Coast Guard.
- (4) An identification card issued by any foreign, federal, or state government.
- (5) An official U.S. passport or an unexpired foreign passport that contains a temporary I-551 stamp.
- (6) An enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington state, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington state drivers' licenses.

#### NEW SECTION

**WAC 246-945-085 Maintenance of and access to retail sales records of restricted products.** (1) The retail sales records required under WAC 246-945-078 are confidential and accessible by the commission and law enforcement agencies. Law enforcement may access the retail sales records for criminal investigations when, at a minimum, there is an articulated individualized suspicion of criminal activity.

- (2) Each law enforcement agency's administrator, chief, sheriff, or other chief executive officer shall ensure:
  - (a) Only authorized employees have access to the databases;
  - (b) Each employee use his or her unique password or access code to access the databases;
  - (c) Each employee adheres to all state and federal laws regarding confidentiality; and
  - (d) As employees change, new passwords or access codes are assigned to new employees and passwords of ex-employees or transferred employees are removed.
- (3) Retail sales records of restricted products, electronic or written, must be kept for a minimum of two years.
- (4) Retail sales records must be destroyed in a manner that leaves the record unidentifiable and nonretrievable.

#### NEW SECTION

**WAC 246-945-087 Exemptions from electronic reporting.** (1) Pharmacies are exempt from entering purchase information into the methamphetamine precursor tracking system when the sale of products containing ephedrine, pseudoephedrine, or phenylpropanolamine or their salts or isomers, or salts of isomers is sold pursuant to a prescription written by an authorized practitioner.

- (2) A retailer must demonstrate "good cause" to qualify for an exemption from electronic reporting requirements. "Good cause" includes, but is not limited to, situations where the installation of the necessary equipment to access the methamphetamine precursor tracking system is unavailable or cost prohibitive to the retailer.

(a) A retailer must submit a written request on a form provided by the board, which shall include the following information:

- (i) The reason for the exemption; and
  - (ii) The anticipated duration needed for the exemption.
- (b) An exemption from electronic reporting may not exceed one hundred eighty days.

(c) A retailer may request additional exemptions by submitting a form defined in this subsection at least thirty days before the current exemption expires. The retailer must show that compliance will cause the business significant hardship.

(d) For all sales transactions involving the sale or attempted sale of a restricted product occurring during the period of an exemption, the retailer shall record into a written logbook, at the time of the sale or attempted sale, the information required under WAC 246-945-078(1).

(e) The written logbook of each sale or attempted sale shall be available for inspection by any law enforcement officer or board inspector during normal business hours.

#### NEW SECTION

**WAC 246-945-088 Denial of a sale—Override.** (1) The retailer must deny the sale of restricted product to purchasers who are not able to produce acceptable identification or if the sale would violate RCW 69.43.110 or federal law.

(2) In the event that the retailer perceives that refusal of the purchase may place them in imminent physical harm, the retailer may use the database safety override function to proceed with the sale, provided that when the threat is no longer perceived, the retailer must immediately contact local law enforcement to report the incident.

#### **Subpart D - Home Dialysis**

#### NEW SECTION

**WAC 246-945-090 Home dialysis program—Legend drugs.** Pursuant to RCW 18.64.257 and 69.41.032, a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program may sell, deliver, possess or dispense directly to its home dialysis patients in cases or full shelf package lots, if prescribed by a physician, the following legend drugs:

- (1) Sterile heparin, 1000 u/mL, in vials;
- (2) Sterile potassium chloride, 2 mEq/mL, for injection;
- (3) Commercially available dialysate; and
- (4) Sterile sodium chloride, 0.9%, for injection in containers of not less than 150 mL.

#### NEW SECTION

**WAC 246-945-091 Home dialysis program—Pharmacist consultant.** Home dialysis programs involved in the distribution of legend drugs as permitted by RCW 18.64.257 and 69.41.032, shall have an agreement with a pharmacist which provides for consultation as necessary. This shall include advice on the drug distribution process to home dialysis patients and on the location used for storage and distribution of the authorized drugs, which shall be reasonably separated from other activities and shall be secure.

#### NEW SECTION

**WAC 246-945-092 Home dialysis program—Records.** (1) A record of shipment shall be attached to the prescriber's order and shall include:

- (a) The name of the patient;
- (b) Strengths and quantities of drugs;
- (c) The manufacturers' names;
- (d) Date of shipment;
- (e) Names of persons who selected, assembled and packaged for shipment; and
- (f) The name of the pharmacist or designated individual responsible for the distribution.

(2) Prescription and drug distribution records shall be maintained in accordance with WAC 246-945-020.

#### NEW SECTION

**WAC 246-945-093 Home dialysis program—Quality assurance.** Home dialysis programs involved in the distribution of legend drugs as permitted by RCW 18.64.257 and 69.41.032, shall develop a quality assurance program for drug distribution and shall maintain records of drug distribution errors and other problems, including loss due to damage or theft.

#### **Subpart E - Compounding**

#### NEW SECTION

**WAC 246-945-100 Compounding minimum standards.** (1) All licensees of the commission must comply, at a minimum, with the following chapters of the United States Pharmacopeia (USP) when engaged in compounding non-sterile and sterile products for patient administration or distribution to a licensed practitioner for patient use or administration:

- (a) USP General Chapter <795> Pharmaceutical Compounding - Nonsterile Preparations;
- (b) USP General Chapter <797> Pharmaceutical Compounding - Sterile Preparations;
- (c) USP General Chapter <800> Hazardous Drugs - Handling in Healthcare Settings; and
- (d) USP General Chapter <825> Radiopharmaceuticals - Preparation, Compounding, Dispensing, and Repackaging.

(2) Copies of the USP General Chapters listed in subsection (1) of this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501. Requestors may also contact USP directly to obtain copies.

#### **PART 2 - GENERAL LICENSING**

#### NEW SECTION

**WAC 246-945-145 License required.** An individual providing pharmacy services to individuals located in Washington is required to be credentialed by the commission, unless the individual is providing pharmacy services within the scope of their employment, or affiliation, with a Wash-

ington licensed nonresident pharmacy or the law otherwise permits the practice.

#### NEW SECTION

**WAC 246-945-150 Applicable forms.** All applications for initial licensure and renewals must be submitted on forms provided by the commission as well as any other required documentation.

#### **Subpart A - Pharmacy Interns and Pharmacist**

#### NEW SECTION

**WAC 246-945-155 Pharmacy interns—Registration requirements.** (1) Unless otherwise stated, each individual shall register with the commission, as a pharmacy intern before beginning pharmacy practice experiences in Washington state. The commission shall grant a registration to practice pharmacy as a pharmacy intern to an individual who is:

(a) Currently enrolled in a professional degree program of a commission accredited school or college of pharmacy and making satisfactory progress towards meeting the requirements for licensure as a pharmacist;

(b) A graduate of a commission accredited school or college of pharmacy;

(c) A graduate of a school or college of pharmacy located outside the United States who has established educational equivalency by obtaining certification by FPGEC;

(d) Required by the commission to be an intern because the commission has determined the individual needs to complete additional practical experience before a pharmacist license is issued or reissued; or

(e) An out-of-state pharmacist enrolled in or participating in an established residency program.

(2) A pharmacy intern shall practice under the immediate supervision of a licensed pharmacist except in accordance with RCW 18.64.253.

(3) A pharmacy intern registration can only be renewed twice.

(4) The commission may consider a pharmacy intern registration inoperable or superseded if one of the following occurs:

(a) A pharmacy intern has not graduated from and is no longer enrolled or in good standing with a commission accredited school or college of pharmacy.

(b) A pharmacy intern is issued a license to practice as a pharmacist in Washington state or another U.S. jurisdiction.

#### NEW SECTION

**WAC 246-945-156 Pharmacy intern—Temporary practice permit.** (1) An individual that holds a pharmacy intern registration in another U.S. jurisdiction, that has registration standards substantially equivalent to Washington, may request a temporary practice permit if:

(a) The applicant is not subject to denial of a credential or issuance of a conditional or restricted credential in any state;

(b) Does not have a criminal record in Washington state;

(c) The applicant's fingerprint-based national background check results are pending; and

(d) The applicant meets WAC 246-945-155 (1)(a) or (b).

(2) To request a temporary practice permit, the pharmacy intern applicant shall submit a written request for a temporary practice permit, and any applicable fees in accordance with WAC 246-945-XXX.

(3) A temporary practice permit expires:

(a) When the pharmacy intern registration is issued;

(b) When a notice of decision on the pharmacy intern registration application is mailed to the applicant; or

(c) Ninety days after the temporary practice permit is issued. The applicant may obtain a one-time extension of up to ninety days with approval of the commission.

#### NEW SECTION

#### **WAC 246-945-162 Pharmacist license qualifications.**

(1) In addition to the requirements in RCW 18.64.080, an applicant for a pharmacist license who holds a baccalaureate degree in pharmacy or a doctor of pharmacy degree from a commission accredited school or college of pharmacy shall submit documentation of education and practice experience as follows:

(a) An applicant who graduated before July 1, 2020, whose official transcripts confer or award a baccalaureate of pharmacy or doctorate of pharmacy degree shall provide certification of at least fifteen hundred pharmacy internship hours in accordance with WAC 246-945-163.

(b) An applicant who graduates after July 1, 2020, whose official transcripts confer or award a doctorate of pharmacy is deemed to have satisfied the pharmacy practice experience and education requirements for licensure without documentation of internship hours.

(2) An applicant for a pharmacist license whose academic training in pharmacy is from institutions in foreign countries shall:

(a) Achieve certification by FPGEC including:

(i) Passing FPGEE;

(ii) Passing required TOEFL iBT;

(b) Provide official transcripts or diploma that shows a baccalaureate of pharmacy or doctorate of pharmacy degree is awarded or conferred; and

(c) Certification of a minimum of fifteen hundred pharmacy internship hours in accordance with WAC 246-945-163.

(3) An applicant for a pharmacist license shall take and pass pharmacist licensure examinations as defined in WAC 246-945-165.

(4) An applicant for a pharmacist license shall provide proof of completion of seven hours of AIDS education as required in chapter 246-12 WAC, Part 8. The applicant is exempt from this requirement if they are a graduate of a commission accredited school or college of pharmacy because the curriculum satisfies this requirement.

#### NEW SECTION

#### **WAC 246-945-163 Certification of internship hours.**

Hours reported to the commission under WAC 246-945-162, 246-945-173, and 246-945-175, shall occur as follows:



- (1) Hours must be completed within eighteen months from the date of graduation;
- (2) From a commission accredited school or college of pharmacy, U.S. jurisdiction board or commission or the supervising pharmacist at the internship site;
- (3) Hours shall be reported thirty days after the completion of any internship experience;
- (4) The documentation must include the supervising pharmacist's evaluation and certification of internship hours, and an intern site evaluation;
- (5) If the report of hours submitted to the commission indicates that the intern has not adequately performed the practice of pharmacy, the commission may reject all or part of the hours reported.

#### NEW SECTION

**WAC 246-945-165 Pharmacist licensure and jurisprudence examinations.** (1) Upon authorization by the commission or its designee, an individual applying for a pharmacist license shall take and pass a pharmacy licensure examination and jurisprudence examination approved by the commission.

(2) A score of seventy-five or higher is required to pass each of the examinations.

(3) An individual who fails the licensure examination or jurisprudence examination three times shall not be authorized for further examination until they have satisfactorily completed a study or tutorial program approved by the commission.

(4) An applicant for a pharmacist license who has passed an approved licensure examination in another state may transfer their score to Washington to meet the commission's requirement to take and pass a commission approved pharmacy licensure examination if:

(a) The applicant meets the requirements in WAC 246-945-162; and

(b) The applicant completes the application process to receive a pharmacist license before the score transfer expires. The score transfer application will expire one year from the date the department receives the score transfer application.

