

**WSR 23-21-098**  
**PROPOSED RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed October 18, 2023, 8:36 a.m.]

Original Notice.

Proposal is exempt under RCW 70A.15.2040(1).

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

Hearing Location(s): On December 5, 2023, at 10 a.m., in person at the NWCAA Office, 1600 South 2nd Street, Mount Vernon, WA; or via video and teleconference <https://us06web.zoom.us/j/85102305919>, Meeting ID 851 0230 5919, phone 253-215-8782.

Date of Intended Adoption: December 14, 2023.

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 December 5, 2023, 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 November 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update the adoption-by-reference date to allow implementation of the most recent version of the referenced state and federal rules; delete chapter 173-442 WAC since it has been repealed; and add 40 C.F.R. 60 Subparts AAb, KKa, MMA, and TTTa and 40 C.F.R. 62 Subpart 000 to the list (NWCAA Section 104).

Replace the detailed public records procedures in the regulation with a general policy statement in accordance with the Public Records Act in chapter 42.56 RCW. The specific details and procedures related to public records will be published in a policy on the NWCAA website. This will allow NWCAA to better keep the public records policy up-to-date with the frequent changes in the RCW and current case law (NWCAA Section 106).

Update the adoption-by-reference date to allow implementation of the most recent version of the referenced state rules related to the State Environmental Policy Act (SEPA) (NWCAA Section 155).

Revise the definition of "Volatile organic compound (VOC)" to point to the general definitions in WAC 173-400-030 to avoid having to update the NWCAA definition each time the WAC definition section is renumbered (NWCAA Section 200).

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 70A.15 RCW.

Statute Being Implemented: RCW 70A.15.2040(1); and chapter 42.56 RCW.

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

Name of Proponent: NWCAA, 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 70A.15.2040.

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

Is exempt under RCW 70A.15.2040.

Explanation of exemptions: Not applicable under RCW 70A.15.2040.

Scope of exemption for rule proposal:

Is fully exempt.

October 18, 2023  
Mark Buford  
Executive Director

AMENDATORY SECTION

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 October 18, 2023 (~~August 24, 2022~~) 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 statewide regulations adopted and enforced under this paragraph.

104.2 All provisions of the following federal rules that are in effect as of October 18, 2023 (~~August 24, 2022~~) 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, AAb, CC, DD, EE, GG, HH, KK, KKa, LL, MM, MMa, 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, TTTa, 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) Subparts LLL and OOO; 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, WWW, XXXX, YYYY, ZZZZ, AAAA, BBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, WWW, YYYY, ZZZZ, BBBB, CCCC, EEEE, FFFF, GGGG, HHHH, JJJJJ, MMMM, NNNNN, OOOOO, QQQQQ, SSSSS, TTTTT, VVVVV, WWWWW, XXXXX, ZZZZZ, AAAAAA, DDDDD, EEEEE, and HHHHH; 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, May 14, 2020, June 10, 2021, February 10, 2022, November 10, 2022, December 14, 2023

AMENDATORY SECTION

SECTION 106 - PUBLIC RECORDS

106.1 AUTHORITY ((AND PURPOSE-))

Northwest Clean Air Agency (NWCAA) is required by chapter 42.56 RCW to adopt and enforce reasonable rules and regulations consistent with the intent of the Public Records Act (chapter 42.56 RCW).

~~((A) The Northwest Clean Air Agency (NWCAA) will make available for inspection and copying nonexempt public records in accordance with the Public Records Act, chapter 42.56 RCW. The Public Records Act defines public records to include any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by the agency.~~

~~(B) The purpose of this section is to establish the procedures the NWCAA will follow in order to provide full access to nonexempt public records. These sections provide information to persons wishing to request access to public records of the NWCAA and establish processes for both requesters and NWCAA staff that are designed to best assist members of the public in obtaining records.))~~

106.2 POLICY ((AGENCY CONTACT INFORMATION))

NWCAA is committed to transparency in government. NWCAA will provide the fullest assistance possible in providing access to public records. Furthermore, the NWCAA's obligations under chapter 42.56 RCW will be met in a timely and professional manner.

The NWCAA public records policy applies to all requests for public records made pursuant to chapter 42.56 RCW. The public records policy is published on the NWCAA website.

~~((A) Any person wishing to request access to public records of the NWCAA, or seeking assistance in making such a request should contact the Public Records Officer of the NWCAA:~~

~~Public Records Officer~~

~~Northwest Clean Air Agency~~

~~1600 S Second St~~

~~Mount Vernon, WA 98273-5202~~

~~Phone: 360-428-1617~~

~~Facsimile: 360-428-1620~~

~~Email: PublicInformationRequests@nwcleanairwa.gov~~

~~Requests may be submitted on the NWCAA website at~~

~~www.nwcleanairwa.gov.~~

~~(B) Duties of Public Records Officer. The Public Records Officer will oversee compliance with this section but another NWCAA staff member may process the request. Therefore, any reference to the Public Records Officer in this section may refer to the Public Records Officer or designee.))~~

106.3 PURPOSE ((AVAILABILITY OF PUBLIC RECORDS-))

As directed by RCW 42.56.100, the purpose of NWCAA's public records policy is to establish the procedures NWCAA will follow to provide full access to public records, not specifically exempted by state or federal law. The policy will ensure that requestors receive the fullest assistance while preventing excessive interference with other essential functions of the agency.

~~((A) Public records are available for inspection Monday through Friday during the hours of 8:30 a.m. to 4:00 p.m., excluding legal~~

holidays. Records must be inspected at the NWCAA office. Arrangements to inspect records should be made in advance with the Public Records Officer.

~~(B) The NWCAA finds that maintaining an index is unduly burdensome and would interfere with agency operations due to the agency's small size and the high volume and types of public records generated and received by the agency.~~

~~(C) The NWCAA will maintain its records in a reasonably organized manner. The NWCAA will take reasonable actions to protect records from damage and disorganization.~~

~~(D) Making a Request for Public Records. Any person wishing to inspect or to have copies made of public records should make this request in writing by letter, email sent to [PublicInformationRequests@nwcleanairwa.gov](mailto:PublicInformationRequests@nwcleanairwa.gov), or through the NWCAA website at [www.nwcleanairwa.gov](http://www.nwcleanairwa.gov).~~

~~(1) The request should include the following information:~~

~~(a) Name of requester;~~

~~(b) Address of requester;~~

~~(c) Other contact information, including telephone number and email address;~~

~~(d) Identification of the information or records sought adequate to locate the records; and~~

~~(e) The date and time of day of the request.~~

~~(2) The Public Records Officer may accept requests for public records by telephone or in person. The Public Records Officer will confirm receipt of the request and summarize the request in writing.~~

~~(3) If requesters refuse to identify themselves or provide sufficient contact information, the NWCAA will respond to the extent feasible and consistent with the law.~~

#### ~~106.4 PROCESSING OF PUBLIC RECORDS REQUESTS~~

~~(A) The Public Records Officer will provide the fullest assistance to requesters and prevent excessive interference with other essential functions of the NWCAA.~~

~~(B) Within 5 business days of receipt of a request, the Public Records Officer will do one or more of the following:~~

~~(1) Make the records available for inspection.~~

~~(2) Provide a copy of the record.~~

~~(a) If photocopies or scanned copies are requested, the Public Records Officer will notify the requester with an estimated cost of the copies and make arrangements for payment.~~

~~(b) If the records are available on the NWCAA website, the Public Records Officer will provide an internet address to the specific records requested.~~

~~(3) Provide a reasonable estimate of when records or an installment of records will be available.~~

~~(4) Ask the requester to provide clarification for a request that is unclear. If the requester fails to respond to a request for clarification and the entire request is unclear, the NWCAA need not respond to it. The NWCAA will respond to those portions of a request that are clear.~~

~~(5) Deny the request.~~

~~(C) If the NWCAA does not respond within 5 business days of receipt of the request, the requester should contact the Public Records Officer to determine the reason for the failure to respond.~~

~~(D) The NWCAA will notify the requester when records are available for inspection and provide space to review documents. No member of the public may remove a document from the designated reviewing area or~~

from the file. The requester shall indicate which documents he or she wishes the NWCAA to copy.

(E) The Public Records Officer will evaluate the request according to the nature and volume of the request. The Public Records Officer will process requests in the order allowing the most requests to be processed in the most efficient manner.

(F) When the request is for a large number of records, the Public Records Officer may provide access for inspection or send copies in installments.

(G) If, after the NWCAA has informed the requester that it has provided all available records, the NWCAA becomes aware of additional responsive documents existing at the time of the request, the Public Records Officer will promptly inform the requester of the additional documents and provide them on an expedited basis.

(H) When the requester either withdraws the request, fails to clarify an unclear request, fails to pay the deposit, fails to make final payment for the requested copies, or fails to inspect or claim the requested records within 30 days after notification, the Public Records Officer may close the request and refile the records.

~~106.5 COSTS OF PROVIDING COPIES OF PUBLIC RECORDS~~

(A) There is no fee for inspecting public records or for the NWCAA's time spent locating public documents and making them available. There is no fee for providing electronic records if they already exist in an electronic format.

(B) The NWCAA is not calculating actual costs for copying its records because to do so would be unduly burdensome for the following reasons: the NWCAA does not have the resources to conduct a study to determine actual copying costs for all its records and to conduct such a study would interfere with other essential agency functions. Therefore, in order to timely implement a fee schedule consistent with the public records act, it is more cost efficient, expeditious and in the public interest for the NWCAA to adopt the state legislature's approved fees and costs for most of the NWCAA records, as authorized in RCW 42.56.120 and as published in NWCAA 106.5(C).

(C) The costs for copying and conveying records are as follows:

Public Records Fee Schedule	
15 cents / standard page	Photocopies provided by NWCAA staff using agency equipment - no fee for first 100 pages per request
10 cents / standard page	Scanned documents provided by NWCAA staff using agency equipment (if the documents are not already in electronic format) - no fee for first 100 pages per request
Actual cost	Digital storage media or devices
Actual cost	Any container or envelope used to mail copies
Actual cost	Postage or delivery charges
Actual cost	Copying or scanning charged by an outside vendor
Actual cost	Expertise to prepare data compilations or provide customized electronic access services
Actual cost	Retrieving documents out of storage
Other	Other charges allowed in RCW 42.56.120

(D) Payment may be made with a credit card on-line, cash, check, or money order made out to the Treasurer of the NWCAA.

~~106.6 EXEMPT RECORDS~~

(A) The Public Records Act provides that some records are exempt in whole or in part from public inspection and copying. In addition to

the list of exemptions in RCW 42.56.050, RCW 42.56.210 through RCW 42.56.400, and WAC 44-14-060, common exemptions include:

~~(1) Confidential business information. The owner or operator of a source may certify that a record or information provided to the agency is confidential because it relates to a process or production unique to the owner or operator or is likely to affect adversely the competitive position if released. Emission and ambient air quality data are excluded from any confidential claim. (RCW 70.94.205)~~

~~(2) Attorney-client communications. Communication between an attorney, who is acting as counsel or advisor, and NWCAA staff is confidential unless a member of the public is copied on that communication (RCW 5.60.060 (2) (a))~~

~~(3) Preliminary drafts, notes, recommendations, and intra-agency memorandums (RCW 42.56.280)~~

~~(4) List of individuals (private or natural persons) for commercial purpose. The NWCAA is prohibited by statute from disclosing lists of individuals for commercial purposes (RCW 42.56.070(8))~~

~~(5) Investigative records and information pertaining to ongoing investigations where premature disclosure could jeopardize effective law enforcement or any person's right to privacy. (RCW 42.56.240(1))~~

~~(6) Identity of persons who file a complaint with the NWCAA if disclosure would endanger any person's life, physical safety or property. If at the time a complaint is filed, the complainant indicates a desire for nondisclosure, such desire shall govern (RCW 42.56.240(2))~~

~~(B) For records or portions of records that are withheld, the Public Records Officer will document the applicable exemption and provide a brief written explanation as to why the record or portion of the record is being withheld.~~

~~(C) In the event that the requested public records contain information that may affect rights of others and may be exempt from disclosure, the Public Records Officer may, prior to providing the public records, give notice to such others whose rights may be affected by the disclosure.~~

#### 106.7 REVIEW OF DENIALS OF PUBLIC RECORD

~~(A) Any person who objects to the initial denial or partial denial of a records request may petition in writing to the Control Officer of the NWCAA for a review of that decision. The petition shall include a copy of the written statement by the Public Records Officer denying the request.~~

~~(B) The Control Officer or designee will either affirm or reverse the denial within 10 business days following the NWCAA's receipt of the petition.~~

~~(C) Any person may petition the Skagit County Superior Court for a review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of 10 business days after the initial denial regardless of any internal appeal process.))~~

PASSED: August 9, 1978 AMENDED: November 8, 2007, September 13, 2018, December 14, 2023

#### AMENDATORY SECTION

#### 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 October 18, 2023 (~~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 nonexempt 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 certain 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/Statute 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, May 14, 2020, December 14, 2023

#### AMENDATORY SECTION

##### SECTION 200 - DEFINITIONS

The terms used in the Regulation of the NWCAA are defined in this section as follows:

**ACTUAL EMISSIONS** - The actual rate of emissions of a pollutant from an emission unit, as determined in accordance with (A) through (C) of this definition.

(A) In general, the actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal stationary source operation. The NWCAA shall allow the use of a different time period upon a determination by the NWCAA that it is more representative of normal stationary source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(B) The NWCAA may presume that stationary source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

(C) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

**AIR CONTAMINANT or AIR POLLUTANT** - Dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

**AIR OPERATING PERMIT (AOP) AFFECTED SOURCE** - This term shall have the meaning given to it in WAC 173-401-200. Additionally, for the purposes of NWCAA 322.4e), for Chapter 401 sources operating Sewage Sludge Incinerators (SSI), those emissions units not included in the Air Operating Permit are not part of the AOP affected source.

**AIR POLLUTION** - The presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health,

plant, or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purposes of the NWCAA Regulation, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

**AIR QUALITY OBJECTIVE** - The concentration and exposure time of one or more air contaminants in the ambient air below which, according to available knowledge, undesirable effects will not occur.

**ALLOWABLE EMISSIONS** - The emission rate of a stationary source calculated using the maximum rated capacity of the stationary source (unless the stationary source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

(A) The applicable standards as in 40 CFR Part 60, 61, 62, or 63;

(B) Any applicable SIP emissions limitation including those with a future compliance date; or

(C) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

**AMBIENT AIR** - The surrounding outside air.

**AMBIENT AIR QUALITY STANDARD OR AIR QUALITY STANDARD** - An established concentration, exposure time, and frequency of occurrence of one or more air contaminants in the ambient air which shall not be exceeded.

**AMBIENT AIR MONITORING STATION** - A station so designated by the Control Officer for the purpose of measuring air contaminant concentrations in the ambient air.

**ATTAINMENT AREA** - A geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant.

**BEGIN ACTUAL CONSTRUCTION** - In general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

**BEST AVAILABLE CONTROL TECHNOLOGY (BACT)** - An emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source, which the NWCAA, on a case-by-case basis, taking into account energy, environmental, and economic impacts, and other costs, determines is achievable for such stationary source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the Best Available Control Technology result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. Emissions from any stationary source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

**BOARD** - Board of Directors of the NWCAA.

**BOTTOM LOADING** - The filling of a tank through a line entering the bottom of the tank.

**BUBBLE** - A set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and WAC 173-400-120.

**BULK GASOLINE PLANT** - A gasoline storage and transfer facility that receives more than 90 percent of its annual gasoline throughput by transport tank and reloads gasoline into transport tanks.

**BUSINESS ESTABLISHMENT** - A facility and/or place where commercial and/or professional dealings are conducted.

**CATALYTIC CRACKING UNIT** - A petroleum refinery cracking unit of the fluid or compact moving bed type consisting of a reactor, regenerator, and fractionating tower and, where employed, a carbon monoxide boiler.

**CLOSED REFINERY SYSTEM** - A disposal system that will process or dispose of those VOC collected from another system.

**COMMERCIAL COMPOSTING FACILITY** - A facility that is operated for the purpose of selling or off-site distribution of compost produced via the controlled biological degradation of organic material.

**COMPLIANCE ORDER** - An order issued by the NWCAA pursuant to the authority of RCW 70.94.332 and 70.94.141(3) that addresses or resolves a compliance issue regarding any requirement of chapter 70.94 RCW or the rules adopted thereunder. Compliance orders may include, but are not limited to, time schedules and/or necessary actions for preventing, abating, or controlling emissions.

**CONCEALMENT** - Any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

**CONTROL FACILITY** - Includes any treatment works, control devices and disposal systems, machinery equipment, structures, property or any part of accessories thereof, installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste which, if released to the outdoor atmosphere, could cause air pollution.

**CONTROL OFFICER** - Air Pollution Control Officer of the NWCAA, also known as Director.

**CRITERIA POLLUTANT** - A pollutant for which there is established a National Ambient Air Quality Standard at 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

**CRUSHING OPERATION** - Metallic and nonmetallic mineral processing plants including, but not limited to, rock, asphalt, and concrete crushers, aggregate screens, and sand and gravel operations. It includes: crushers, grinding mills, screening operations, bucket elevators, belt conveyors, bagging operations, storage bins, enclosed truck or railcar loading stations as well as crushers and grinding mills at hot mix asphalt facilities that reduce the size of nonmetallic minerals embedded in recycled asphalt pavement and subsequent affected facilities up to, but not including, the first storage silo or bin. Sources subject to 40 CFR 60 Subpart 000 (Standards of Performance for Nonmetallic Mineral Processing Plants) are considered crushing operations.

**CUTBACK ASPHALT** - An asphalt that has been blended with more than 7 percent petroleum distillates by weight.

**DAYLIGHT HOURS** - The hours between official sunrise and official sunset.

**DISPOSAL SYSTEM** - A process or device that reduces the mass quantity of the uncontrolled VOC emissions by at least 90 percent.

**ECOLOGY** - Washington State Department of Ecology (WDOE).

**EMISSION** - A release of air contaminants into the ambient air.

**EMISSION REDUCTION CREDIT (ERC)** - A credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

**EMISSION POINT** - The location (place in horizontal plane and vertical elevation) from which an emission enters the atmosphere.

**EMISSION STANDARD, EMISSION LIMITATION, or EMISSION LIMIT** - A requirement established under the Federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a stationary source to assure continuous emission reduction and any design, equipment work practice, or operational standard adopted under the Federal Clean Air Act or chapter 70.94 RCW.

**EMISSIONS UNIT** - Any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act, chapter 70.94 RCW, chapter 70.98 RCW, or the Regulation of the NWCAA.

**EQUIPMENT** - Any stationary or portable device or any part thereof capable of causing the emission of any contaminant into the atmosphere or ambient air.

**EXCESS EMISSIONS** - Emissions of an air pollutant in excess of any applicable emission standard.

**FEDERAL CLEAN AIR ACT (FCAA)** - The Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

**FEDERALLY ENFORCEABLE** - All limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, 62, and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or order of approval under a SIP-approved new source review regulation, or any voluntary limits on emissions pursuant to WAC 173-400-091.

**FUEL BURNING EQUIPMENT** - Any device used for the external combustion of fuel for the primary purpose of producing useful heat or power.

**FUGITIVE DUST** - A particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that generate fugitive dust. Fugitive dust is a type of fugitive emission.

**FUGITIVE EMISSIONS** - Emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**GASOLINE** - A petroleum distillate that is liquid at standard conditions, has a true vapor pressure greater than 4 psia at 20 degrees C, and is used as a fuel for internal combustion engines.

**GASOLINE DISPENSING FACILITY (GDF)** - Any stationary facility that dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment.

**GASOLINE LOADING TERMINAL** - A gasoline transfer facility that receives more than 10 percent of its annual gasoline throughput solely or in combination by pipeline, ship, or barge, and loads gasoline into transport tanks.

GREENHOUSE GASES (GHGs) - Includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

HAZARDOUS AIR POLLUTANT (HAP) - Any air pollutant listed in or pursuant to Section 112(b) of the Federal Clean Air Act, 42 U.S.C. §7412.

HEAT INPUT CAPACITY - The maximum actual or design heat capacity, whichever is greater, stated in British thermal units per hour (BTU/hr), generated by the stationary source and expressed using the higher heating value of the fuel unless otherwise specified.

INCINERATOR - A furnace used primarily for the thermal destruction of waste.

INSTALLATION - The placement, assemblage, or construction of equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

LOWEST ACHIEVABLE EMISSION RATE (LAER) - For any stationary source, the more stringent emissions rate based on the following:

(A) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed new or modified stationary source demonstrates that such limitations are not achieved in practice; or

(B) The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source.

In no event shall the application of this term allow a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable New Source Performance Standards.

MAJOR MODIFICATION - (A) Major modification as it applies to stationary sources subject to requirements for new stationary sources in nonattainment areas, is defined in WAC 173-400-112. (B) Major modification as it applies to stationary sources subject to requirements for new stationary sources in attainment or unclassified areas is defined in WAC 173-400-113.

MAJOR STATIONARY SOURCE - (A) Major stationary source as it applies to stationary sources subject to requirements for new stationary sources in nonattainment areas is defined in WAC 173-400-112. (B) Major stationary source as it applies to stationary sources subject to requirements for new stationary sources in attainment or unclassified areas is defined in WAC 173-400-113.

MASKING - The mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

MATERIAL HANDLING - The handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

MODIFICATION - Any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such stationary source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

MULTIPLE CHAMBER INCINERATOR - Any incinerator consisting of two or more combustion chambers in series, employing adequate design parameters necessary for maximum combustion of the material to be burned.

NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS) - An ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAP) - The federal rules in 40 CFR Part 61.

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES - The federal rules in 40 CFR Part 63.

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) - The permit program that addresses water pollution by regulating facilities that discharge to waters of the United States.

NEW SOURCE - means one or more of the following:

(A) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted

(B) The restart of a stationary source after permanent shutdown

(C) Any other project that constitutes a new source under the Federal Clean Air Act

NEW SOURCE PERFORMANCE STANDARDS (NSPS) - The federal rules in 40 CFR Part 60.

NONATTAINMENT AREA - A geographic area designated by EPA at 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant. An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

NONROAD ENGINE - (A) Except as discussed in (B) of this definition, a nonroad engine is any internal combustion engine:

(1) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

(2) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

(3) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

(B) An internal combustion engine is not a nonroad engine if:

(1) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

(2) The engine is regulated by a New Source Performance Standard (NSPS) promulgated under section 111 of the Federal Clean Air Act; or

(3) The engine otherwise included in (A)(3) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approxi-

mately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

**NOTICE OF CONSTRUCTION APPLICATION** - A written application to allow construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source.

**ODOR** - That property of a substance that enables its detection by the sense of smell and/or taste.

**ODOR SOURCE** - Any source that incurs two verified odor nuisance complaints within a 12 month time period. Odor nuisance complaints are verified by a NWCAA representative according to the criteria in NWCAA Sections 530 and 535.

**OPACITY** - The degree to which an object seen through a plume is obscured, stated as a percentage.

**ORDER** - Any order issued by the NWCAA pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, 70.94.154, and 70.94.141(3), and includes, where used in the generic sense, the terms order, compliance order, order of approval, and regulatory order.

**ORDER OF APPROVAL OR ORDER OF APPROVAL TO CONSTRUCT (OAC)** - A regulatory order issued by the NWCAA to approve the notice of construction application for a proposed new source or modification or the replacement or substantial alteration of control technology at an existing stationary source.

**OWNER, OPERATOR, OR AGENT** - Includes the person who leases, supervises, or operates the equipment or control facility.

**OZONE DEPLETING SUBSTANCE** - Substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

**PARTICLE** - A small discrete mass of solid or liquid matter.

**PARTICULATE MATTER or PARTICULATES** - Any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

**PARTS PER MILLION (PPM)** - parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

**PERMANENT SHUTDOWN** - Permanently stopping or terminating all processes at a "stationary source" or "emissions unit." Except as provided in subsections (A), (B), and (C) whether a shutdown is permanent depends on the intention of the owner or operator at the time of the shutdown as determined from all facts and circumstances, including the cause of the shutdown.

(A) A shutdown is permanent if the owner or operator files a report of shutdown, as provided in NWCAA Section 325. Failure to file such a report does not mean that a shutdown was not permanent.

(B) Any shutdown lasting 2 or more years is considered to be permanent.

(C) A registered source that does not pay the applicable annual registration fee by the deadline is considered in permanent shutdown unless notified in writing by the NWCAA.

**PERSON** - An individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

**PETROLEUM LIQUIDS** - Petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Numbers 2 through 6 fuel oils as specified in ASTM D396-78, 89, 90, 92, 96, or 98, gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM D2880-78 or 96, or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D975-78, 96, or 98a.



**PETROLEUM REFINERY** - 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.

**PM<sub>2.5</sub>** - Particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

**PM<sub>2.5</sub> EMISSIONS** - Finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in 40 CFR Part 51 or by a test method specified in the SIP. PM<sub>2.5</sub> emissions are also known as primary PM<sub>2.5</sub>, direct PM<sub>2.5</sub>, total PM<sub>2.5</sub>, or combined filterable PM<sub>2.5</sub> and condensable PM. These solid particles are emitted directly from an air emissions source or activity, or are the gaseous emissions or liquid droplets from an air emissions source or activity that condense to form PM at ambient temperatures.

**PM<sub>10</sub>** - Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

**PM<sub>10</sub> EMISSIONS** - Finely divided solid or liquid material, including condensable particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

**PORTABLE SOURCE** - A portable source is one that is designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. Portable sources include only those that are subject to registration under NWCAA Section 320. Nonroad engines are not considered portable sources.

**PORTLAND CEMENT PLANT** - Any facility manufacturing portland cement by either the wet or dry process.

**POTENTIAL TO EMIT (PTE)** - The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

**PREVENTION OF SIGNIFICANT DETERIORATION (PSD)** - The program in WAC 173-400-700 through 750.

**PROCESS** - A physical and/or chemical modification or treatment of a material from its previous state or condition.

**PROCESS UNIT** - All the equipment essential to a particular production process.

**PROPER ATTACHMENT FITTINGS** - Connecting hardware for the attachment of fuel transfer or vapor lines that meets or exceeds industrial stand-

ards or specifications and the standards of other agencies or institutions responsible for health and safety.

**REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT)** - The lowest emission limit that a particular stationary source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual stationary source or source category taking into account the impact of the stationary source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any stationary source or source category shall be adopted only after notice and opportunity for comment are afforded.

**REFUSE** - Putrescible and non-putrescible solid waste including garbage, rubbish, ashes, dead animals, abandoned automobiles, solid market wastes, street cleanings, and industrial wastes including waste disposal in industrial salvage.

**REFUSE BURNING EQUIPMENT** - Equipment designed to burn waste (refuse) material, scrap or combustion remains.

**REGISTRATION** - The process of identifying, delineating, and itemizing all air contaminant sources within the jurisdiction of the NWCAA including the making of periodic reports, as required, by the persons operating or responsible for such sources and may contain information concerning location, size, height of contaminant outlets, processes employed, nature of the contaminant emissions and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

**REGULATORY ORDER** - An Order issued by the NWCAA to an air contaminant source or sources pursuant to chapter 70.94 RCW including, but not limited to, RCW 70.94.141(3). A Regulatory Order includes an Order that requires compliance with any applicable provision of chapter 70.94 RCW, rules adopted thereunder, or the NWCAA Regulation.

**SMOKE** - Gas borne particulate matter in a sufficient amount to be observable.

**SOLID WASTE** - All putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. This includes all liquid, solid, and semisolid materials, which are not primary products of public, private, industrial, commercial, mining, and agricultural operations. Solid waste includes but is not limited to septage from septic tanks, dangerous waste, and problem wastes. Solid waste does not include wood waste or sludge from wastewater treatment plants.

**SOURCE** - All of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products.

**SOURCE CATEGORY** - All sources of the same type or classification.

**STACK** - Any point in a stationary source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

**STAGE I VAPOR RECOVERY** - Vapor recovery system that captures gasoline vapors during gasoline transfer operations at gasoline dispensing facilities, except during motor vehicle refueling.

STAGE II VAPOR RECOVERY - Vapor recovery system that captures gasoline vapors during motor vehicle refueling operations from stationary tanks at gasoline dispensing facilities.

STANDARD CONDITIONS - A temperature of 20 degrees C (68 degrees F) and a pressure of 760 mm (29.92 inches) of mercury.

STANDARD CUBIC FOOT OF GAS - That amount of gas which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor at a pressure of 14.7 psia and a temperature of 68 degrees F.

STATE ACT - Washington Clean Air Act (chapter 70.94 RCW) and chapter 43.21B RCW.

STATE IMPLEMENTATION PLAN (SIP) - Washington and NWCAA SIP in 40 CFR Part 52, subpart WW. The SIP contains state, local, and federal regulations and orders, the state plan, and compliance schedules approved and promulgated by EPA for the purpose of implementing, maintaining, and enforcing National Ambient Air Quality Standards.

STATIONARY SOURCE - Any building, structure, facility, or installation which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216(11) of the Federal Clean Air Act.

SUBMERGED FILL LINE - Any discharge pipe or nozzle that meets either of the following conditions:

(A) Where the tank is filled from the top, the end of the discharge pipe or nozzle must be totally submerged when the liquid level is 6 inches from the bottom of the tank, or

(B) Where the tank is filled from the side, the discharge pipe or nozzle must be totally submerged when the liquid level is 18 inches from the bottom of the tank.

SUBMERGED LOADING - The filling of a tank with a submerged fill line.

SUITABLE CLOSURE or SUITABLE COVER - 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.

SULFURIC ACID PLANT - Any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

SYNTHETIC MINOR - Any stationary source whose potential to emit has been limited below applicable thresholds by means of a federally enforceable order, rule, or permit condition.

THROUGHPUT - means the amount of material passing through a facility.

TON - Short ton or 2,000 pounds (a long ton is considered 2,240 pounds).

TOTAL SUSPENDED PARTICULATE - Particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

TOXIC AIR POLLUTANT (TAP) OR TOXIC AIR CONTAMINANT - Any toxic air pollutant listed in WAC 173-460-150. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

TRANSPORT TANK - A container with a capacity greater than 264 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.

TRUE VAPOR PRESSURE - The equilibrium partial pressure exerted by a hydrocarbon at storage conditions.

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

UNCLASSIFIABLE AREA - An area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 CFR Part 81.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - Referred to as EPA.

VAPOR BALANCE SYSTEM - A combination of pipes or hoses that 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 RECOVERY SYSTEM - A process and equipment that prevents emission to the atmosphere of volatile organic compounds released by the operation of any transfer, storage, or process equipment.

VOLATILE ORGANIC COMPOUND (VOC) - Any carbon compound that participates in atmospheric photochemical reactions; see definition of "Volatile organic compound (VOC)" ((as defined)) in WAC 173-400-030((+95)).

WASHINGTON ADMINISTRATIVE CODE (WAC) - Regulations of executive branch agencies in the state of Washington, such as the Department of Ecology.

WAXY, HEAVY POUR CRUDE OIL - A crude oil with a pour point of 10 degrees C or higher (determined by the ASTM Standard D97-66, "Test for Pour Point of Petroleum Oils").

WOOD WASTE BURNER - A sheet metal or other type of enclosure to form a truncated cone or a single chamber cylindrically shaped incinerator line or constructed of suitable refractory material that is designed and used for the disposal of wood and bark wastes by incineration.

PASSED: January 8, 1969 AMENDED: October 31, 1969, September 3, 1971, June 14, 1972, July 11, 1973, February 14, 1973, January 9, 1974, October 13, 1982, November 14, 1984, October 13, 1994, February 8, 1996, May 9, 1996, March 13, 1997, November 12, 1998, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, November 17, 2011, March 14, 2013, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, February 10, 2022, December 14, 2023

**WSR 23-22-001**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed October 18, 2023, 2:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-035.

Title of Rule and Other Identifying Information: WAC 388-845-0045

When there is capacity to add people to a waiver, how does DDA determine who will be enrolled?, 388-845-1105 Who is a qualified provider of stabilization services - crisis diversion bed?, 388-845-1505 Who are qualified providers of residential habilitation services for the core waiver?, and 388-845-3062 Who is required to sign the person-centered service plan and how can it be signed?

Hearing Location(s): On December 5, 2023, at 10:00 a.m., virtual via Microsoft Teams or call in. Please see the department of social and health services (DSHS) website for the most up-to-date information.

Date of Intended Adoption: Not earlier than December 6, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on December 5, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on November 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration is amending these rules to align with amendments to home and community-based services waivers as approved by the Centers for Medicare and Medicaid Services. Major changes include: Adding a priority group for waiver enrollment; adding a new provider type for stabilization services; and adding signature options for person-centered service plans.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.120.

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

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Ann Vasilev, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1551.

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 rules are exempt as allowed under RCW 34.05.328 (5) (b) (vii) which states in part, "this section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

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 rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 17, 2023  
Katherine I. Vasquez  
Rules Coordinator

### SHS-4988.3

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

**WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled?** When there is capacity on a waiver, DDA may enroll people from the statewide database in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDA may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDA has determined to be in immediate risk of ICF/IID admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(k).

(g) Persons exiting the Washington department of children, youth, and families foster care or aging out of dependency.

(3) DDA may consider persons who need the waiver services available in the basic plus or IFS waivers to maintain them in their family's home or in their own home.

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

**WAC 388-845-1105 Who is a qualified provider of stabilization services - crisis diversion bed?** Providers of stabilization services - crisis diversion beds must be:

- (1) ((DDA)) Department-certified residential agencies per chapter 388-101 WAC;
- (2) ~~((Other department licensed or certified agencies; or~~
- ~~(3)) State-operated agencies ((-)); or~~
- (3) Other agencies licensed by the department of children, youth, and families under chapter 110-145 WAC and contracted with DDA to provide services under chapter 388-833 WAC.

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

**WAC 388-845-1505 Who are qualified providers of residential habilitation services for the core waiver?** Providers of residential habilitation services for participants in the core waiver must be one of the following:

- (1) ((Individuals)) An individual contracted with DDA to provide ~~((residential support))~~ services as a (("))companion home((")) provider under chapter 388-829C WAC;
  - (2) ((Individuals)) An individual or agency contracted with DDA to provide ~~((training))~~ services as an (("))alternative living provider((")) under chapter 388-829A WAC;
  - (3) ((Agencies)) An agency contracted with DDA and certified per chapter 388-101 WAC;
  - (4) A state-operated living ((alternatives)) alternative (SOLA);
- or
- (5) A licensed and contracted:
    - (a) Group care ~~((facilities and))~~ facility or staffed residential ~~((homes))~~ home under chapter 110-145 WAC;
    - (b) Child foster ~~((homes))~~ home under chapter 110-148 WAC; or
    - (c) Child placing ~~((agencies))~~ agency under chapter 110-147 WAC.

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

**WAC 388-845-3062 Who is required to sign the person-centered service plan and how can it be signed?** (1) If you do not have a legal representative, you must sign the person-centered service plan.

(2) If you have a legal representative, your legal representative must sign the person-centered service plan.

(3) If you need assistance to understand your person-centered service plan, DDA will follow the steps outlined in WAC 388-845-3056 ~~((1) and (3))~~.

(4) You choose how to sign your person-centered service plan - such as, with a pen, or with an electronic or voice signature.

**WSR 23-22-002**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed October 18, 2023, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-040.

Title of Rule and Other Identifying Information: WAC 388-823-0600

How do I show that I have another neurological or other condition similar to intellectual disability?, 388-823-0610 If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial functional limitations?, 388-823-1005 When does my eligibility as a DDA client expire?, and 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA?

Hearing Location(s): On December 5, 2023, at 10:00 a.m., virtual via Microsoft Teams or call in. Please see the department of social and health services (DSHS) website for the most up-to-date information.

Date of Intended Adoption: Not earlier than December 6, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on December 5, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on November 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration is amending these rules to implement HB 1407 (2023), make changes to the eligibility expiration processes, and clarify language in the eligibility review section.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71A.16.020.

Statute Being Implemented: RCW 71A.16.040.

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

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Will Nichol, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1583.

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 rules relate to internal governmental operations that are not subject to violation by a nongovernment party.

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; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:



Is fully exempt.

October 17, 2023  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4985.5

AMENDATORY SECTION (Amending WSR 18-15-046, filed 7/13/18, effective 8/13/18)

**WAC 388-823-0600 How do I show that I have another neurological or other condition similar to intellectual disability?** In order to be considered for eligibility under the category of another neurological or other condition similar to intellectual disability you must:

(1) Be age four or older and have a diagnosis by a licensed physician of a neurological or chromosomal disorder that:

- (a) Originated before age (~~eighteen~~) 18;
- (b) Is known by reputable authorities to cause intellectual and adaptive skills deficits;
- (c) Is expected to continue indefinitely without improvement;
- (d) Is other than intellectual disability, autism, cerebral palsy, or epilepsy;
- (e) Is not attributable to nor is itself a mental illness, or emotional, social, or behavior disorder; and
- (f) Has resulted in substantial functional limitations.

(2) Be receiving fee-for-service medically intensive children program (MICP) services under chapter 182-551 WAC, and have been continuously eligible for DDA due solely to your MICP eligibility since before August 13, 2018; or

(3) Be under the age of (~~ten~~) 20 and have one or more developmental delays.

AMENDATORY SECTION (Amending WSR 18-15-046, filed 7/13/18, effective 8/13/18)

**WAC 388-823-0610 If I have another neurological or other condition similar to intellectual disability, how do I meet the definition of substantial functional limitations?** If you have an eligible condition of another neurological or other condition similar to intellectual disability, in order to meet the definition of substantial functional limitations you must have impairments in both intellectual abilities and adaptive skills, which are separate from any impairment due to an unrelated mental illness, or emotional, social, or behavioral disorder.

(1) For (~~WAC 388-823-0600(1)~~) a neurological or chromosomal disorder, evidence of substantial functional limitations requires documentation of (a) and (b) below:

(a) For impairment in intellectual abilities, either subsection (i) or (ii) or (iii) of this section:

(i) An FSIQ score of more than 1.5 standard deviations below the mean under WAC 388-823-0720 and subject to all of WAC 388-823-0720 and WAC 388-823-0730;

(ii) If you are under the age of (~~twenty~~) 20, significant academic delays defined as delays of more than two standard deviations below the mean at the time of testing in both broad reading and broad mathematics; or

(iii) A written statement (~~by~~) from a licensed physician, a licensed psychologist, or a school psychologist that your condition (~~is so severe that you are unable to demonstrate the minimal skills required to complete testing for an~~) prevents you from completing FSIQ testing.

(b) For impairment in adaptive skills, a score of more than two standard deviations below the mean under WAC 388-823-0740 and subject to all of WAC 388-823-0740 and WAC 388-823-0750.

(2) For (~~WAC 388-823-0600(2)~~) the medically intensive children's program, you do not need additional evidence of your substantial functional limitations if your eligible condition is solely due to your eligibility and participation in the fee-for-service medically intensive children program under chapter 182-551 WAC.

(3) For (~~WAC 388-823-0600(3)~~) developmental delays, evidence of substantial functional limitations requires documentation of (a) or (b) or (c) below:

(a) You are under the age of three and have one or more developmental delays under WAC 388-823-0770;

(b) You are under the age of three and meet the ESIT eligibility requirements; or

(c) You are under the age of (~~ten~~) 20 and have three or more developmental delays under WAC 388-823-0770.

AMENDATORY SECTION (Amending WSR 18-15-046, filed 7/13/18, effective 8/13/18)

**WAC 388-823-1005 When does my eligibility as a DDA client expire?** (1) If you are determined eligible before age three, your eligibility expires on your fourth birthday.

(2) If you are determined eligible (~~(at age three but under age ten under)~~) with developmental delays (~~(or Down syndrome)~~) after your third birthday, your eligibility expires on your (~~tenth~~) 20th birthday.

(3) DDA will notify you at least six months before your eligibility expiration date.

(4) If your eligibility expires, you must reapply in order to maintain eligibility with DDA.

(5) If (~~(you fail to reapply before your expiration date or if)~~) DDA receives your reapplication less than (~~(sixty)~~) 60 days before your expiration date and (~~(DDA)~~) does not have sufficient time to make an eligibility determination by the date of expiration, your DDA eligibility will expire and your DDA paid services will stop.

(a) If DDA determines you are eligible after your eligibility expires, your eligibility will be reinstated on the date that DDA determines you eligible under WAC 388-823-0100.

(b) If DDA determines you are eligible after your eligibility expires, your eligibility will not be retroactive to the expiration date.

(6) This expiration of eligibility takes effect ~~((even))~~ if DDA is unable to locate you to provide written notification that eligibility is expiring.

(7) There is no appeal right to eligibility expiration.

AMENDATORY SECTION (Amending WSR 19-14-119, filed 7/3/19, effective 8/3/19)

**WAC 388-823-1010 When will DDA review my eligibility to determine if I continue to meet the eligibility requirements for DDA? (1)**

DDA will review your eligibility:

(a) If you are age ~~((nineteen))~~ 19 and:

(i) Your most recent eligibility determination was completed before your ~~((sixteenth))~~ 16th birthday; and

(ii) You are eligible with intellectual disability, cerebral palsy, epilepsy, autism, or another neurological or other condition similar to intellectual disability.

(b) If you are age ~~((nineteen))~~ 19 and ~~((were determined))~~ are eligible ~~((under))~~ with another neurological or other condition similar to intellectual disability and have used academic delays as evidence of your substantial functional limitations~~((+))~~.

(c) Before authorization of any DDA-paid service if you are not currently receiving paid services and your most current eligibility determination was made before June 1, 2005~~((+))~~.

~~((If the evidence used to make your most recent eligibility determination is insufficient, contains an error, or appears fraudulent;~~

~~((e)))~~ If new information becomes available that does not support your current eligibility determination~~((+or+))~~.

~~((f)))~~ (e) If you were determined eligible due solely to your eligibility for fee-for-service (FFS) medically intensive children's program (MICP) services and you are no longer eligible for FFS MICP services.

(2) If DDA ~~((requires additional information to make a determination of eligibility during a review and you do not provide sufficient information))~~ does not receive all of the documentation necessary to determine you are eligible during a review, DDA will terminate your eligibility:

(a) On your ~~((twentieth))~~ 20th birthday if the review is because you are age ~~((nineteen))~~ 19; or

(b) ~~((Ninety))~~ 90 days after DDA requests the information if the review is because:

(i) You have requested a paid service;

(ii) ~~((The evidence used to make your most recent eligibility determination is insufficient, contains an error, or appears fraudulent;~~

~~((iii)))~~ New information is available that does not support your current eligibility determination; or

~~((iv)))~~ (iii) You are no longer eligible for FFS MICP services under chapter 182-551 WAC.

## WSR 23-22-016

## PROPOSED RULES

## BELLEVUE COLLEGE

[Filed October 19, 2023, 1:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-04-044.

Title of Rule and Other Identifying Information: Chapter 132H-108 WAC, Policies and procedures and formal hearing rules for contested case hearings. Amending WAC 132H-108-420, 132H-108-440, and 132H-108-450.

Hearing Location(s): On December 5, 2023, at 9:00 - 10:00 a.m., online via Zoom <https://bellevuecollege.zoom.us/j/86393796324?pwd=Y3dqL0dhNnNXSWJVZhdIWm9CTzJ2dz09>, Meeting ID 863 9379 6324, Pass-code 853624.

Date of Intended Adoption: January 18, 2024.

Submit Written Comments to: Loreen Keller, 3000 Landerholm Circle S.E., A-201, Bellevue, WA 98007, email [loreen.keller@bellevuecollege.edu](mailto:loreen.keller@bellevuecollege.edu), phone 425-564-6155, by December 1, 2023.

Assistance for Persons with Disabilities: Contact Disability Resource Center, TTY 425-564-6189.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Housekeeping edits and updates to application process for adjudicative hearings in line with current practices of the college.

Reasons Supporting Proposal: Housekeeping and process edits only.

Statutory Authority for Adoption: Chapter 34.05 RCW; and RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140(13).

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

Name of Proponent: Bellevue College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Loreen Keller, 3000 Landerholm Circle [S.E.], A-201 Bellevue, WA 98007, 425-564-6155.

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. Bellevue College is not one of the enumerated agencies required to conduct cost-benefit analyses under RCW 34.05.328(5).

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.

Scope of exemption for rule proposal:

Is fully exempt.

October 19, 2023  
Loreen M. Keller  
Associate Director  
Policies and Special Projects

OTS-5039.1

**Chapter 132H-108 WAC**  
**((PRACTICE AND PROCEDURE AND)) FORMAL HEARING RULES FOR CONTESTED CASE HEARINGS**

AMENDATORY SECTION (Amending WSR 90-09-066, filed 4/18/90, effective 5/19/90)

**WAC 132H-108-420 Appointment of presiding officers.** The president or president's designee shall designate a presiding officer for an adjudicative proceeding. The presiding officer shall be an administrative law judge, a member in good standing of the Washington State Bar Association, a panel of individuals, the president or ~~((his or her))~~ their designee, or any combination of the above. Where more than one individual is designated to be the presiding officer, one person shall be designated by the president or president's designee to make decisions concerning discovery, closure, means of recording adjudicative proceedings, and similar matters.

AMENDATORY SECTION (Amending WSR 90-09-066, filed 4/18/90, effective 5/19/90)

**WAC 132H-108-440 Application for adjudicative proceeding.** An application for adjudicative proceeding shall be in writing, and signed by the applicant or the applicant's representative. The application for an adjudicative proceeding should specify the issue to be decided in the proceeding. Applications ~~((forms are available))~~ should be submitted to the office of the president in person or by mail at the following address: 3000 Landerholm Circle, S.E., ~~((Room B202,))~~ Bellevue, Washington 98007.

~~((1))~~ Written application for an adjudicative proceeding should be submitted to the above address within ~~((twenty))~~ 20 days of the agency action giving rise to the application, unless provided for otherwise by statute or rule.

AMENDATORY SECTION (Amending WSR 90-09-066, filed 4/18/90, effective 5/19/90)

**WAC 132H-108-450 Brief adjudicative procedures.** This rule is adopted in accordance with RCW ~~((34.95.482-494 [34.05.482-494]))~~ 34.05.482 through 34.05.491, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

- (1) Residency determinations made pursuant to RCW 28B.15.013, conducted by the admissions office;
- (2) Disputes concerning educational records;
- (3) Student conduct proceedings. The procedural rules in chapter ~~((132H-200))~~ 132H-126 WAC apply to these procedures ~~((-))~~;
- (4) Parking violations. The procedural rules in chapter 132H-116 WAC apply to these proceedings;
- (5) Outstanding debts owed by students or employees;

(6) Loss of eligibility for participation in institution-sponsored athletic events, pursuant to chapter 132H-400 WAC.

AMENDATORY SECTION (Amending WSR 90-09-066, filed 4/18/90, effective 5/19/90)

**WAC 132H-108-470 Procedure for closing parts of the hearings.** A party may apply for a protective order to close part of a hearing. The party making the request should state the reasons for making the application to the presiding officer. If the other party opposes the request, a written response to the request shall be made within (~~ten~~) 10 days of the request to the presiding officer. The presiding officer shall determine which, if any, parts of the proceeding shall be closed, and state the reasons (~~therefor~~) therefore in writing within (~~twenty~~) 20 days of receiving the request.

**WSR 23-22-043**  
**PROPOSED RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed October 24, 2023, 2:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-18-051.

Title of Rule and Other Identifying Information: WAC 139-03-070 and 139-06-070.

Hearing Location(s): On December 13, 2023, at 10:00 a.m., at Washington State Criminal Justice Training Commission (WSCJTC), 19010 1st Avenue South, Burien, WA 98148. Hearing will be held in the auditorium.

Date of Intended Adoption: December 13, 2023.

Submit Written Comments to: Lacey Ledford, 19010 1st Avenue South, Burien, WA 98148, email lacey.ledford@cjtc.wa.gov, by December 10, 2023.

Assistance for Persons with Disabilities: Contact Lacey Ledford, phone 206-670-5813, email lacey.ledford@cjtc.wa.gov, by December 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To update the burden of proof and make clear the requirements and responsibilities of the hearing process in regard to the office of administrative hearings, WSCJTC, and the respondent.

Reasons Supporting Proposal: Rules on this subject are required to notify, and make clear the due process rights of, respondents whose certification is being brought before a hearing panel.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: RCW 43.101.080, 43.101.380.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kayla Wold, 19010 1st Avenue South, Burien, WA 98148, 206-835-7306.

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 rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and 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.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 24, 2023  
Lacey Ledford  
Rules Coordinator

## OTS-5036.1

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

**WAC 139-03-070 Burden and standard of proof.** Unless otherwise provided by law (~~(, the appealing party has the burden of proof, and the standard of proof on all factual issues is preponderance of the evidence) or rule:~~

(1) In any action to appeal the commission's final administrative decision, the appealing party shall bear the burden of proof.

(2) The burden of proof in certification matters is governed by WAC 136-06-070(13).

(3) The standard of proof on all factual issues is preponderance of the evidence.

## OTS-5037.2

AMENDATORY SECTION (Amending WSR 23-19-038, filed 9/13/23, effective 10/14/23)

**WAC 139-06-070 Conference and hearings procedures.** (1) An administrative law judge (ALJ) shall preside over all prehearing conferences, status conferences, and the hearing itself.

(2) The attorney general's office shall represent the commission in all adjudicative proceedings before the commission.

(3) Once the commission hearings coordinator receives the request for hearing, the first prehearing conference shall be held within 14 days unless that time is extended by mutual agreement of the parties or for good cause.

~~(a) ((Prior to the first prehearing conference, the parties shall receive timely notice of prehearing conference.))~~ The ALJ shall serve timely notice of the initial prehearing conference on all parties. The notice will contain the date and time ((for)) of the first prehearing conference ((as well as sign-on information and the names of the hearing panel members for the hearing)), the sign-on information, and the names of the hearing panel members.

(b) Any motion for disqualification of a panel member must be filed prior to the first prehearing conference.

(4) The first prehearing conference is administrative. Its primary purpose is to schedule the hearing date, which must occur within 90 days of the first prehearing conference unless that time is extended on mutual agreement of the parties or for good cause.

~~(a) During the first prehearing conference, the ((administrative law judge (ALJ))~~ ALJ may schedule due dates for the filing of any prehearing briefs, witness lists, exhibit lists and exchange of exhibits, objections to witnesses and exhibits, and prehearing motions. The ALJ will also schedule a second prehearing conference.

(b) The ALJ shall issue a prehearing conference order within one week of the conclusion of the first prehearing conference. The prehearing conference order shall describe the action taken at the con-



ference and the ~~((agreements made by the parties))~~ parties' agreements.

(5) The purpose of the second prehearing conference ~~((will be to address any objections to the parties' witnesses and exhibits))~~ is to address the parties' evidentiary objections and ascertain the parties' readiness to proceed to hearing. ~~((During the second prehearing conference, parties shall be prepared to discuss any remaining matters including any objections to witnesses or exhibits, and any remaining motions))~~ Parties shall be prepared to discuss all evidentiary objections, all motions, and any remaining matters.

(a) The ALJ will make any necessary rulings on motions and evidentiary objections ~~((to witnesses and exhibits))~~.

(b) ~~((An order shall be issued by))~~ The ALJ shall issue an order within 10 days of the conclusion of the second prehearing conference.

(c) After the second prehearing conference, the panel members will be provided with copies of all materials admitted into evidence, ~~((to include))~~ the witness ~~((list and copies of))~~ lists, the statement of charges, ~~((as well as all))~~ and the briefings submitted by the parties.

(6) Failure of the respondent or the respondent's attorney to attend or participate in any scheduled prehearing conference will result in a finding of default and an order will be entered under RCW 34.05.440.

(7) Hearings may be held in person or virtually.

(a) Once the hearing date has been set, a written notice will appear on the commission website with the date, time, and location of the hearing.

(b) Hearings are open to the public and accommodations will be made for public attendance of virtual meetings.

(c) The commission shall create audio or video recordings of all prehearing conferences and hearings.

(8) If an in-person hearing is scheduled, the hearings coordinator will provide an admitted exhibits binder including all admitted exhibits from both parties. Both parties shall use the admitted exhibits binder ~~((shall be used by both parties))~~ to reference or display any admitted exhibits during the hearing. If a virtual hearing is scheduled, the parties shall maintain control of their exhibits and, if necessary, will be required to share their screens when referencing or displaying an admitted exhibit during the proceeding. Parties are forbidden from screen sharing any portion or version of exhibits ~~((or any versions of exhibits))~~ not previously admitted.

(9) If an in-person hearing is scheduled, the respondent must attend the proceeding in person. ~~((Respondents who fail))~~ A respondent's failure to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(a) In person hearings will be conducted at the training commission located at: 19010 1st Avenue South, Burien, Washington, 98148.

(b) If a virtual hearing is scheduled, the respondent shall remain visible on screen at all times the parties are on the record. ~~((Respondents who fail))~~ A respondent's failure to comply with this attendance requirement will result in the revocation, suspension, or denial of certification and the hearings panel shall enter an order of default and final order under RCW 34.05.440.

(10) Regardless of whether a hearing is scheduled in-person or virtually, witnesses may testify at the hearing in-person, by telephone, or virtually.

(11) A five-member hearings panel shall hear the case and will make the commission's final administrative decision based on a majority of the vote.

(12) The standard of proof in actions before the commission is a preponderance of the evidence. RCW 43.101.380(1).

(13) The commission holds the burden of proof in actions before the hearings panel to deny, revoke, or suspend an officer's certification.

## WSR 23-22-055

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed October 25, 2023, 9:17 a.m.]

Supplemental Notice to WSR 23-17-086.

Preproposal statement of inquiry was filed as WSR 23-13-024.

Title of Rule and Other Identifying Information: WAC

182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage.

Hearing Location(s): On December 5, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance at [https://us02web.zoom.us/webinar/register/WN\\_3tyz-700QNW4WTLvvp-jA](https://us02web.zoom.us/webinar/register/WN_3tyz-700QNW4WTLvvp-jA). If the link above opens with an error message, please try using a different browser or copy and paste the web link to your browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: December 6, 2023.

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 December 5, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by November 17, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA held a public hearing on September 26, 2023, on WAC 182-535A-0040 to make the requirements for "case study" less restrictive in subsection (5)(c). HCA removed "when done in conjunction with limited or comprehensive treatment only" and replaced it with "when done in conjunction with orthodontic treatment."

After the public hearing, HCA recognized that another revision to this section was necessary to make the language less restrictive around who must perform treatment and follow-up care. HCA revised the language for who can provide treatment and follow-up care to read "by a provider who is part of a craniofacial team that includes, but is not limited to, a general or pediatric dentist, orthodontist, and a maxillofacial surgeon or specialist." HCA removed "only by an orthodontist or agency-recognized craniofacial team."

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: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Janice Tadeo, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-1583.

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.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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. HCA is amending these rules to be less restrictive and provide more precise language to define the program parameters and ensure consistency. This change does not impose a more-than-minor cost.

October 25, 2023  
Wendy Barcus  
Rules Coordinator

## OTS-4725.2

AMENDATORY SECTION (Amending WSR 23-08-009, filed 3/23/23, effective 4/23/23)

**WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage.** Orthodontic treatment and orthodontic-related services require prior authorization.

(1) The medicaid agency covers orthodontic treatment and orthodontic-related services for a client who has one of the medical conditions listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed (~~(only by an orthodontist or agency-recognized craniofacial team)~~) by a provider who is part of a craniofacial team that includes, but is not limited to, a general or pediatric dentist, orthodontist, and an oral maxillofacial surgeon or specialist.

(a) Cleft lip and palate, cleft palate, or cleft lip.

(b) The following craniofacial anomalies including, but not limited to:

- (i) Hemifacial microsomia;
- (ii) Craniosynostosis syndromes;
- (iii) Cleidocranial dental dysplasia;
- (iv) Arthrogryposis;
- (v) Marfan syndrome;
- (vi) Treacher Collins syndrome;
- (vii) Ectodermal dysplasia; or
- (viii) Achondroplasia.

(2) The agency authorizes orthodontic treatment and orthodontic-related services when the following criteria are met:

(a) Severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score of 25 or higher as determined by the agency;

(b) The client has established caries control; and

(c) The client has established plaque control.

(3) The agency covers orthodontic treatment for dental malocclusions other than those listed in subsections (1) and (2) of this section on a case-by-case basis when the agency determines medical necessity based on documentation submitted by the provider.

(4) The agency does not cover the following orthodontic treatment or orthodontic-related services:

(a) Orthodontic treatment for cosmetic purposes;

(b) Orthodontic treatment that is not medically necessary;

(c) Orthodontic treatment provided out-of-state, except as stated in WAC 182-501-0180 (see also WAC 182-501-0175 for medical care provided in bordering cities); or

(d) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC.

(5) The agency covers the following orthodontic treatment and orthodontic-related services:

(a) Limited orthodontic treatment.

(b) Comprehensive full orthodontic treatment on adolescent dentition.

(c) A case study when done in conjunction with (~~limited or comprehensive~~) orthodontic treatment (~~only~~).

(d) Other orthodontic treatment subject to review for medical necessity as determined by the agency.

(6) The agency covers the following orthodontic-related services:

(a) Clinical oral evaluations according to WAC 182-535-1080.

(b) Cephalometric films that are of diagnostic quality, dated, and labeled with the client's name.

(c) Orthodontic appliance removal as a stand-alone service only when:

(i) The client's appliance was placed by a different provider or dental clinic; and

(ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.

(7) The treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, or treatment objectives are not achieved, the provider must:

(a) Document in the client's record why treatment was discontinued or not completed, or why treatment goals were not achieved.

(b) Notify the agency by submitting the Orthodontic Discontinuation of Service form (HCA 13-0039).

(8) The agency evaluates a request for orthodontic treatment or orthodontic-related services:

(a) That are in excess of the limitations or restrictions listed in this section, according to WAC 182-501-0169; and

(b) That are listed as noncovered according to WAC 182-501-0160.

(9) The agency reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligible for services under the EPSDT program according to the provisions of WAC 182-534-0100.

## WSR 23-22-060

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed October 25, 2023, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-16-127.

Title of Rule and Other Identifying Information: Multistate nursing license fee (new) and increase to nursing center surcharge fee. The department of health (department) in consultation with the board of nursing (board), formerly known as the nursing care quality assurance commission, is proposing to increase the nursing center surcharge fee and proposing to create a new fee for a multistate nursing license in WAC 246-840-990. The proposed rule implements SSB 5499 Multistate nurse licensure compact (chapter 123, Laws of 2023).

Hearing Location(s): On December 5, 2023, at 3:00 p.m., at the Department of Health, Town Center 2, 111 Israel Road S.E., Rooms 166 and 167, Tumwater, WA 98501; or virtually via Zoom. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_8L54h4jTS6SNILvK30afRA](https://us02web.zoom.us/webinar/register/WN_8L54h4jTS6SNILvK30afRA). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 12, 2023.

Submit Written Comments to: Heather Cantrell, P.O. Box 47850, Olympia, WA 98504-7850, email <https://fortress.wa.gov/doh/policyreview>, by December 5, 2023.

Assistance for Persons with Disabilities: Contact Heather Cantrell, phone 360-236-3538, fax 360-236-4738, TTY 711, email [HSQAfeerules@doh.wa.gov](mailto:HSQAfeerules@doh.wa.gov), by November 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department, in consultation with the board, is proposing changes to WAC 246-840-990 to enact provisions in SSB 5499 that include Washington state in a nurse licensure compact with multiple states. The proposed rules update an existing licensing surcharge amount in rule to comply with the new surcharge amount in law for a central nursing resource center and set a fee for a new multistate license option for registered nurses (RNs) and licensed practical nurses (LPNs) residing in Washington state.

The department and the board are proposing a new surcharge amount of \$8 to align with SSB 5499, which changes the existing surcharge from \$5 to \$8 on all license types for RNs and LPNs. Advanced registered nurse practitioners are only required to pay the surcharge on their RN licenses.

The department and board are proposing a new fee of \$65 for an applicant applying for an RN and LPN multistate license. To renew a multistate license a \$20 fee will be charged. These fees are in addition to the established application and renewal fees for RNs and LPNs. A Washington state licensed RN or LPN may pay the \$65 multistate license fee to convert their existing license to a multistate license without paying other established application and renewal fees.

Reasons Supporting Proposal: The multistate license option will allow RNs and LPNs who reside in Washington state to forgo their single-state license and practice in-person or via telehealth in other compact states. To maintain the multistate license issued in Washington state, the RN or LPN must maintain their primary residence in Washington state.

The proposed surcharge increase for a central nursing resource center brings the department and the board into compliance with the

law as amended by SSB 5499 effective July 23, 2023, which changes an existing surcharge from \$5 to \$8 on all license types for RNs and LPNs. The surcharge provides grants to a central nursing resource center.