#### NEW SECTION

**WAC 246-945-170 Pharmacist licensure by license transfer—Temporary practice permits.** (1) An individual who holds an active pharmacist license, in good standing, issued by another U.S. jurisdiction may apply for a pharmacist license in Washington by license transfer. In addition to the completion of the commission's application, the applicant must:

(a) File for license transfer using the NABP eLTP process; and

(b) Take and pass the approved jurisprudence examination.

(2) A temporary practice permit to practice pharmacy may be issued to an applicant for a pharmacist license by license transfer if the applicant meets all of the requirements and qualifications in subsection (1) of this section, and the following criteria are met:

(a) The applicant is not subject to denial of a credential or issuance of a conditional or restricted credential in any U.S. jurisdiction;

(b) Does not have a criminal record in Washington state;

(c) The applicant's fingerprint-based national background check results are pending; and

(d) To request a temporary practice permit, the applicant shall submit a written request for a temporary practice permit, and pay the applicable fees in accordance with WAC 246-945-XXX.

(3) A temporary practice permit expires:

(a) When the pharmacist license is issued;

(b) When a notice of decision on the pharmacist license application is mailed to the applicant; or

(c) One hundred eighty days after the temporary practice permit is issued. The applicant may obtain a one-time extension of one hundred eighty days with approval of the commission.

(4) A temporary practice permit holder cannot qualify as a responsible pharmacy manager.

#### NEW SECTION

**WAC 246-945-173 Expired pharmacist license.** To return to active status a pharmacist with an expired license shall pay the applicable fees in accordance with WAC 246-945-XXX and:

(1) If the pharmacist license has been expired for less than three years the pharmacist shall meet the requirements of chapter 246-12 WAC, Part 2 and fifteen CPE hours per year the license has been expired.

(2) If the pharmacist license has been expired for three years or more, and the pharmacist holds an active credential in another U.S. jurisdiction, and is in good standing, the pharmacist shall:

(a) Meet the requirements in chapter 246-12 WAC, Part 2;

(b) Provide certification of an active pharmacist license which includes:

(i) Name and license number;

(ii) Issue and expiration date; and

(iii) Verification that the license has not been the subject of final or pending disciplinary action.

(c) Submit verification of current active pharmacy practice from another U.S. jurisdiction; and

(d) Take and pass the commission approved jurisprudence examination.

(3) If a pharmacist license has been expired for three years or more, and the pharmacist has not been in active practice in another U.S. jurisdiction, the pharmacist shall:

(a) Meet the requirements of chapter 246-12 WAC, Part 2;

(b) Serve an internship of three hundred hours in compliance with WAC 246-945-163; and

(c) Take and pass the commission approved jurisprudence and licensure examinations.

NEW SECTION

**WAC 246-945-175 Inactive pharmacist license.** (1) A pharmacist may obtain an inactive license by meeting the requirements of WAC 246-12-090 and RCW 18.64.140.

(2) An inactive license can be renewed in accordance with WAC 246-945-XXX.

(3) If a license is inactive for three years or less, to return to active status a pharmacist shall meet the requirements of chapter 246-12 WAC, Part 4.

(4) If a license is inactive for more than three years, and the pharmacist has been in active practice in another U.S. jurisdiction, to return to active status the pharmacist must:

(a) Provide certification of an active pharmacist license which includes:

(i) Name and license number;

(ii) Issue and expiration date; and

(iii) Verification that the license has not been the subject of final or pending disciplinary action.

(b) Submit verification of current active pharmacy from another U.S. jurisdiction;

(c) Meet the requirements of chapter 246-12 WAC, Part 4; and

(d) Take and pass the commission approved jurisprudence examination.

(5) If a pharmacist license has been inactive for more than three years, and the pharmacist has not been in active practice in another U.S. jurisdiction, to return to active status, the pharmacist shall comply with the requirements of WAC 246-945-173(3).

NEW SECTION

**WAC 246-945-178 Pharmacist continuing education.**

(1) As part of the process to renew a pharmacist license, a pharmacist shall complete CPE in compliance with this section.

(2) A pharmacist shall complete the equivalent of 3.0 of CPE hours (equal to thirty contact hours) administered by an ACEP accredited provider each license renewal cycle.

(3) A pharmacist shall register with a program designated by the commission for tracking completed CPE hours.

(4) A pharmacist shall complete a one-time training in suicide screening and referral by the end of the first full renewal cycle after initial licensure. The training must meet the following requirements:

(a) Be at least three hours long;

(b) Be from the department of health's model list of approved suicide prevention training programs, and include content related to imminent harm via lethal means; and

(c) The hours spent completing the training in this subsection may count toward meeting CPE requirements.

(5) CPE hours cannot be carried over to the next renewal cycle.

NEW SECTION

**WAC 246-945-180 Nuclear pharmacist endorsement.** To receive a nuclear pharmacist endorsement, a pharmacist must:

(1) Be licensed to practice in Washington;

(2) Meet minimal standards of training and experience in the handling of radioactive materials in accordance with WAC 246-240-075 and submit to the commission proof of compliance; and

(3) Receive a letter of recognition as a nuclear pharmacist from the commission.

**Subpart B - Pharmacy Assistants and Technicians**NEW SECTION

**WAC 246-945-200 Pharmacy assistants.** (1) To become registered as a pharmacy assistant an applicant shall submit an application to the commission that meets the requirements of chapter 246-12 WAC, Part 2.

(2) An initial applicant shall complete four hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(3) The supervising pharmacist, shall instruct the pharmacy assistant regarding their scope of practice.

(4) To renew a registration a pharmacy assistant shall submit an application to the commission with the applicable fees in accordance with WAC 246-945-XXX.

NEW SECTION

**WAC 246-945-203 Pharmacy technician-in-training authority for experiential training.** (1) An individual who is enrolled in a commission-approved pharmacy-technician training program shall obtain an endorsement for experiential training in a pharmacy for:

(a) Initial certification; or

(b) As required by the commission to complete additional practice experience before a pharmacy technician certification is issued, renewed, or reactivated.

(2) An individual with a technician in training endorsement may only work in that capacity at those sites identified on the application.

(3) Before beginning the pharmacy-technician training program the individual shall submit an application to the commission to become certified as a pharmacy assistant. The application must include verification of enrollment in a commission-approved pharmacy-technician education and training program.

(4) The commission may consider the pharmacy technician-in-training authority inoperable or superseded if one of the following occurs:

(a) A pharmacy technician certification is issued;

(b) A pharmacy technician-in-training is no longer enrolled or in good standing with a commission-approved training program; or

(c) A pharmacy technician-in-training does not complete a training program within two years of entering a technician-in-training program, unless otherwise authorized by the commission.

NEW SECTION

**WAC 246-945-205 Pharmacy technician certification.** (1) An applicant for a pharmacy technician certification shall be eighteen years of age and hold a high school diploma or GED.

(2) To be issued a certification as a pharmacy technician an applicant shall meet the qualifications in RCW 18.64A-.020, and:

(a) Provide proof of completion of eight hours of guided study of Washington state and federal pharmacy law. The law study shall be done in coordination and oversight of a Washington licensed pharmacist.

(b) Provide proof of four hours of AIDS education as required in chapter 246-12 WAC, Part 8, the applicant is exempt if they have completed a commission-approved training program whose program materials on file with the commission office document four hours of AIDS education.

(c) Provide proof of successful completion of a commission-approved pharmacy-technician training program WAC 246-945-215. Acceptable documentation includes:

(i) On-the-job training program. Successful completion of didactic and practice experience signed by the program director on a form provided by the commission; or

(ii) Formal academic or college programs. Official transcripts of completion of a diploma or certificate program at a pharmacy technician school or a two-year associate degree program, which shall include evidence of practice training hours; or

(iii) Certificate of Release or Discharge from Active Duty, DD214 documenting evidence of pharmacy technician training provided by a branch of the federal armed services.

(d) Pass a national certification examination approved by the commission within one year of completing a commission-approved training program and applying for certification, unless otherwise authorized by the commission.

(3) An applicant who is a graduate of a foreign school, university or college of pharmacy or medicine, whose professional degree program is approved by the commission shall complete the following:

(a) If English is not the primary language, the applicant shall take and pass TOEFL iBT;

(b) Complete five hundred twenty hours of supervised experience under the supervision of a licensed pharmacist with training hours reported using forms provided by the commission; and

(c) Pass a national certification examination approved by the commission.

(4) An out-of-state pharmacy technician applicant must meet the same requirements as a pharmacy technician trained in Washington state.

#### NEW SECTION

**WAC 246-945-210 Pharmacy technician—Temporary practice permit—Military spouse eligibility and issuance.** A military spouse or state registered domestic partner of a member of the military may receive a temporary practice permit while completing any specific additional requirements that are not related to training or practice standards for a pharmacy technician certification. The commission adopts the procedural rules as adopted by the department of health in WAC 246-12-051.

#### NEW SECTION

**WAC 246-945-215 Pharmacy technician education and training programs.** A pharmacy technician-training program must meet the minimum requirements of this section and be approved by the commission.

(1) A pharmacy technician-training program shall be considered approved by the commission if it is accredited, approved, or administered by:

- (a) The American Society of Health-System Pharmacists (ASHP);
- (b) The Accreditation Council for Pharmacy Education;
- (c) Pharmacy Technician Certification Board; or
- (d) The United States Armed Forces.

(2) A pharmacy technician education and training program not covered by subsection (1) of this section shall be considered meeting the requirements of RCW 18.64A.020 and approved by the commission if it meets the following minimum requirements:

(a) Prepare students for entry-level practice in a variety of settings including, but not limited to, community, hospital, and long-term care, this shall include:

(i) Orientation to pharmacy practice. Health care delivery systems, broad definitions of pharmacy practice and practice settings, communication techniques, confidentiality of information and safety considerations;

(ii) Basic pharmaceuticals. Medical and pharmaceutical terminology and abbreviations, components of a prescription and patient medication record, drug dosage forms, routes of administration and drug product packaging, weighing and measuring, labeling, drug nomenclature, aseptic techniques, drug storage and handling, and drug standard and information sources;

(iii) Federal and state regulations. A minimum of eight hours in principles of applicable state and federal pharmacy laws, rules, regulations, guidelines, and interpretive statements; and

(iv) Pharmaceutical calculations. Basic mathematics including: Fractions, decimals, percentages, proportions, and weights and measures.

(b) Include a multicultural health curriculum as required by RCW 43.70.615.

(c) Have a pharmacist program director that is accountable for the overall quality of the program.

(d) Include minimum hours of education and training that extends over a period of fifteen weeks but under twenty-four months, and includes at a minimum:

(i) For vocational or technical training eight hundred hours which includes one hundred sixty hours supervised practice experience.

(ii) For formal or academic training programs two academic quarters with thirty credit hours each and includes one hundred sixty supervised practice experience.

(iii) On-the-job training of at least five hundred twenty hours with twelve hours of instructive education.

(3) To be approved by the commission a program must provide to the commission:

- (a) A complete application;
- (b) The name of a designated licensed pharmacist as program director;
- (c) A list or copies of training manuals and reference;

- (d) Content of instruction;
- (e) Methods for evaluating trainees; and
- (f) Verification of eight hours of pharmacy law study.

(4) A pharmacy technician training program must renew every five years. Any substantive changes to the program or change in program director must be reported to the commission within thirty calendar days.

#### NEW SECTION

**WAC 246-945-217 Expired pharmacy technician certification.** To return to active status a pharmacy technician with an expired certification shall pay the applicable fees in accordance with WAC 246-945-XXX, and:

(1) If a pharmacy technician's certification has expired for five years or less, the pharmacy technician shall meet the requirements of chapter 246-12 WAC, Part 2.

(2) If the pharmacy technician's certification has expired for over five years and they have not been in active practice in another U.S. jurisdiction, the pharmacy technician shall:

(a) Complete the requirements for certification under WAC 246-945-205; and

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

(3) If the pharmacy technician's certification has expired for over five years and they have been in an active practice in another U.S. jurisdiction with duties that are substantially equivalent to a pharmacy technician in Washington state, the pharmacy technician shall:

(a) Submit verification of current active pharmacy practice in another U.S. jurisdiction; and

(b) Meet the requirements of chapter 246-12 WAC, Part 2.