RCW 43.70.250 requires that the costs of licensing in each profession be fully borne by members of that profession and the office of financial management (OFM) requires agencies to maintain a reasonable working capital reserve in state accounts to cover fluctuations in cash flow. Without fee increases, the board's fund balance will fall below the recommended levels.

Statutory Authority for Adoption: RCW 18.79.202, 18.130.040, 43.70.110, 43.70.250, 43.70.280; and SSB 5499 (chapter 123, Laws of 2023).

Statute Being Implemented: SSB 5499 (chapter 123, Laws of 2023).

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

Name of Proponent: Department of health and state board of nursing, governmental.

Name of Agency Personnel Responsible for Drafting: Jessilyn Dagum, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-3538; Implementation: Amber Zawislak, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4785; and Enforcement: Catherine Woodard, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4757.

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. As defined in RCW 34.05.328 (5)(b), the department has determined that no significant analysis is required because the amendments are to set or adjust fees or correct or clarify language without changing the effect of the rule.

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.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rules set and adjust fees.

Scope of exemption for rule proposal:

Is fully exempt.

October 25, 2023  
 Kristin Peterson, JD  
 Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

**OTS-4971.2**

AMENDATORY SECTION (Amending WSR 22-15-074, filed 7/18/22, effective 12/1/22)

**WAC 246-840-990 Fees and renewal cycle.** (1) A licensed practical nurse (LPN) or a registered nurse (RN) must renew (~~his or her~~) their single or multistate license every year on the licensee's birthday.

(2) When applying for a license an applicant for an initial or renewal LPN license or RN license must pay, in addition to the application fee, the University of Washington (UW) health sciences online library access (HEAL-WA) surcharge and the central nursing resource center (nursing center) surcharge, as required in RCW 43.70.110.

(3) An advanced registered nurse practitioner (ARNP) must renew (~~his or her~~) their license every two years on the licensee's birthday. An ARNP must also hold a valid single or multistate RN license and pay all associated fees every year on the licensee's birthday.

(4) A nursing technician must renew (~~his or her~~) their registration every year on the practitioner's birthday. The renewal must be accompanied by an attestation as required in RCW 18.79.370 that includes the nursing technician's anticipated graduation date. If the anticipated graduation date is within one year, the registration will expire 30 days after the anticipated graduation date. The expiration date may be extended to 60 days after graduation if the nursing technician can show good cause as defined in WAC 246-840-010(15).

(5) A practitioner who holds more than one credential will be charged separate fees for each credential, in compliance with WAC 246-12-020 through 246-12-051 and RCW 43.70.110.

(6) The following nonrefundable fees will be charged:

**((Application Fees**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner <sup>1</sup>	Nursing Technician
Application Fee	114	69	130	25
HEAL-WA Surcharge	16	16	0	0
Nursing Center Surcharge	5	5	0	0
<b>Total</b>	<b>135</b>	<b>90</b>	<b>130</b>	<b>25</b>

<sup>1</sup>Pays a \$125 application fee per specialty license. If not currently a licensed RN, must also pay RN application fees.

**On-Time Renewal**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner <sup>2</sup>	Nursing Technician
Renewal Fee	114	69	130	25
HEAL-WA Surcharge	16	16	0	0
Nursing Center Surcharge	5	5	0	0
<b>Total</b>	<b>135</b>	<b>90</b>	<b>130</b>	<b>25</b>

<sup>2</sup>Pays a \$125 renewal fee per specialty license once every two years. Must also renew RN license every year.

**Late Renewal – Up to One Year Past the Expiration**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner <sup>3</sup>	Nursing Technician
Renewal Fee	114	69	130	25



HEAL-WA Surcharge	16	16	0	0
Nursing Center Surcharge	5	5	0	0
Late Renewal Penalty	50	50	50	25
<b>Total</b>	<b>185</b>	<b>140</b>	<b>180</b>	<b>50</b>

<sup>3</sup>Pays \$50 per specialty license in late fees.

**Late Renewal—One Year or More Expired**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner
Renewal Fee	114	69	130
HEAL-WA Surcharge	16	16	0
Nursing Center Surcharge	5	5	0
Late Renewal Penalty	50	50	50
Expired Licenses Reissuance	70	70	0
<b>Total</b>	<b>255</b>	<b>210</b>	<b>180</b>

**Retired Active Renewal**

	Registered Nurse	Licensed Practical Nurse
Renewal Fee	44	44
HEAL-WA Surcharge	16	16
Nursing Center Surcharge	5	5
<b>Total</b>	<b>65</b>	<b>65</b>

**Retired Active Renewal—Late Renewal - Up to One Year Past the Expiration**

	Registered Nurse	Licensed Practical Nurse
Renewal Fee	44	44
HEAL-WA Surcharge	16	16
Nursing Center Surcharge	5	5
Late Renewal Penalty	45	45
<b>Total</b>	<b>110</b>	<b>110</b>

**Retired Active Renewal—Late Renewal - One Year or More Expired**

	Registered Nurse	Licensed Practical Nurse
Renewal Fee	44	44
HEAL-WA Surcharge	16	16
Nursing Center Surcharge	5	5
Late Renewal Penalty	45	45
Expired License Reissuance	70	70
<b>Total</b>	<b>180</b>	<b>180</b>

**Inactive License Renewal**

Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner
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Renewal Fee	44	44	40
HEAL-WA Surcharge	16	16	0
Nursing Center Surcharge	5	5	0
<b>Total</b>	<b>65</b>	<b>65</b>	<b>40</b>

**Inactive License Renewal—Late Renewal—Up to One Year Past the Expiration**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner
Renewal Fee	44	44	40
HEAL-WA Surcharge	16	16	0
Nursing Center Surcharge	5	5	0
Late Renewal Penalty	45	45	40
<b>Total</b>	<b>110</b>	<b>110</b>	<b>80</b>

**Inactive License Renewal—Late Renewal—One Year or More Expired**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner
Renewal Fee	44	44	40
HEAL-WA Surcharge	16	16	0
Nursing Center Surcharge	5	5	0
Late Renewal Penalty	45	45	40
Expired License Reissuance	40	40	40
<b>Total</b>	<b>150</b>	<b>150</b>	<b>120</b>

**Other fees**

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner	Nursing Technician
Duplicate licensee or registration	20	20	20	15
Verification of licensure	25	25	25	25))

**Application Fees**

	Registered Nurse	Multistate Registered Nurse <sup>2</sup>	Licensed Practical Nurse	Multistate Licensed Practical Nurse <sup>2</sup>	Advanced Registered Nurse Practitioner <sup>1</sup>	Nursing Technician
Application Fee	114	114	69	69	130	25
HEAL-WA Surcharge	16	16	16	16	0	0
Nursing Center Surcharge	8	8	8	8	0	0
Multistate License Fee	0	65	0	65	0	0
<b>Total</b>	<b>138</b>	<b>203</b>	<b>93</b>	<b>158</b>	<b>130</b>	<b>25</b>

<sup>1</sup>Pays a \$130 application fee per specialty license. If not currently a licensed RN, must also pay RN application fees.

<sup>2</sup> Providers currently licensed in Washington state pay the \$65 multistate license fee to convert their existing license to a multistate license.

**On-Time Renewal**

	<u>Registered Nurse</u>	<u>Multistate Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Multistate Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner<sup>2</sup></u>	<u>Nursing Technician</u>
Renewal Fee	114	114	69	69	130	25
HEAL-WA Surcharge	16	16	16	16	0	0
Nursing Center Surcharge	8	8	8	8	0	0
Multistate License Fee	0	20	0	20	0	0
<b>Total</b>	<b>138</b>	<b>158</b>	<b>93</b>	<b>113</b>	<b>130</b>	<b>25</b>

<sup>2</sup>Pays a \$130 renewal fee per specialty license once every two years. Must also renew RN license every year.

**Late Renewal - Up to One Year Past the Expiration**

	<u>Registered Nurse</u>	<u>Multistate Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Multistate Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner<sup>3</sup></u>	<u>Nursing Technician</u>
Renewal Fee	114	114	69	69	130	25
HEAL-WA Surcharge	16	16	16	16	0	0
Nursing Center Surcharge	8	8	8	5	0	0
Late Renewal Penalty	50	50	50	50	50	25
Multistate License Fee	0	20	0	20	0	0
<b>Total</b>	<b>188</b>	<b>208</b>	<b>143</b>	<b>163</b>	<b>180</b>	<b>50</b>

<sup>3</sup>Pays \$50 per specialty license in late fees.

**Late Renewal - One Year or More Expired**

	<u>Registered Nurse</u>	<u>Multistate Registered Nurse</u>	<u>Licensed Practical Nurse</u>	<u>Multistate Licensed Practical Nurse</u>	<u>Advanced Registered Nurse Practitioner</u>	
Renewal Fee	114	114	69	69	130	
HEAL-WA Surcharge	16	16	16	16	0	
Nursing Center Surcharge	8	8	8	8	0	
Late Renewal Penalty	50	50	50	50	50	
Expired Licenses Reissuance	70	70	70	70	0	
Multistate License Fee	0	20	0	20	0	
<b>Total</b>	<b>258</b>	<b>278</b>	<b>213</b>	<b>233</b>	<b>180</b>	

**Retired Active Renewal**

	<u>Registered Nurse</u>		<u>Licensed Practical Nurse</u>			
Renewal Fee	44		44			

**Retired Active Renewal**

	<u>Registered Nurse</u>		<u>Licensed Practical Nurse</u>			
<u>HEAL-WA Surcharge</u>	16		16			
<u>Nursing Center Surcharge</u>	5		5			
<b>Total</b>	<b>65</b>		<b>65</b>			

**Retired Active Renewal—Late Renewal - Up to One Year Past the Expiration**

	<u>Registered Nurse</u>		<u>Licensed Practical Nurse</u>			
<u>Renewal Fee</u>	44		44			
<u>HEAL-WA Surcharge</u>	16		16			
<u>Nursing Center Surcharge</u>	5		5			
<u>Late Renewal Penalty</u>	45		45			
<b>Total</b>	<b>110</b>		<b>110</b>			

**Retired Active Renewal—Late Renewal - One Year or More Expired**

	<u>Registered Nurse</u>		<u>Licensed Practical Nurse</u>			
<u>Renewal Fee</u>	44		44			
<u>HEAL-WA Surcharge</u>	16		16			
<u>Nursing Center Surcharge</u>	5		5			
<u>Late Renewal Penalty</u>	45		45			
<u>Expired License Reissuance</u>	70		70			
<b>Total</b>	<b>180</b>		<b>180</b>			

**Inactive License Renewal**

	<u>Registered Nurse</u>		<u>Licensed Practical Nurse</u>		<u>Advanced Registered Nurse Practitioner</u>	
<u>Renewal Fee</u>	44		44		40	
<u>HEAL-WA Surcharge</u>	16		16		0	
<u>Nursing Center Surcharge</u>	5		5		0	
<b>Total</b>	<b>65</b>		<b>65</b>		<b>40</b>	

**Inactive License Renewal—Late Renewal - Up to One Year Past the Expiration**

	<u>Registered Nurse</u>		<u>Licensed Practical Nurse</u>		<u>Advanced Registered Nurse Practitioner</u>	
<u>Renewal Fee</u>	44		44		40	

**Inactive License Renewal—Late Renewal - Up to One Year Past the Expiration**

	<u>Registered Nurse</u>		<u>Licensed Practical Nurse</u>		<u>Advanced Registered Nurse Practitioner</u>	
<u>HEAL-WA Surcharge</u>	16		16		0	
<u>Nursing Center Surcharge</u>	5		5		0	
<u>Late Renewal Penalty</u>	45		45		40	
<b>Total</b>	<b>110</b>		<b>110</b>		<b>80</b>	

**Inactive License Renewal—Late Renewal - One Year or More Expired**

	<u>Registered Nurse</u>		<u>Licensed Practical Nurse</u>		<u>Advanced Registered Nurse Practitioner</u>	
<u>Renewal Fee</u>	44		44		40	
<u>HEAL-WA Surcharge</u>	16		16		0	
<u>Nursing Center Surcharge</u>	5		5		0	
<u>Late Renewal Penalty</u>	45		45		40	
<u>Expired License Reissuance</u>	40		40		40	
<b>Total</b>	<b>150</b>		<b>150</b>		<b>120</b>	

**Other fees**

	<u>Registered Nurse</u>		<u>Licensed Practical Nurse</u>		<u>Advanced Registered Nurse Practitioner</u>	<u>Nursing Technician</u>
<u>Duplicate Licensee or Registration</u>	20		20		20	15
<u>Verification Licensure</u>	25		25		25	25

## WSR 23-22-062

## PROPOSED RULES

## STATE BOARD OF HEALTH

[Filed October 25, 2023, 10:17 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-06-082.

Title of Rule and Other Identifying Information: On-site sewage systems, chapter 246-272A WAC. The state board of health (board) is proposing amendments to address changes to existing requirements, including requirements governing local management plans, repairs, registration of proprietary treatment products, minimum lot sizes, treatment levels, and licensing of operations and maintenance providers. The proposed rule establishes new requirements, including requirements for field verification of proprietary products, property transfer inspections, remediation, and product supply chain issues. The proposed rule also makes several editorial updates to improve clarity and repeals obsolete rules.

Hearing Location(s): On January 10, 2024, at 1:30 p.m., at the Department of Health, 111 Israel Road S.E., Town Center 2, Rooms 166 and 167, Tumwater, WA 98501; or virtually. Register at [https://us02web.zoom.us/webinar/register/WN\\_FvTsOSBvRbqMrlvz2Ky4mA](https://us02web.zoom.us/webinar/register/WN_FvTsOSBvRbqMrlvz2Ky4mA). The rules hearing will be hybrid. Individuals may attend either virtually or in-person.

Date of Intended Adoption: January 10, 2024.

Submit Written Comments to: Peter Beaton, P.O. Box 47824, Olympia, WA 98504-7824, email [peter.beaton@doh.wa.gov](mailto:peter.beaton@doh.wa.gov), <https://fortress.wa.gov/doh/policyreview>, by November 28, 2023.

Assistance for Persons with Disabilities: Contact Melanie Hisaw, phone 360-236-4104, email [Melanie.hisaw@sboh.wa.gov](mailto:Melanie.hisaw@sboh.wa.gov), by January 2, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing amendments to chapter 246-272A WAC to address changes to existing requirements, including requirements governing local management plans, repairs, registration of proprietary treatment products, minimum lot sizes, treatment levels, and licensing of operations and maintenance providers. The proposed rule establishes new requirements, including requirements for field verification of proprietary products, property transfer inspections, remediation, and product supply chain issues. The proposed rule also makes several editorial updates to rule language to improve clarity and repeals obsolete rules. The proposed rules are necessary to maintain enforceable standards for design, construction, installation, operation, maintenance, and monitoring to ensure properly functioning onsite sewage systems.

Reasons Supporting Proposal: WAC 246-272A-0425 requires the department of health (department) to review the rules every four years to determine the overall effectiveness, areas needing revision, and to report the results and recommendations back to the board and local health officers. The department replicated the process used in previous reviews and found that revisions to the rule were needed to address several issues. The proposed rules are needed to protect public health by minimizing the potential exposure to sewage and the adverse effects of discharges on ground and surface waters.

Statutory Authority for Adoption: RCW 43.20.050(3), 43.20.065; chapters 70A.105, 70A.110 RCW.

Statute Being Implemented: RCW 43.20.050(3), 43.20.065; chapters 70A.105, 70A.110 RCW.

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

Name of Proponent: State board of health and department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Peter Beaton, Department of Health, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3150; Implementation and Enforcement: Jeremy Simmons, Department of Health, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3346,

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 Peter Beaton, Department of Health, P.O. Box 47824, Olympia, WA 98504-7824, phone 360-236-3150, TTY 711, email peter.beaton@doh.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 relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of Exemption(s): The following sections of the proposed rule are exempt under RCW 34.05.310 (4) (d): WAC 246-272A-0001, 246-272A-0005, 246-272A-0007, 246-272A-0010, 246-272A-0013, 246-272A-0170, 246-272A-0240, 246-272A-0265, 246-272A-0310, 246-272A-0425, 246-272A-0430, and 246-272A-0440. WAC 246-272A-0420 is exempt under RCW 34.05.310 (4) (b).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: [No information supplied by agency].

The proposed rule does impose more-than-minor costs on businesses.

#### Small Business Economic Impact Statement (SBEIS)

**A brief description of the proposed rule, including the current situation/rule, followed by the history of the issue and why the proposed rule is needed. A 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:**

Chapter 246-272A WAC, On-site sewage systems, regulates the location, design, installation, operation, maintenance, and monitoring of on-site sewage systems (OSS). There are approximately 950,000 OSS in Washington that produce around 340,000,000 gallons of wastewater per day. This rule protects public health by minimizing both the potential for exposure to sewage from on-site sewage systems, and the adverse effects of discharges from on-site sewage systems on ground and surface waters.<sup>1[1]</sup>

Local health officers (LHOs) have three options to enforce chapter 246-272A WAC. They can: Adopt their own local code; adopt this rule by reference; or defer to chapter 246-272A WAC. The board is authorized under RCW 43.20.050 to adopt rules for the design, construction, installation, operation, and maintenance of those on-site sewage

systems with design flows of less than 3,500 gallons per day. The department implements these rules. The department is required to review chapter 246-272A WAC every four years to evaluate the effectiveness of the rules and determine areas where revisions may be necessary. The department is also required to provide the results of the review along with recommendations to the board and local health officers. This requirement was adopted in 2005 and the department completed its first evaluation in 2009 and a subsequent evaluation in 2013. Both evaluations concluded with the finding that no revisions were necessary.<sup>2[2]</sup>

In 2017, the department conducted an evaluation of the existing OSS rule, including gathering feedback on the rules from local health partners and interested parties. In December 2017, the department published the following report on the findings: 2017 Evaluation of the Effectiveness of Chapter 246-272A WAC, On-Site Sewage Systems.<sup>3[3]</sup> The report identified seven key issues and several minor issues that should be considered for possible revision in rule making. The seven key issues were: Definitions, local management plans, property transfer inspections, application of treatment levels, ultraviolet light disinfection effectiveness and approval, horizontal setbacks (system location), and statewide service provider licensing. The department briefed the board in January 2018 and the board directed staff to file a CR-101 preproposal statement of inquiry. Staff filed the CR-101 as WSR 18-06-082 on March 6, 2018.<sup>4[4]</sup>

The Washington state legislature passed SB 5503 in the 2019 legislative session, and it was codified as RCW 43.20.065.<sup>5[5]</sup> The bill addressed repair and replacement of failed systems and system inspections. The law has been addressed in the rule making.

To assist and inform the rule revision process, and to ensure that chapter 246-272A WAC consistently promotes safe and effective operation of OSS, the board requested input and review from a statewide representation of diverse interested parties. The department formed the on-site rule revision committee (ORRC) in June 2018 to serve as this group and foster communication and cooperation between interested parties. ORRC's role was informal and advisory to the department in this rule making. ORRC proposed, made recommendations for, and gave input to the rule. ORRC members include representatives from industry, regulators, consumers, and academia. Two subcommittees were formed to advise on policy and technical issues. The department drafted issue papers on several key topics for both subcommittees. These subcommittees worked on topics, held votes on topics, and ultimately made recommendations to the entire ORRC. ORRC used a majority rule when considering amendments that were forwarded to the department. There were proposals with unanimous support and others with a simple majority.

ORRC met nine times between June 2018 and February 2020 as a full committee and the department convened many associated subcommittee meetings that reported out to the full ORRC. The department shared a draft with interested parties for informal review and comment. In addition, the department conducted three in-person and one web-based public workshops concluding in October 2019. Based on comments received, the department made several changes to the draft rules. The department worked with environmental health directors from different areas of the state on ORRC and separately to help fine tune the draft rules.

**The objectives of the proposed OSS rules are to:**



- Incorporate the most recent science and technology standards for OSS;
- Ensure OSS are inspected periodically in all areas of the state to determine whether they are functioning properly to avoid contamination and environmental degradation resulting from a failure; and
- Establish a mechanism for local and state governments to enforce OSS practices that protect the environment and residents of Washington state from OSS safety hazards.

The department assumes businesses will have to hire professional engineers, designers, installers, pumpers, and maintenance service providers in various situations to prepare documents and to provide other professional services as described in the significant analysis.

**Identification and summary of which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS):**

**SBEIS Table 1. Summary of Businesses Required to Comply with the Proposed Rule**

NAICS Code <sup>6161</sup>	NAICS Business Description	Number of Businesses in Washington State	Minor Cost Threshold <sup>7171</sup>
541330	Engineering Services	1,717	\$7,717
562991	Septic Tank and Related Service	118	\$2,661
<b>327390</b>	Other Concrete Product Manufacturing	49	\$15,846
326199	All Other Plastics Product Manufacturing	98	\$18,869
562998	All Other Miscellaneous Waste Management Services (Maintenance Service Providers)	42	\$14,287
238910	Site Preparation Contractors	2,373	\$4,017
333318	Commercial and Service Industry Machinery Manufacturing (Manufacturers)	109	\$9,003
531210	Offices of Real Estate Agents and Brokers	2,751	\$3,168
237210	Land Subdivision	195	\$4,213

**Analysis of probable costs of businesses in the industry to comply with the proposed rule, including the cost of equipment, supplies, labor, professional services, and administrative costs. The analysis considers if compliance with the proposed rule will cause businesses in the industry to lose sales or revenue:**

**Sectional Analysis:** The sectional analysis includes sections that result in compliance costs to businesses. It does not include sections where businesses provide services to customers, for example the costs of completing an inspection of an OSS for a client. This is because costs are passed to clients and clients pay for these additional costs, in this case OSS owners will pay the cost of the services. These costs are not included in this analysis because businesses elect to provide these services and are not obligated to do so. The department anticipates that most new requirements will not cause businesses to lose sales or revenue, with potential exceptions.

**Cost Survey:** To help better understand the costs of each section of the rule, the department developed a cost survey surveying local government environmental health directors, wastewater program staff, and industry members associations that represent them. Cost survey details and methodology are outlined in the significant analysis (available upon request).

**WAC 246-272A-0120 Proprietary treatment product registration—  
Process and requirements:**

**Description:** This section establishes the required content and submittal process for manufacturers to use to register their products.

**Cost:** The department received survey responses from nine manufacturers. The department also does not collect cost estimates for non-compliance events, so it did not complete a survey on the cost of the compliance plan because this only applies if a manufacturer is having problems. SBEIS Table 2 shows the estimated costs for maintenance service providers of taking a pair of samples for E. coli or fecal coliform. Only one of six manufacturers indicated they would hire a third-party contractor to take the required 25 sample sets during a routine maintenance visit due to logistical restrictions. Additionally, six out of 11 manufacturers indicated that they already maintain a company website, so posting required materials was solely cost to update websites. Six manufacturers provided cost estimates to post the materials. The table does not include the cost of 25 pairs of samples. The department contacted and received cost information for 50 samples. The department was given a cost of \$28 to \$65 per sample<sup>8[8]</sup> depending on the test technique; for a total cost for 50 samples ranging between \$2,000 and \$3,250.<sup>9[9]</sup>

**SBEIS Table 2. Estimated Cost to Adhere to the Field Verification Component of the Proprietary Treatment Product Registration, Process, and Requirements\* (From SA Table 6)**

Description	Cost Frequency	N	Range (\$)	Median (\$)	Mean (\$)	Standard Deviation (\$)
Cost to collect a pair (one influent AND one effluent) of samples, during a routine maintenance service visit NOT including travel	Unit	5	4.28 - 47.50	24	23.66	16.65
Cost to collect a pair (one influent AND one effluent) of samples, during a nonroutine maintenance service visit (including travel)	Unit	5	For one pair 50 - 292 For 25 pairs 1,250 - 7,300	65	147.10	122.81
Cost to take the pair of influent and effluent samples to the lab	Unit	5	68.50 - 190	120	126.90	50.82
Cost to complete a product field verification process report (not including sampling costs)	Unit	6	144 - 48,000	3188	10,353	18,682
Cost to hire a service provider or a third-party sampler to collect 25 pairs of samples	Unit	6	5,225 - 100,000	20,000	34,038	35,936
Cost to post required materials on website	One-time	6	20 - 450	65	141	170

\*In the past two years, the department has received applications for four treatment productions and one distribution product, which helps to estimate the total cost.

**Potential Impact on Businesses:** Manufacturers of treatment units will need to arrange for sampling of at least 25 installations of each of their products that are registered as providing DL1, DL2, or TLN treatment. Manufacturers may conduct this sampling or hire a third party to conduct it. It will entail developing a sampling plan, contacting owners and arranging for site visits, collecting samples, delivering samples to a laboratory for analysis, and writing a report synthesizing the laboratory results. If the results demonstrate that the product does not meet the registered treatment level, the product

will be reassessed and may be reassigned to a treatment level or be removed from registration. If it is removed from registration, it can no longer be sold in Washington.

**WAC 246-272A-0200 Permit requirements:**

**Description:** This section specifies the permit application content when a person proposes the installation, repair, modification, connection to, or expansion of an OSS. The proposed change adds a requirement for site maps to include (1) horizontal separations as noted in Table IV in the rule, (2) an elevation benchmark, and (3) relative elevations of system components.

**Cost:** SBEIS Table 3 and Table 4 show the anticipated one-time cost for designers and engineers to add the specified items to their designs. The results of our survey found that 34 of 40 designer respondents already include these new components in their site plans. Therefore, they would not have additional costs to comply with the rule. The department received survey responses from 10 designers and 10 engineers about adding new elements to designs. SBEIS Table 3 and Table 4 present the estimated costs.

**SBEIS Table 3. Estimated Cost to Designers to Adhere to Permit Requirements (From SA Table 7)**

Description (responses)	N	Range (\$)	Median (\$)	Mean (\$)	Standard Deviation (\$)
One-time cost to add horizontal separations as noted in Table IV into design process	4	6.25 - 900	250	352	385
Unit cost to put the horizontal separations as noted in Table IV into one OSS design <b>Low-end range**</b>	4	6.25 - 500	175	164	122
Unit cost to put the horizontal separations as noted in Table IV into one OSS design <b>High-end range**</b>	4	12.50 - 500	225	241	209
One-time cost to add elevation benchmark as noted in Table IV into design process*	10	6.25 - 1,200	150	306	409
One-time cost to add relative elevations of system components as noted in Table IV into design process*	7	6.25 - 900	81	223	316
Unit cost to add relative elevations of system components on one site map* <b>Low-end range**</b>	7	6.25 - 512	150	170	188
Unit cost to add relative elevations of system components on one site map* <b>High-end range**</b>	6	12.50 - 368	170	368	503

\*These are items covered under WAC 332-130-145(1).

\*\*Respondents were asked to provide a range of costs and the department analyzed the low end and high end of the range to better understand the potential minimum cost and maximum cost of compliance.

**SBEIS Table 4. Estimated Cost to Professional Engineers to Adhere to Permit Requirements (From SA Table 8)**

Description (responses)	N	Range (\$)	Median (\$)	Mean (\$)	Standard Deviation (\$)
One-time cost to add horizontal separations as noted in Table IV into design process	8	180 - 22,500	11,050	10,765	7,531
One-time cost to add elevation benchmark as noted in Table IV into design process	10	150 - 8,000	800	1,620	2,348
Unit cost to add elevation benchmarks on one site map <b>Low-end range**</b>	9	37.50 - 3,250	390	731	1,014

Description (responses)	N	Range (\$)	Median (\$)	Mean (\$)	Standard Deviation (\$)
Unit cost to add elevation benchmarks on one site map <b>High-end range**</b>	9	300 - 5,200	700	1,351	1,531
One-time cost to add relative elevations of system components as noted in Table IV into design process*	6	200 - 8,000	795	1,932	3,019

\*These are items covered under WAC 332-130-145(1).

\*\*Respondents were asked to provide a range of costs and the department analyzed the low end and high end of the range to better understand the potential minimum cost and maximum cost of compliance.

**Potential Impact on Businesses:** Designers and engineers will need to incorporate the new items required as part of a permit application and site plan. The department anticipates that there will be an initial period of added costs, effort, and learning while designers and engineers incorporate the new requirements into their practices and routines. However, over time, these requirements are expected to become part of their routine data collection and reporting with marginal impacts.

**WAC 246-272A-0210 Location:**

**Description:** This section establishes minimum horizontal separations (distance) in Table IV of this section for septic tanks, drainfield, and building sewers to various water sources to prevent pollution. The proposed change includes adding any or all of the following components to a site map if they exist on the site: (1) Nonpublic in-ground water containment vessels; (2) closed geothermal loop or pressurized nonpotable water line; (3) lined stormwater detention pond; (4) unlined stormwater infiltration pond; or (5) subsurface stormwater infiltration or dispersion component.

**Cost:** The department received survey responses from four designers and eight engineers on the cost of adding any or all of the new source types to site maps. SBEIS Table 5 presents the estimated costs.

**SBEIS Table 5. Estimated Cost to Include Any of All Source Types to a Site Map (From SA Table 9)**

Description	N	Range (\$)	Median (\$)	Mean (\$)	Standard Deviation (\$)
<b>Designer</b>					
One-time cost to incorporate the items that you currently do not include from current Table IV into the design process	4	6.25 - 900	250	352	385
One-time cost to incorporate the items that you currently do not include from current Table IV into one OSS design <b>Low-end range*</b>	4	6.25 - 500,241	175	164	122
One-time cost to incorporate the items that you currently do not include from current Table IV into one OSS design <b>High-end range*</b>	4	12.50 - 500	225	241	209
<b>Engineer</b>					
One-time cost to incorporate the items that you currently do not include from current Table IV into the design process	8	180 - 22,500	11,050	10,766	7,531 [7,531]
One-time cost to incorporate the items that you currently do not include from current Table IV into one OSS design <b>Low-end range*</b>	7	0 - 6,000	520	1,207	2,129

Description	N	Range (\$)	Median (\$)	Mean (\$)	Standard Deviation (\$)
One-time cost to incorporate the items that you currently do not include from current Table IV into one OSS design  <b>High-end range*</b>	7	300 - 72,000	900	11,121	26,850

\*Respondents were asked to provide a range of costs and the department analyzed the low end of the range and the high end of the range to better understand the potential minimum cost and maximum cost to compliance.

**Potential Impact on Businesses:** The proposed setbacks will impact some developments (individual lots and subdivisions). By requiring additional setbacks, this may restrict how these lots can be laid out (require house placement in different area or potentially the size/footprint of the house). Conceivably, this could prevent the development of a lot if the extent of threats to water sources, with their associated setbacks, resulted in no viable building site unless the applicant requested and received a waiver. This impact is difficult to predict because it depends on the existence of the newly proposed components on the protected sources list.