#### NEW SECTION

**WAC 246-945-220 Pharmacy technician—Continuing education.** (1) As part of the process to renew a pharmacist license, a pharmacist shall complete continuing pharmacy education (CPE) in compliance with this section.

(2) A pharmacy technician shall complete 2.0 CPE hours (equal to twenty contact hours) administered by an ACPE accredited program each certification renewal period.

(3) A pharmacy technician shall register with a program designated by the commission for tracking completed CPE hours.

(4) CPE hours cannot be carried over to the next renewal cycle.

#### **Subpart C - Pharmaceutical Firm Licensing**

#### NEW SECTION

**WAC 246-945-230 General information, change of location, ownership or new construction.** (1) The definitions in this subsection apply throughout WAC 246-945-230 through 246-945-247 unless otherwise specified:

(a) "License" includes "licensing," "licensure," "certificate," "certification," and "registration."

(b) "Facility" includes pharmacies, nonresident pharmacies, health care entities, hospital pharmacy associated clinics, wholesalers, and manufacturers.

(2) The commission shall license a facility that:

(a) Submits a completed application for the license applied for on forms provided by the commission;

(b) Pays the applicable fees in accordance with WAC 246-945-XXX. This fee will not be prorated under any circumstances;

(c) Undergoes an inspection by the commission if the facility is located in Washington pursuant to WAC 246-945-005 that results in either no deficiencies or an approved plan of correction; and

(d) Obtains a controlled substances registration from the commission and is registered with the DEA if the facility intends to possess or distribute controlled substances.

(3) Once an initial license is issued, a licensed facility must:

(a) Notify the commission and pay a facility inspection fee in lieu of paying an original license fee for modifications or remodels. A modification or remodel of a pharmacy location includes changes to a previously approved area, room or pharmacy building which result in changes in the pharmacy that affects security, square footage, access to drugs, compounding or necessitates temporary relocation of pharmacy services.

(b) Submit a new application on forms provided by the commission and pay the original license fee as established in WAC 246-945-XXX if the facility changes location to a different address. If located in Washington, a facility may not relocate prior to the inspection of the new premises.

(c) Notify the commission and pay the original license fee in accordance with WAC 246-945-XXX whenever there is a change of ownership. Change in ownership includes changes in business or organizational structure such as a change from sole proprietorship to a corporation, or a change of more than fifty percent ownership in a corporation.

(i) Upon receipt of a change of ownership application and fees, the purchaser may begin operations prior to the issuance of a new pharmacy license only when the purchaser and seller have a written power of attorney agreement. This agreement shall delineate that violations during the pending application process shall be the sole responsibility of the seller.

(ii) This agreement shall be provided to the commission upon request.

(d) Notify the commission within thirty days of any changes to the information provided on their application.

(e) Notify the commission of any changes in their responsible pharmacy manager in accordance with WAC 246-945-480, if a responsible pharmacy manager is required for initial licensure.

(f) Renew their license in accordance with WAC 246-945-XXX.

(4) A license is issued to a location and is not transferable.

NEW SECTION

**WAC 246-945-232 Pharmacy licensing.** The commission shall issue a pharmacy license to an applicant that:

- (1) Is in compliance with WAC 246-945-230;
- (2) Has a designated responsible pharmacy manager; and
- (3) If a pharmacy is new or remodeled, the applicant has provided the commission evidence of being built or remodeled in accordance with all building, health, and fire codes required for the particular area.

NEW SECTION

**WAC 246-945-233 Hospital pharmacy associated clinics.** (1) A parent hospital pharmacy may add or delete a hospital pharmacy associated clinic (HPAC) to a hospital pharmacy license at any time in compliance with WAC 246-945-230 (2)(a), (b), and (d).

(2) The HPAC must designate a responsible pharmacy manager and notify the commission of changes.

(3) HPAC locations are identified as follows:

(a) Category 1 HPAC: Receives drugs transferred from the parent hospital pharmacy to the HPAC and does not perform sterile or nonsterile compounding of drugs.

(b) Category 2 HPAC: Receives drugs transferred from the parent hospital pharmacy to the HPAC and performs sterile or nonsterile compounding of drugs.

(4) A HPAC licensed under the parent hospital pharmacy license must obtain a separate DEA registration in order to possess controlled substances.

NEW SECTION

**WAC 246-945-235 Nonresident pharmacy license.** The commission shall issue a nonresident pharmacy license to an applicant that:

- (1) Provides all information required by RCW 18.64.-360;
- (2) Is in compliance with WAC 246-945-230;
- (3) Has identified a responsible pharmacy manager, whose license is in good standing in the U.S. jurisdiction in which they are located; and
- (4) Has provided to the commission proof that its resident license is in good standing.

NEW SECTION

**WAC 246-945-245 Health care entity license.** (1) The commission shall issue a health care entity license to an applicant that:

- (a) Is in compliance with WAC 246-945-230; and
  - (b) Has designated a responsible pharmacy manager.
- (2) An organization (e.g., a clinic) must obtain a separate license for each of its locations. One organization occupying multiple suites in one facility is deemed to be occupying one location requiring one license. Separate organizations occupying the same location must obtain separate licenses.

NEW SECTION

**WAC 246-945-246 Wholesaler.** (1) Every wholesaler who engages in wholesale distribution into, out of, or within Washington state must be licensed by the commission before engaging in wholesale distribution of drugs. Entities required to be licensed as a wholesaler includes:

- (a) In-state and out-of-state pharmaceutical wholesalers;
- (b) Out-of-state manufacturer that distribute or sell drugs into Washington;
- (c) Virtual wholesalers;
- (d) Out-of-state virtual manufacturers that distribute or sell drugs into Washington;
- (e) Outsourcing facilities required to be registered with the FDA as an outsourcing facility as defined in 21 U.S.C. Sec. 353b(d)(4)(A) that are located in Washington, or distribute or sell drugs into Washington; and
- (f) Reverse distributors.

(2) The commission may issue a wholesaler license to an applicant that is in compliance with the requirements in WAC 246-945-230 and this section.

(3) In addition to the requirements in subsection (2) of this section if the applicant is located outside of Washington, the applicant must provide:

- (a) A copy of a site inspection conducted by the regulatory authority in the resident U.S. jurisdiction or third-party inspection program recognized by the commission within the last two years and every two years with the distributor's renewal;
- (b) A copy of the resident state license; and
- (c) A list of licenses, registrations, permits or certificates held in other U.S. jurisdictions.

(4) In addition to the requirements in subsection (2) of this section if the applicant plans to export noncontrolled drugs to persons in a foreign jurisdiction, the applicant must provide letters from the consulate of the country to which the drugs are exported and should verify consignee receiving such drugs is legally entitled in that country to receive them, if applicable. These letters shall be made available to the commission upon its request. The issuance of an export wholesaler license does not authorize delivery of drugs in the United States.

(5) Minimum qualifications. The commission shall consider, at a minimum, the following factors in reviewing the qualifications of individuals who engage in wholesale distribution of prescription drugs within the state:

- (a) Any convictions of the applicant under any federal, state, or local laws relating to drug samples, wholesale, or retail drug distribution, or distribution of controlled substances;
- (b) Any felony convictions of the applicant under federal, state, or local laws;
- (c) The applicant's past experience in the manufacture or distribution of prescription drugs, including controlled substances;
- (d) Any false or fraudulent material furnished by the applicant on any application made in connection with drug manufacturing or distribution;
- (e) Suspension or revocation by federal, state, or local government of any license currently or previously held by the

applicant for the manufacture or distribution of any drugs, including controlled substances;

(f) Compliance with licensing requirements under any previously granted licenses;

(g) Compliance with requirements to maintain and make available to the commission, federal, state, or local enforcement officials those records required to be maintained by wholesale drug distributors; and

(h) Any other factors or qualifications the commission considers relevant to and consistent with public health and safety.

(6) When operations are conducted at more than one location by a single wholesale distributor, each location shall be licensed by the commission.

#### NEW SECTION

**WAC 246-945-247 Pharmaceutical manufacturer license.** (1) An entity located in Washington state that manufactures drugs must be licensed by the commission in accordance with the laws and regulations of Washington state before engaging in manufacturing.

(2) The commission shall issue a manufacturer license to an applicant that is in compliance with the requirements in WAC 246-945-230.

(3) When operations are conducted at more than one location by a single manufacturer, each location shall be licensed by the commission.

### **Subpart D - Commission Registrations**

#### NEW SECTION

**WAC 246-945-250 Researcher and other controlled substance registration.** (1) Applicants for initial registration and renewal for researcher or other controlled substance registrations shall submit to the commission a complete application with fees relevant to the registration type.

(a) Researcher:

(i) Noncontrolled legend drugs; or

(ii) Researchers requiring to purchase, possess, administer or dispense controlled substances shall apply for a controlled substance authority on its license with the commission and register with the DEA.

(b) Other controlled substance registrations:

(i) Opioid treatment programs;

(ii) Analytical laboratories;

(iii) Dog handler; and

(iv) Other agencies who have demonstrated a legitimate need to use precursor chemicals.

(2) The application shall:

(a) List all legend drugs and controlled substances to be used and the purpose for its use;

(b) Name the primary registrant; and

(c) List the names of the individuals authorized to access the controlled substances.

(3) Applicants shall undergo an initial inspection and periodic inspections as deemed appropriate by the commission.

#### NEW SECTION

**WAC 246-945-253 Shopkeeper registration.** (1) A shopkeeper registration is issued to a business license authorizing the holder to purchase, possess, and sell over-the-counter medications as defined in RCW 18.64.044 and chapter 69.43 RCW, if applicable.

(2) A business entity with a licensed pharmacy with different operating hours shall hold a shopkeeper registration to acquire, possess, and sell over-the-counter medications when the pharmacy is closed.

#### NEW SECTION

**WAC 246-945-254 Animal control and humane society registration.** (1) Humane societies and animal control agencies registered with the commission under RCW 69.50.310 may purchase, possess, and administer sodium pentobarbital and approved legend drugs as provided in RCW 69.41.080.

(2) To apply for registration, a humane society or animal control agency shall submit to the commission a completed application for registration on forms provided by the commission and undergo an initial inspection.

(3) The registered agency shall designate an individual responsible for maintaining all records and submitting all reports required by applicable federal or state law or rule.

(4) The registered agency shall provide to the commission a list of staff trained and authorized to administer approved drugs.

#### NEW SECTION

**WAC 246-945-255 Chemical capture—Department of fish and wildlife.** (1) The department of fish and wildlife may apply to the commission for a limited registration under chapters 69.50 and 69.41 RCW to purchase, possess, and administer controlled substances and legend drugs for use in chemical capture programs.

(2) Each department of fish and wildlife field office that stores controlled substances or legend drugs must register with the commission. The department of fish and wildlife must notify the commission of the names of individuals who are authorized to possess and administer controlled substances and legend drugs.

(3) The department of fish and wildlife shall designate one individual at each field office who shall be responsible for the ordering, possession, safe storage, and utilization of controlled substances and legend drugs. The department of fish and wildlife shall notify the commission of the name of the designated individual.

### **PART 3 - PROFESSIONAL STANDARDS**

#### NEW SECTION

**WAC 246-945-305 Pharmacist's professional responsibilities.** (1) A pharmacist shall be knowledgeable of, and comply with, all applicable rules and laws.

(2) A pharmacist is responsible for providing patients with safe and appropriate medication therapy.

(3) A pharmacist shall be responsible for any delegated act performed by pharmacy interns, pharmacy technicians, and pharmacy assistants under their supervision.

(4) A pharmacist shall delegate pharmacy functions in accordance with WAC 246-945-315.