**WAC 246-272A-0270 Operation, monitoring, and maintenance—Owner responsibilities:**

**Description:** This section describes what owners must do for operating, monitoring, maintaining, and inspection of their OSS to minimize the risk of failure and threat to public health.

**Cost:** If the property owner is in compliance with routine inspection requirements,<sup>10[10]</sup> and the inspection was completed by a third-party inspector, there will likely be no additional costs.

**Potential Impact on Businesses:** There is expected to be minimal impact to realtors. Real estate purchases in Washington are contracted through a purchase and sale agreement (PSA) form. This form requires an inspection of the OSS. Buyers are currently allowed to waive this requirement. The realtor is responsible for ensuring that the PSA is completed and recording that either the OSS is inspected, or that the buyer has waived the OSS inspection. Under the proposed revisions, the buyer would no longer be permitted to waive the OSS inspection and the realtor would be responsible for recording that the inspection was complete. To reiterate the above, if the property owner is not in compliance with routine inspection requirements, there will likely be no additional costs; if the property owner is not in compliance with routine inspection requirements, the additional cost to realtors would be time for the owner to bring the OSS into compliance with routine inspection requirements.

**WAC 246-272A-0320 Developments, subdivisions, and minimum land area requirements:**

**Description:** This section establishes minimum land area requirements when proposing land developments or subdivisions. The proposed amendments have potential costs to businesses by: (1) Increasing minimum lot size; (2) Reducing the maximum unit volume of sewage per day per acre from 3.5 to 3.35 for nonresidential uses on lots served by public water supplies; (3) establishing minimum useable land area as a new requirement; and (4) updating requirements for subsized lots. For a more detailed description of these changes, see the significant analysis.

**Cost: Part 1 Increase minimum lot size:** The department developed tables that show the modest impact of the proposed increase of minimum

lot size to lots that can be subdivided (shown in the significant analysis). The proposed increase ranges from 500 square feet to 1,000 square feet, depending on soil type. As an example, for soil type 2, the change will require a landowner to have a minimum of .30 of an acre lot to create a lot compared to the .29 acre (1/100 of an acre impact); and for a 10-lot subdivision, the minimum size of subdividable lot would have to be 11/100 of an acre larger.

**Potential Impact on Businesses:** In general, the department does not anticipate that the proposed rule will impact developers' sales/revenue. The department acknowledges that there could be potential scenarios where developers are affected by the rule, but in general most subdivisions will not be affected. The potential impact of the rule could be seen if the development is over 20 acres AND the developer is developing the lots to be as small as possible.

**Part 2 Reduce the maximum unit volume of sewage per day per acre:** SBEIS Table 6 describes the change from 3.5 to 3.35 maximum volumes of sewage per day per acre for nonresidential uses on lots served by public water supplies. To understand the costs, SBEIS Table 6 and Table 7 outline the maximum unit volume of sewage per acre under the current and proposed rule.

**SBEIS Table 6. Calculation of Maximum Unit Volume of Sewage Per Acre Under Current Rule (From SA Table 20)**

Current Rule	
Known variables	Minimum Lot Size = 12,500 sq ft 1 acre = 43,560 sq ft Unit Volume of Sewage = 450 Gallons of Sewage Per Day
Maximum unit volumes of sewage per acre for nonresidential uses on lots served by public water supplies	1 acre/Minimum Lot Size = Unit Volumes of Sewage Per Acre 43,560 sq ft/12,500 sq ft = 3.48 ≈ 3.5 Unit Volumes of Sewage Per Acre
Unit volumes of sewage converted into gallons per acre	Unit Volumes of Sewage Per Acre x Gallons of Sewage Per Unit Volume of Sewage 3.5 Unit Volumes of Sewage Per Acre x 450 Gallons Per Day = <b>1,575 Gallons of Sewage Per Day Per Acre</b>

**SBEIS Table 7. Calculation of Maximum Unit Volume of Sewage Per Acre Under Proposed Rule (From SA Table 21)**

Proposed Rule	
Known Variables	Minimum Lot Size = 13,000 sq ft 1 acre = 43,560 sq ft Unit Volume of Sewage = 450 Gallons of Sewage Per Day
Maximum unit volumes of sewage per acre for nonresidential uses on lots served by public water supplies	1 acre/Minimum Lot Size = Unit Volumes of Sewage Per Acre 43,560 sq ft/13,000 sq ft = 3.35 Unit Volumes of Sewage Per Acre
Unit volumes of sewage converted into gallons per acre	Unit Volumes of Sewage per Acre x Gallons of Sewage Per Unit Volume of Sewage 3.35 Unit Volumes of Sewage Per Acre x 450 Gallons Per Day = <b>1,508 Gallons of Sewage Per Day Per Acre</b>

The proposed amendment maximum quantity of sewage that can be generated by nonresidential uses on lots served by public water supplies is therefore reduced from 1,575 gallons per day per acre to 1,508 gallons per day per acre. This is a reduction of 67 gallons per day per acre (a decrease of about four percent).

**Potential Impact on Businesses:** The department is unable to estimate how this will affect businesses. The department acknowledges that businesses could be impacted by the rule by the reduction of 67 gallons of sewage per day per acre.

**Part 3 Establish minimum useable land area as a new requirement:**

The cost to designers to incorporate the proposed minimum useable land requirement into an OSS design was collected during the cost survey, but as the costs will likely be passed onto the consumer and not be a cost to businesses, the department did not include the cost in this section.

**Potential Impact on Businesses:** Lots created for commercial usage that will be served by an OSS will be required to have a minimum area of land that is usable for an OSS. Land subdivisions that will be served by OSS will need to be planned and configured so that each lot contains the required minimum usable land area.

**Part 4 Update requirements for subsized lots:** The amendments are based on the premise that lots sized in compliance with Table XI in the rule adequately protect groundwater and surface water resources from nitrogen impacts. Smaller lot sizes are allowed if nitrogen is treated at the same proportion that the lot is smaller than the Table XI requirement. This allows OSS to be installed on lots that do not meet Table XI's requirements (subsized lots) while ensuring that groundwater and surface water is protected. Using this methodology, new planned developments can be designed with lots as small as half the size of Table XI's minimum lot sizes by installing nitrogen treatment technology that takes the place of the land area that is otherwise used to treat and dilute nitrogen. Developers may choose to pay more for OSS, which treats nitrogen in exchange for using less land area, and get more lots from a subdivision.

**Potential Impact on Businesses:** Developers may choose to pay more for OSS that treats nitrogen in exchange for using less land area. The result is more lots from a subdivision and a higher cost OSS on each lot.

**Summary of All Costs:** Due to the large number of requirements of the proposed rule, coupled with the fact that many of the requirements do not universally apply to businesses, many costs are indeterminate, and it is not possible to compute the total incremental costs of the revised rules. The department anticipates that most new requirements will not cause businesses to lose sales or revenue, with potential exceptions as noted in this document.

**Analysis on if the proposed rule may impose more-than-minor costs for businesses in the industry. Includes a summary of how the costs were calculated:** Yes, the costs of the proposed rule are greater than the minor cost threshold (SBEIS Table 8).

**Summary of how this determination was made:** SBEIS Table 8 shows the reported estimated costs of selected sections of the rule (that will affect businesses) and that the proposed rule will likely impose more-than-minor costs for businesses in the industries.

**SBEIS Table 8. Summary of Costs to Businesses**

NAICS Name/ Number	Minor Cost Threshold (\$)	Requirement/Section	Reported Estimated Cost (\$)*
Engineers/541330	\$7,117	One-time cost to incorporate the items that you currently do not include from current Table IV into the design process (WAC 246-272A-0210)	\$10,000 \$12,100 \$15,625 \$16,900 \$22,500

NAICS Name/ Number	Minor Cost Threshold (\$)	Requirement/Section	Reported Estimated Cost (\$)*
Manufacturers/ 33318	\$9,003	Cost to hire a service provider or a third-party sampler to collect 25 pairs of samples (WAC 246-272A-0120)	\$20,000 \$20,000 \$50,000 \$100,000

\*Each cost listed represents an individual response from the survey. Results are not intended to be summed, but intended to be the cost to each individual business to comply with the individual rule section.

**Determination on if the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule:** Yes, the department believes the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

**Explanation of the Determination:** The department makes this determination based on examining cost per employee criteria. Many of the costs are comparable for small and large businesses. Therefore, because smaller businesses have fewer employees, their cost per employee will be higher (disproportionate) than the cost per employee of larger businesses.

**Thoughts on disproportionate impacts to small businesses: Installers** will need to incorporate new requirements into their installation practices. Initial implementation costs may be elevated as new requirements and practices are learned and refined. This may cause some uncertainties for installers as contracts are bid and accepted under the rule's new requirements. Over time, the new requirements are expected to become common practice with marginal impacts as compared to current practices and costs. The department assumes costs will be passed to customers with no long-term negative impacts on installers.

**Engineers and designers** will need to incorporate new requirements into their design practices. Initial implementation costs may be elevated as new requirements and practices are learned and refined. This may cause some uncertainties for engineers and designers as contracts are bid on and accepted under the rule's new requirements. Engineering firms and designers are generally adept at learning new requirements and applying their costing structure to ensure that costs are covered, and profits maintained and [within] appropriate margins. Over time, the new requirements are expected to become common practice with marginal impacts as compared to current practices and costs. The department assumes costs will be passed on to customers with no long-term negative impacts to engineers or designers.

**Maintenance service providers** are often some of the largest companies involved in the onsite sewage industry. Maintenance service providers will need to incorporate new requirements into their installation practices. Initial implementation costs may be elevated as new requirements and practices are learned and refined. In particular, new requirements for inspections may be challenging for maintenance service providers to incorporate into their practices and costing structures. This may cause some uncertainties for maintenance service providers as service is provided under the rule's new requirements. Over time, the new requirements are expected to become common practice with marginal impacts as compared to current practices and costs. The de-



partment assumes costs will be passed to customers with no long-term negative impacts on installers.

**Manufacturers** vary from very small and local to very large and international. Manufacturers of disinfecting proprietary treatment products will be required to conduct field verification of all of their registered products. This is a new requirement and practice and may elevate costs to manufacturers as they undertake field verification of their products. Over time, the new requirements are expected to become common practice with costs minimized and processes streamlined. The department assumes most costs will be passed to customers with no long-term negative impacts to manufacturers. Some manufacturers may elect to adjust their prices to offset the projected impacts while others are expected to wait to review impacts before adjusting prices.

**Realtors** will need to ensure that OSS property transfer inspections happen for all property sales unless you are already in compliance with routine inspection requirements in the rule. This is already part of their work. The PSA that accompanies all property sales includes an OSS inspection addendum. The new requirements will preclude buyers from waiving this inspection. There is expected to be little to no long-term negative impact to realtors.

**Developers** will need to plan subdivisions with slightly larger lot sizes if they are subdividing/building at the minimum lot sizing (i.e., the maximum density) allowed. The number of lots created from a subdivision would be impacted if the lots were the smallest size allowed and the subdivision was over 20 acres. The department does not have information on the frequency of this type of subdivision required to make a determination of the disproportionate impact to small businesses, but anticipates that the impacts would be marginal when compared to proceeds from sale of lots.

**If the proposed rule has a disproportionate impact on small businesses, the following steps have been identified and taken to reduce the costs of the rule on small businesses. If costs cannot be reduced, an explanation has been provided below about why the costs cannot be reduced.**

**1. Reducing, modifying, or eliminating substantive regulatory requirements:** The department convened ORRC. Its members took great interest in minimizing the impact of the draft rules by reducing, modifying, and eliminating the requirements when appropriate. ORRC included eight representatives from industry, including manufacturers, installers, designers, engineers, maintenance service providers, and realtors. The department also was aware and considered the impact of every provision when drafting the rules.

**2. Simplifying, reducing, or eliminating recordkeeping and reporting requirements:** Similar to above, ORRC was very aware and attempted to limit the impact to all parties when drafting the rules and attempted to simplify, reduce, and eliminate recordkeeping and reporting requirements when possible.

**3. Reducing the frequency of inspections:** The rule does not require inspections of any businesses. OSS is required to be inspected to protect public health. Most OSS are owned and operated by private residential owners. Some businesses are served by an OSS. The proposed rule requires all OSS to be inspected at the time of property transfer. The proposal allows the local health officer to remove the property transfer inspection for any OSS that is in compliance with routine inspections requirements that are already required for all OSS. This will significantly reduce the frequency of inspections.

**4. Delaying compliance timetables:** The department plans to recommend delaying the effective date of most provisions in the rule by one year to enable local health officers, industry practitioners, and interested parties to work on implementation. The department also plans to recommend delaying implementation of the property transfer inspection provision by two additional years to allow more time to prepare for implementation. The board will take these recommendations into consideration at the time of the public hearing and rule adoption.

**5. Reducing or modifying fine schedules for noncompliance:** The proposed rules do not add any new fining authority or new fine schedules.

**6. Any other mitigation techniques including those suggested by small businesses or small business advocates:** Several changes that will reduce burdens and save costs for small businesses are included in the proposed rule. Some of the proposed improvements include:

- Streamlining and digitizing the proprietary product renewal process;
- Adding testing and registration options for proprietary products;
- Adding a provision that manufacturers of proprietary products can use replacement components that their products have not been tested with in cases of supply chain or manufacturing disruption; and
- Adding an allowance for local health officers to develop a policy allowing remediation practices.

**Description of how small businesses were involved in the development of the proposed rule:** ORRC included eight representatives from industry, including manufacturers, installers, designers, engineers, maintenance service providers, and realtors. Each of these representatives represented the interests of small businesses. ORRC gave input on all aspects of the draft rule that was released for informal comment. The department received and reviewed several comments from small businesses and small business advocates. The department made adjustments to the draft rule to reduce burdens and perceived burdens noted by commentors.

The department also developed a proposed revision to include the new proprietary product field verification requirement as proposed by ORRC to the standards document that details the processes of registering proprietary products. The department invited all manufacturers that currently have registered proprietary treatment products in Washington, as well as representatives of the state and national manufacturers' associations, to participate in a workgroup to draft this document.

**The estimated number of jobs that will be created or lost in result of the compliance with the proposed rule:** The impact of the revised rules on jobs is indeterminate. However, as the rule increases the number of inspections, this could result in increased employment for inspectors, pumpers, and maintenance service providers.

[1] Internal Document "2018 Socioeconomic Impact Survey of Hammersley Inlet Shellfish Growers." Available Upon Request.

[2] <https://doh.wa.gov/sites/default/files/legacy/Documents/Pubs/337-152a.pdf?uid=635807f46e5ae>.

[3] 2017 Evaluation of the Effectiveness of Chapter 246-272A WAC, On-site Sewage Systems.

[4] <https://doh.wa.gov/sites/default/files/legacy/Documents/Pubs/337-152a.pdf?uid=635807f46e5ae>.

[5] RCW 43.20.065: On-site sewage system failures and inspections—Rule making.

[6] U.S. Census Bureau, North American Industry Classification System (NAICS).

[7] Governor's Office for Regulatory Innovation and Assistance, Regulatory Fairness Act Tools & Guidance, Minor Cost Threshold Calculator.

[8] Range: \$28 per sample (Lewis County) to \$65 per sample. AmTest Laboratories quoted \$40/sample.

[9] \$28 X 50 samples = \$1,400, \$65 X 50 samples = \$3,250.

[10] WAC 246-272A-0270 (1)(e).

A copy of the statement may be obtained by contacting Peter Beaton, Department of Health, P.O. Box 47824, Olympia, WA 98504-7824, phone 360-236-3150, TTY 711, email peter.beaton@doh.wa.gov.

October 24, 2023  
Michelle A. Davis, MPA  
Executive Director

## OTS-4868.5

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0001 Purpose, objectives, and authority.** (1) The purpose of this chapter is to protect the public health by minimizing:

(a) The potential for public exposure to sewage from on-site sewage systems (OSS); and

(b) Adverse effects to public health that discharges from ~~((on-site sewage systems))~~ OSS may have on ground and surface waters.

(2) This chapter regulates the location, design, installation, operation, maintenance, and monitoring of ~~((on-site sewage systems))~~ OSS to:

(a) Achieve effective long-term sewage treatment and effluent dispersal; and

(b) Limit the discharge of contaminants to waters of the state.

(3) The state board of health is authorized under RCW 43.20.050 to establish minimum requirements for the department of health and local boards of health, and consistent with RCW 43.70.310 integrating the preservation of public health with protection of the environment in order to endorse policies in common.

(4) This chapter is intended to coordinate with other applicable statutes and rules for the design of ~~((on-site sewage systems))~~ OSS under chapter 18.210 RCW and chapter 196-33 WAC.

(5) This chapter is intended to coordinate with other applicable statutes for land use planning under chapters 36.70 and 36.70A RCW, and the statutes for subdivision of land under chapter 58.17 RCW.

(6) The local health officer may designate low-lying marine shorelines in their jurisdiction.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0005 Administration.** The local health officers and the department shall administer this chapter under the authority and requirements of chapters 70.05, 70.08, ~~((70.118,))~~ 70.46, 70A.105, 70A.110, and 43.70 RCW. RCW 70.05.060(7) authorizes local health officers to charge fees for the administration of this chapter.

NEW SECTION**WAC 246-272A-0007 Applicability.** (1) The local health officer:

- (a) Shall apply this chapter to OSS for treatment, siting, design, installation, and operation and maintenance measures treating sewage and dispersing effluent from residential sources with design flows up to 3,500 gallons per day;
- (b) May apply this chapter to OSS for nonresidential sources of sewage if treatment, siting, design, installation, and operation and maintenance measures provide treatment and effluent dispersal equal to that required of residential sources;
- (c) May not apply this chapter to industrial wastewater.
- (2) The department shall apply the requirements of this chapter for the registration of proprietary treatment and distribution products.
- (3) A valid OSS design approval, or installation permit issued prior to the effective date of these rules:
- (a) Shall be acted upon in accordance with the requirements of this chapter in force at the time of issuance;
- (b) Remains valid for a period of not more than five years from the date of approval or issuance, or remains valid for an additional year beyond the effective date of this chapter, whichever has the most lenient expiration date; and
- (c) May be modified to include additional requirements if the health officer determines that a serious threat to public health exists.
- (4) This chapter does not apply to facilities regulated as reclaimed water use under chapters 90.46 RCW and 173-219 WAC.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0010 Definitions.** (~~((1) Acronyms used in this chapter:~~

~~"ANSI" means American National Standards Institute.~~

~~"BOD" means biochemical oxygen demand, typically expressed in mg/L.~~

~~"CBOD<sub>5</sub>" means carbonaceous biochemical oxygen demand, typically expressed in mg/L.~~

~~"FC" means fecal coliform, typically expressed in number colonies/100 ml.~~

~~"LOSS" means a large on-site sewage system (see chapter 246-272B WAC).~~

~~"NSF" means National Sanitation Foundation International.~~

~~"O&G" (formerly referred to as FOG) means oil and grease, a component of sewage typically originating from food stuffs (animal fats or vegetable oils) or consisting of compounds of alcohol or glycerol with fatty acids (soaps and lotions). Typically expressed in mg/L.~~

~~"OSS" means on-site sewage system.~~

~~"RS&G" means recommended standards and guidance.~~

~~"SSAS" means a subsurface soil absorption system.~~

~~"TAC" means the technical advisory committee established in WAC 247-272A-0400.~~

~~"TN" means total nitrogen, typically expressed in mg/L.~~

~~"TSS" means total suspended solids, a measure of all suspended solids in a liquid, typically expressed in mg/L.~~

~~"USEPA" means United States Environmental Protection Agency.~~

~~(2) Definitions used in this chapter:)~~

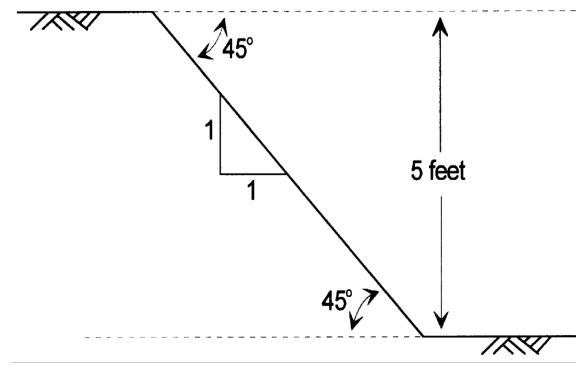
The definitions used in this section apply throughout this chapter unless the context clearly indicates otherwise:

(1) "Additive" means a commercial product added to an ((on-site sewage system)) OSS intended to affect the performance or aesthetics of an ((on-site sewage system)) OSS.

(2) "ANSI" means American National Standards Institute.

(3) "Approved" means a written statement of acceptability issued by the local health officer or the department.

(4) "Bank" means any naturally occurring slope greater than 100 percent (45 degrees) and extending vertically at least five feet from the toe of the slope to the top of the slope as follows:



(5) "Bed" means a soil dispersal component consisting of an excavation with a width greater than three feet.

(6) "Black water" means any waste from toilets or urinals.

(7) "BOD" means biochemical oxygen demand, typically expressed in mg/L.

(8) "Building drain" means that part of the lowest piping of a building's drainage system that receives the discharge of sewage from pipes inside the walls of the building and conveys it to the building sewer beginning two feet outside the building wall.

(9) "Building sewer" means that part of the horizontal piping of a drainage system extending from the building drain, which collects sewage from all the drainage pipes inside a building, to an ((on-site sewage system)) OSS. It begins two feet outside the building wall and conveys sewage from the building drain to the ((remaining portions of the on-site sewage system)) OSS.

(10) "CBOD<sub>5</sub>" means carbonaceous biochemical oxygen demand, typically expressed in mg/L.

(11) "Cesspool" means a pit receiving untreated sewage and allowing the liquid to seep into the surrounding soil or rock.

(12) "Conforming system" means any ((on-site sewage system)) OSS or component, meeting any of the following criteria:

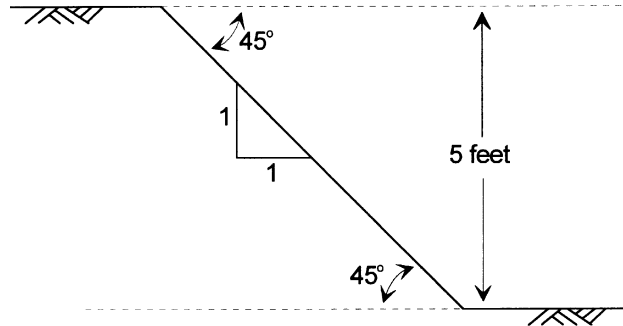
(a) In full compliance with new construction requirements under this chapter; or

(b) Approved, installed and operating in accordance with requirements of previous editions of this chapter; or

(c) Permitted by the waiver process under WAC 246-272A-0420 ((that assures public health protection by higher treatment performance or other methods)).

(13) "Cover material" means soil placed over a soil dispersal component composed predominately of mineral material with no greater than ~~(ten)~~ 10 percent organic content. Cover material may contain an organic surface layer for establishing a vegetative landscape to reduce soil erosion.

(14) "Cuts ~~((and/or banks))~~" means any ~~((naturally occurring or))~~ artificially formed slope greater than ~~((one hundred))~~ 100 percent ~~((forty-five))~~ 45 degrees and extending vertically at least five feet from the toe of the slope to the top of the slope as follows:



(15) "Department" means the Washington state department of health.

(16) "Designer" means a person who matches site and soil characteristics with appropriate on-site sewage technology. Throughout this chapter this term applies to both ~~((on-site sewage treatment system))~~ OSS designers licensed under chapter 18.210 RCW and professional engineers licensed under chapter 18.43 RCW.

(17) "Design flow" means the maximum volume of sewage a residence, structure, or other facility is estimated to generate in a ~~((twenty-four-hour))~~ 24-hour period. It incorporates both an operating capacity and a surge capacity for the ~~((system))~~ OSS during periodic heavy use events. The sizing and design of the ~~((on-site sewage system))~~ OSS components are based on the design flow.

(18) "Development" means the creation of a residence, structure, facility, subdivision, site, area, or similar activity resulting in the production of sewage.

(19) "Disinfection" means the process of destroying pathogenic microorganisms in sewage through the application of ultraviolet light, chlorination, or ozonation.

(20) "Distribution technology" means any arrangement of equipment ~~((and/))~~ or materials that distributes sewage within an ~~((on-site sewage system))~~ OSS.

(21) "DL" means disinfection level.

~~((("Drain field" see subsurface soil absorption system (SSAS) and soil dispersal component.))~~

(22) "Drainrock" means clean washed gravel or crushed rock ranging in size from three-quarters inch to two and one-half inches ~~((7))~~ and containing no more than two percent by weight passing a US No. 8 sieve and no more than one percent by weight passing a US No. 200 sieve.

(23) "DS&G" means department standards and guidance.

(24) "E. coli" means Escherichia coli bacteria. Counts of these organisms are typically used to indicate potential contamination from sewage or to describe a level of needed disinfection, typically expressed as colony forming units/100 ml.

(25) "Effluent" means liquid discharged from a ((septic)) sewage tank or other ((on-site-sewage-system)) OSS component.

(26) "EPA" means United States Environmental Protection Agency.

(27) "Expanding clay" means a clay soil with the mineralogy of clay particles, such as those found in the Montmorillonite/Smectite Group, which causes the clay particles to expand when they absorb water, closing the soil pores, and contract when they dry out.

(28) "Expansion" means a change in a residence, facility, site, or use that:

(a) Causes the sewage quantity or quality to exceed the existing design flow of the ((on-site-system)) OSS, for example, when a residence is increased from two to three bedrooms or a change in use from an office to a restaurant; or

(b) Reduces the treatment or dispersal capability of the existing ((on-site-sewage-system)) OSS or the reserve area, for example, when a building is placed over a reserve area.

(29) "Extremely gravelly" means soil with ((sixty)) 60 percent or more, but less than ((ninety)) 90 percent rock fragments by volume.

(30) "Failure" means a condition of an ((on-site-sewage-system)) OSS or component that threatens the public health by inadequately treating sewage or by creating a potential for direct or indirect contact between sewage and the public. Examples of failure include:

(a) Sewage on the surface of the ground;

(b) ((Sewage)) Septic backing up into a structure caused by slow soil absorption of septic tank effluent;

(c) Sewage leaking from a sewage tank or collection system;

(d) Cesspools or seepage pits where evidence of groundwater or surface water quality degradation exists;

(e) Inadequately treated effluent contaminating groundwater or surface water; or

(f) Noncompliance with standards stipulated on the permit.

(31) "Fecal coliform" or "FC" means bacteria common to the digestive systems of warm-blooded animals that are cultured in standard tests. Counts of these organisms are typically used to indicate potential contamination from sewage or to describe a level of needed disinfection((. Generally)) typically expressed ((as colonies per)) in colony forming units/100 ml.

(32) "Fill" means unconsolidated material that:

(a) Meets soil types 1-6 textural criteria and is used as part of a dispersal component;

(b) Is used to change grade or to enhance surface water diversion; or

(c) Is any other human-transported material.

(33) "Flood plain" means an area that is low-lying and adjacent to a stream or river that is covered by water during a flood.

(34) "GPD" means gallons per day.

(35) "Gravelly" means soils with ((fifteen)) 15 percent or more, but less than ((thirty-five)) 35 percent rock fragments by volume.

(("Gray water" means sewage from)) (36) "Greywater" means sewage from any source in a residence or structure that has not come into contact with toilet or urinal wastes, including bathtubs, showers, bathroom sinks, washing machines, dishwashers, and kitchen sinks. ((It includes sewage from any source in a residence or structure that has not come into contact with toilet wastes.))

(37) "Groundwater" means subsurface water occupying the zone of saturated soil, permanently, seasonally, or as the result of the tides. Indications of groundwater may include:

(a) Water seeping into or standing in an open excavation from the soil surrounding the excavation or monitoring ports.

(b) Spots or blotches of different color or shades of color interspersed with a dominant color in soil, caused by reduction and oxidation of iron. These color patterns are redoximorphic features, commonly referred to as mottling. Redoximorphic features often indicate the intermittent presence of groundwater and may indicate poor aeration and impeded drainage. (~~Also see "water table."~~)

(38) "Holding tank sewage system" means an (~~on-site sewage system which~~) OSS that incorporates a sewage tank without a discharge outlet, the services of a sewage pumper/hauler, and the offsite treatment and disposal for the sewage generated.

(39) "Hydraulic loading rate" means the amount of effluent applied to a given treatment step, (~~in this chapter~~) expressed as gallons per square foot per day or  $(+)\text{gal}/\text{sq. ft.}/\text{day}(+)$ .

(40) "Industrial wastewater" means the water or liquid carried waste from an industrial process. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses, or dairies. (~~The term~~) Industrial wastewater includes contaminated stormwater and leachate from solid waste facilities.

(41) "Infiltrative surface" means the surface within a treatment component or soil dispersal component to which effluent is applied and through which effluent moves into original, undisturbed soil or other porous treatment media.

(42) "Installer" means a person approved by the local health officer to install (~~on-site sewage systems~~) an OSS or OSS components.

(43) "Local health officer" means the health officer of the city, county, or city-county health department or district within the state of Washington, or a representative authorized by and under the direct supervision of the local health officer, as defined in chapter 70.05 RCW.

(44) "LOSS" means a large on-site sewage system under chapter 246-272B WAC.

(45) "Maintenance" means the actions necessary to keep the (~~on-site sewage system~~) OSS components functioning as designed.

(46) "Maintenance service provider" means a management entity certified by the local health officer and conducts a comprehensive analysis of an OSS.

(47) "Malfunction" means a damaged or deficient previously conforming OSS component that may be corrected by means of a minor repair.

(48) "Massive structure" means the condition of a soil layer in which the layer appears as a coherent or solid mass not separated into peds of any kind.

(49) "mg/L" means milligrams per liter.

(50) "ml" means milliliter.

(51) "Minimum usable land area" means the minimum land area within the minimum lot size required per development using an OSS, which is based on soil type and type of water supply. Minimum usable land area is free of all physical restrictions and meet minimum vertical and horizontal separations.

(52) "Minor repair" means the repair or replacement of any of the following existing damaged or malfunctioning OSS components except that the repair or replacement of a sewage tank, treatment component, or soil dispersal component is not considered a minor repair:



- (a) Control panels;
- (b) Building sewers;
- (c) Any other portions of tightline in the OSS;
- (d) Risers and riser lids;
- (e) Sewage tank baffles;
- (f) Effluent filters;
- (g) Sewage tank pumps and lids;
- (h) Pump control floats; and
- (i) OSS inspection boxes and ports.