#### NEW SECTION

##### **WAC 246-945-310 Responsible pharmacy manager.**

The responsible pharmacy manager must be licensed to practice pharmacy in the state of Washington. The responsible pharmacy manager designated by a facility as required under WAC 246-945-410 shall have the authority and responsibility to assure that the area(s) within the facility where drugs are stored, compounded, delivered, or dispensed are operated in compliance with all applicable state and federal statutes and regulations.

#### NEW SECTION

##### **WAC 246-945-315 Delegation of pharmacy functions to pharmacy ancillary personnel.**

(1) All delegated pharmacy functions shall be performed under a pharmacist's immediate supervision. A pharmacist, as an adjunct to assist in the immediate supervision of the pharmacy ancillary personnel or intern, may employ technological means to communicate with or observe the pharmacy ancillary personnel or intern. A pharmacist shall make certain all applicable state and federal laws including, but not limited to, confidentiality, are fully observed when employing technological means of communication and observation. If technology is being used to provide immediate supervision of pharmacy ancillary personnel or intern such technology shall be sufficient to provide the personal assistance, direction and approval required to meet the standard of practice for the delegated tasks.

(2) When delegating a pharmacy function to a pharmacy technician:

(a) A pharmacist shall consider the pharmacy technician's scope of practice, education, skill, and experience and take them into account; and

(b) A pharmacist will not delegate a pharmacy function that is listed in WAC 246-945-320.

(3) A pharmacist may delegate to a pharmacy assistant those functions defined in RCW 18.64A.030 and the following:

(a) Prepackage and label drugs for subsequent use in prescription dispensing operations; and

(b) Count, pour, and label for individual prescriptions.

#### NEW SECTION

**WAC 246-945-317 Tech check tech.** (1) "Verification" as used in this section means the pharmacist has reviewed a patient prescription initiated by an authorized prescriber, has examined the patient's drug profile, and has approved the prescription after taking into account pertinent drug and disease information to ensure the correctness of the prescription for a specific patient. The verification process must generate an audit trail that identifies the pharmacist. The pharmacist who performs the verification of a prescription is responsible for

all reports generated by the approval of that prescription. The unit-dose medication fill and check reports are an example.

(2) A pharmacist may allow for unit-dose medication checking. Following verification of a prescription by the pharmacist, a technician may check unit-dose medication cassettes filled by another pharmacy technician or pharmacy intern in pharmacies serving facilities licensed under chapter 70.41, 71.12, 71A.20, or 74.42 RCW. No more than a forty-eight hour supply of drugs may be included in the patient medication cassettes and a licensed health professional must check the drug before administering it to the patient.

#### NEW SECTION

**WAC 246-945-320 Nondelegable tasks.** (1) A pharmacist shall not delegate the following to ancillary personnel:

(a) Receipt or transfer of a verbal prescription other than refill authorization from a prescriber.

(b) Consultation with the patient regarding the prescription, both prior to and after the prescription filling regarding any information contained in a patient medication record system; however, this shall not prohibit pharmacy ancillary personnel from providing to or receiving from the patient or the patient's agent certain information where no professional judgment is required.

(c) Consultation with the prescriber regarding the patient and the patient's prescription.

(d) Interpretation of data in a patient medication record system.

(e) Ultimate responsibility for all aspects of the completed prescription and assumption of the responsibility for the filled prescription, such as: Accuracy of drug, strength, labeling, proper container and other requirements.

(f) Patient counseling in accordance with WAC 246-945-325.

(g) Substitution of a biological or drug product in accordance with WAC 246-945-340.

(h) Decision to not dispense lawfully prescribed drugs or devices or to not distribute drugs and devices approved by the FDA for restricted distribution by pharmacies.

(i) Prescription adaptation in accordance with WAC 246-945-335.

(2) A pharmacy intern can perform any pharmacy function based on their education, skill and experience, except supervising other pharmacy personnel.

#### NEW SECTION

**WAC 246-945-325 Patient counseling.** (1) The pharmacist shall offer to counsel:

(a) Upon the initial fill of a prescription for a new or change of therapy.

(b) When the pharmacist using their professional judgment determines counseling is necessary to promote safe and effective use and to facilitate an appropriate therapeutic outcome for that patient.

(2) This does not apply to medications that are administered by a licensed health professional acting within their scope of practice.

NEW SECTION

**WAC 246-945-330 Refilling prescriptions.** (1) A prescription may be refilled when permitted by state and federal law and only as authorized by the prescriber.

(2) Except as provided in subsection (1) of this section, a pharmacist may renew a prescription for a noncontrolled legend drug one time in a six-month period when an effort has been made to contact the prescriber and they are not available for authorization under the following conditions:

- (a) The amount dispensed is the quantity on the most recent fill or a thirty-day supply, whichever is less;
- (b) The refill is requested by the patient or the patient's agent;
- (c) The patient has a chronic medical condition;
- (d) No changes have been made to the prescription; and
- (e) The pharmacist communicates the renewal to the prescriber within one business day.

NEW SECTION

**WAC 246-945-332 Continuity of care.** When the governor issues an emergency proclamation for an event which prevents continuity of health care for persons and animals because their prescribed medications are no longer available to them due to the emergency event, pharmacists and pharmacies may provide emergency prescription supplies for medications during the period of the proclaimed emergency as provided below:

(1) An initial supply of up to thirty days of current prescriptions for legend drug (noncontrolled) medications or seven-day supply of current prescriptions for controlled substance medications in Schedules III, IV, and V may be provided to patients under the following conditions:

(a) Presentation of a valid prescription container complete with legible label indicating there are remaining refills, or confirmation of the prescribed medication and available refills by review of the patient's current medical records or pharmacy records or in the professional judgment of the pharmacist; or

(b) If the prescription is expired or has no refills and the pharmacist is unable to readily obtain refill authorization from the prescriber, the pharmacist may dispense a one-time emergency refill of the last dispensed quantity or up to a thirty-day supply of a maintenance medication.

(c) If the patient is unable to provide either a valid prescription or prescription container the pharmacist may use their professional judgment when accepting a provider reconciled medication list.

(2) For each medication dispensed under this section, a pharmacist shall:

(a) Document the dispensing as a prescription, noting where the information from subsection (1)(a) of this section was obtained;

(b) Inform the patient's provider and the pharmacy at which the patient obtains his or her medications of the dispensing as soon as possible following the emergency dispensing;

(c) Mark the face of the prescription as an "emergency" prescription.

(3) Nothing in this rule modifies insurers' requirements for coverage and payment for prescribed medications.

NEW SECTION

**WAC 246-945-335 Prescription adaptation.** Upon patient consent, a pharmacist may adapt drugs as specified in this rule, provided that the prescriber has not indicated that adaptation is not permitted.

(1) Change quantity. A pharmacist may change the quantity of medication prescribed if:

(a) The prescribed quantity or package size is not commercially available;

(b) The change in quantity is related to a change in dosage form;

(c) The change is intended to dispense up to the total amount authorized by the prescriber including refills in accordance with RCW 18.64.520; or

(d) The change extends a maintenance drug for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program in accordance with RCW 48.43.096.

(2) Change dosage form. A pharmacist may change the dosage form of the prescription if it is in the best interest of patient care, so long as the prescriber's directions are also modified to equate to an equivalent amount of drug dispensed as prescribed.

(3) Complete missing information. A pharmacist may complete missing information on a prescription if there is evidence to support the change.

(4) Documentation. A pharmacist who adapts a prescription in accordance with these rules must document the adaptation in the patient's record.

NEW SECTION

**WAC 246-945-340 Prescriptions—Drug product substitutions.** (1) A pharmacist may substitute a drug or biologic product dispensed pursuant to a prescription if in compliance with applicable laws and rules.

(2) A pharmacist may substitute a drug product or a biologic product when any of the following applies:

(a) The substitution is permitted by RCW 69.41.120;

(b) The substitution is permitted by a formulary developed by an interdisciplinary team of an institutional facility; or

(c) The substitution is otherwise permitted by law.

(3) In addition to any other applicable requirements, a pharmacist shall only substitute a drug or a biologic product pursuant to subsection (2)(b) of this section if:

(a) An employee or contractor of the institutional facility prescribed the drug or biologic product to be substituted;

(b) The interdisciplinary team was composed of a non-pharmacist prescriber listed in RCW 69.41.030 and a pharmacist; and

(c) The formulary is readily retrievable by the pharmacist.



NEW SECTION

**WAC 246-945-345 Prescription transfers.** (1) Subsections (2) through (5) of this section apply to the transfer of prescription information for noncontrolled drugs. The transfer of controlled substance prescription information must conform to the requirements of 21 C.F.R. Sec. 1306.25.

(2) Upon patient request, a prescription may be transferred within the limits of state and federal law.

(3) Sufficient information needs to be exchanged in the transfer of a prescription to maintain an auditable trail, and all elements of a valid prescription.

(4) Pharmacies sharing a secure real-time database are not required to transfer prescription information for dispensing.

(5) Prescriptions must be transferred by electronic means or facsimile, except in emergent situations.

NEW SECTION

**WAC 246-945-350 Collaborative drug therapy agreements.** (1) A pharmacist exercising prescriptive authority in their practice must have a valid CDTA on file with the commission and their practice location.

(2) A CDTA must include:

(a) A statement identifying the practitioner authorized to prescribe and the name of each pharmacist who is party to the agreement;

(i) The practitioner authorized to prescribe must be in active practice; and

(ii) The authority granted must be within the scope of the practitioners' current practice.

(b) A statement of the type of prescriptive authority decisions which the pharmacist is authorized to make, which includes:

(i) A statement of the types of diseases, drugs, or drug categories involved, and the type of prescriptive authority activity (e.g., modification or initiation of drug therapy) authorized in each case.

(ii) A general statement of the training required, procedures, decision criteria, or plan the pharmacist is to follow when making therapeutic decisions, particularly when modification or initiation of drug therapy is involved.

(c) A statement of the activities the pharmacist is to follow in the course of exercising prescriptive authority, including:

(i) Documentation of decisions made; and

(ii) A plan for communication or feedback to the authorizing practitioner concerning specific decisions made.

(3) A CDTA is only valid for two years from the date of signing.

(4) Any modification of the written guideline or protocol shall be treated as a new CDTA.

NEW SECTION

**WAC 246-945-355 Monitoring of drug therapy by pharmacist.** In the absence of a CDTA, the term "monitoring drug therapy" used in RCW 18.64.011 shall mean a review of the drug therapy regimen of patients by a pharmacist for the purpose of evaluating or rendering advice to the prescribing

practitioner or patient regarding the patients drug therapy. Monitoring of drug therapy includes, but not be limited to, the evaluation of the patient through history taking, physical examination, ordering, administering or reviewing laboratory tests, imaging, and social evaluation related to an existing diagnosis and drug therapies for optimization of drug therapy.

NEW SECTION

**WAC 246-945-360 Patient rights.** Any person authorized to practice or assist in the practice of pharmacy shall not engage in any of the following:

(1) Destroy unfilled lawful prescription;

(2) Refuse to return unfilled lawful prescriptions;

(3) Violate a patient's privacy;

(4) Discriminate against patients or their agent in a manner prohibited by state or federal laws; or

(5) Intimidate or harass a patient.

NEW SECTION

**WAC 246-945-365 Approval of impaired practitioner substance abuse monitoring program.** (1) The commission will approve recovery, assistance and monitoring programs under RCW 18.130.175 for its credential holders.

(2) For the purposes of RCW 18.130.175(1), the commission will consider a licensee to have not successfully completed the program if they are discharged from the program for failure to comply with the program's terms and conditions.

(3) A licensee referred or required to participate in a program will be subject to disciplinary action under chapter 18.130 RCW if they fail to sign or otherwise revoke a waiver allowing the program to release information to the commission.

(4) An approved program shall report a licensee who fails to comply with the program's terms and conditions within seven calendar days.

(5) A licensee shall report themselves to the commission if they fail to comply with RCW 18.130.175, the program's terms and conditions, or any part of this section within seven calendar days. The fact an approved program has reported under subsection (4) of this section does not absolve the licensee of a responsibility to report.

NEW SECTION

**WAC 246-945-370 Sexual misconduct.** (1) A pharmacy health care practitioner 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 constitute grounds for disciplinary action.

(2) Practitioner under this section shall be defined as any person credentialed under RCW 18.64.080 or chapter 18.64A RCW.

(3) 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 within the health care practitioner's scope of practice;

(c) Rubbing against a patient, client, or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Not allowing a patient or client privacy to dress or undress except as may be necessary in emergencies or custodial situations;

(g) Not providing the patient or client a gown or draping except as may be necessary in emergencies;

(h) Dressing or undressing in the presence of the patient, client, or key party;

(i) Removing patient's or client's clothing or gown or draping without consent, except emergent medical necessity or being in a custodial setting;

(j) Encouraging masturbation or other sex act in the presence of the health care provider;

(k) Masturbation or other sex act by the health care provider in the presence of the patient, client, or key party;

(l) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(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 health care provider;

(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 materials, other than for legitimate health care purposes.

(4) 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.

(5) A health care practitioner 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 health care practitioner's sexual needs.

(6) A health care practitioner must not engage, or attempt to engage, in the activities listed in subsection (4) of this section with a former patient, client, or key party if:

(a) There is a significant likelihood that the patient, client, or key party will seek or require additional services from the health care practitioner; or

(b) There is an imbalance of power, influence, opportunity, or special knowledge of the professional relationship.

(7) When evaluating whether a health care provider engaged, or attempted to engage, in sexual misconduct, the commission will consider factors including, but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the practitioner-patient relationship;

(b) Transfer of care to another health care practitioner;

(c) Duration of the practitioner-patient relationship;

(d) Amount of time that has passed since the last health care services to the patient or client;

(e) Communication between the health care practitioner 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 health care practitioner;

(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.

(8) Patient, client, or key party initiation or consent does not excuse or negate the health care practitioner's responsibility.

(9) 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 health care provider;

(b) Contact that is necessary for a legitimate health care purpose and that meets the standard of care appropriate to that profession; or

(c) Providing health care services for a legitimate health care purpose to a person who is in a preexisting, established personal relationship with the health care provider where there is no evidence of, or potential for, exploiting the patient or client.

## PART 4 - OPERATIONAL STANDARDS

### Subpart A - Pharmacies, HCEs and HPACs

#### NEW SECTION

**WAC 246-945-405 Applicability.** (1) The rules in this chapter apply to pharmacies, health care entities (HCE), and hospital pharmacy associated clinics (HPAC).

(2) Unless specified, the term "facility" as used in this part includes pharmacies, HCEs, and HPACs.

#### NEW SECTION

**WAC 246-945-410 Facility standards.** A facility must meet the following minimum requirements:

(1) The facility shall be constructed and equipped with adequate security to protect equipment, records, and supply

of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use.

(2) The facility shall be properly equipped to ensure the safe, clean, and sanitary condition necessary for the proper operation, the safe preparation of prescriptions, and to safeguard product integrity.

(3) The facility shall be staffed sufficiently to allow appropriate supervision, operate safely and, if applicable, remain open during posted hours of operation.

(4) The facility shall be adequately stocked to maintain at all times a representative assortment of drugs in order to meet the pharmaceutical needs of its patients in compliance with WAC 246-945-415.

(5) The facility shall designate a responsible pharmacy manager:

(a) By the date of opening; and

(b) Within thirty calendar days of a vacancy.

(6) The facility shall create and implement policies and procedures related to:

(a) Purchasing, ordering, storing, compounding, delivering, dispensing, and administering legend drugs, including controlled substances.

(b) Accuracy of inventory records, patient medical records as related to the administration of controlled substances and legend drugs, and any other records required to be kept by state and federal laws.

(c) Adequate security of legend drugs, including controlled substances.

(d) Controlling access to legend drugs, including controlled substances.

(7) Prescription drugs must only be dispensed pursuant to a valid prescription as required by WAC 246-945-011.

(8) A drug utilization review of each prescription before dispensing and delivery shall occur except in emergent medical situations, or if:

(a) The drug is a subsequent dose from a previously reviewed prescription;

(b) The prescriber is in the immediate vicinity and controls the drug dispensing process;

(c) The system is being used to provide access to medications on override and only a quantity sufficient to meet the immediate need of the patient is removed; or

(d) Twenty-four hour pharmacy services are not available, and a pharmacist will review all prescriptions added to a patient's profile within six hours of the facility opening.

(9) Each drug dispensed and delivered to a patient must bear a complete and accurate label as required by WAC 246-945-015 through 246-945-018. The information contained on the label shall be supplemented by oral or written information as required by WAC 246-945-325.

(10) Access to the drug storage area located within the facility should be limited to pharmacists unless one of the following applies:

(a) A pharmacy intern, or pharmacy ancillary personnel enter under the immediate supervision of a pharmacist; or

(b) A pharmacist authorizes temporary access to an individual performing a legitimate nonpharmacy function under the immediate supervision of the pharmacist; or

(c) The facility has a policy and procedure restricting access to a health care professional licensed under the chap-

ters specified in RCW 18.130.040, and the actions of the health care professional are within their scope of practice.

(11) In accordance with RCW 18.64A.060 prior to utilizing pharmacy ancillary personnel a facility shall submit to the commission a utilization plan for pharmacy technicians and pharmacy assistants:

(a) Utilization plan for pharmacy technicians. The application for approval must describe the manner in which the pharmacy technicians will be utilized and supervised, including job descriptions, task analysis or similar type documents that define the duties performed and the conditions under which they are performed, number of positions in each category, as well as other information as may be required by the commission. The commission will be notified of all changes to the utilization plan. A copy of the utilization plan must be maintained in the pharmacy. The utilization plan must comply with WAC 246-945-315 and 246-945-320.

(b) Utilization plan for pharmacy assistants. The application for approval shall list the job title or function of the pharmacy assistant and comply with WAC 246-945-315(3).

(12) A facility's paper prescriptions must be maintained in accordance with WAC 246-945-020 and as follows:

(a) Paper prescriptions for Schedule II drugs must be maintained as a separate file from other prescriptions.

(b) Paper prescriptions for Schedule III, IV, and V drugs must be maintained as a separate file, or maintained in a separate file with prescriptions for noncontrolled legend drugs as allowed under federal law.

#### NEW SECTION

**WAC 246-945-415 Dispensing and delivery of prescription drugs.** (1) A pharmacy may deliver filled prescriptions as long as appropriate measures are taken to ensure product integrity and receipt by the patient or patient's agent.

(2) Pharmacies have a duty to deliver lawfully prescribed drugs or devices to patients and to distribute drugs and devices approved by the U.S. Food and Drug Administration for restricted distribution by pharmacies, or provide a therapeutically equivalent drug or device in a timely manner consistent with reasonable expectations for filling the prescription, except for the following or substantially similar circumstances:

(a) Prescriptions containing an obvious or known error, inadequacies in the instructions, known contraindications, or incompatible prescriptions, or prescriptions requiring action in accordance with WAC 246-945-410(8) or 246-945-335;

(b) National or state emergencies or guidelines affecting availability, usage, or supplies of drugs or devices;

(c) Lack of specialized equipment or expertise needed to safely produce, store, or dispense drugs or devices, such as certain drug compounding or storage for nuclear medicine;

(d) Potentially fraudulent prescriptions; or

(e) Unavailability of drug or device despite good faith compliance with WAC 246-945-410(4).

(3) Nothing in this section requires pharmacies to deliver a drug or device without payment of their usual and customary or contracted charge.

(4) If despite good faith compliance with WAC 246-945-410(4), the lawfully prescribed drug or device is not in stock,

or the prescription cannot be filled pursuant to subsection (1)(a) of this section, the pharmacy shall provide the patient or agent a timely alternative for appropriate therapy which, consistent with customary pharmacy practice, may include obtaining the drug or device. These alternatives include, but are not limited to:

(a) Contact the prescriber to address concerns such as those identified in subsection (1)(a) of this section or to obtain authorization to provide a therapeutically equivalent product;

(b) If requested by the patient or their agent, return unfilled lawful prescriptions to the patient or agent; or

(c) If requested by the patient or their agent, communicate or transmit, as permitted by law, the original prescription information to a pharmacy of the patient's choice that will fill the prescription in a timely manner.

(5) Engaging in or permitting any of the following shall constitute grounds for discipline or other enforcement actions:

(a) Destroy unfilled lawful prescriptions;

(b) Refuse to return unfilled lawful prescriptions;

(c) Violate a patient's privacy;

(d) Discriminate against patients or their agent in a manner prohibited by state or federal laws; and

(e) Intimidate or harass a patient.

(6) Filled prescriptions may be picked up or returned for delivery by authorized personnel when the pharmacy is closed for business if the prescriptions are placed in a secured delivery area outside of the drug storage area. The secured delivery area must be a part of a licensed pharmacy, and equipped with adequate security, including an alarm or comparable monitoring system, to prevent unauthorized entry, theft, or diversion. Access to the secured delivery area must be addressed by the policies and procedures developed by the responsible pharmacy manager.

(7) HCEs shall dispense in accordance with RCW 18.64.450.

(8) A licensed hospital pharmacy dispensing appropriately labeled, patient specific drugs to a HPAC licensed under the parent hospital pharmacy may do so only pursuant to a valid prescription and prescription information is authenticated in the medical record of the patient to whom the legend drug or controlled substance will be provided according to the policy and procedures of the parent hospital pharmacy.

#### NEW SECTION

**WAC 246-945-417 Electronic systems for patient medication records, prescriptions, chart orders, and controlled substance records.** (1) A pharmacy shall use an electronic recordkeeping system to establish and store patient medication records, including patient allergies, idiosyncrasies or chronic conditions, and prescription, refill, transfer information, and other information necessary to provide safe and appropriate patient care.

(a) Systems must prevent auto-population of user identification information.

(b) Pharmacies that provide off-site pharmacy services without a pharmacist for product fulfillment or prescription

processing must track the identity of each individual involved in each step of the off-site pharmacy services.

(2) The electronic recordkeeping system must be capable of real-time retrieval of information pertaining to the ordering, verification, and processing of the prescription where possible.

(3) The electronic recordkeeping system must include security features to protect the confidentiality and integrity of patient records including:

(a) Safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription information and patient medication records; and

(b) Functionality that documents any alteration of prescription information after a prescription is dispensed, including the identification of the individual responsible for the alteration.

(4) The pharmacy shall have policies and procedures in place for system downtime.

(a) The procedure shall provide for the maintenance of all patient recordkeeping information as required by this chapter.

(b) Upon restoration of operation of the electronic recordkeeping system the information placed in the auxiliary recordkeeping procedure shall be entered in each patient's records within two working days, after which the auxiliary records may be destroyed.

(c) This section does not require that a permanent dual recordkeeping system be maintained.

(5) The pharmacy shall maintain records in accordance with WAC 246-945-020.

(6) Electronic prescriptions for prescription drugs must be maintained by the pharmacy in a system that meets the requirements of 21 C.F.R. Sec. 1311.

(7) HCEs or HPACs that maintain an electronic record system must be done in accordance with subsections (2) through (7) of this section.

#### NEW SECTION

##### **WAC 246-945-418 Paper recordkeeping procedure.**

If an HPAC or HCE does not maintain an electronic recordkeeping system their manual records must contain all information required in WAC 246-945-417. The record system consists of the hard copy of the original prescription and a card or filing procedure that contains all data on new and refill prescriptions for a patient. This data must be organized in such a fashion that information relating to all prescription drugs used by a patient will be reviewed each time a prescription is filled.

#### NEW SECTION

##### **WAC 246-945-420 Facility inventory requirements.**

(1) A facility shall conduct its own separate inventory of prescription drugs when it closes in accordance WAC 246-945-480.