(53) "Moderate structure" means well-formed distinct peds evident in undisturbed soil. When disturbed, soil material parts into a mixture of whole peds, broken peds, and material that is not in peds.

(54) "Modification" means the alteration of an existing OSS component that does not result in an expansion of the system. A modification is not considered a repair.

(55) "Monitoring" means periodic or continuous checking of an ~~(on-site sewage system)~~ OSS, which is performed by observations and measurements, to determine if the system is functioning as intended and if system maintenance is needed. Monitoring also includes maintaining accurate records that document monitoring activities.

~~("On-site sewage system" (OSS) means an integrated system of components, located on or nearby the property it serves, that conveys, stores, treats, and/or provides subsurface soil treatment and dispersal of sewage. It consists of a collection system, a treatment component or treatment sequence, and a soil dispersal component. An on-site sewage system also refers to a holding tank sewage system or other system that does not have a soil dispersal component.)~~

(56) "NSF" means National Sanitation Foundation International.

(57) "O&G" means oil and grease, a component of sewage typically originating from food stuffs such as animal fats or vegetable oils, or consisting of compounds of alcohol or glycerol with fatty acids such as soaps and lotions, typically expressed in mg/L.

(58) "Operating capacity" means the average daily volume of sewage an OSS can treat and disperse on a sustained basis. The operating capacity, which is lower than the design flow, is an integral part of the design and is used as an index in OSS monitoring.

(59) "Ordinary high-water mark" means the mark on lakes, streams, springs, and tidal waters, found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland with respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. The following ~~(definitions)~~ conditions apply where the ordinary high-water mark cannot be found:

(a) The ordinary high-water mark adjoining marine water is the elevation at mean higher high tide; and

(b) The ordinary high-water mark adjoining freshwater is the line of mean high water.

(60) "OSS" means on-site sewage system, an integrated system of components, located on or nearby the property it serves, which conveys, stores, treats, and provides subsurface soil treatment and dispersal of sewage. It consists of a collection system, a treatment component or treatment component sequence, and a soil dispersal component. An OSS also refers to a holding tank sewage system or other system that does not have a soil dispersal component. The term "on-site

sewage system (OSS)" does not include any system regulated by a water quality discharge permit issued under chapter 90.48 RCW.

(61) "PAG" means policy advisory group.

(62) "PDP" means product development permit.

(63) "Ped" means a unit of soil structure such as blocks, column, granule, plate or prism formed by natural processes.

(64) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of these entities. For the purposes of WAC 246-272A-0430 and 246-272A-0440, a person is defined to include:

(a) Applicant;

(b) Reapplicant;

(c) Permit holder; or

(d) Any individual associated with (a), (b) or (c) of this subsection including, but not limited to:

(i) Board members;

(ii) Officers;

(iii) Managers;

(iv) Partners;

(v) Association members;

(vi) Agents; and

(vii) Third persons acting with the knowledge of such persons.

(65) "Planned unit development" means a subdivision characterized by a unified site design, clustered residential units (~~and~~) or commercial units, and areas of common open space.

(66) "Platy structure" means soil that contains flat peds that lie horizontally and often overlap. This type of structure (~~will~~) impedes the vertical movement of water.

(67) "Pressure distribution" means a system of small diameter pipes equally distributing effluent throughout (~~a SSAS~~) an OSS, as described in the (~~department's "Recommended Standards and Guidance") DS&G for Pressure Distribution Systems, ("2001") 2022~~. A subsurface drip system (~~may be used wherever the chapter requires~~) is considered a pressure distribution system.

(68) "Professional engineer" means a person who is currently licensed as an engineer under the provisions of chapter 18.43 RCW.

(69) "Proprietary product" means a sewage treatment and distribution technology, method, or material subject to a patent or trademark.

(70) "Public domain technology" means a sewage treatment and distribution technology, method, or material not subject to a patent or trademark.

(71) "Public sewer system" means a sewerage system:

(a) Owned or operated by a city, town, municipal corporation, county, or other approved ownership consisting of a collection system and necessary trunks, pumping facilities and a means of final treatment and disposal; and

(b) Approved by or under permit from the department of ecology, the department of health (~~and~~) or a local health officer.

(72) "Puget Sound counties" means Clallam, Island, Kitsap, Jefferson, Mason, San Juan, Seattle-King, Skagit, Snohomish, Tacoma-Pierce, Thurston, and Whatcom. All other counties are defined as non-Puget Sound counties.

(73) "Pump chamber" means a watertight receptacle placed after a septic tank, sewage tank, or other treatment facility that contains the required controls and alarms to convey sewage effluent to a treatment or dispersal component.

(74) "Pumper" means a person approved by the local health officer to remove and transport sewage or septage from ~~((on-site sewage systems))~~ an OSS.

(75) "Record drawing" means an accurate graphic and written record of the location and features of the OSS that are needed to properly monitor, operate, and maintain that system. Also known as an "as-built" drawing.

(76) "Remediation" means any action, approved by the local health officer, which attempts to restore the function of a previously conforming OSS dispersal component that has failed. Remediation is not considered:

(a) A minor repair;

(b) A repair;

(c) An additive; or

(d) A treatment or distribution technology that allows the OSS to meet a specific treatment level.

(77) "Repair" means the relocation, replacement or reconstruction of a failed ~~((on-site sewage system))~~ OSS, or any OSS components not included in the list for a minor repair, which have failed in order to restore the OSS to a nonfailure status.

(78) "Reserve area" means an area of land approved for the installation of a conforming ~~((system))~~ OSS that is protected and maintained for replacement of the OSS upon its failure.

(79) "Residential sewage" means sewage having the constituency and ~~((strength))~~ quality typical of ((wastewater from domestic households)) residential septic tank effluent consistent with treatment level E identified in Table III in WAC 246-272A-0110.

(80) "Restrictive layer" means a stratum impeding the vertical movement of water, air, and growth of plant roots, such as hardpan, claypan, fragipan, caliche, some compacted soils, bedrock and unstructured clay soils.

(81) "Rock fragment" means rock or mineral fragments having a diameter of two millimeters or more ~~((; for example))~~. Examples include, gravel, cobbles, stones, and boulders.

(82) "Seepage pit" means an excavation more than three feet deep where the sidewall of the excavation is designed to dispose of septic tank effluent. Seepage pits ~~((may))~~ are also ~~((be called "dry wells."))~~ known as dry wells.

(83) "Septage" means ~~((the mixture of solid wastes, scum, sludge, and liquids pumped from within septic tanks, pump chambers, holding tanks, and other OSS components))~~ liquid or solid material removed from sewage tanks, cesspools, portable toilets, type III marine sanitation devices, vault toilets, pit toilets, recreational vehicle holding tanks, or similar systems that receive only domestic sewage.

(84) "Septic tank" means a watertight treatment receptacle receiving the discharge of sewage from a building sewer or sewers, designed and constructed to ~~((permit separation of))~~ separate settleable and floating solids from the liquid, detention and anaerobic digestion of the organic matter, prior to discharge of the liquid.

~~((("Septic system" see on-site sewage system or OSS.))~~

(85) "Sewage" means any urine, feces, and the water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places.

(86) "Sewage quality" means contents in sewage that include:

(a) CBOD<sub>5</sub>, TSS, and O&G;

(b) Other parameters that ~~((can))~~ may adversely affect treatment. Examples include pH, temperature, and dissolved oxygen; or

(c) Other constituents that create concerns due to specific site sensitivity. Examples include fecal coliform, *E. coli*, phosphorus, and nitrogen.

(87) "Sewage tank" means a prefabricated or cast-in-place septic tank, pump ~~((tank/dosing))~~ chamber, dosing chamber, holding tank, grease interceptor, recirculating filter tank or any other tanks as they relate to ~~((on-site sewage systems))~~ OSS including tanks for use with proprietary products.

(88) "Soil dispersal component" means a technology that releases effluent from a treatment component into the soil for dispersal, final treatment and recycling.

(89) "Soil log" means a detailed description of soil characteristics providing information on the soil's capacity to act as an acceptable treatment and dispersal medium for sewage.

(90) "Soil scientist" means a person certified by the American Society of Agronomy as a Certified Professional Soil Scientist.

(91) "Soil type" means one of seven numerical classifications of fine earth particles and rock fragments as described in WAC 246-272A-0220 (2) (e).

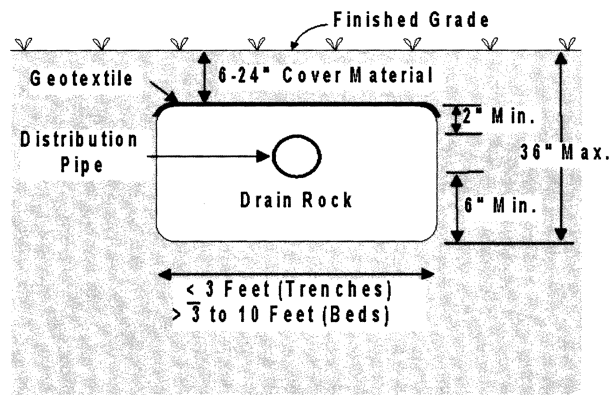
(92) "Standard methods" means the ~~((20th))~~ 23rd Edition of Standard Methods for the Examination of Water and Wastewater, prepared and published jointly by the American Public Health Association, the American Water Works Association and the Water Environment Federation.

(93) "Strong structure" means peds are distinct in undisturbed soil. They separate cleanly when soil is disturbed, and the soil material separates mainly into whole peds when removed.

(94) "Subdivision" means a division of land or creation of lots or parcels, described under chapter 58.17 RCW, including both long and short subdivisions, planned unit developments, and mobile home parks.

(95) "Subsurface drip system" means an efficient pressurized wastewater distribution system that can deliver small, precise doses of effluent to soil surrounding the drip distribution piping ~~((called)), also known as dripline((+))~~, as described in the ~~((department's "Recommended Standards and Guidance))~~ DS&G for Subsurface Drip Systems, 2020. ~~(("))~~

~~(("Subsurface soil absorption system" (SSAS) means))~~ (96) "SSAS" means a subsurface soil absorption system that is a soil dispersal component of trenches or beds containing either a distribution pipe within a layer of drainrock covered with a geotextile, or an approved gravelless distribution technology, designed and installed in ~~((original, undisturbed, unsaturated soil providing at least minimal vertical separation as established in this chapter))~~ suitable soil, with either gravity or pressure distribution of the treatment component effluent.



(97) "Suitable" means original, undisturbed, unsaturated soil of soil types 1-6 with at least the vertical separation established in this chapter.

(98) "Surface water" means any fresh or marine body of water (whether fresh or marine,) flowing or contained in natural or artificial unlined depressions for significant periods of the year, including natural and artificial lakes, ponds, springs, rivers, streams, swamps, marshes, irrigation canals and tidal waters.

(99) "TAG" means the technical advisory group established in WAC 246-272A-0400.

(100) "Timed dosing" means delivery of discrete volumes of sewage at prescribed time intervals.

(101) "TN" means total nitrogen, typically expressed in mg/L.

(102) "Treatment component" means a technology that treats sewage in preparation for further treatment (and/or) dispersal into the soil environment. Some treatment components, such as mound systems, incorporate a soil dispersal component in lieu of separate treatment and soil dispersal components.

(103) "Treatment component sequence" means any series of treatment components that discharges treated sewage to the soil dispersal component.

(104) "Treatment level" means one of ((six)) the following levels (A, B, C, DL1, DL2, DL3, E, & N) ((used in these rules)) to:

(a) Identify treatment component performance demonstrated through requirements specified in WAC 246-272A-0110; and

(b) Match site conditions of vertical separation and soil type with treatment components. ((Treatment levels used in these rules are not intended to be applied as field compliance standards. Their intended use is for establishing treatment product performance in a product testing setting under established protocols by qualified testing entities.

~~"Treatment sequence" means any series of treatment components that discharges treated sewage to the soil dispersal component.))~~

(105) "Trench" means a soil dispersal component consisting of an excavation with a width of three feet or less.

(106) "TSS" means total suspended solids, a measure of all suspended solids in a liquid, typically expressed in mg/L.

(107) "Unit volume of sewage" means:

(a) Flow from a single-family residence;

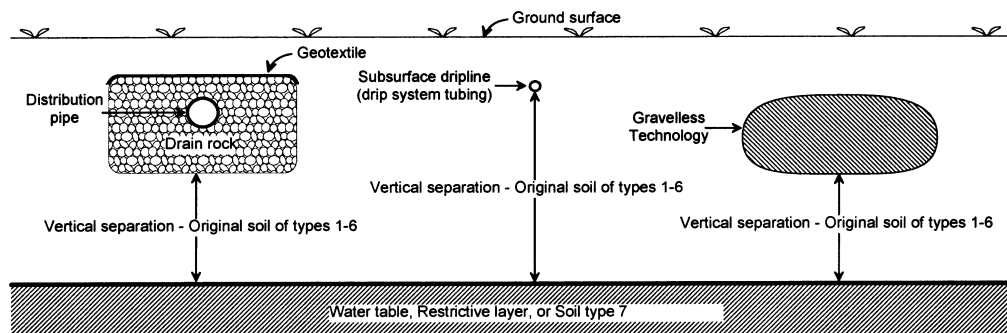
(b) Flow from a mobile home site in a mobile home park; or

(c) Four hundred fifty gallons of sewage per day where the proposed development is not single-family residences or a mobile home park.

(108) "Unknown OSS" means an OSS that was installed without the knowledge or approval of the local health jurisdiction, including those that were installed before such approval was required.

(109) "Unpermitted sewage discharge" means the discharge of sewage or treated effluent from an unknown OSS.

(110) "Vertical separation" means the depth of ((unsaturated, original, undisturbed soil of soil types 1-6)) suitable soils between the bottom infiltrative surface of a soil dispersal component and the highest seasonal water table, a restrictive layer, or soil type 7 as illustrated below by the profile drawing of subsurface soil absorption systems:



(111) "Very gravelly" means soil containing ((thirty-five)) 35 percent or more, but less than ((sixty)) 60 percent rock fragments by volume.

(112) "Water supply protection zone" means the land area around each existing or proposed well site to protect the water supply from contamination.

(113) "Water table" means the upper surface of the groundwater, whether permanent or seasonal. Also see "groundwater" as defined in this section. (("))

(114) "Well" means any excavation that is constructed when the intended use of the well is for the location, diversion, artificial recharge, observation, monitoring, dewatering or withdrawal of groundwater for agricultural, municipal, industrial, domestic, or commercial use. ((Excluded are)) The following are not considered a well:

(a) A temporary observation or monitoring well used to determine the depth to a water table for locating an OSS;

(b) An observation or monitoring well used to measure the effect of an OSS on a water table; ((and))

(c) An interceptor or curtain drain constructed to lower a water table; and

(d) A dewatering well used temporarily for the purpose of a sewage tank or pump chamber installation.

## GENERAL REQUIREMENTS

NEW SECTION

**WAC 246-272A-0013 Local rules.** (1) The local health officer shall enforce the requirements of this chapter until a local board of health adopts local OSS regulations. A local board of health may adopt and enforce local rules governing OSS when the local regulations are:

(a) Consistent with, and at least as stringent as this chapter; and  
 (b) Approved by the department prior to the effective date of local regulations.

(2) To apply for department approved local OSS regulations a local board of health shall submit the proposed local regulations to the department.

(3) Within 90 days of receipt of proposed local regulations, the department shall:

(a) Approve the proposed regulations; or  
 (b) Deny the proposed regulations if the department determines local regulations are not consistent with this chapter or less stringent than this chapter and provide specific reasons for the denial.

(4) Upon receipt of department approval, or after 90 days if the department fails to act, the local board may implement adopted regulations. The local board shall provide a copy of the adopted local regulations to the department.

(5) If the department denies approval of local regulations, the local board of health may:

(a) Resubmit revised regulations that address the specific reasons for the denial for department consideration; or  
 (b) Submit a request to the department to review its denial within 120 days from the date the local board of health receives the specific reasons for the denial.

(6) Upon receipt of request for review of the department denial, the department shall:

(a) Acknowledge the receipt of the request within 30 days; and  
 (b) Form a mutually acceptable advisory panel to review the department denial and reach an agreement within a reasonable time. The panel shall consist of:

(i) One representative from the department;  
 (ii) One representative from a local health jurisdiction other than that which requested the review; and  
 (iii) One member of the TAG.

(7) If good faith efforts to reach agreement are unsuccessful between the department and a local board of health, the local board of health may appeal the denial to the Washington state board of health for resolution.

(8) Nothing in this chapter shall prohibit the adoption and enforcement of more stringent regulations by a local board of health.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0015 Local management ((and regulation)) plans.**

(1) ((By July 1, 2007,)) The local health officer((s of health jurisdictions in the twelve counties bordering)) for each Puget Sound county shall develop a written local management plan ((that will)) to provide guidance to the local health jurisdiction regarding development

and management activities for all OSS within the jurisdiction. The ~~((plan))~~ department will review the existing OSS local management plans for all Puget Sound counties within two years of the effective date of the rule. If the department determines a plan revision is necessary upon review, the local health officer shall revise the local management plan for all OSS within the local health jurisdiction consistent with subsection (2) of this section.

(2) At a minimum, the local management plan for Puget Sound counties must specify how the local health jurisdiction will:

(a) Progressively develop and maintain an inventory including the type and location of all known OSS in operation within the jurisdiction;

(b) Identify any areas where OSS could pose an increased public health risk. The following areas shall be given priority in this activity:

(i) Shellfish protection districts or shellfish growing areas;

(ii) Sole source aquifers as designated by the ~~((USEPA))~~ EPA;

(iii) Areas in which aquifers used for potable water as designated under the Washington State Growth Management Act ~~((7))~~ under chapter 36.70A RCW are critically impacted by recharge;

(iv) Designated wellhead protection areas ~~((for))~~ in Group A public water ~~((systems))~~ supplies under chapter 246-290 WAC;

(v) Up-gradient areas directly influencing water recreation facilities designated for swimming in natural waters with artificial boundaries within the waters as described by the Water Recreation Facilities Act ~~((7))~~ under chapter 70.90 RCW;

(vi) Areas designated ~~((by the department of ecology))~~ as special protection areas under WAC 173-200-090 ~~((7, Water quality standards for groundwaters of the state of Washington))~~;

(vii) Wetland areas under production of crops for human consumption;

(viii) Frequently flooded areas including areas delineated by the Federal Emergency Management Agency ~~((and))~~ or as designated under the Washington State Growth Management Act ~~((7))~~ under chapter 36.70A RCW;

(ix) Areas where nitrogen has been identified as a contaminant of concern including, but not limited to, the marine waters of Puget Sound; ~~((and))~~

(x) Areas where phosphorous has been identified as a contaminant of concern;

(xi) Areas where sea level rise may impact adequate horizontal separations to surface water; and

(xii) Other areas designated by the local health officer.

(c) Identify operation, maintenance and monitoring requirements commensurate with risks posed by OSS within the geographic areas identified in (b) of this subsection;

~~((Facilitate education of homeowners regarding their responsibilities under this chapter and provide operation and maintenance information for all types of systems in use within the jurisdiction;~~

~~((e) Remind and encourage homeowners to complete the operation and maintenance inspections required by WAC 246-272A-0270;~~

~~((f))~~ Educate OSS owners about their responsibilities to perform OSS operation and maintenance, including information for owners to complete any inspection required by WAC 246-272A-0270;

(e) Maintain records required under this chapter, including ~~((of))~~ all operation and maintenance activities as identified; ~~((and))~~

~~((g))~~ (f) Enforce OSS owner permit application, operation, monitoring and maintenance and failure repair requirements ~~((defined))~~ in



WAC 246-272A-0200 ~~((1))~~ (2), 246-272A-0260, 246-272A-0270, 246-272A-0275, and 246-272A-0280 ~~((1) and (2))~~;

~~((h))~~ (g) Describe the capacity of the local health jurisdiction to ~~((adequately))~~ fund the local ~~((OSS plan, including))~~ management plan, which includes a summary of program expenditures by activity, source of funds, a strategy to fill any funding gaps, and the ability to find failing and unknown systems; and

~~((i) Assure that it)~~ (h) Verify that the local management plan was developed ~~((to coordinate))~~ in coordination with the comprehensive land use plan of the entities governing development ~~((in the health officer's))~~ within the local health jurisdiction.

~~((2) After being approved by the local board of health following a public hearing, the local health officers required to develop a written plan under subsection (1) of this section shall:~~

~~(a) Supply a copy of the plan to the department;~~

~~(b) Supply a copy of the plan to the entities responsible for land use planning and development regulations in the health officer's jurisdiction; and~~

~~(c) Implement the plan described in subsection (1) of this section.~~

~~(3) The plans of local health jurisdictions required to develop a written plan under subsection (1) of this section shall be submitted to the department by July 1, 2007, and shall be reviewed to ensure the elements described in subsection (1) of this section have been addressed. The department shall provide in writing to the local board of health its review of the completeness of the plan.~~

~~(4) For purposes of this chapter, the local health jurisdictions in marine counties are Clallam, Island, Kitsap, Jefferson, Mason, San Juan, Seattle-King, Skagit, Snohomish, Tacoma-Pierce, Thurston and Whatcom.)~~

(3) The department shall review the local management plan for Puget Sound counties at least once every five years. If the department determines plan revision is necessary upon review of the local management plan described in subsection (2) of this section, the department shall notify the local health officer of their findings.

(4) The local health officer for Puget Sound counties shall:

(a) Review and update the local management plan, as necessary, or at least once every five years;

(b) If after the review the local management plan is updated, provide an opportunity for public input on the local management plan;

(c) Following local board of health approval, submit the local management plan to the department for review;

(d) Implement the local management plan;

(e) Submit an annual report to the department including all of the following in a format specified by the department:

(i) Number of OSS;

(ii) Number of unknown OSS identified;

(iii) Number of failures found;

(iv) Number of failures repaired; and

(v) Status of compliance with inspections required by WAC 246-272A-0270;

(f) Supply a copy of the local management plan to the entities responsible for land use planning and development regulations in the local health jurisdiction.

~~(5) The local health officer((s)) for ((all other jurisdictions not required to develop a written plan under subsection (1) of this section)) a non-Puget Sound county shall develop a written local man-~~

agement plan that will provide guidance to the local health jurisdiction regarding development and management activities for all OSS within the jurisdiction. At a minimum the plan shall include:

(a) A description of the capacity of the local health jurisdiction to provide education and operation and maintenance information for all types of systems in use within the jurisdiction;

(b) A description of how the local health officer will remind and encourage homeowners to complete the operation and maintenance inspection required by WAC 246-272A-0270; and

(c) A description of the capacity of the local health jurisdiction to adequately fund the local OSS plan.

(6) In order to implement the plan described in subsections (1) and (5) of this section, the local health officer shall require the owner of the OSS to:

(a) Comply with additional requirements identified in the plan for the location, design, or performance; and

(b) Comply with the conditions of the operational permit if one is required.

(7) In order to implement the plan described in subsections (1) and (5) of this section, the local health officer may require the owner of the OSS to:

(a) Ensure additional maintenance and monitoring of the OSS;

(b) Provide dedicated easements for inspections, maintenance, and potential future expansion of the OSS; and

(c) Place a notice to title identifying any additional requirements for OSS operation, maintenance and monitoring(, and

~~(d) Have an inspection of the OSS at the time of property transfer including the preparation of a "record drawing" if necessary.~~

~~(8) No later than July 1, 2006, the department shall develop guidance on local management programs to assist marine local health jurisdictions in plan development.~~

~~(9) Until such time as the local board of health decides to adopt its own rules, the local health officer shall enforce this chapter. Local boards of health may adopt and enforce local rules and regulations governing on-site sewage systems when the local regulations are:~~

~~(a) Consistent with, and at least as stringent as, this chapter; and~~

~~(b) Approved by the department prior to the effective date of local regulations.~~

~~(10) A local board of health shall apply for departmental approval of local regulations by initiating the following procedure:~~

~~(a) The local board shall submit the proposed local regulations to the department.~~

~~(b) Within ninety days of receipt, the department shall:~~

~~(i) Approve the regulation in writing; or~~

~~(ii) Signify automatic tacit approval with the local regulations and permitting local implementation by failing to act; or~~

~~(iii) Deny approval of the regulations. If the department determines local regulations are not consistent with this chapter, the department shall provide specific reasons for denial.~~

~~(11) Upon receipt of departmental approval or after ninety days without notification, whichever comes first, the local board may implement adopted regulations. The local board shall provide a copy of the adopted local regulations to the department.~~

~~(12) If the department denies approval of local regulations, the local board of health may:~~

- ~~(a) Resubmit revised regulations for departmental consideration;~~  
or  
~~(b) Submit a written request for a review of the departmental denial within one hundred twenty days from the date the local board of health receives the written reasons for the denial.~~
- ~~(13) Upon receipt of written request for review of the departmental denial, the department shall:~~
- ~~(a) Acknowledge the receipt of the request in writing; and~~
  - ~~(b) Form a mutually acceptable advisory panel consisting of:~~
    - ~~(i) One departmental employee;~~
    - ~~(ii) One employee from a local health jurisdiction other than that which requested the review; and~~
    - ~~(iii) One member of the technical advisory committee.~~
- ~~(14) If good faith efforts to reach agreement are unsuccessful, the local board of health may appeal the denial to the Washington state board of health for resolution.~~
- ~~(15) Nothing in this chapter shall prohibit the adoption and enforcement of more stringent regulations by local health departments.~~
- ~~(16) In the plan required in subsection (1) of this section and in local regulations, the local health officer may address water conservation and include options for the nonpotable reuse of gray water. Any treatment and dispersal of gray water outside the residence or structure must comply with this chapter).~~
- (8) The department shall maintain and update guidance and provide technical assistance to assist local health jurisdictions in local management plan development.

**( (GENERAL REQUIREMENTS) )**

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0025 Connection to public sewer system. (1)**

~~((When))~~ Upon the failure of an existing OSS within the service area of a sewer utility, the local health officer shall:

(a) Permit the repair or replacement of the OSS only if a conforming OSS can be designed and installed, excluding OSS designed in compliance with or proposing to use Table X in WAC 246-272A-0280; or

(b) Require connection to a public sewer system if the sewer utility allows the connection and has adequate public sewer services ((are)) available within ((two hundred feet of the residence or facility, the local health officer, upon the failure of an existing on-site sewage system may:

~~(a) Require hook-up to a public sewer system; or~~

~~(b) Permit the repair or replacement of the on-site sewage system only if a conforming system can be designed and installed.~~

~~(2) Except as noted in subsection (1) of this section, the owner of a failure shall abandon the OSS under WAC 246-272A-0300 and connect the residence or other facility to a public sewer system when:~~

~~(a) The distance between the residence or other facility and an adequate public sewer is two hundred feet or less as measured along the usual or most feasible route of access; and~~

~~(b) The sewer utility allows the sewer connection.~~

~~(3)) 200 feet from where the existing building drain connects to the existing building sewer, or where no building drain exists, within 200 feet from where the sewer line begins, as measured along the usual or most feasible route of access.~~

~~(2) The owner of a ((residence or other facility)) structure served by ((a system meeting the requirements of Table IX of this chapter)) an OSS permitted as a repair under Table X in WAC 246-272A-0280 shall abandon the OSS ((according to the requirements)) as specified in WAC 246-272A-0300, and connect the ((residence or other facility)) structure to a public sewer system when:~~

~~(a) Connection is deemed necessary to protect public health by the local health officer;~~

~~(b) An adequate public sewer becomes available within ((two hundred)) 200 feet of the ((residence or other facility)) existing structure, or in cases where no building drain exists, within 200 feet from where the sewer for the building begins, as measured along the usual or most economically feasible route of access; and~~

~~(c) The sewer utility allows the sewer connection.~~

~~((4)) (3) Local boards of health may require a new development to connect to a public sewer system to protect public health.~~

~~((5)) (4) Local boards of health shall require new development or a development with a failing ((system)) OSS to connect to a public sewer system if it is required by the comprehensive land use plan or development regulations.~~

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0100 Sewage technologies.** (1) The department ((may develop recommended)) shall maintain standards and guidance ((to assist)) for local health officers ((in permitting different types of)) to permit sewage treatment and distribution technologies ((including the following four broad categories:

~~(a) Public domain treatment technologies (e.g., sand filters);~~

~~(b) Proprietary treatment products (e.g., aerobic treatment systems and packed bed filters);~~

~~(c) Public domain distribution technologies (e.g., gravel or generic gravel substitutes, gravity and pressure distribution methods and materials);~~

~~(d) Proprietary distribution products (e.g., subsurface dripline products or gravelless distribution products)).~~

~~(2) ((All types of)) Before the local health officer permits sewage technologies, the sewage technologies must ((have either standards)) be registered for use as described in this chapter, have standards for use as described or referenced in this chapter, or ((departmental recommended standards and guidance before the local health officer may permit them. Recommended standards and guidance may include information and detail such as:~~

~~(a) Application;~~

~~(b) Design;~~

~~(c) Installation;~~

~~(d) Operation, monitoring and maintenance;~~  
~~(e) Performance expectations; and~~  
~~(f) Sources of information.)) have DS&G describing sewage technologies uses as maintained by the department.~~

(3) The department may remove, restrict, or suspend a proprietary product's approval for use based on failure to meet required standards or conditions of approval.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0110 Proprietary treatment products—(~~Certification and~~) Eligibility for registration.** (1) Manufacturers shall register (~~their~~) a proprietary treatment product(~~s~~) with the department using the process described in WAC 246-272A-0120 before (~~the~~) a local health officer may permit (~~their~~) use of the product.

(2) To (~~qualify~~) be eligible for product registration, manufacturers desiring to sell or distribute proprietary treatment products in Washington state shall:

(a) Verify product performance through testing using the testing protocol established in Table I (~~and register their product with the department using the process described in WAC 246-272-0120~~) of this section;

(b) Report product test results of influent and effluent sampling obtained throughout the testing period (including normal and stress loading phases) for evaluation of constituent reduction according to the requirements in Table II of this section;

(c) Demonstrate product performance according to the requirements in Table III of this section. All (~~thirty-day~~) 30-day averages and geometric means obtained throughout the test period must meet the identified threshold values to qualify for registration at that threshold level; and

(d) (~~For registration at levels A, B, and C~~) Verify bacteriological reduction according to WAC 246-272A-0130 for product registration utilizing disinfection levels DL1, DL2, and DL3.

(3) Manufacturers verifying product performance through testing according to the following standards or protocols shall have product testing conducted by a testing facility accredited by ANSI:

(a) (~~ANSI/NSF~~) NSF/ANSI Standard 40(—): Residential Wastewater Treatment Systems;

(b) NSF/ANSI Standard 41: Non-Liquid Saturated Treatment Systems;

(c) NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation; (~~or~~)

(d) (~~Protocol~~) NSF/ANSI Standard 245: Residential Wastewater Treatment Systems - Nitrogen Reduction; or

(e) NSF/ANSI Standard 385: Residential Wastewater Treatment Systems - Disinfection Mechanics for Bacteriological Reduction described in WAC 246-272A-0130.

(4) Manufacturers verifying product performance through testing according to (~~the following standards or protocols shall have product testing conducted by a testing facility meeting the requirements established by the Testing Organization and Verification Organization, consistent with the test protocol and plan:~~

~~(a) EPA/NSF Protocol for the Verification of Wastewater Treatment Technologies; or~~

~~(b) EPA Environmental Technology Verification Program protocol for the Verification of Residential Wastewater Treatment Technologies for Nutrient Reduction.)~~ EPA Method 1664, Revision B and using a wastewater laboratory certified by the Washington department of ecology shall provide supporting information, including flow data, and influent and effluent quality sampling results from a minimum of three installations with similar design loading to demonstrate product performance to Category 2 standards.

~~(5) Treatment levels ((used in these rules are not intended to be applied as field compliance standards. Their intended use is for establishing))~~ established in Table III of this section are intended to establish treatment product performance in a product testing setting under established protocols by qualified testing entities. Field compliance standards for proprietary treatment products shall follow the requirements in WAC 246-272A-0120 (5).

~~(6) Manufacturers may submit a written request to substitute components of a registered product's construction in cases of supply chain shortage or similar manufacturing disruptions impacting installations, operation, or maintenance. The substitution request must include a report stamped, signed, and dated by a professional engineer demonstrating the substituted component will not negatively impact performance or diminish the effect of the treatment, operation, and maintenance of the original registered product. If approved, substitution is authorized until rescinded by the department.~~

(( ~~TABLE I~~ ))

**Table I**

<b>Testing Requirements for Proprietary Treatment Products</b>	
<b>Treatment Component/Sequence Category</b>	<b>Required Testing Protocol</b>
<del>Category 1</del> <b>Category 1</b> <del>Designed to treat ((sewage with strength typical of a residential source when)) septic tank effluent ((is)) anticipated to be equal to or less than treatment level E.</del>	<del>((ANSI/NSF)) NSF/ANSI 40—Residential Wastewater Treatment Systems (((protocols)) versions dated between ((July 1996 and the effective date of these rules)) January 2009 and May 31, 2021)</del>
<del>Category 2</del> <b>Category 2</b> <del>Designed to treat ((high-strength sewage when septic tank)) effluent ((is)) or sewage with sewage quality parameters anticipated to be greater than treatment level E.</del>  (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	<del>((EPA/NSF Protocol for the Verification of Wastewater Treatment Technologies/ EPA Environmental Technology Verification (April 2004)))</del> EPA Method 1664, Revision B (February 2010)
<del>Category 3</del> <b>Category 3</b> <del>Black water component of residential sewage (such as composting* and incinerating** toilets).</del>	NSF/ANSI Standard 41: Non-Liquid Saturated Treatment Systems <del>((September 1999))</del> Versions dated between February 2011 and May 31, 2021  **NSF Protocol P157 Electrical Incinerating Toilets - Health and Sanitation (April 2000)
<b>Total Nitrogen Reduction in Categories 1 &amp; 2 (Above)</b>	<del>((Protocol for the Verification of Residential Wastewater Treatment Technologies for Nutrient Reduction/EPA Environmental Technology Verification Program (November, 2000)))</del> NSF/ANSI Standard 245: Residential Wastewater Treatment Systems – Nitrogen Reduction (Versions dated between January 2018 and May 31, 2021)

(( ~~TABLE II~~ ))

**Table II**

<b>Test Results Reporting Requirements for Proprietary Treatment Products</b>	
<b>Treatment Component/Sequence Category</b>	<b>Testing Results Reported</b>
<p><b>Category 1</b> Designed to treat <del>((sewage with strength typical of a residential source when septic tank effluent ((is)) anticipated to be equal to or less than treatment level E.</del></p>	<p>Report <u>the following</u> test results of influent and effluent sampling obtained throughout the testing period for evaluation of <del>((constituent))</del> reduction <del>((for the parameters:))</del> of CBOD<sub>5</sub><sup>2</sup>, and TSS:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Average <span style="float: right;"><input type="checkbox"/> Standard Deviation</span></li> <li><input type="checkbox"/> Minimum <span style="float: right;"><input type="checkbox"/> Maximum</span></li> <li><input type="checkbox"/> Median <span style="float: right;"><input type="checkbox"/> Interquartile Range</span></li> <li><input type="checkbox"/> 30-day Average (for each month)</li> </ul> <p>For <u>evaluation of</u> bacteriological reduction performance<del>((;))</del>.</p> <p><u>Report complete treatment component sequence testing as described in Table III, Category 1.</u></p> <p><u>For evaluation of performance meeting treatment level DL1:</u>                      (1) <u>Report fecal coliform test results of influent and effluent sampling by geometric mean from samples drawn within <del>((thirty))</del> 30-day or monthly calendar periods, obtained from a minimum of three samples per week throughout the testing period. See WAC 246-272A-0130.</u>                      (2) <u>Report complete testing results for supplemental bacteriological reduction technology<sup>1</sup> when the required treatment levels for fecal coliform in Table III, Category 1 are not met by the primary proprietary treatment product.</u></p> <p><u>For evaluation of performance meeting treatment levels DL2 or DL3:</u>                      (1) <u>Report fecal coliform test results of influent and effluent sampling by geometric mean from samples drawn within 30-day or monthly calendar periods, obtained from a minimum of three samples per week throughout the testing period as described in WAC 246-272A-0130; or</u>                      (2) <u>Report complete testing results for supplemental bacteriological reduction technology<sup>1</sup> when the required treatment levels for fecal coliform in Table III, Category 1 are not met by the primary proprietary treatment product.</u></p> <p>For all options, test report must also include the individual results of all samples drawn throughout the test period.</p>
<p><b>Category 2</b> Designed to treat <del>((high-strength sewage when septic tank))</del> effluent <del>((is))</del> <u>or sewage with sewage quality parameters</u> anticipated to be greater than treatment level E.  (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, <u>atypical</u> residences, etc.)</p>	<p>Report all individual test results and full test average values of influent and effluent sampling obtained throughout the testing period for <u>the evaluation of reduction of:</u> CBOD<sub>5</sub>, TSS and O&amp;G. Establish the treatment capacity of the product tested in pounds per day for CBOD<sub>5</sub>.</p>
<p><b>Category 3</b> Black water component of residential sewage (such as composting and incinerating toilets).</p>	<p>Report test results on all required performance criteria according to the format prescribed in the NSF test protocol described in Table I.</p>
<p><b>Total Nitrogen Reduction in Categories 1 &amp; 2 (Above)</b></p>	<p>Report test results on all required performance criteria according to the format prescribed in the test protocol described in Table I.</p>

~~(( TABLE III ))~~  
**Table III**

<b><del>((Product Performance Requirements for Proprietary Treatment Products</del></b>	
<b><del>Treatment Component/Sequence Category</del></b>	<b><del>Product Performance Requirements</del></b>
<p><b>Category 1</b> Designed to treat sewage with strength typical of a residential source when septic tank effluent is anticipated to be equal to or less than treatment level E.</p>	<p><b><del>Treatment System Performance Testing Levels</del></b></p>

<b>((Product Performance Requirements for Proprietary Treatment Products</b>						
<b>Treatment Component/Sequence Category</b>	<b>Product Performance Requirements</b>					
	<b>Level</b>	<b>Parameters</b>				
		<b>CBOD<sub>5</sub></b>	<b>TSS</b>	<b>O&amp;G</b>	<b>FC</b>	<b>TN</b>
	<b>A</b>	10 mg/L	10 mg/L	—	200/100 ml	—
	<b>B</b>	15 mg/L	15 mg/L	—	1,000/100 ml	—
	<b>C</b>	25 mg/L	30 mg/L	—	50,000/100 ml	—
	<b>D</b>	25 mg/L	30 mg/L	—	—	—
	<b>E</b>	125 mg/L	80 mg/L	20 mg/L	—	—
	<b>N</b>	—	—	—	—	20 mg/L
Values for Levels A – D are 30-day values (averages for CBOD <sub>5</sub> , TSS, and geometric mean for FC.) All 30-day averages throughout the test period must meet these values in order to be registered at these levels. Values for Levels E and N are derived from full test averages.						
<b>Category 2</b> Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E.  (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)	All of the following requirements must be met:  (1) All full test averages must meet Level E; and (2) Establish the treatment capacity of the product tested in pounds per day for CBOD <sub>5</sub> .					
<b>Category 3</b> Black water component of residential sewage (such as composting and incinerating toilets).	Test results must meet the performance requirements established in the NSF test protocol.					
<b>Total Nitrogen Reduction in Categories 1 &amp; 2 (Above)</b>	Test results must establish product performance effluent quality meeting Level N, when presented as the full test average.))					

<b>Product Performance Requirements for Proprietary Treatment Products</b>							
<b>Treatment Component/Sequence Category</b>	<b>Product Performance Requirements</b>						
<b>Category 1</b> Designed to treat effluent anticipated to be equal to or less than treatment level E.	<b>Treatment System Performance Testing Levels</b>						
	<b>Level</b>	<b>Parameters</b>					
		<b>CBOD<sub>5</sub> mg/L</b>	<b>TSS mg/L</b>	<b>O&amp;G mg/L</b>	<b>FC col/100 mL</b>	<b>TN mg/L</b>	<b>E. coli cfu/100 mL</b>
	<b>A</b>	10	10	—	—	—	—
	<b>B</b>	15	15	—	—	—	—
	<b>C</b>	25	30	—	—	—	—
	<b>DL1</b>	25	30	—	200	—	126
	<b>DL2</b>	—	—	—	1,000	—	—
	<b>DL3</b>	—	—	—	50,000	—	—
<b>E</b>	228	80	20	—	—	—	



<b>Product Performance Requirements for Proprietary Treatment Products</b>							
<b>Treatment Component/Sequence Category</b>	<b>Product Performance Requirements</b>						
	<u>N</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>==</u>	<u>30 (or 50% reduction based on mass loading as required in WAC 246-272A-0320)</u>	<u>==</u>
	<p>Values for Levels A - D are 30-day values (averages for CBOD<sub>5</sub>, TSS, and geometric mean for FC.) All 30-day averages throughout the test period must meet these values in order to be registered at these levels.                      Values for Levels E and N are derived from full test averages.</p>						
<p><b>Category 2</b> Designed to treat high-strength sewage when septic tank effluent is anticipated to be greater than treatment level E.                      (Such as at restaurants, grocery stores, mini-marts, group homes, medical clinics, residences, etc.)</p>	<p>All of the following requirements must be met:                      (1) All full test averages must meet Level E; and                      (2) Establish the treatment capacity of the product tested in pounds per day for CBOD<sub>5</sub>.</p>						
<p><b>Category 3</b> Black water component of residential sewage (such as composting and incinerating toilets).</p>	<p>Test results must meet the performance requirements established in the NSF test protocol.</p>						
<p><b>Total Nitrogen Reduction in Categories 1 &amp; 2 (Above)</b></p>	<p>Test results must establish product performance effluent quality meeting Level N, when presented as the full test average.</p>						

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0120 Proprietary treatment product registration— Process and requirements.** (1) Manufacturers shall register (~~their~~) proprietary treatment (~~product(s)~~) products with the department by submitting a complete registration application for review and approval in the format provided by the department, including:

- (a) Manufacturer's name, mailing address, (~~street address and~~) phone number, email address, and website address;
- (b) Contact (~~individual's~~) person's name, title, mailing address, (~~street~~) email address, and phone number. The contact (~~individual~~) person must be vested with the authority to represent the manufacturer in this capacity;
- (c) Name, including specific brand and model, of the proprietary treatment product;
- (d) A description of the function of the proprietary treatment product along with any known limitation on the use of the product;
- (e) Product description and technical information, including process flow drawings and schematics; materials and characteristics; component design specifications; design capacity, volumes and flow as-

sumptions and calculations; components; dimensioned drawings and photos;

- (f) For treatment systems in Category 2, daily capacity of the model or models in pounds per day of CBOD<sub>5</sub>;
- (g) Siting and installation requirements;
- (h) Detailed description, procedure and schedule of routine service and system maintenance events;
- (i) Estimated operational costs for the first five years of the treatment component's life. This (~~shall~~) must include both estimated annual electricity costs, and routine maintenance costs, including replacement of parts;
- (j) Identification of information subject to protection from disclosure of trade secrets;
- (k) Most current dated copies of product brochures (~~(&)~~) and manuals: *Sales & Promotional; Design; Installation; Operation & Maintenance; and Homeowner Instructions*;
- (l) The most recently available product test protocol dated no earlier than the dates in WAC 246-272A-0110 Table I and the results report;

(m) A signed and dated certification by the manufacturer's agent specifically including the following statement, "I certify that I represent (INSERT MANUFACTURING COMPANY NAME) and I am authorized to prepare or direct the preparation of this application for registration. I attest, under penalty of law, that this document and all attachments are true, accurate, and complete. I understand and accept that the product testing results reported with this application for registration are the parameters and values to be used for determining conformance with Treatment System Performance Testing Levels established in chapter 246-272A WAC";

(n) A signed and dated certification from the testing entity including the statement, "I certify that I represent (INSERT TESTING ENTITY NAME), that I am authorized to report the testing results for this proprietary treatment product. I attest, under penalty of law, that the report about the test protocol and results is true, accurate, and complete"; and

(o) The fee described in WAC (~~(246-272A-990)~~) 246-272-2000.

(2) Products within a single series or model line, (~~(+)~~) sharing distinct similarities in design, materials, and capacities (~~(+)~~), may be registered under a single application, consistent with the provisions of their test protocol for the certification of other products within a product series. Products outside of the series or model line must be registered under separate applications.

(3) Upon receipt of (~~(an)~~) a registration application the department shall:

(a) Verify that the application is complete including dated and current copies of all of the required manuals; and

(b) If (~~(complete)~~) approved, place the product on the department's list of (~~(proprietary)~~) registered on-site treatment and distribution products.

(4) All registrations are valid for up to one year, expiring on December 31<sup>st</sup> of each year. Fees are not prorated.

(5) In order to renew a proprietary treatment product technology registration, a manufacturer shall:

(a) Apply for renewal of product registration using the (~~(form or in the)~~) format provided by the department (~~(-)~~);

(b) Submit ~~((the results of))~~ any of the following applicable reports:

(i) A retesting ~~((, if the product has completed retesting))~~ report from the testing entity according to the protocol required for registration ~~((and a report from the testing entity has been issued since initial registration or previous renewal. Renewal shall be based on the most recent test results.))~~ as identified in this section;

(ii) A field verification performance report as identified in the proprietary products DS&G, dated the effective date of the rule. If field performance results demonstrate that the product has failed to meet the requirements in the DS&G, the manufacturer shall report to the department describing the reasons for the failure to meet the requirements consistent with the DS&G;

(c) Provide an ~~((affidavit))~~ attestation to the department verifying whether or not the product has changed over the previous year. If the product has changed, the ~~((affidavit))~~ attestation must also include a full description of the changes. If the product has changed in a way that affects performance, the product may not be renewed and shall meet the requirements for initial registration~~(( ))~~;

(d) Provide a statement that all required dated manuals are current, or submit the updated and dated new manuals; and

(e) Submit the fee established in WAC ~~((246-272A-990))~~ 246-272-2000.

(6) As part of product registration renewal, the department shall:

(a) Request field assessment comments from local health officers no later than October 31st of each year. These comments may include concerns about a variety of field assessment issues, including:

(i) Product function, including verification of field performance testing as identified in the DS&G;

(ii) Product reliability~~(( ))~~; and

(iii) Problems arising with operation and maintenance;

(b) Discuss with the ~~((TAC))~~ TAG any field assessment information that may impact product registration renewal;

(c) Notify the manufacturer of any product to be discussed with the ~~((TAC))~~ TAG, prior to discussion with the ~~((TAC))~~ TAG, regarding the nature of comments received; ~~((and))~~

(d) Renew the product registration unless:

(i) The manufacturer of a product does not apply for renewal; or

(ii) The department, after deliberation with the ~~((TAC))~~ TAG, concludes product registration renewal should not be given or should be delayed until the manufacturer submits information that satisfactorily answers concerns and issues; and

(e) Provide a compliance plan to the manufacturer within 90 days based on departmental concerns of public health risk related to the product.

(7) The department shall maintain a list of proprietary treatment products meeting the registration requirements established in this chapter. The product registration is a condition of approval for use.

(8) Manufacturers shall have readily accessible product information for designers, ~~((homeowners,))~~ regulators, ~~((system))~~ OSS owners and other interested parties ~~((about their product))~~ posted on the manufacturer's website including the most current dated version of:

(a) Product manuals;

(b) Design instructions;

(c) Installation instructions;

(d) Operation and maintenance;

- (e) ((Homeowner)) Owner instructions; and
- (f) How to locate a list of representatives and manufacturer certified maintenance service providers, if any.

AMENDATORY SECTION (Amending WSR 06-01-020, filed 12/12/05, effective 1/12/06)

**WAC 246-272A-0130 Bacteriological reduction.** This section establishes the requirements for registering bacteriological reduction processes.

(1) Manufacturers shall, for the purpose of product registration as described in WAC 246-272A-0110 and 246-272A-0120 ~~((for meeting treatment levels A, B, or C, verify bacteriological reduction performance by sampling for fecal coliform.~~

~~(a) For products not yet tested according to ANSI/NSF Standard 40 testing protocol dated July 1996 or later, the requirements of both ANSI/NSF Standard 40 and the protocol specified in subsection (2) of this section for verifying bacteriological reduction must be met.~~

~~(b) For products that have been tested according to ANSI/NSF Standard 40 dated July 1996 or later but have not yet been tested for bacteriological reduction, treatment performance of the treatment product or sequence may be established based on test results for CBOD<sub>5</sub> and TSS obtained from the previous ANSI/NSF Standard 40 testing and bacteriological reduction performance based on testing according to the protocol in subsection (2) of this section. Provided that the testing entity must verify the influent wastewater stream throughout the bacteriological testing period meets the influent threshold levels for CBOD<sub>5</sub> and TSS required by ANSI/NSF Standard 40 testing protocol):~~

~~(a) For meeting treatment levels DL1 verify bacteriological reduction performance by sampling for fecal coliform or *E. coli*.~~

~~(b) For meeting treatment level DL2 or DL3, verify bacteriological reduction performance by sampling for fecal coliform.~~

(2) All test data submitted for product registration shall be produced by an ANSI accredited, third-party testing and certification organization whose accreditation is specific to on-site wastewater treatment products. Bacteriological reduction performance must be determined ~~((while))~~ either:

~~(a) According to the procedures in NSF/ANSI Standard 385 for supplemental bacteriological reduction; or~~

~~(b) Concurrent with testing protocol. The treatment product or treatment component sequence ~~((is tested))~~ testing according to the ~~((ANSI/NSF))~~ NSF/ANSI Standard 40 testing protocol. ~~((During this))~~~~

~~(3) Testing under subsection (2)(b) of this section shall be completed in compliance with the following requirements ~~((apply))~~:~~

~~(a) Collect samples from both the influent and effluent streams, identifying the treatment performance achieved by the full treatment process, ~~((+))~~ component or sequence ~~((+))~~;~~

~~(b) Obtain influent characteristics falling within a range of  $10^{(4)}$  -  $10^8$  fecal coliform/100 mL or  $10^2$  -  $10^6$  *E. coli*/100 mL calculated as ~~((thirty))~~ 30-day geometric means during the test ~~((-))~~;~~

~~(c) Test the influent to any disinfection unit and report the following at each occasion of sampling performed in (d) of this subsection:~~

~~(i) Flow rate;~~

- (ii) pH;
- (iii) Temperature;
- (iv) Turbidity; and
- (v) Color((-));
- (d) Obtain samples for fecal coliform or *E. coli* analysis during both the design loading and stress loading periods identified by NSF/ANSI Standard 40. Grab samples shall be collected from both the influent and effluent on three separate days of the week. Each set of influent and effluent grab samples must be taken from a different dosing time frame, either ((+))morning, afternoon, or evening(+)), so that samples have been taken from each dosing time frame by the end of the week((-));
- (e) Conduct analyses according to standard methods;
- (f) Report the geometric mean of fecal coliform or *E. coli* test results from all samples taken within ((thirty)) 30-day or monthly calendar periods;
- (g) Report the individual results of all samples taken throughout the test period design and stress loading; and
- (h) Report all maintenance and servicing conducted during the testing period, including for example, instances of cleaning a UV lamp, or replenishment of chlorine chemicals.
- ((+3)) (4) Manufacturers may register products in treatment levels ((A)) DL1 and ((B)) DL2 using disinfection.
- ((+4)) (5) Manufacturers may not register products for treatment level ((C)) DL3 using disinfection.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0140 Proprietary distribution products—Certification ((and registration)) requirements.** (1) ((Manufacturers shall register proprietary distribution products, including gravelless distribution products and subsurface dripline products, with the department before the local health officer may permit their use.

(2) Manufacturers desiring to sell proprietary distribution products shall certify that the product(s) meets the standards established in this chapter and register their product(s) with the department using the process described in WAC 246-272A-0145.

(3)) Proprietary distribution products, including gravelless distribution products and subsurface dripline products, must be registered with the department before permitting, sale, and use. To be eligible for registration as described in WAC 246-272A-0145, products must first be certified as described in this section.

(2) To be certified, proprietary gravelless distribution products shall:

(a) Be constructed or manufactured from materials that are nondecaying and nondeteriorating and do not leach chemicals when exposed to sewage and the subsurface soil environment;

(b) Provide liquid storage volume at least equal to the storage volume provided within the ((thirty)) 30 percent void space in a ((twelve)) 12-inch layer of drainrock in a drainrock-filled distribution system. This storage volume must be established by the gravelless distribution products, ((system)) OSS design and installation and must

be maintained for the life of the ~~((system))~~ OSS. This requirement may be met on a lineal-foot, or on an overall system design basis;

(c) Provide ~~((suitable))~~ effluent distribution to the infiltrative surface at the soil interface; and

(d) Maintain the integrity of the trench or bed. The material used, by its nature and its manufacturer-prescribed installation procedure, must withstand the physical forces of the soil sidewalls, soil backfill and the weight of equipment used in the backfilling.

~~((4))~~ (3) Proprietary subsurface dripline products shall:

(a) Be warranted by the manufacturer for use with sewage and for resistance to root intrusion~~((-))~~;

(b) Incorporate emitters with a maximum nominal rated discharge of 1.3 gallons per hour. Emitter discharge rate may be controlled either by use of pressure-compensating emitters or with a pressure regulator~~((-))~~; and

(c) Be color-coded purple to identify that the pipe contains non-potable water from a sewage source.

(4) To be certified by the department, the manufacturer must submit:

(a) A signed and dated statement by the manufacturer's agent specifically including the following statement, "I certify that I represent (INSERT MANUFACTURING COMPANY NAME) and I am authorized to prepare or direct the preparation of this application for product registration. I attest, under penalty of law, that this document and all attachments, are true, accurate, and complete."

(b) A signed and dated statement from the licensed professional engineer including the statement, "I certify that I represent (INSERT PROFESSIONAL ENGINEERING FIRM NAME), that I am authorized to certify the performance characteristics for the proprietary distribution product presented in this application. I attest, under penalty of law, that the technology report is true, accurate, and complete."

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0145 Proprietary distribution product registration**

**—Process and requirements.** (1) Manufacturers shall register their proprietary distribution ~~((product(s)))~~ products with the department by submitting a complete application for review and approval in the format provided by the department, including:

(a) Manufacturer's name, mailing address, ~~((street address, and))~~ phone number, email address, and website address;

(b) Contact ~~((individual's))~~ person's name, title, mailing address, ~~((street))~~ email address, and phone number. The contact ~~((individual))~~ person must be vested with the authority to ~~((act as))~~ represent the agent of the manufacturer in this capacity;

(c) Name, including specific brand and model, of the proprietary distribution product;

(d) A description of the function of the proprietary distribution product along with any known limitations on ~~((its))~~ the use of the product;

(e) Product description and technical information, including schematics; materials and characteristics; component design specifica-

tions; design capacity, volumes and flow assumptions and calculations; components; dimensioned drawings and photos;

(f) Siting and installation requirements;

(g) Detailed description, procedure and schedule of routine service and system maintenance events;

(h) Identification of information subject to protection from disclosure of trade secrets;

(i) Most current, dated copies of product brochures and manuals: Sales & Promotional; Design; Installation; Operation & Maintenance; and ((Homeowner)) Owner Instructions;

(j) For gravelless chamber systems a quantitative description of the actual exposed trench-bottom infiltrative surface area for each model seeking registration;

(k) A statement from a professional engineer that certifies the technology meets the standards established in WAC 246-272A-0140;

~~(l) ((A signed and dated certification by the manufacturer's agent specifically including the following statement, "I certify that I represent (INSERT MANUFACTURING COMPANY NAME) and I am authorized to prepare or direct the preparation of this application for product registration. I attest, under penalty of law, that this document and all attachments, are true, accurate, and complete."~~

~~(m) A signed and dated certification from the licensed professional engineer including the statement, "I certify that I represent (INSERT PROFESSIONAL ENGINEERING FIRM NAME), that I am authorized to certify the performance characteristics for the proprietary distribution product presented in this application. I attest, under penalty of law, that the technology report is true, accurate, and complete."~~

~~(n)) The fee established in WAC ((246-272A-0990)) 246-272-2000.~~

(2) Products within a single series or model line, ~~((+))~~ sharing distinct similarities in design, materials, and capacities ~~((+))~~, may be registered under a single application. Products outside of the series or model line must be registered under separate applications.

(3) Upon receipt of an application the department shall:

(a) Verify that the application is complete, including dated and current copies of all required manuals; and

(b) If ~~((complete))~~ approved, place the product on the list of ~~((proprietary))~~ registered on-site treatment and distribution products.

(4) All registrations are valid for up to one year, expiring on December 31st of each year. Required fees are not prorated.

(5) In order to renew a proprietary distribution product registration, a manufacturer ~~((must))~~ shall:

(a) Apply for renewal of product registration using the form or in the format provided by the department;

(b) Provide an ~~((affidavit))~~ attestation to the department verifying whether or not the product has changed over the previous year. If the product has changed, the ~~((affidavit))~~ attestation must also include a full description of the changes. If the product has changed in a way that affects performance, the product may not be renewed and shall meet the requirements of initial registration; ~~((and))~~

(c) Provide a statement that all required dated manuals are current, or submit the updated and dated new manuals; and

~~(d) Submit the fee established in WAC ((246-272A-0990))~~ 246-272-2000.

(6) As part of product registration renewal, the department ~~((shall))~~ will:

(a) Request field assessment comments from local health officers (~~(no later than October 31st)~~) before November 1st of each year. These comments may include concerns about a variety of field assessment issues, including product function, product reliability, and problems arising with operation and maintenance;

(b) Discuss with the ~~((TAC))~~ TAG any field assessment information that may impact product registration renewal;

(c) Notify the manufacturer of any product to be discussed with the ~~((TAC))~~ TAG, prior to discussion with the ~~((TAC))~~ TAG, regarding the nature of comments received; ~~((and))~~

(d) Renew the product registration unless:

(i) The manufacturer of a product does not apply for renewal; or

(ii) The department, after deliberation with the ~~((TAC))~~ TAG, concludes product registration renewal should not be given or should be delayed until the manufacturer submits information that satisfactorily answers concerns and issues; and

(e) Provide a compliance plan to the manufacturer within 90 days based on departmental concerns of public health risk related to the product.

(7) The department shall maintain a list of proprietary distribution products meeting the registration requirements established in this chapter. The product registration is a condition of approval for use.

(8) Manufacturers shall have readily accessible product information for designers, ~~((homeowners,))~~ regulators, ~~((system))~~ OSS owners and other interested parties ~~((about their product))~~ posted on the manufacturer's website including the most current dated version of:

(a) Product manuals;

(b) Design instructions;

(c) Installation instructions;

(d) Operation and maintenance;

(e) ~~((Homeowner))~~ Owner instructions; and

(f) How to locate a list of representatives and manufacturer certified maintenance service providers, if any.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0170 Product development permits.** (1) A local health officer may issue a ~~((product development permit (PDP)))~~ PDP for any proprietary treatment component or sequence to be used during a development period. ~~((In order))~~ To protect public health during the development period, a complete ~~((system))~~ OSS meeting the requirements of this chapter and the site must already be installed. The ~~((product))~~ component or sequence under development may then be added to the treatment system allowing the ~~((product))~~ developer to gather data about ~~((the product's))~~ performance in the field. The PDP allows ~~((product))~~ developers to explore ~~((and develop))~~ new technologies prior to product testing and registration under WAC 246-272A-0110 and 246-272A-0120. The PDP is not an alternative to testing and registration.

(2) An ~~((application))~~ applicant for a PDP ~~((shall include))~~ must submit an application to the local health officer including all of the following:



- (a) Proof of an existing conforming (~~(system)~~) OSS in compliance with all local requirements, or a permit for a conforming (~~(system)~~) OSS. The conforming (~~(system)~~) OSS must be installed in its entirety before the PDP becomes valid;
- (b) A description of the product under development including performance goals and a description of how the system will be used to treat sewage;
- (c) (~~(Documentation of)~~) Financial assurance (~~(that will cover)~~) covering the correction of any potential public health threats or environmental damage resulting from the use of the product under development. Instruments of financial assurance include:
- (i) An irrevocable letter of credit in the amount required by the local health officer issued by an entity authorized to issue letters of credit in Washington state;
- (ii) Cash or security deposit payable to the local health jurisdiction in the amount required by the local health officer; or
- (iii) Any other financial assurance that satisfies the local health officer.
- (d) Documentation signed by the owner of the proposed product development site allowing access to the local health officer for inspection of the site; and
- (e) Any other information required by the local health officer.
- (3) The local health officer may (~~(stipulate)~~) impose additional requirements for a PDP necessary to (~~(assure)~~) safeguard the performance of the conforming (~~(system)~~) OSS, including providing performance data to the local health officer.
- (4) A PDP is a site-specific permit. Product development at multiple sites requires a PDP for each site.
- (5) During the term of the PDP, product development, testing and sampling are under the full control of the product developer and all data collected is considered proprietary information.
- (6) A PDP is valid for one year and may be renewed by the local health officer.
- (7) The product development period is over when the original PDP or any subsequently renewed permits have expired. At this time, the product developer:
- (a) Shall, at the direction of the local health officer, remove the product under development from the site, reestablishing all appropriate plumbing and power connections for the conforming (~~(system)~~) OSS.
- (b) May subject the product to performance testing described in WAC 246-272A-0110 (~~(in order)~~) to allow the product to be eligible for registration with the department.
- (8) The local health officer may revoke or amend a PDP:
- (a) If the continued operation or presence of the product under development:
- (i) Presents a risk to (~~(the)~~) public health or the environment;
- (ii) Causes adverse effects on the proper function of the conforming (~~(system)~~) OSS on the site; or
- (iii) Leaks or discharges sewage on the surface of the ground.
- (b) If the developer fails to comply with any requirements stipulated on the permit by the local health officer.
- (9) The local health officer may charge fees adequate to administer the PDP program.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0200 Permit requirements.** (1) (~~Prior to beginning the construction process~~) A permit is not required for a minor repair. The local health officer may require the owner to submit information regarding any activities defined as a minor repair for record-keeping purposes.