(2) A facility shall conduct an inventory of controlled substances every two years.

(3) A facility shall conduct its own separate inventory of controlled substances in the following situations:

(a) Within thirty days of designating a responsible pharmacy manager. The incoming responsible pharmacy manager, or designee, shall conduct a complete controlled substance inventory.

(b) On the effective date of an addition of a substance to a schedule of controlled substances. Each facility that possesses the substance shall take an inventory of the substance on hand, and thereafter, include the substance in each inventory.

(4) A pharmacy that exclusively stores, dispenses or delivers legend drugs, including controlled substances, without a pharmacist on-site shall maintain a perpetual inventory.

(5) A pharmacy that exclusively stores, dispenses or delivers prescription drugs without pharmacy ancillary personnel physically on-site shall maintain a perpetual inventory.

#### NEW SECTION

**WAC 246-945-425 Shared pharmacy services.** Pharmacy services may be provided off-site at one or more locations. When the services being performed are related to prescription fulfillment or processing, the pharmacy or pharmacist must comply with the following:

(1) Long term care shared pharmacy services in accordance with RCW 18.64.570.

(2) Central fill shared pharmacy services in accordance with the following conditions:

(a) The originating pharmacy shall have written policies and procedures outlining the off-site pharmacy services to be provided by the central fill pharmacy, or the off-site pharmacist or pharmacy technician, and the responsibilities of each party;

(b) The parties shall share a secure real-time database or utilize other secure technology, including a private, encrypted connection that allows access by the central pharmacy or off-site pharmacist or pharmacy technician to the information necessary to perform off-site pharmacy services; and

(c) A single prescription may be shared by an originating pharmacy and a central fill pharmacy or off-site pharmacist or pharmacy technician. The fulfillment, processing and delivery of a prescription by one pharmacy for another pursuant to this section will not be construed as the fulfillment of a transferred prescription or as a wholesale distribution.

#### NEW SECTION

**WAC 246-945-430 Pharmacies storing, dispensing and delivering drugs to patients without a pharmacist on-site.** (1) The following requirements apply to pharmacies storing, dispensing and delivering drugs to patients without a pharmacist on-site and are in addition to applicable state and federal laws applying to pharmacies.

(2) The pharmacy is required to have adequate visual surveillance of the full pharmacy and retain a high quality recording for a minimum of thirty calendar days.

(3) Access to a pharmacy by individuals must be limited, authorized, and regularly monitored.

(4) A visual and audio communication system used to counsel and interact with each patient or patient's caregiver, must be clear, secure, and HIPAA compliant.

(5) The responsible pharmacy manager, or designee, shall complete and retain, in accordance with WAC 246-945-005 a monthly in-person inspection of the pharmacy.

(6) A pharmacist must be capable of being on-site at the pharmacy within three hours if an emergency arises.

(7) The pharmacy must be closed to the public if any component of the surveillance or visual and audio communication system is malfunctioning, and remain closed until system corrections or repairs are completed or a pharmacist is on-site to oversee pharmacy operations.

#### NEW SECTION

**WAC 246-945-435 Provision of emergency department discharge medication when pharmacy services are unavailable.** (1) The responsible pharmacy manager of a hospital or free standing emergency department may, in collaboration with the appropriate medical staff committee of the hospital, develop policies and procedures to provide discharge medications to patients released from hospital emergency departments during hours when community or outpatient hospital pharmacy services are not available.

(2) The policies and procedures in subsection (1) of this section shall:

(a) Comply with all requirements of RCW 70.41.480;

(b) Ensure all prepackaged medications are affixed with a label that complies with WAC 246-945-018;

(c) Require oral or electronically transmitted chart orders be verified by the practitioner in writing within seventy-two hours;

(d) The medications distributed as discharge medications are stored in compliance with the laws concerning security and access; and

(e) Ensure discharge medications are labeled appropriately.

(3) The delivery of a single dose for immediate administration to the patient is not subject to this regulation.

#### NEW SECTION

**WAC 246-945-440 Administration of patient owned medications.** Facilities shall develop written policies and procedures for the administration of patient owned medications.

#### NEW SECTION

**WAC 246-945-445 Investigational drugs.** (1) The responsible pharmacy manager or their designee is responsible for the storage, distribution, and control of approved investigational drugs used in an institutional facility. The pharmacy shall be responsible for maintaining and providing information on approved investigational drugs.

(2) Under the explicit direction of the authorized principal investigator, coinvestigator(s), or per study protocol requirements, investigational drugs must be properly labeled and stored for use. An appropriate medical staff committee,

institution review board, or equivalent committee, shall approve the use of such drugs.

#### NEW SECTION

**WAC 246-945-450 Accessing technology used to dispense—Nursing students.** (1) Nursing students may be given access privileges to technology used to dispense medications for patient administration as provided for in this section.

(2) Nursing students must be enrolled in a nursing program approved by the Washington state nursing care quality assurance commission in accordance with WAC 246-840-510.

(3) A facility that provides a clinical opportunity to nursing students must meet the following to grant access to technology used to dispense medications for patient administration:

(a) The facility, in collaboration with the nursing program, shall provide nursing students with orientation and practice experiences that include the demonstration of competency of skills prior to using the dispensing technology;

(b) Nursing programs and participating facilities shall provide adequate training for students accessing dispensing technology;

(c) The nursing programs and participating facilities shall have policies and procedures for nursing students to provide safe administration of medications; and

(d) The nursing program and participating facilities shall develop and have a way of reporting and resolving any nursing student medication errors, adverse events, and alleged diversion.

#### NEW SECTION

**WAC 246-945-455 Drugs stored outside of the pharmacy.** (1) In order for drugs to be stored in a designated area outside the pharmacy including, but not limited to, floor stock, in an emergency cabinet, in an emergency kit, or as emergency outpatient drug delivery from an emergency department at a registered institutional facility, the following conditions must be met:

(a) Drugs stored in such a manner shall remain under the control of, and be routinely monitored by, the supplying pharmacy;

(b) The supplying pharmacy shall develop and implement policies and procedures to prevent and detect unauthorized access, document drugs used, returned and wasted, and regular inventory procedures;

(c) Access must be limited to health care professionals licensed under the chapters specified in RCW 18.130.040 acting within their scope, and nursing students as provided in WAC 246-945-450;

(d) The area is appropriately equipped to ensure security and protection from diversion or tampering; and

(e) The facility is able to possess and store drugs.

(2) For nursing homes and hospice programs an emergency kit or supplemental dose kit must comply with RCW 18.64.560.

#### NEW SECTION

**WAC 246-945-460 Staffing and supervision of pharmacy staff.** (1) The ratio of pharmacy technicians to pharmacist(s) on duty is to be determined by the responsible pharmacy manager.

(2) The responsible pharmacy manager will ensure that the number of pharmacy technicians on duty can be satisfactorily supervised by the pharmacist(s) on duty.

#### NEW SECTION

#### **WAC 246-945-480 Facility reporting requirements.**

(1) The outgoing and incoming responsible pharmacy manager must report in writing to the commission a change in a responsible manager designation within ten business days of the change.

(2) Unless otherwise specified, when permanently closing a facility, the facility must:

(a) Report to the commission in writing, no later than thirty calendar days prior to closing:

(i) The date the facility will close;

(ii) The names and addresses of the persons who shall have custody of the prescription files, bulk compounding records, repackaging records, invoices and controlled substances inventory records of the pharmacy to be closed; and

(iii) The names and addresses of any person(s) who will acquire any legend drugs from the facility to be closed, if known at the time the notification is filed.

(b) Provide notification to customers noting the last day the pharmacy will be open, name and address of the pharmacy to which prescription records will be transferred and instructions on how patients can arrange for transfer of their prescription records to a pharmacy of their choice and the last day a transfer may be initiated. Notification should include:

(i) Distribution by direct mail; or

(ii) Public notice in a newspaper of general circulation in the area served by the pharmacy; and

(iii) Posting a closing notice sign in a conspicuous place in the public area of the pharmacy.

(c) No later than fifteen days after closing:

(i) Return the facility license;

(ii) Confirm that all legend drugs were transferred or destroyed. If the legend drugs were transferred, provide the names and addresses of the person(s) to whom they were transferred;

(iii) Confirm if controlled substances were transferred, including the date of transfer, names, addresses, and a detailed inventory of the drugs transferred;

(iv) Confirm return of DEA registration and all unused DEA 222 forms to the DEA;

(v) Confirm all pharmacy labels and blank prescriptions were destroyed; and

(vi) Confirm all signs and symbols indicating the presence of the pharmacy have been removed.

(3) The commission may conduct an inspection to verify all requirements in subsection (2) of this section have been completed.

(4) The facility shall immediately report to the commission any disasters, accidents and emergencies which may affect the strength, purity, or labeling of drugs, medications,

devices or other materials used in the diagnosis or the treatment of injury, illness, and disease.

(5) Any facility credentialed by the commission must report to the commission any disciplinary action, including denial, revocation, suspension, or restriction to practice by another state, federal, or foreign authority.

#### NEW SECTION

**WAC 246-945-485 Destruction or return of drugs or devices—Restrictions.** (1) A dispensed drug or prescription device must only be accepted for return and reuse as follows:

(a) Noncontrolled legend drugs that have been maintained in the custody and control of the institutional facility, dispensing pharmacy, or their related facilities under common control may be returned and reused if product integrity can be assured.

(b) Those that qualify for return under the provisions of chapter 69.70 RCW.

(2) A dispensed drug or prescription device may be accepted for return and destruction if:

(a) The dispensed drug or prescription device was dispensed in a manner inconsistent with the prescriber's instructions;

(b) The return is in compliance with the Washington state safe medication return program laws and rules, chapters 69.48 RCW and 246-480 WAC; or

(c) The return and destruction is in compliance with the facility's policies and procedures.

#### NEW SECTION

**WAC 246-945-490 Nuclear pharmacies.** (1) The commission shall issue a permit to operate a nuclear pharmacy providing radiopharmaceutical services to a qualified nuclear pharmacist. The qualified nuclear pharmacist shall:

(a) Supervise all personnel performing tasks in the preparation and distribution of radiopharmaceuticals.

(b) Be responsible for all operations of the licensed area.

(c) Designate one or more qualified health care professionals licensed under the chapters specified in RCW 18.130.040, to have access to the licensed area in emergency situations and in the nuclear pharmacist's absence. These individuals may obtain radiopharmaceuticals for the immediate emergency and must document such withdrawals in the control system.

(2) A nuclear pharmacy shall have adequate space that is appropriate with the scope of services provided, including meeting the following requirements:

(a) The nuclear pharmacy area shall be separate from the pharmacy areas for nonradiopharmaceuticals and shall be secured from access by unauthorized personnel;

(b) A nuclear pharmacy handling radiopharmaceuticals exclusively may be exempted from the general space requirements for pharmacies by obtaining a waiver from the commission; and

(c) Detailed floor plans shall be submitted to the commission and the state radiation control agency before approval of the pharmacy license.

(3) A nuclear pharmacy shall prepare, compound, and dispense radiopharmaceuticals in accordance with USP <800> and <825>.

(4) The preparation of nuclear pharmaceuticals requires the compounding skills of the nuclear pharmacist and shall be done to assure that the final drug product meets USP <800> and <825>.

(5) A nuclear pharmacy shall maintain records of acquisition and disposition of all radiopharmaceuticals in accordance with applicable regulations of the commission, the state radiation control agency and other state and federal agencies.

(6) For a nuclear pharmacy handling radiopharmaceuticals exclusively, the commission may waive regulations pertaining to the pharmacy permits for nonradiopharmaceuticals for requirements that do not pertain to the practice of nuclear pharmacy.

(7) Radiopharmaceuticals are to be dispensed only upon a prescription from a practitioner authorized to possess, use and administer radiopharmaceuticals. A nuclear pharmacy may also furnish radiopharmaceuticals for office use to these practitioners. In absence of a prescription for an individual identified patient, the statement "Office Use Only" should be applied.