(2) Except for a minor repair, a person proposing the installation, repair, modification, connection to, or expansion of an OSS, shall (~~report the following~~) submit an application and obtain a permit from the local health officer prior to beginning construction. The permit application must include the following:

(a) General information including:

(i) Name and address of the property owner and the applicant at the head of each page of the submission;

(ii) Parcel number and if available, the address of the site;

(iii) Source of drinking water supply;

(iv) Identification if the property is within the boundaries of a recognized sewer utility;

(v) Size of the parcel;

(vi) Type of permit for which application is being made(~~(r)~~). For example, new installation, repair, expansion, modification, or operational;

(vii) Source of sewage(~~(r)~~). For example, residence, restaurant, or other type of business;

(viii) Location of utilities;

(ix) Name of the site evaluator;

(x) Name, signature and stamp of the designer;

(xi) Date of application; and

(xii) Name and signature of the fee simple owner, the contract purchaser of the property, or the owner's authorized agent.

(b) The soil and site evaluation as specified under WAC 246-272A-0220(~~(r)~~);

(c) A dimensioned site plan of the proposed initial (~~(system)~~) OSS, the reserve area and those areas immediately adjacent that contain characteristics impacting design including:

(i) Designated areas for the proposed initial (~~(system)~~) OSS and the reserve area;

(ii) The location of all soil logs and other soil tests for the OSS;

(iii) General topography and(~~(/or)~~) slope;

(iv) Drainage characteristics;

(v) Horizontal separations as noted in Table IV in WAC 246-272-0210;

(vi) The location of existing and proposed encumbrances affecting (~~(system)~~) OSS placement, including legal access documents if any component of the OSS is not on the lot where the sewage is generated;

(~~and~~

(~~(vi)~~) (vii) An arrow indicating north;

(viii) A legend of symbols used;

(ix) Plan scale and a graphic scale bar;

(x) Vertical datum used (such as "assumed," "North American Vertical Datum of 1988 (NAVD 88)," "National Shoreline Reference Station (NSRS)," or "unknown");

(xi) An elevation benchmark and relative elevations of system components;

(xii) Name, signature, stamp, and contact information of the designer; and

(xiii) A statement on limitation of use indicating the site plan is not a survey.

(d) A detailed ~~((system))~~ OSS design meeting the requirements under WAC 246-272A-0230, 246-272A-0232, 246-272A-0234, and 246-272A-0238 including:

(i) A drawing showing the dimensioned location of components of the proposed OSS, and the system designed for the reserve area if reserve site characteristics differ significantly from the initial area;

(ii) Vertical cross-section drawings showing:

(A) The depth of the soil dispersal component, the vertical separation, and depth of cover material; and

(B) Other new OSS components constructed at the site.

(iii) Calculations and assumptions supporting the proposed design, including:

(A) System operating capacity and design flow;

(B) Soil type; ~~((and))~~

(C) Hydraulic loading rate in the soil dispersal component; and

(e) Any additional information as deemed necessary by the local health officer.

~~((2) A permit is not required for replacement, addition, or modification of broken or malfunctioning building sewers, risers and lids, sewage tank lids, sewage tank baffles, sewage tank pumps, pump control floats, pipes connecting multiple sewage tanks, and OSS inspection boxes and ports where a sewage tank, treatment component, or soil dispersal component does not need to be replaced. The local health officer may require the owner to submit information regarding these activities for recordkeeping purposes.))~~

(3) The local health officer may develop the information required in subsection ~~((1))~~ (2) of this section if authorized by local ~~((regulations))~~ rules.

(4) The local health officer shall:

(a) Respond to an application within ~~((thirty))~~ 30 days as required in RCW 70.05.074~~((-))~~;

(b) Permit only public domain treatment technologies that ~~((have departmental RS&G.))~~ are described in this chapter or in a current DS&G;

(c) Permit only proprietary products that are registered by the department ~~((. During the period of transition from the list of approved systems and products to the registered list, the local health officer may permit products on the list of approved systems and products.~~

~~((e))~~;

(d) Issue a permit when the information submitted under subsection (1) of this section meets the requirements contained in this chapter and in local ~~((regulations))~~ rules;

~~((d))~~ (e) Identify the permit as a new installation, repair, expansion, modification, or operational permit;

~~((e))~~ (f) Specify the expiration date on the permit. The expiration date may not exceed five years from the date of permit issuance;

~~((f))~~ (g) Include a reminder on the permit application of the applicant's right of appeal; and

~~((g))~~ (h) If requiring an operational permit, state the period of validity and the date and conditions of renewal including any required field compliance.

- (5) The local health officer may revoke or deny a permit for just cause. Examples include, but are not limited to:
- (a) Construction or continued use of an OSS that threatens ~~((the))~~ public health;
  - (b) Misrepresentation or concealment of material fact in information submitted to the local health officer; or
  - (c) ~~((Failure to meet))~~ Noncompliance with the conditions of the permit, this chapter or any local ((regulations)) rules.
- (6) ~~((Before the local health officer issues a permit for the installation of an OSS to serve more than one development, the applicant shall show:~~
- ~~(a) An approved public entity owning or managing the OSS in perpetuity; or~~
  - ~~(b) A management arrangement acceptable to the local health officer, recorded in covenant, lasting until the on-site system is no longer needed, and containing, but not limited to:~~
    - ~~(i) A recorded easement allowing access for construction, operation, monitoring maintenance, and repair of the OSS; and~~
    - ~~(ii) Identification of an adequate financing mechanism to assure the funding of operation, maintenance, and repair of the OSS.)~~
- An applicant for a permit to install an OSS serving more than one development must submit an application that proves the OSS:
- (a) Is owned or managed in perpetuity by a public entity;
  - (b) Is described in a separate writing including, but not limited to, an easement, covenant, contract, or other legal document authorizing access for construction, operation maintenance, and repair; and
  - (c) If owned privately, is adequately financed.
- (7) The local health officer shall not delegate the authority to issue permits.
- (8) The local health officer may stipulate additional requirements for a particular permit if necessary ~~((for))~~ to protect public health ~~((protection))~~.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0210 Location.** (1) ~~((Persons))~~ OSS shall ~~((design and install OSS))~~ be designed and installed to meet at least the minimum horizontal separations shown in Table IV, Minimum Horizontal Separations:

**Table IV  
Minimum Horizontal Separations**

Items Requiring Setback	From edge of soil dispersal component and reserve area	From sewage tank and distribution box	From building sewer, and nonperforated distribution pipe
Well <del>((or suction line))</del>	100 ft.	50 ft.	50 ft.
Public drinking water well	100 ft.	100 ft.	100 ft.
<u>Nonpublic drinking water well</u>	<u>100 ft.</u>	<u>50 ft.</u>	<u>50 ft.</u>
Public drinking water spring <u>or surface water</u> measured from the ordinary high-water mark	200 ft.	200 ft.	100 ft.
<u>Nonpublic drinking water spring or surface water ((used as drinking water source))</u> measured from the ordinary high-water mark <sup>1</sup>	100 ft.	50 ft.	50 ft.

Items Requiring Setback	From edge of soil dispersal component and reserve area	From sewage tank and distribution box	From building sewer, and nonperforated distribution pipe
<u>Nonpublic, in-ground, drinking water containment vessel<sup>3</sup></u>	<u>20 ft.</u>	<u>10 ft.</u>	<u>10 ft.</u>
Pressurized water supply line <u>or easement for water supply line</u>	10 ft.	10 ft.	10 ft.
<u>Closed geothermal loop<sup>4</sup> or pressurized nonpotable water line</u>	<u>10 ft.</u>	<u>10 ft.</u>	<u>10 ft.</u>
Decommissioned well (decommissioned in accordance with chapter 173-160 WAC)	10 ft.	N/A	N/A
Surface water measured from the ordinary high-water mark	100 ft.	50 ft.	10 ft.
Building foundation/in-ground swimming pool	10 ft.	5 ft.	2 ft.
Property or easement line	5 ft.	5 ft.	N/A
<u>Lined<sup>5</sup> stormwater detention pond<sup>6</sup></u>			
<u>Down-gradient<sup>7</sup>:</u>	<u>30 ft.</u>	<u>N/A</u>	<u>N/A</u>
<u>Up-gradient<sup>7</sup>:</u>	<u>10 ft.</u>	<u>N/A</u>	<u>N/A</u>
<u>Unlined<sup>8</sup> stormwater infiltration pond<sup>6</sup> (up or down-gradient)<sup>7</sup></u>	<u>100 ft.</u>	<u>50 ft.</u>	<u>10 ft.</u>
<u>Irrigation canal or irrigation pond (up or down-gradient)</u>	<u>100 ft.</u>	<u>50 ft.</u>	<u>10 ft.</u>
Interceptor/curtain drains/foundation drains/drainage ditches			
<u>Down-gradient<sup>2</sup>:</u>	<u>30 ft.</u>	<u>5 ft.</u>	<u>N/A</u>
<u>Up-gradient<sup>2</sup>:</u>	<u>10 ft.</u>	<u>N/A</u>	<u>N/A</u>
<u>Subsurface stormwater infiltration or dispersion component<sup>6</sup></u>			
<u>Down-gradient<sup>7</sup>:</u>	<u>30 ft.</u>	<u>10 ft.</u>	<u>N/A</u>
<u>Up-gradient<sup>7</sup>:</u>	<u>30 ft.</u>	<u>10 ft.</u>	<u>N/A</u>
Other site features that may allow effluent to surface			
<u>Down-gradient<sup>2</sup>:</u>	<u>30 ft.</u>	<u>5 ft.</u>	<u>N/A</u>
<u>Up-gradient<sup>2</sup>:</u>	<u>10 ft.</u>	<u>N/A</u>	<u>N/A</u>
Down-gradient cuts or banks with at least 5 ft. of original, undisturbed soil above a restrictive layer due to a structural or textural change	25 ft.	N/A	N/A
Down-gradient cuts or banks with less than 5 ft. of original, undisturbed soil above a restrictive layer due to a structural or textural change	50 ft.	N/A	N/A
<del>((Other adjacent))</del> <u>Soil dispersal components((/ subsurface stormwater infiltration systems)) serving a separate OSS</u>	10 ft.	N/A	N/A

<sup>1</sup> If surface water is used as a public drinking water supply, the designer shall locate the OSS outside of the required source water protection area.  
<sup>2</sup> The item is down-gradient when liquid will flow toward it upon encountering a water table or a restrictive layer. The item is up-gradient when liquid will flow away from it upon encountering a water table or restrictive layer.

(2) ~~((If any condition indicates))~~ When conditions indicate a greater potential for contamination or pollution, the local health officer may increase the minimum horizontal separations. Examples of such conditions include, but are not limited to, excessively permeable soils, unconfined aquifers, shallow or saturated soils, dug wells, and improperly abandoned wells.

(3) The local health officer may allow a reduced horizontal separation to not less than two feet from where the property line, easement line, ~~((in-ground swimming pool,))~~ or building foundation is up-gradient.

(4) The local health officer may require an applicant to demonstrate the OSS meets (a), (b), or (c) of this subsection when determining if a horizontal separation to a minimum of 75 feet between an OSS dispersal component and ((an individual)) a water well, ((individual)) spring, or surface water that is not a public water source ((can be reduced to a minimum of seventy-five feet, by the local health officer, and be described as a conforming system upon signed approval by the health officer if the applicant demonstrates)) is allowed:

(a) Adequate protective site-specific conditions, such as physical settings with low ~~((hydro-geologic))~~ hydrogeologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers ~~((and/or aquatards separating)), an aquatard that separates~~ potable water from the OSS treatment zone, excessive depth to groundwater, down-gradient contaminant source, or outside the zone of influence; or

(b) Design and proper operation of an OSS ~~((system assuring))~~ with enhanced treatment performance beyond that accomplished by meeting the vertical separation and effluent distribution requirements described in Table VI in WAC 246-272A-0230 ~~((Table VI));~~ or

(c) Evidence ~~((of protective conditions involving both))~~ the OSS satisfies the requirements of (a) and (b) of this subsection.

(5) Persons shall design ~~((and/))~~ or install a soil dispersal component only if:

(a) The slope is less than ~~((forty-five))~~ 45 percent ~~((+twenty-four))~~ or 24 degrees ~~((+))~~;

(b) The area is not subject to:

(i) Encroachment by buildings or construction such as placement of power poles and underground utilities;

(ii) Cover by impervious material;

(iii) Vehicular traffic; or

(iv) Other activities adversely affecting the soil or the performance of the OSS.

(c) Sufficient reserve area for replacement exists to treat and dispose one hundred percent of the design flow;

(d) The land is stable; and

(e) Surface drainage is directed away from the site.

(6) The local health officer may approve a sewer transport line within ten feet of a water supply line if the sewer line is constructed in accordance with section ~~((C1-9))~~ C1-9.1 of the department of ecology's "*Criteria For Sewage Works Design,*" ~~((December 1998))~~ 2008.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0220 Soil and site evaluation.** (1) Only professional engineers, designers, or local health officers may perform soil and site evaluations. Soil scientists may only perform soil evaluations.

(2) The person evaluating the soil and site shall:

(a) Report:

- (i) A sufficient number of soil logs to evaluate conditions within:
  - (A) The initial soil dispersal component; and
  - (B) The reserve area.
- (ii) The groundwater conditions, the date of the observation, and the probable maximum height;
- (iii) The topography of the proposed initial ~~((system))~~ OSS, the reserve area, and those areas immediately adjacent that contain characteristics impacting the design;
- (iv) The drainage characteristics of the proposed initial ~~((system))~~ OSS, the reserve area and those areas immediately adjacent that contain characteristics impacting the design;
- (v) The existence of structurally deficient soils subject to major wind or water erosion events such as slide zones and dunes;
- (vi) The existence of designated flood plains ~~((and))~~;
- (vii) Other areas identified in the local management plan required in WAC 246-272A-0015; and
- ~~((vii))~~ (viii) The location of existing features affecting ~~((system))~~ OSS placement, such as, but not limited to:
  - (A) Wells ~~((and suction lines))~~;
  - (B) Water sources and supply lines;
  - (C) Surface water and stormwater infiltration areas;
  - (D) Abandoned wells;
  - (E) Outcrops of bedrock and restrictive layers;
  - (F) Buildings;
  - (G) Property lines and lines of easement;
  - (H) Interceptors such as footing drains, curtain drains, and drainage ditches;
  - (I) Cuts, banks, and fills;
  - (J) Driveways and parking areas;
  - (K) Existing OSS; and
  - (L) Underground utilities;
- (b) Use the soil and site evaluation procedures and terminology in accordance with Chapter 5 of the *On-site Wastewater Treatment Systems Manual*, EPA 625/R-00/008, February 2002 except where modified by, or in conflict with, this chapter ~~((available upon request to the department))~~;
- (c) Use the soil names and particle size limits of the United States Department of Agriculture Natural Resources Conservation Service classification system;
- (d) Determine texture, structure, compaction, and other soil characteristics that affect the treatment and water movement potential of the soil by using normal field ~~((and/))~~ or laboratory procedures such as particle size analysis; and
- (e) Classify the soil as in Table V, Soil Type Descriptions:

~~((TABLE V))~~ **Table V**  
**Soil Type Descriptions**

Soil Type	Soil Textural Classifications
<b>1</b>	Gravelly and very gravelly coarse sands, all extremely gravelly soils excluding <u>those with</u> soil types 5 and 6 as the <u>nongravel portion</u> , and all soil types with greater than or equal to 90% rock fragments.
<b>2</b>	Coarse sands.

Soil Type	Soil Textural Classifications
3	Medium sands, loamy coarse sands, loamy medium sands.
4	Fine sands, loamy fine sands, sandy loams, loams.
5	Very fine sands, loamy very fine sands; or silt loams, sandy clay loams, clay loams and silty clay loams with a moderate or strong structure (excluding platy structure).
6	Other silt loams, sandy clay loams, clay loams, silty clay loams.
7 <b>Unsuitable for treatment or dispersal</b>	Sandy clay, clay, silty clay, strongly cemented or firm soils, soil with a moderate or strong platy structure, any soil with a massive structure, any soil with appreciable amounts of expanding clays.

(3) The owner of the property or (~~his~~) the owner's agent shall:

(a) Prepare the soil log excavation to:

(i) Allow examination of the soil profile in its original position by:

(A) Excavating pits of sufficient dimensions to enable observation of soil characteristics by visual and tactile means to a depth three feet deeper than the anticipated infiltrative surface at the bottom of the soil dispersal component; or

(B) Stopping at a shallower depth if a water table or restrictive layer is encountered;

(ii) Allow determination of the soil's texture, structure, color, bulk density or compaction, water absorption capabilities or permeability, and elevation of the highest seasonal water table; and

(b) Assume responsibility for constructing and maintaining the soil log excavation in a manner to prevent injury as required by chapter 296-155 WAC.

(4) The local health officer:

(a) Shall render a decision on the height of the water table within (~~twelve~~) 12 months of receiving the application under precipitation conditions typical for the region;

(b) May require water table measurements to be recorded during months of probable high-water table conditions, if insufficient information is available to determine the highest seasonal water table;

(c) May require any other soil and site information affecting location, design, or installation; (~~and~~)

(d) May reduce the required number of soil logs for OSS serving a single-family residence if adequate soils information has previously been developed; and

(e) May require another site and soil evaluation if the site has been altered since the initial site and soil evaluation was submitted to the local health officer.



AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0230 Design requirements—General.** (1) (~~(On-site sewage systems may)~~) OSS must only be designed by professional engineers, licensed under chapter 18.43 RCW, or (~~(on-site sewage treatment system)~~) OSS designer((s)), licensed under chapter 18.210 RCW, except:

(a) If at the discretion of the local health officer, a resident owner of a single-family residence not (~~(adjacent to)~~) within 200 feet of a marine shoreline is allowed to design (~~(a system)~~) an OSS for that residence; or

(b) If the local health officer performs the soil and site evaluation, the health officer (~~(is allowed to)~~) may design (~~(a system)~~) the OSS.

(2) The designer shall use the following criteria when developing a design for an OSS:

(a) All sewage from the building served is directed to the OSS;

(b) Sewage tanks (~~(have been reviewed and approved by the department)~~) are in compliance with chapter 246-272C WAC;

(c) Drainage from the surface, footing drains, roof drains, sub-surface stormwater infiltration systems, and other nonsewage drains is prevented from entering the OSS, the area where the OSS is located, and the reserve area;

(d) The OSS is designed to treat and disperse the sewage volume as follows:

(i) For single-family residences:

(A) The operating capacity is based on 45 gpd per capita with two people per bedroom (~~(-)~~) ;

(B) The minimum design flow per bedroom per day is the operating capacity of (~~(ninety)~~) 90 gallons multiplied by 1.33 to account for a 33 percent surge capacity. This results in a minimum design flow of (~~(one hundred twenty)~~) 120 gallons per bedroom per day (~~(-)~~) ;

(C) (~~(A factor greater than 0.33 to account for surge capacity may be required by)~~) The local health officer (~~(-)~~) may require a factor greater than 33 percent to account for surge capacity;

(D) The minimum design flow of the OSS is 240 gpd; and

(E) The local health officer may require an increase of the design flow for dwellings with anticipated greater flows, such as larger dwellings (~~(-~~

~~(E) The minimum design flow is two hundred forty gallons per day-~~) ); or

(ii) For single-family residences with one additional dwelling served by the same OSS:

(A) All requirements in (d) (i) of this subsection apply;

(B) The minimum design flow for one additional dwelling is 120 gallons per bedroom; and

(C) The local health officer may require an increase of the design flow for dwellings with anticipated greater flows; or

(iii) For three or more dwellings served by the same OSS:

(A) All requirements in (d) (i) of this subsection apply;

(B) The minimum design flow for the first dwelling is 240 gallons per day;

(C) The minimum design flow for each additional dwelling is 120 gallons per bedroom;

(D) The local health officer may require an increase of the design flow for dwellings with anticipated greater flows; and

(E) The local health officer shall require documentation including, but not limited to, an easement, covenant, contract, or other legal document authorizing access for construction, operation, maintenance, and repair; or

(iv) For other facilities, the design flows noted in "On-site Wastewater Treatment Systems Manual," USEPA, EPA-625/R-00/008, February 2002 ((available upon request to the department) shall) must be used. Sewage flows from other sources of information may be used in determining system design flows if they incorporate both an operating capacity and a surge capacity((-));

(e) The OSS is designed to address sewage quality as follows:

(i) For all systems, the designer shall consider:

(A) CBOD<sub>5</sub>, TSS, and O&G;

(B) Other parameters that can adversely affect treatment anywhere along the treatment component sequence. Examples include pH, temperature, and dissolved oxygen;

(C) The sensitivity of the site where the OSS will be installed. Examples include areas where fecal coliform constituents can result in public health concerns, such as shellfish growing areas, designated swimming areas, and other areas identified by the local management plan required in WAC 246-272A-0015((-)); and

(D) Nitrogen contributions. Where nitrogen has been identified as a contaminant of concern by the local management plan required in WAC 246-272A-0015, it ((shall)) must be addressed through lot size ((and/or)) treatment, or both.

(ii) For OSS treating sewage from a nonresidential source, the designer shall provide the following information showing:

(A) ((Information to show)) The sewage is not industrial wastewater;

(B) ((Information regarding)) The sewage effluent quality and identifying chemicals found in the sewage ((that)) effluent are not found in sewage effluent from a residential source; and

(C) A site-specific design providing the necessary treatment ((level equal to that required of)) equaling required treatment of sewage effluent quality from a residential source;

(f) The vertical separation ((to be)) used to establish the treatment levels and application rates. The selected vertical separation ((shall)) must be used consistently throughout the design process((-)); and

(g) Treatment levels:

(i) Requirements for matching treatment component and method of distribution with soil conditions of the soil dispersal component are listed in Table VI of this section. The treatment levels correspond with those established for treatment components under the product performance testing requirements in Table III of WAC 246-272A-0110. The method of distribution applies to the soil dispersal component.

(ii) Disinfection may not be used ((to achieve the fecal coliform requirements to meet:

~~(A) Treatment levels A or B in Type 1 soils; or~~

~~(B) Treatment level C)):~~

(A) To achieve DL1 or DL2 in type 1 soils; or

(B) DL3.

~~((TABLE VI))~~ **Table VI**  
**Treatment Component Performance Levels and**  
**Method of Distribution<sup>1</sup>**

Vertical Separation in inches	Soil Type		
	1	2	3-6
12 < 18	A & DL1 - pressure with timed dosing	B & DL2 - pressure with timed dosing	B & DL2 - pressure with timed dosing
≥18 < 24	B & DL2 - pressure with timed dosing	((B)) C & DL3 - pressure with timed dosing	((B)) C & DL3 - pressure with timed dosing
≥24 < 36	B & DL2 - pressure with timed dosing	C & DL3 - pressure with timed dosing	E - pressure with timed dosing
≥36 < 60	B & DL2 - pressure with timed dosing	E - pressure	E - gravity
≥60	C & DL2 - pressure	E - gravity	E - gravity

<sup>1</sup>The treatment component performance levels correspond with those established for treatment components under the product testing requirements in WAC 246-272A-0110.

(3) The coarsest textured soil within the vertical separation selected by the designer ((shall)) determines the minimum treatment level and method of distribution.

(4) The local health officer shall not approve designs for:

- (a) Cesspools; or
- (b) Seepage pits.

(5) The local health officer may approve a design for the reserve area different from the design approved for the initial OSS, if both designs meet the requirements of this chapter for new construction.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0232 Design requirements—Septic tank sizing.** Septic tanks ((shall)) must:

(1) Have at least two compartments with the first compartment liquid volume equal to one-half to two-thirds of the total liquid volume. This standard may be met by one tank with two compartments or by two single compartment tanks in series.

(2) Have the following minimum liquid volumes:

(a) For a single-family residence use Table VII, Required Minimum Liquid Volumes of Septic Tanks:

~~((TABLE VII))~~ **Table VII**  
**Required Minimum Liquid Volumes of Septic Tanks**

Number of Bedrooms	Required Minimum Liquid Tank Volume in Gallons
((≤3	900
4	1000))

Number of Bedrooms	Required Minimum Liquid Tank Volume in Gallons
≤4	1,000
Each additional bedroom	250

(b) For OSS treating sewage from a residential source, other than one single-family residence, ~~((two hundred fifty))~~ 250 gallons per bedroom with a minimum of ~~((one thousand))~~ 1,000 gallons;

(c) For OSS treating sewage from a nonresidential source, three times the design flow.

(3) Comply with chapter 246-272C WAC.

NEW SECTION

**WAC 246-272A-0233 Design requirements—Pump chambers.** (1) All pump chambers, except pump basins, must be designed to meet the following requirements:

(a) Have a minimum volume of 1,000 gallons;

(b) Provide an internal volume to account for the design flow, full-time pump submergence, space for sludge accumulation below the pump inlet and emergency storage volume of at least 75 percent of the design flow;

(c) Follow any applicable DS&G or proprietary product design manual for all OSS components included in the pump chamber; and

(d) Comply with chapter 246-272C WAC.

(2) For the purposes of this section, "pump basin" means a watertight receptacle that contains a pump to convey sewage from a limited use area that is separate from the main wastewater sewer pipe leaving a structure, to the main treatment component of an OSS; typically much smaller than a pump chamber and separate from the main sewer pipe due to elevation restrictions. Pump basins are intended for limited, specialized uses, and not intended as a replacement or substitute for a pump chamber. Pump basins must be in compliance with chapter 246-272C WAC.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0234 Design requirements—Soil dispersal components.** (1) All soil dispersal components, except one using a subsurface dripline product, ~~((shall))~~ must be designed to meet the following requirements:

(a) Maximum hydraulic loading rates ~~((shall be based on the rates))~~ described in Table VIII, Maximum Hydraulic Loading Rate;

~~((TABLE VIII))~~

**Table VIII**

**Maximum Hydraulic Loading Rate**

		<u>Column A</u>	<u>Column B</u>
Soil Type	Soil Textural Classification Description	Loading Rate for Residential Septic Tank Effluent Using Gravity or Pressure Distribution gal./sq. ft./day	Loading Rate for Residential Effluent Meeting Treatment Level C & DL3 or Higher Effluent Quality Using Pressure Distribution gal./sq. ft./day
1	Gravelly and very gravelly coarse sands, all extremely gravelly soils excluding those with soil types 5 & 6 as the nongravel portion, all soil types with greater than or equal to 90% rock fragments.	1.0	<u>1.2</u>
2	Coarse sands.	1.0	<u>1.2</u>
3	Medium sands, loamy coarse sands, loamy medium sands.	0.8	<u>1.0</u>
4	Fine sands, loamy fine sands, sandy loams, loams.	0.6	<u>0.8</u>
5	Very fine sands, loamy very fine sands; or silt loams, sandy clay loams, clay loams and silty clay loams with a moderate structure or strong structure (excluding a platy structure).	0.4	<u>0.56</u>
6	Other silt loams, sandy clay loams, clay loams, silty clay loams.	0.2	<u>0.2</u>
7	Sandy clay, clay, silty clay and strongly cemented firm soils, soil with a moderate or strong platy structure, any soil with a massive structure, any soil with appreciable amounts of expanding clays.	((Not suitable)) <u>Unsuitable</u>	<u>Unsuitable</u>

(b) Calculation of the absorption area is based on:

(i) The design flow in WAC 246-272A-0230(2); and

(ii) Loading rates equal to or less than those in Table VIII of this section as applied to the infiltrative surface of the soil dispersal component or the finest textured soil within the vertical separation selected by the designer, whichever has the finest texture.

(c) Requirements for the method of distribution ((shall)) must correspond to those in WAC 246-272A-0230, Table VI.

(d) Soil dispersal components having daily design flow between ((one thousand and three thousand five hundred)) 1,000 and 3,500 gallons of sewage per day ((shall)) must:

(i) Only be located in soil types 1-5;

(ii) Only be located on slopes of less than ((thirty)) 30 percent, or ((seventeen)) 17 degrees; and

(iii) Have pressure distribution including time dosing.

(2) The local health officer may allow the maximum hydraulic loading rates in Table VIII of this section. Loading rates identified in Column B must not be combined with any dispersal component size reductions.

(3) All soil dispersal components using a subsurface dripline product must be designed to meet the following requirements:

(a) ((Calculation of)) The absorption area calculation is based on:

(i) The design flow in WAC 246-272A-0230(2); and

(ii) Loading rates (~~that are~~) dependent on the soil type, other soil and site characteristics, and the spacing of dripline and emitters as directed in Table VIII of this section;

(b) (~~The dripline must be installed~~) A minimum installation of six inches into original, undisturbed soil;

(c) Timed dosing; and

(d) (~~Soil dispersal components having~~) Daily design flows greater than (~~one thousand~~) 1,000 gallons of sewage per day (~~may~~):

(i) (~~Only be~~) Located only in soil types 1-5;

(ii) (~~Only be~~) Located only on slopes of less than (~~thirty~~) 30 percent, or (~~seventeen~~) 17 degrees.

(~~3~~) (4) All SSAS (~~shall~~) must meet the following requirements:

(a) The infiltrative surface may not be deeper than three feet below the finished grade, except under special conditions approved by the local health officer. The depth of such system (~~shall~~) must not exceed (~~ten~~) 10 feet from the finished grade;

(b) A minimum of six inches of sidewall must be located in (~~original undisturbed~~) suitable soil;

(c) Beds are only designed in soil types 1, 2, 3 or in fine sands with a width not exceeding (~~ten~~) 10 feet. Gravity beds must have a minimum of one lateral for every three feet in width;

(d) Individual laterals greater than (~~one hundred~~) 100 feet in length must use pressure distribution;

(e) A layer of between six and (~~twenty-four~~) 24 inches of cover material; and

(f) Other features (~~shall~~) must conform with the "On-site Wastewater Treatment Systems Manual," United States Environmental Protection Agency EPA-625/R-00/008 February 2002 (~~available upon request to the department~~) except where modified by, or in conflict with this section or local (~~regulations~~) rules.