(8) A nuclear pharmacist may transfer to authorized persons radioactive materials not intended for drug use, in accordance with regulations of the state radiation control agency.

(9) In addition to labeling requirements of WAC 246-945-015 through 246-945-017 for nonradiopharmaceuticals, the immediate outer container of the radiopharmaceutical to be dispensed shall also be labeled with:

(a) Standard radiation symbol;

(b) The words "caution-radioactive material";

(c) Radionuclide and chemical form (generic name);

(d) Activity dispensed with units (millicuries or microcuries) at calibration date and time;

(e) If a liquid, the volume in milliliters;

(f) Calibration date and time for the dose;

(g) BUD and special storage and handling instructions for nonimmediate use;

(h) Specific concentration of radioactivity; and

(i) The patient name/identifier, and number of dosage units dispensed, for all therapeutic and blood-products.

(10) The immediate container of the radiopharmaceutical to be dispensed shall be labeled with:

(a) The standard radiation symbol;

(b) The words "caution-radioactive material";

(c) The name of the nuclear pharmacy;

(d) The prescription number;

(e) Radionuclide and chemical form (generic name)";

(f) The date;

(g) Activity dispensed with units (millicuries or microcuries) at calibration date and time; and

(h) The patient name/identifier for all therapeutic and blood-products.

(11) The amount of radioactivity shall be determined by radiometric methods for each individual preparation immediately prior to dispensing.

(12) A nuclear pharmacy may redistribute NDA approved radiopharmaceuticals if the pharmacy does not pro-

cess the radiopharmaceuticals in any manner or violate the product packaging.

(13) The nuclear pharmacy shall have readily available the current applicable state laws and regulations of the commission and state radiation control agency.

(14) The nuclear pharmacy shall maintain, and submit to the commission and state radiation control agency, a library commensurate with the level of radiopharmaceutical service to be provided before approval of the license.

#### NEW SECTION

**WAC 246-945-492 Nuclear pharmacies—Equipment requirements.** (1) A nuclear pharmacy shall have adequate equipment appropriate with the scope of radiopharmaceutical services to be provided. The nuclear pharmacy shall submit to the commission and the radiation control agency a detailed list of equipment and description of use before approval of the license.

(2) The commission may, for good cause shown, waive regulations pertaining to the equipment and supplies required for a nuclear pharmacy handling radiopharmaceuticals exclusively.

#### **Subpart B - Registrations**

#### NEW SECTION

**WAC 246-945-500 Humane societies, animal control agencies, and department of fish and wildlife chemical capture programs—Designated person.** (1) Each registered humane society, animal control agency, and department of fish and wildlife chemical capture program location shall have a designated person.

(2) The designated person is responsible for:

(a) Ordering, possession, safe storage and use of all approved drugs;

(b) Maintaining all records required by WAC 246-945-510; and

(c) Ensuring all records required by WAC 246-945-510 are available for inspection by the commission or its designee.

(3) A registered humane society, animal control agency, or department of fish and wildlife chemical capture program shall notify the commission within ten calendar days of a change in the designated person.

#### NEW SECTION

**WAC 246-945-503 Humane societies, animal control agencies, and department of fish and wildlife chemical capture programs—Authorized personnel.** (1) Each registered humane society, animal control agency, and department of fish and wildlife chemical capture program location shall ensure only authorized personnel possess or administer approved legend drugs and approved controlled substances at the registered location.

(2) For registered humane societies and animal control agencies, authorized personnel are those individuals who have:

(a) Completed a commission-approved training program or training that is substantially equivalent; and

(b) Been approved by the designated person.

(3) For registered department of fish and wildlife chemical capture programs, authorized personnel are those individuals who have:

(a) Completed a commission-approved training program or training that is substantially equivalent;

(b) Been approved by the department of fish and wildlife; and

(c) Are a department of fish and wildlife officer, biologist, or veterinarian.

(4) A commission-approved training program shall include didactic and practical training under the direction of a licensed veterinarian. The commission-approved training program should ensure that authorized personnel shall be able to demonstrate adequate knowledge of the potential hazards and proper techniques used in administering approved legend and controlled substances.

#### NEW SECTION

**WAC 246-945-505 Humane societies and animal control agencies—Approved legend drugs and approved controlled substances.** (1) The following legend drugs are designated as "approved legend drugs" for use by registered humane societies and animal control agencies for pre-euthanasia sedation:

(a) Acetylpromazine;

(b) Dexmedetomidine;

(c) Medetomidine; and

(d) Xylazine.

(2) Registered humane societies and animal control agencies may only use sodium pentobarbital to euthanize injured, sick, homeless or unwanted domestic pets, and domestic or wild animals.

(3) Any approved drug used by the registered humane society and animal control agency shall be marked "for veterinary use only."

(4) Staff of registered humane societies and animal control agencies may administer legend drugs and controlled substances which have been prescribed by a licensed veterinarian for a specific animal, which have been dispensed by a pharmacy or a veterinarian and are properly labeled in accordance with either RCW 18.64.246 or 69.41.050 and WAC 246-945-015 through 246-945-017.

#### NEW SECTION

**WAC 246-945-507 Department of fish and wildlife chemical capture programs—Approved legend drugs and approved controlled substances.** (1) The following legend drugs are designated as "approved legend drugs" for use by registered department of fish and wildlife chemical capture programs:

(a) Acetylpromazine;

(b) Atipamezole;

(c) Azaperone;

(d) Detomidine;

(e) Dexmedetomidine;

(f) Isoflurane;



- (g) Medetomidine;
- (h) Naltrexone;
- (i) Tolazoline;
- (j) Xylazine; and
- (k) Yohimbine.

(2) The following controlled substances are controlled substances approved for use by registered department of fish and wildlife chemical capture programs:

- (a) Butorphanol;
- (b) Diazepam;
- (c) Diprenorphine;
- (d) Carfentanil;
- (e) Fentanyl;
- (f) Ketamine;
- (g) Midazolam;
- (h) Tiletamine; and
- (i) Zolazepam.

(3) Staff of registered department of fish and wildlife chemical capture programs may administer legend drugs and controlled substances which have been prescribed by a licensed veterinarian for a specific animal or management group of animals, which have been dispensed by a pharmacy or a veterinarian and are properly labeled in accordance with either RCW 18.64.246 or 69.41.050 and WAC 246-945-015 through 246-945-017 or 246-933-340 (5)(a) and (b).

#### NEW SECTION

**WAC 246-945-510 Humane societies, animal control agencies, and department of fish and wildlife chemical capture programs—Recordkeeping and reports.** (1) Each registered humane society, animal control agency, and department of fish and wildlife chemical capture program location shall record the receipt, use, and disposition of approved drugs in a logbook or electronic record. An electronic record can meet the requirements of this section if the electronic record is legible and in a readily retrievable format, provided federal law does not require them to be kept in a hard copy format.

(2) The logbook or electronic record must have sufficient detail to allow an audit of the drug usage to be performed and must include:

- (a) Date and time of administration;
- (b) Route of administration;
- (c) Identification number or other identifier assigned to the animal;
- (d) Estimated weight of the animal;
- (e) Estimated age and breed or species of the animal;
- (f) Name of drug used;
- (g) Dose of drug administered;
- (h) Amount of drug wasted; and
- (i) Initials of the primary person administering the drug.

(3) The logbook or electronic record may omit subsection (2)(b), (d), and (e) of this section if the information is recorded in other records cross-referenced by the animal identification number or other assigned identifier.

(4) Authorized personnel of the registered entity shall document any errors or discrepancies in the drug inventory in the logbook or electronic record and report to the registered entity for investigation.

(5) The registered entity shall report any unresolved discrepancies in writing to the commission within seven calendar days and to the DEA if the loss includes a controlled substance.

(6) The designated person shall perform a physical inventory or count of approved drugs every twelve months. The physical inventory must be reconciled with the logbook or electronic record.

(7) The designated person or designee shall destroy or waste noncontrolled legend drugs that are unfit for administration. A second member of the staff shall witness the destruction or waste of drugs. The destruction or waste of noncontrolled legend drugs will be documented in the logbook or electronic record with the date of the event and signatures of the individuals involved.

(8) A registered entity shall return all unwanted or unused approved controlled substances to the manufacturer or destroy them in accordance with the rules and requirements of the commission, the DEA, and the department of ecology. The return or destruction of controlled substances will be documented in the logbook or electronic record with the date of the event and signatures of the individuals involved.

(9) A registered entity must maintain a readily retrievable list of all authorized personnel who have demonstrated the qualifications to possess and administer approved drugs.

(10) All records of the registered entity must be available for inspection by the commission or its designee.

(11) The registered entity must maintain the logbook and other related records in accordance with WAC 246-945-020.

#### NEW SECTION

**WAC 246-945-515 Human societies, animal control agencies, and department of fish and wildlife chemical capture programs—Drug storage and field use.** (1) Each registered humane society, animal control agency, and department of fish and wildlife chemical capture program location must store all approved legend drugs, and approved controlled substances in a substantially constructed securely locked cabinet or drawer.

(2) Only authorized personnel as defined in WAC 246-945-503 (2) and (3) shall have access to the drug storage cabinet or drawer at the registered location.

(3) A registered humane society and animal control agency may allow the possession of approved drugs for field use under the following conditions:

- (a) The individual meets the requirements of an authorized person in WAC 246-945-503(2);
- (b) The individual is either:
  - (i) A humane officer;
  - (ii) An animal control enforcement officer;
  - (iii) An animal control authority; or
  - (iv) A peace officer authorized by the chief of police, sheriff, or county commissioner.

(c) The approved drugs are stored in a locked metal box securely attached to a vehicle;

(d) A drug inventory is completed at the beginning and end of each shift, and recorded in a logbook or electronic

record that meets the requirements of WAC 246-945-510; and

(e) All receipts and use of approved drugs are recorded in a logbook or electronic record that meets the requirements of WAC 246-945-510.

(4) A registered department of fish and wildlife chemical capture program may allow the possession of approved drugs for field use under the following conditions:

(a) The individual meets the requirements of an authorized person in WAC 246-945-503(3);

(b) The approved drugs are stored in a locked metal box securely attached to a vehicle;

(c) A drug inventory is completed on a monthly basis and recorded in a logbook or electronic record that meets the requirements of WAC 246-945-510; and

(d) All receipts and use of approved drugs are recorded in a logbook or electronic record that meets the requirements of WAC 246-945-510.

### Subpart C - Drug Distributors

#### NEW SECTION

**WAC 246-945-550 Manufacturers—Minimum standards.** (1) Manufacturers shall comply with the applicable requirements in 21 C.F.R., Part 210, "Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs"; and 21 C.F.R., Part 211, "Current Good Manufacturing Practice for Finished Pharmaceuticals; General."

(2) Manufacturers required to register with the FDA as an outsourcing facility as defined in 21 U.S.C. Sec. 353b(d) (4)(A), shall also comply with FDA guidance document.

(3) Virtual manufacturers shall ensure its own drugs are manufactured in compliance with this section.

#### NEW SECTION

**WAC 246-945-553 Teat dip containers.** The reuse of teat dip containers and closures shall be allowed under the following circumstances:

(1) Teat dip containers for reuse must have attached a labeling panel bearing product name, brand name and distributor address if marketed by other than the manufacturer, manufacturer name and address, product strength, quantity, expiration date, directions for use, and appropriate cautionary statements for the product contained within.

(2) All reusable teat dip containers will be hot stamped for permanent identification as teat dip containers. The hot stamp shall imprint on the plastic container, in an immutable manner, the words "teat dip only" and the manufacturer's name. Teat dip manufacturers may only refill containers bearing their company name.

(3) With cooperation from dairy producers, dairy sanitarians will take random samples of teat dip in reusable containers while on regular farm inspections. The samples, along with appropriate label information, will be forwarded to the board of pharmacy for analysis to ensure that the product meets label specifications and is free of contamination.

(4) Reusable teat dip containers shall not be reactive, additive, or absorptive so as to alter the safety, identity, strength, quantity, or purity of the product.

(5) Upon return to the manufacturer, reusable teat dip containers shall be cleaned and sanitized. To ensure adequate cleaning occurs, the board of pharmacy may require a manufacturer to submit and have approved a cleaning procedure. Containers showing structural damage, or any signs of being used for substances or materials other than teat dip shall not be reused as teat dip containers.

#### NEW SECTION

**WAC 246-945-555 Wholesaler—Minimum standards—Scope.** (1) WAC 246-945-560 through 246-945-600 establish the minimum standards for facilities licensed as wholesalers, their officers, designated representatives, agents, and employees.

(2) Virtual wholesalers shall ensure drugs they purchase or sell are stored and distributed in compliance with WAC 246-945-560 through 246-945-600.

#### NEW SECTION

**WAC 246-945-560 Wholesaler—Facility standards.** (1) Facilities used for wholesale drug distribution must:

(a) Be of suitable size, construction, and location to accommodate cleaning, maintenance, and proper operations;

(b) Have storage areas that provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security;

(c) Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, adulterated, counterfeit, or suspected of being counterfeit, otherwise unfit for distribution, or that are in immediate or sealed secondary containers that have been opened;

(d) Be maintained in a clean and orderly condition;

(e) Be free from infestation of any kind;

(f) Be a commercial location and not a personal dwelling or residence;

(g) Provide for the secure and confidential storage of information with restricted access and policies and procedures to protect the integrity and confidentiality of information; and

(h) Provide and maintain appropriate inventory controls in order to detect and document any theft, counterfeiting, or diversion of drugs.

(2) Facilities used for wholesale drug distribution must be secure from unauthorized entry, as follows:

(a) Access from outside the premises must be kept to a minimum and well controlled;

(b) The outside perimeter of the premises must be well lit;

(c) Entry into areas where drugs are held must be limited to authorized personnel;

(d) Facilities must be equipped with an alarm system to detect entry after hours; and

(e) Facilities must be equipped with security systems sufficient to protect against theft, diversion, or record tampering.

NEW SECTION

**WAC 246-945-565 Wholesaler—Drug storage.** (1) Drugs must be stored at temperatures and under conditions required by the labeling of the drugs, if any, or by the requirements of the 43rd edition of USP and 38th edition of the National Formulary (USP/NF), to preserve product identity, strength, quality, and purity. The USP/NF is available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501. Requestors may also contact USP directly to obtain copies.

(2) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(3) Temperature and humidity recording equipment, devices, and/or logs shall be used to document proper storage of drugs.

(4) Controlled substance drugs should be isolated from noncontrolled substance drugs and stored in a secured area.

(5) Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated must be physically separated from other drugs in a designated quarantine area until destroyed or returned to the original manufacturer or third party returns processor.

(6) Used drugs and those whose immediate or sealed outer or sealed secondary containers have been opened are adulterated and must be quarantined.

(7) Drugs must be quarantined under any condition that causes doubt as to a drug's safety, identity, strength, quality, or purity unless under examination, testing, or other investigation the drug is proven to meet required standards.

NEW SECTION

**WAC 246-945-570 Wholesaler—Drug shipment inspection.** (1) Each outside shipping container must be visually examined on receipt for identity and to avoid acceptance of drugs that are contaminated or otherwise unfit for distribution.

(2) Outgoing shipments must be inspected to verify the accuracy and product integrity of the shipment contents.

NEW SECTION

**WAC 246-945-575 Wholesaler—Recordkeeping.** (1) Wholesalers and other entities engaged in wholesale drug distribution must establish and maintain inventories and records of transactions pertaining to the receipt and distribution or other disposition of drugs. The records must include at least:

(a) The source of the drugs, including the name and principal address of the seller or transferor;

(b) The identity and quantity of the drugs received and distributed or disposed of; and

(c) The dates of receipt and distribution or other disposition of the drugs.

(2) Records must be retained in a readily retrievable manner in accordance with WAC 246-945-020.

NEW SECTION

**WAC 246-945-580 Wholesaler—Personnel.** (1) A wholesaler must establish and maintain a list of officers, directors, managers, a designated representative, and other persons responsible for wholesale drug distribution, storage, and handling and must include a description of each individual's duties and a summary of their qualifications.

(2) A wholesaler must employ personnel in sufficient numbers and with adequate education, training, and experience to safely and lawfully engage in wholesale drug distribution activities.

NEW SECTION

**WAC 246-945-585 Wholesaler—Suspicious orders and due diligence.** (1) Wholesalers shall design and operate a system to identify and report suspicious orders of controlled substances and drugs of concern to the commission.

(a) Suspicious orders shall be submitted electronically through a commission approved system or to the commission or within five business days of the order being identified as suspicious by the wholesaler, and must include, but not necessarily limited to:

(i) Customer name;

(ii) Customer address;

(iii) Customer DEA registration number;

(iv) State license number(s);

(v) Transaction date;

(vi) Drug name;

(vii) NDC number;

(viii) Quantity ordered; and

(ix) Indication of whether the drug was shipped, and if not, the factual basis for the refusal to supply.

(b) Zero reports shall be submitted if no suspicious orders have been identified in a calendar month, and such reports shall be submitted within fifteen business days of the end of the calendar month.

(c) Wholesalers may apply to the commission for an exemption from the reporting requirements if they do not distribute controlled substances or drugs of concern.

(2) Except as provided in subsection (3) of this section, a wholesaler shall exercise due diligence to identify customers ordering or seeking to order controlled substances or drugs of concern, and establish the normal and expected transactions conducted by those customers, as well as to identify and prevent the sale of controlled substances or drugs of concern that are likely to be diverted from legitimate channels. Such due diligence measures shall include, but are not limited to, the following, which shall be conducted prior to an initial sale and on a regular basis, as necessary:

(a) Questionnaires and affirmative steps by the wholesaler to confirm the accuracy and validity of the information provided, it shall be considered illegal for a customer to provide false or misleading information;

(b) For a customer who is a prescriber, confirmation of prescriber type, specialty practice area, and if the prescriber personally furnishes controlled substances or drugs of concern, the quantity furnished;

(c) Review of drug utilization reports; and

(d) Obtaining and conducting a review of the following:

- (i) Methods of payment accepted and in what ratios;
- (ii) The ratio of controlled versus noncontrolled prescriptions and overall sales;
- (iii) Orders for controlled substances or drugs of concern from other wholesalers U.S. DEA's Automation of Reports and Consolidated Orders System (ARCOS); and
- (iv) The ratio of out-of-state patients served compared to in-state patients.

(3) A wholesaler receiving a request for an initial sale of a controlled substance or drugs of concern may conduct the sale before complying with subsection (2) of this section if all of the following apply:

- (a) The sale is to a new customer;
- (b) The wholesaler documents that the order is to meet an emergent need;
- (c) The wholesaler completes the requirements of subsection (2) of this section no later than sixty business days from the date of sale.

(4) A wholesaler receiving a request from an existing customer to purchase a controlled substance or drug of concern, the size/quantity of which exceeds the established algorithm limitations or quota restrictions for such customer, may sell the drug of concern or controlled substance provided the customer submit documentation explaining the request.

(5) Any customer that is believed to be engaged in potential diversion activity, including those to whom a wholesaler refuses to sell, shall be electronically reported to the commission. Such reports shall include:

- (a) Customer name;
- (b) Customer address;
- (c) DEA number;
- (d) State license number(s);
- (e) A detailed explanation of why the wholesaler identified the customer as a possible diversion risk; and
- (f) Such reports shall be submitted within thirty days of refusal, cessation, or identification by wholesaler.

(6) All licensed wholesalers shall submit all reports to the commission in a DEA ARCOS format where applicable.

#### NEW SECTION

**WAC 246-945-590 Wholesaler—Policies and procedures.** Wholesalers shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, transport, and shipping and wholesale distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and for correcting all errors and inaccuracies in inventories. Wholesalers shall include the following in their written policies and procedures:

(1) A procedure to be followed for handling recalls and withdrawals of drugs. Such procedure shall be adequate to deal with recalls and withdrawals due to:

- (a) Any action initiated at the request of FDA or any other federal, state, or local law enforcement or other government agency, including the commission; or
- (b) Any volunteer action by the manufacturer to remove defective or potentially defective drugs from the market.

(2) A procedure to ensure that wholesalers prepare for, protect against, and handle any crisis that affects security or

operation of any facility in the event of a strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.

(3) A procedure to ensure that any outdated drugs shall be segregated from other drugs and either returned to the manufacturer or destroyed in accordance with federal and state laws, including all necessary documentation and the appropriate witnessing. This procedure shall provide for written documentation of the disposition of outdated drugs.

(4) A procedure for the destruction of outdated drugs in accordance with federal and state laws.

(5) A procedure for the disposing and destruction of containers, labels, and packaging to ensure that the containers, labels, and packaging cannot be used in counterfeiting activities, including all necessary documentation, and the appropriate witnessing of the destruction of any labels, packaging, immediate containers, or containers in accordance with all applicable federal and state requirements.

(6) A procedure for identifying, investigating, and reporting significant drug inventory discrepancies involving counterfeit, suspect of being counterfeit, contraband, or suspect of being contraband, in the inventory and reporting of such discrepancies as required to the FDA, commission and/or appropriate federal or state agency upon discovery of such discrepancies.

(7) A procedure for reporting criminal or suspected criminal activities involving the inventory of drug(s) as required to the commission, FDA, and if applicable, DEA.

(8) Procedures addressing:

(a) The design and operation of the suspicious order monitoring and reporting system;

(b) Mandatory annual training for staff responsible for identifying and reporting suspicious orders and potential diversion activities. Such training must include the following:

- (i) The wholesaler's suspicious order monitoring system;
- (ii) The process to collect all relevant information on customers in accordance with WAC 246-960-330; and
- (iii) The requirement and process for submission of suspicious order and information on customers who engage in potential diversion activities.

(9) A procedure for timely responding to customers who submit purchase orders for patients with emergent needs.

#### NEW SECTION

**WAC 246-945-595 Wholesaler and manufacturer—Prohibited acts.** It is unlawful for a wholesaler or manufacturer to perform, cause the performance of, or aid and abet any of the following acts in Washington state:

(1) The manufacture, repackaging, sale, delivery, or holding or offering for sale any drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or has otherwise been rendered unfit for distribution or wholesale distribution;

(2) The adulteration, misbranding, or counterfeiting of any drug;

(3) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the product labeling of

a drug or the commission of any other act with respect to a drug that results in the drug being misbranded;

(4) The forging, counterfeiting, simulating, or falsely representing of any drug without the authority of the manufacturer, or using any mark, stamp, tag, label, or other identification device without the authorization of the manufacturer;

(5) The purchase or receipt of a drug from a person that is not authorized to distribute drugs to that purchaser or recipient;

(6) The sale or transfer of a drug to a person who is not legally authorized to receive a drug;

(7) The sale or transfer of a drug from pharmacies to distributors for resale;

(8) The failure to maintain or provide records as required by laws and rules;

(9) Providing the commission or any of its representatives or any state or federal official with false or fraudulent records or making false or fraudulent statements regarding any matter within the provisions of these laws and rules;

(10) The obtaining of or attempting to obtain a drug by fraud, deceit, misrepresentation or engaging in misrepresentation or fraud in the distribution or wholesale distribution of a drug;

(11) The distribution of a drug to the patient without a prescription from a practitioner licensed by law to use or prescribe the drug; and

(12) The distribution or wholesale distribution of a drug that was previously dispensed by a pharmacy or distributed by a practitioner.

#### NEW SECTION

##### **WAC 246-945-600 Salvaging and reprocessing.**

Wholesalers shall be subject to the provisions of any applicable federal, state, or local laws or rules that relate to prescription drug salvaging or reprocessing, including Chapter 21, Parts 207, 210, and 211k of the Code of Federal Regulations.