(~~4 For~~) (5) SSAS with drainrock and distribution pipe must meet the following requirements:

(a) A minimum of two inches of drainrock (~~is required~~) above the distribution pipe;

(b) A minimum of six inches of drainrock below the distribution pipe; and

(c) Location of the sidewall below the invert of the distribution pipe (~~is located~~) in original undisturbed soil.

(~~5~~) (6) The local health officer may allow the infiltrative surface area in a SSAS to include six inches of the SSAS sidewall height when meeting the required absorption area where total recharge by annual precipitation and irrigation is less than (~~twelve~~) 12 inches per year.

(~~6~~) (7) The local health officer may permit (~~systems~~) OSS consisting (~~solely~~) of (~~a~~) septic tanks and a gravity SSAS in soil type 1 if all the following criteria are met:

(a) The (~~system~~) OSS serves a single-family residence;

(b) The lot size is (~~greater than~~) two and one-half acres or larger;

(c) Annual precipitation in the region is less than (~~twenty-five~~) 25 inches per year (~~as described by "Washington Climate" published jointly by the Cooperative Extension Service, College of Agriculture, and Washington State University (available for inspection at Washington state libraries)) from a reputable source approved by the local health officer;~~

(d) The ~~((system))~~ OSS is located outside the ~~((twelve))~~ 12 counties bordering Puget Sound; and

(e) The geologic conditions beneath the dispersal component must satisfy the minimum unsaturated depth requirements to groundwater as determined by the local health officer. The method for determination is described by "*Design Guideline for Gravity Systems in Soil Type 1,*" ~~((available upon request to the department))~~ 2017.

~~((7))~~ The local health officer may increase the loading rate in Table VIII up to a factor of two for soil types 1-4 and up to a factor of 1.5 for soil types 5 and 6 if a product tested to meet treatment level D is used. This reduction may not be combined with any other SSAS size reductions.

~~(8)(a))~~ (8) Both the primary and reserve areas must be sized ~~((to))~~ at least ~~((one hundred))~~ 100 percent of the approved loading rates ~~((listed in Table VIII.~~

~~(b)~~ However, the local health officer may allow a legal lot of record created prior to the effective date of this chapter that cannot meet this primary and reserve area requirement to be developed if all the following conditions are met:

~~(i)~~ The lot cannot meet the minimum primary and reserve area requirements due to the loading rates for medium sand, fine sand and very fine sand listed in Table VIII of this chapter;

~~(ii)~~ The primary and reserve areas are sufficient to allow installation of a SSAS using maximum loading rates of 1.0 gallons/square foot per day for medium sand, 0.8 gallons/square foot/day for fine sand, and 0.6 gallons/square foot/day for very fine sand; and

~~(iii)~~ A treatment product meeting at least Treatment Level D and pressure distribution with timed dosing is used). The local health officer may require the sizing of the reserve area using the loading rate in Table VIII of this section. Column A must be used when sizing the primary area using Column B.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0238 Design requirements—Facilitate operation, monitoring and maintenance.** (1) The OSS must be designed to facilitate routine operation, monitoring and maintenance according to the following criteria:

(a) For gravity ~~((systems, septic))~~ OSS:

(i) Sewage tank access for maintenance and inspection at finished grade is required. ~~((If effluent filters are used, access to the filter at finished grade is required.))~~ The local health officer may allow access for maintenance and inspection of a ~~((system consisting of a septic))~~ sewage tank ~~((and gravity flow SSAS))~~ to be a maximum of six inches below finished grade provided a marker showing the location of the tank access is installed at finished grade.

(ii) Each SSAS lateral must include at least one observation port installed in a representative location in order to facilitate SSAS monitoring.

(b) For all other ~~((systems))~~ OSS, service access and monitoring ports at finished grade are required for all system components. Specific component requirements include:

(i) Septic tanks must have service access maintenance holes (~~formerly manholes~~) and monitoring ports for the inlet and outlet (~~(- If effluent filters are used, access to the filter at finished grade is required)~~);

(ii) Surge, flow equalization or other sewage tanks must have service access (~~(manholes)~~) maintenance holes;

(iii) Other pretreatment units (~~(+)~~) such as aerobic treatment units and packed-bed filters (~~(+)~~) must have service access (~~(manholes)~~) maintenance holes and monitoring ports;

(iv) Pump chambers, tanks and vaults must have service access (~~(manholes)~~) maintenance holes;

(v) Disinfection units must have service access and be installed to facilitate complete maintenance and cleaning, including an easy-access, freefall sampling port; and

(vi) Soil dispersal components (~~(shall)~~), excluding subsurface drip, must have monitoring ports for both distribution devices and the infiltrative surface.

(c) For systems using pumps, clearly accessible controls and warning devices are required including:

(i) Process controls such as float and pressure activated pump on/off switches, pump-run timers and process flow controls;

(ii) Diagnostic tools including dose cycle counters and hour meters on the sewage stream, or flow meters on either the water supply or sewage stream; and

(iii) Audible and visual alarms designed to alert a resident of a malfunction. The alarm must be placed on a circuit independent of the pump circuit.

(2) All accesses must be designed to allow for monitoring and maintenance and shall be secured to minimize injury or unauthorized access in a manner approved by the local health officer.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0240 Holding tank sewage systems.** (1) A person may not install or use holding tank sewage systems for residential development or expansion of residences, whether seasonal or year-round, except as set forth under subsection (2) of this section.

(2) The local health officer may approve installation of holding tank sewage systems only:

(a) For permanent uses limited to controlled, part-time, commercial usage situations, such as recreational vehicle parks and trailer dump stations;

(b) For interim uses limited to handling of emergency situations; or

(c) For repairs as permitted under WAC 246-272A-0280 (1) (~~(+e)~~) (d) (i).

(3) A person proposing to use a holding tank sewage system shall:

(a) Follow design criteria established by the department;

(b) Submit a management program to the local health officer assuring ongoing operation, monitoring and maintenance before the local health officer issues the installation permit; and

(c) Use a holding tank reviewed and approved by the department.



AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0250 Installation.** (1) Only installers may construct OSS, except as noted under subsection (2) of this section.

(2) The local health officer may allow the resident owner of a single-family residence (~~((not adjacent to a marine shoreline))~~) to install the OSS for that single-family residence except when:

(a) The primary and reserve areas are within 200 feet of marine water;

(b) The primary and reserve areas are within 100 feet of surface water; or

(c) The installation permit meets Table IX standards in WAC 246-272A-0270.

(3) The installer described by either subsection (1) or (2) of this section shall:

(a) Follow the approved design;

(b) Have the approved design in possession during installation;

(c) Make no changes to the approved design without the prior authorization of the designer and the local health officer;

(d) Only install (~~((septic tanks, pump chambers, and holding))~~) sewage tanks approved by the department consistent with chapter 246-272C WAC;

(e) Be on the site at all times during the excavation and construction of the OSS;

(f) Install the OSS to be watertight, except for the soil dispersal component;

(g) Cover the installation only after the local health officer has given approval to cover; and

(h) Back fill with six to (~~((twenty-four))~~) 24 inches of cover material and grade the site to prevent surface water from accumulating over any component of the OSS.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0260 Inspection.** (1) For all activities requiring a permit, the local health officer shall inspect the OSS. The local health officer shall:

(a) Visit the OSS site during the site evaluation, construction, or final construction inspection;

(b) Either inspect the OSS before cover or allow the designer of the OSS to perform the inspection before cover if the designer is not also named as installer of the system(~~((=))~~); and

(c) Keep the record drawings on file, with the approved design documents.

(2) Prior to any inspection, the local health officer or inspector authorized by the local health officer shall coordinate with the OSS owner to obtain access. When the owner does not authorize access, the local health officer may follow the administrative search warrant procedures in RCW 70A.105.030 to gain access.

(3) For any OSS located on a single property serving one dwelling unit on the same property, the local health officer shall not require a property owner to grant inspection and maintenance easements as a condition of receiving a permit.

(4) During the final construction inspection, the local health officer or the designer of the OSS must confirm the OSS meets the approved design.

(5) To comply with the requirements of WAC 246-272A-0270 (1)(e) or (k), an inspection must include, at a minimum:

(a) Inspection and evaluation of:

(i) The status of all sewage tanks including baffles, effluent filters, tank contents such as water level, scum, sludge, solids, water tightness, and general structural conditions;

(ii) The status of all lids, accesses, and risers;

(iii) The OSS and reserve area for any indicators of OSS failure or conditions that may impact system function, operation or repair; and

(iv) Any other components such as distribution boxes;

(b) A review of the record drawing and related documents, if they exist, including previous reports to confirm the system is operating as designed; and

(c) Any proprietary products following the procedures of the accepted operations and maintenance manual associated with those products.

(6) Evidence of an OSS property transfer inspection as required in WAC 246-272A-0270 (1)(k) must be provided to the local health jurisdiction on a form approved by the local health officer, including at a minimum:

(a) All applicable information from subsection (5) of this section;

(b) The address of the property served by the OSS;

(c) The date of the inspection;

(d) The permitted type and design flow for known OSS; and

(e) Verification that the record drawing is accurate, if it exists, or an OSS site plan showing the location of all system components relative to structures and prominent site features.

(7) A local health jurisdiction may require an additional inspection report, or additional information, for an inspection required under WAC 246-272A-0270(1). The person responsible for the final construction inspection shall assure the OSS meets the approved design.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0265 Record drawings.** Upon completion of ~~((the))~~ new construction, alteration or repair of the OSS, the OSS owner shall submit a complete and detailed record drawing ~~((shall be submitted to both))~~ to the local health officer ~~((and the OSS owner))~~ that includes at a minimum ~~((the following))~~:

(1) Measurements and directions accurate to +/- 1/2 foot, unless otherwise determined by the local health officer, ~~((to assure))~~ so that the following parts of the OSS can be easily located:

(a) All sewage tank openings requiring access;

(b) The ends, and all changes in direction, of installed and found buried pipes and electrical cables that are part of the OSS; and

(c) Any other OSS component which, in the judgment of the local health officer or the designer, must be accessed for observation, maintenance, or operation;

(2) Location and dimensions of the reserve area;

(3) Record that materials and equipment meet the specifications contained in the design;

(4) Initial settings of electrical or mechanical devices that must be known to operate the system in the manner intended by the designer or installer; and

(5) For proprietary products, manufacturer's standard product literature, including performance specifications and maintenance recommendations needed for operation, monitoring, maintenance or repair of the OSS.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0270 Operation, monitoring, and maintenance—Owner responsibilities.** (1) The OSS owner is responsible for operating, monitoring, and maintaining the OSS to minimize the risk of failure, and ~~((to accomplish this purpose,))~~ shall:

(a) Request assistance from the local health officer upon occurrence of a system failure or suspected system failure;

(b) Obtain approval from the local health officer before:

(i) Repairing, altering, or expanding an OSS ~~((~~  
~~))~~ as required by WAC 246-272A-0200; or

(ii) Before beginning the use of any newly constructed OSS;

(c) Secure and renew contracts for periodic maintenance ~~((where))~~  
if required by the local health jurisdiction;

~~((e))~~ (d) Obtain and renew operation permits if required by the local health jurisdiction;

~~((d))~~ Assure a complete evaluation of the system components and/or (e) Obtain an inspection, as required in WAC 246-272A-0260(5), by a maintenance service provider authorized by the local health officer of all OSS and property to determine functionality, maintenance needs and compliance with ~~((regulations))~~ this chapter and local rules, and any permits:

(i) At least once every three years, unless more frequent inspections are specified by the local health officer, for all ~~((systems))~~  
OSS consisting solely of a ~~((septic))~~ sewage tank and gravity SSAS;

(ii) Annually for all other ~~((systems))~~ OSS unless more frequent inspections are specified by the local health officer;

~~((e))~~ (iii) Submit the results of the inspection to the local health jurisdiction, using a form approved by the local health officer and in compliance with WAC 246-272A-0260(5);

(f) Employ an approved pumper to remove the septage from the tank when the level of solids and scum indicates that removal is necessary;

~~((f))~~ (g) Provide ongoing maintenance and complete any needed repairs to promptly return the ~~((system))~~ OSS to a proper operating condition;

~~((g))~~ (h) Protect the OSS area and the reserve area from:

(i) Cover by structures or impervious material;

(ii) Surface drainage, and direct drains, such as footing or roof drains. The drainage must be directed away from the area where the OSS is located;

(iii) Soil compaction~~((r))~~. For example by vehicular traffic or livestock; and

(iv) Damage by soil removal and grade alteration~~((r))~~

~~(h))~~.

(i) Keep the flow of sewage to the OSS at or below the approved operating capacity and sewage quality;

~~((i))~~ (j) Operate and maintain ((systems)) OSS as directed by the local health officer((

~~j) Request assistance from the local health officer upon occurrence of a system failure or suspected system failure)); and~~

~~(k) At the time of property transfer((r)):~~

(i) Provide to the buyer, all available OSS maintenance and repair records((, if available,)) in addition to the completed seller disclosure statement in accordance with chapter 64.06 RCW for residential real property transfers;

(ii) Beginning February 1, 2027, obtain an inspection, as required in WAC 246-272A-0260(5), by a third-party inspector authorized by the local health officer. The local health officer may:

(A) Remove the requirement for an inspection at the time of property transfer if the local health jurisdiction has evidence that the OSS is in compliance with (e) of this subsection and the OSS was inspected by a third-party inspector authorized by the local health officer;

(B) Verify the results of the property inspection for compliance with WAC 246-272A-0260; and

(C) Require additional inspections and other requirements not listed in WAC 246-272A-0260;

(iii) Beginning February 1, 2027, obtain an inspection of proprietary treatment products per the product manufacturer recommendations, as required in WAC 246-272A-0260, by a third-party inspector authorized by the local health officer. The local health officer may:

(A) Remove the requirement for an inspection at the time of property transfer if the local health jurisdiction has evidence that the OSS is in compliance with (e) of this subsection and the OSS was inspected by a third-party inspector authorized by the local health officer;

(B) Verify the results of the property inspection for compliance with WAC 246-272A-0260; and

(C) Require additional inspections and other requirements not listed in WAC 246-272A-0260;

(iv) Submit the results of the inspection, and any additional information or reports required by the local health officer, to the local health jurisdiction, using an inspection report form approved by the local health officer. The local health officer may require a compliance schedule for repair of a failure discovered during the property transfer inspection.

~~(2) ((Persons shall))~~ A person may not:

(a) Use or introduce strong bases, acids or chlorinated organic solvents into an OSS for the purpose of system cleaning;

(b) Use ((a sewage system)) an OSS additive unless it is specifically approved by the department; ((or))

(c) Use an OSS to dispose of waste components atypical of sewage from a residential source; or

(d) Use any remediation process or activity unless it is approved by the local health officer and is in compliance with WAC 246-272A-0278.

NEW SECTION

**WAC 246-272A-0278 Remediation.** (1) The local health officer may establish a program and requirements for reviewing and approving remediation activities.

(2) Remediation must not:

(a) Result in damage to the OSS;

(b) Result in insufficient soil treatment in the zone between the soil dispersal component and the highest seasonal water table, restrictive layer, or soil type 7; or

(c) Disturb the soil in or below the soil dispersal component if the vertical separation requirements of WAC 246-272A-0230 are not met.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0280 Repair of failures.** (~~((1) When an OSS failure occurs, the OSS owner shall:~~

~~(a) Repair or replace the OSS with a conforming system or component, or a system meeting the requirements of Table IX either on the:~~

~~(i) Property served; or~~

~~(ii) Nearby or adjacent property if easements are obtained; or~~

~~(b) Connect the residence or facility to a:~~

~~(i) Publicly owned LOSS;~~

~~(ii) Privately owned LOSS where it is deemed economically feasible; or~~

~~(iii) Public sewer; or~~

~~(c) Perform one of the following when requirements in (a) and (b) of this subsection are not feasible:~~

~~(i) Use a holding tank; or~~

~~(ii) Obtain a National Pollution Discharge Elimination System or state discharge permit from the Washington state department of ecology issued to a public entity or jointly to a public entity and the system owner only when the local health officer determines:~~

~~(A) An OSS is not feasible; and~~

~~(B) The only realistic method of final dispersal of treated effluent is discharge to the surface of the land or into surface water; or~~

~~(iii) Abandon the property.~~

~~(2) Prior to repairing the soil dispersal component, the OSS owner shall develop and submit information required under WAC 246-272A-0200(1).~~

~~(3) The local health officer shall permit a system that meets the requirements of Table IX only if the following are not feasible:~~

~~(a) Installation of a conforming system or component; and~~

~~(b) Connection to either an approved LOSS or a public sewer.~~

~~(4) The person responsible for the design shall locate and design repairs to:~~

~~(a) Meet the requirements of Table IX if the effluent treatment and soil dispersal component to be repaired or replaced is closer to any surface water, well, or spring than prescribed by the minimum separation required in Table IV of WAC 246-272A-0210(1). Pressure distribution with timed dosing in the soil dispersal component is required in all cases where a conforming system is not feasible.~~

**TABLE IX**  
**Treatment Component Performance Levels for Repair of OSS Not Meeting**  
**Vertical and Horizontal Separations<sup>1</sup>**

Vertical Separation (in inches)	Horizontal Separation <sup>2</sup>											
	<25 feet			25 < 50 feet			50 < 100 feet <sup>3</sup>			≥100 feet		
	Soil Type			Soil Type			Soil Type			Soil Type		
	1	2	3-6	1	2	3-6	1	2	3-6	1	2	3-6
<12	A	A	A	A	A	A	A	A	B	B	B	B
≥12 < 18	A	A	A	A	B	B	A	B	B	Conforming Systems		
≥18 < 24	A	A	A	A	B	B	A	B	C			
≥24 < 36	A	B	B	B	C	C	B	C	C			
≥36	A	B	B	B	C	C	B	C	E			

<sup>1</sup>The treatment component performance levels correspond with those established for treatment components under the product performance testing requirements in Table III of WAC 246-272A-0110.

<sup>2</sup>The horizontal separation indicated in Table IX is the distance between the soil dispersal component and the surface water, well, or spring. If the soil dispersal component is up-gradient of a surface water, well, or spring to be used as a potable water source, or beach where shellfish are harvested, the next higher treatment level shall apply unless treatment level A is already required.

<sup>3</sup>On a site where there is a horizontal setback of 75-100 feet between an OSS dispersal component and an individual water well, individual spring, nonmarine surface water or surface water that is not a public water source and a vertical separation of greater than twelve inches, a conforming system that complies with WAC 246-272A-0210(4) shall be installed if feasible.

- ~~(b) Protect drinking water sources and shellfish harvesting areas;~~
- ~~(c) Minimize nitrogen discharge in areas where nitrogen has been identified as a contaminant of concern in the local plan under WAC 246-272A-0015;~~
- ~~(d) Prevent the direct discharge of sewage to groundwater, surface water, or upon the surface of the ground;~~
- ~~(e) Meet the horizontal separations under WAC 246-272A-0210(1) to public drinking water sources;~~
- ~~(f) Meet other requirements of this chapter to the maximum extent permitted by the site; and~~
- ~~(g) Maximize the:~~
  - ~~(i) Vertical separation;~~
  - ~~(ii) Distance from a well, spring, or suction line; and~~
  - ~~(iii) Distance to surface water.~~
- ~~(5) Prior to designing the repair system, the designer shall consider the contributing factors of the failure to enable the repair to address identified causes.~~
- ~~(6) If the vertical separation is less than twelve inches, the local health officer may permit ASTM C-33 sand or coarser to be used as fill to prevent direct discharge of treated effluent to groundwater, surface water, or upon the surface of the ground.~~
- ~~(7) For a repair using the requirements of Table IX, disinfection may not be used to achieve the fecal coliform requirements to meet:~~
  - ~~(a) Treatment levels A or B where there is less than eighteen inches of vertical separation;~~
  - ~~(b) Treatment levels A or B in type 1 soils; or~~
  - ~~(c) Treatment level C.~~
- ~~(8) The local health officer shall identify repair permits meeting the requirements of Table IX for the purpose of tracking future performance.~~
- ~~(9) An OSS owner receiving a repair permit for a system meeting the requirements of Table IX from the local health officer shall:~~
  - ~~(a) Immediately report any failure to the local health officer;~~

~~(b) Comply with all local and state requirements stipulated on the permit.)~~

~~(1) When an OSS failure occurs the local health officer shall:~~

~~(a) Allow an OSS to be repaired using the least costly alternative that meets standards and is likely to provide comparable or better long-term sewage treatment and effluent dispersal outcomes;~~

~~(b) Permit an OSS meeting the requirements in Table X of this section only if the OSS has failed and the following are not feasible:~~

~~(i) Installation of a conforming OSS or component; or~~

~~(ii) Connection to either an approved LOSS or a public sewer.~~

~~(c) Identify repair permits meeting the requirements in Table X of this section for the purpose of tracking future performance;~~

~~(d) Give first priority to allowing repair and second priority to allowing replacement of an existing conventional OSS, consisting of a septic tank and drainfield, with a similar conventional OSS;~~

~~(e) Evaluate all unpermitted sewage discharges to determine if they pose a public health threat. If determined by the local health officer to be a public health threat, the local health officer shall require a compliance schedule;~~

~~(f) Report failures within 200 feet of shellfish growing areas to the department; and~~

~~(g) Not impose or allow the imposition of more stringent performance requirements of equivalent OSS on private entities than public entities.~~

~~(2) The local health officer may:~~

~~(a) Require a compliance schedule for failures discovered during property transfer inspections;~~

~~(b) Allow a repair of a failure using ASTM C-33 sand or coarser as fill to prevent direct discharge of treated effluent to groundwater, surface water, or upon the surface of the ground if the vertical separation is less than 12 inches.~~

~~(3) The OSS owner shall notify the local health officer when there is a failure and indicate which methods will be used to address the failure in accordance with Table IX of this section:~~

~~(a) The owner may use option D only if the local health officer determines options A through C are not feasible and may use option E or F only if options A through D are not feasible.~~

~~(b) For options A through F, the owner shall develop and submit information and obtain a permit as required under WAC 246-272A-0200 prior to any repair or replacement of an OSS on the property served or a nearby property if the owner obtains an appropriate documentation including, but not limited to, an easement, covenant, contract, or other legal document authorizing access for construction, operation, maintenance, and repair.~~

~~(c) If options A through F are not feasible, the owner shall discontinue use of the OSS, abandon the OSS according to the requirements in WAC 246-272A-0300, and cease all sewage generating activities on the property.~~

**Table IX  
Options and Methods to Address an OSS Failure**

Options	Method
A	Repair or replace the OSS, with a similar OSS, if the OSS provides comparable or better long-term sewage treatment and effluent dispersal outcomes where: <ol style="list-style-type: none"> <li>1. The effluent treatment and soil dispersal component to be repaired or replaced is not closer to any surface water, well, or spring than the minimum separation distance required in Table IV of WAC 246-272A-0210(1);</li> </ol>

<u>Options</u>	<u>Method</u>
	<p><u>2. The soil dispersal component to be repaired or replaced complies with the treatment level and dispersal method requirements in Table VI of WAC 246-272A-0230;</u>  <u>3. The local health officer has a permit or record of the OSS on file; and</u>  <u>4. The repair or replacement will not result in an OSS that meets the definition of failure.</u></p>
<u>B</u>	<u>Repair or replace the OSS with an OSS in compliance with new construction requirements under this chapter.</u>
<u>C</u>	<p><u>Connect the residence or facility to a:</u></p> <ol style="list-style-type: none"> <li><u>1. Publicly owned LOSS;</u></li> <li><u>2. Privately owned LOSS where it is deemed economically feasible; or</u></li> <li><u>3. Public sewer.</u></li> </ol>
<u>D</u>	<u>Repair or replace the OSS in conformance with Table X of this section.</u>
<u>E</u>	<u>Use a holding tank.</u>
<u>F</u>	<p><u>Obtain a National Pollution Discharge Elimination System or state discharge permit from the Washington state department of ecology issued to a public entity or jointly to a public entity and the OSS owner only when the local health officer determines:</u></p> <ol style="list-style-type: none"> <li><u>1. An OSS is not feasible; and</u></li> <li><u>2. The only realistic method of final dispersal of treated effluent is discharge to the surface of the land or into surface water.</u></li> </ol>

- (4) When there is an OSS failure, the OSS designer shall:
- (a) Evaluate the causes of failure prior to designing the repair or replacement of the OSS;
  - (b) Prevent the direct discharge of sewage or treated effluent to groundwater, surface water, or upon the surface of the ground;
  - (c) Meet the horizontal separations under WAC 246-272A-0210(1) to public drinking water sources;
  - (d) Protect all drinking water sources, shellfish harvesting areas, and water recreation facilities designated for swimming in natural waters;
  - (e) Minimize nitrogen discharge in areas where nitrogen has been identified as a contaminant of concern in the local management plan under WAC 246-272A-0014 or 246-272A-0016;
  - (f) Not use disinfection to achieve fecal coliform or *E. Coli* requirements in Table X of this section to meet:
    - (i) Treatment levels DL1 or DL2 with less than 18 inches of vertical separation; or
    - (ii) Treatment levels DL1 or DL2 in type 1 soils; or
    - (iii) Treatment level DL3.
  - (g) Minimize impact of phosphorus discharge in areas where the local health officer has identified phosphorus as a contaminant of concern in the local management plan under WAC 246-272A-0015;
  - (h) Locate and design repairs meeting the requirements in Table X of this section if the effluent treatment and soil dispersal component to be repaired or replaced is closer to any surface water, well, or spring than prescribed by the minimum separation required in Table IV of WAC 246-272A-0210(1);
    - (i) Design any nonconforming OSS using pressure distribution with timed dosing in the soil dispersal component; and
    - (j) Meet all other design requirements of this chapter to the maximum extent permitted by the site, to maximize the:
      - (i) Vertical separation;
      - (ii) Distance from a well or spring; and
      - (iii) Distance to surface water.

**Table X**



**Treatment Component Performance Levels for Repair of OSS Not Meeting Vertical and Horizontal Separations<sup>1</sup>**

Vertical Separation (in inches)	Horizontal Separation <sup>2</sup>											
	< 30 feet			≥ 30 < 50 feet			≥ 50 < 100 feet <sup>3</sup>			≥ 100 feet		
	Soil Type			Soil Type			Soil Type			Soil Type		
	1	2	3-6	1	2	3-6	1	2	3-6	1	2	3-6
< 12	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>
≥ 12 < 18	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	<u>A &amp; DL1</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	Conforming  OSS		
≥ 18 < 24	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>A &amp; DL1</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	<u>A &amp; DL1</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>			
≥ 24 < 36	<u>A &amp; DL1</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	<u>C &amp; DL3</u>			
≥ 36	<u>A &amp; DL1</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	<u>B &amp; DL2</u>	<u>C &amp; DL3</u>	<u>C &amp; DL3</u>	<u>B &amp; DL2</u>	<u>C &amp; DL3</u>	<u>C &amp; DL3</u>			

<sup>1</sup>The treatment component performance levels correspond with those established for treatment components under the product performance testing requirements in Table III in WAC 246-272A-0110.

<sup>2</sup>The horizontal separation indicated in Table X of this section is the distance between the soil dispersal component and the surface water, well, or spring. If the soil dispersal component is up-gradient of a surface water, well, or spring to be used as a potable water source, or beach where shellfish are harvested, the next higher treatment level shall apply unless treatment level A is already required.

<sup>3</sup>On a site where there is a horizontal setback of 75-100 feet between an OSS dispersal component and an individual water well, individual spring, nonmarine surface water or surface water that is not a public water source and a vertical separation of greater than 12 inches, a conforming OSS that complies with WAC 246-272A-0210(4) shall be installed if feasible.

NEW SECTION

**WAC 246-272A-0282 Minor repair of malfunctions.** The local health officer:

- (1) Shall require the minor repair of a malfunction to a functioning state;
- (2) May require a permit for a minor repair of a malfunction; and
- (3) May require the OSS owner to submit information regarding minor repairs of a malfunction.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0290 Expansions.** (1) The local health officer shall require an OSS and a reserve area in full compliance with the new ((system)) construction standards specified in this chapter for an OSS expansion ((of a residence or other facility)).

(2) A local health officer may allow expansion of an existing ((on-site sewage system adjacent to)) OSS within 200 feet of a marine shoreline that does not meet the minimum horizontal separation between the soil dispersal component and the ordinary high-water mark required by WAC 246-272A-0210, Table IV, provided that:

- (a) The ((system)) OSS meets all requirements of WAC 246-272A-0230, 246-272A-0232, 246-272A-0234, and 246-272A-0238;

(b) The ~~((system))~~ OSS complies with all other requirements of WAC 246-272A-0210 and this section;

(c) Horizontal separation between the soil dispersal component and the ordinary high-water mark is ~~((fifty))~~ 50 feet or greater; and

(d) Vertical separation is two feet or greater.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0300 Abandonment.** Persons permanently abandoning a ~~((septic))~~ sewage tank, seepage pit, cesspool, or other sewage container shall:

(1) Have the septage removed by an approved pumper; and

(2) Perform one of the following:

(a) Remove and dispose of sewage tanks and other components in a manner approved by the local health officer; or

(b) Leave the sewage tanks and components in place. Remove or destroy the lid~~((+))~~ if possible and ~~((+3))~~ fill the void with soil or gravel; and

(3) Grade the site to the surroundings.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0310 Septage management.** ~~((1) The local health officer shall approve an individual before they may remove septage from an OSS.~~

~~((2) Persons))~~ A person removing septage from an OSS shall obtain approval from the local health officer before removal and:

~~((a))~~ (1) Transport septage or sewage only in vehicles clearly identified with the name of the business and approved by the local health officer;

~~((b))~~ (2) Record and report septage removal as required by the local health officer; and

~~((e))~~ (3) Dispose of septage, or apply septage biosolids to land only in a manner consistent with applicable laws.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0320 Developments, subdivisions, and minimum land area requirements.** ~~((1) A person proposing a subdivision where the use of OSS is planned shall obtain a recommendation for approval from the local health officer as required by RCW 58.17.150.~~

~~(2) The local health officer shall require the following prior to approving any development:~~

~~(a) Site evaluations as required under WAC 246-272A-0220, excluding subsections (3)(a)(i) and (4)(d);~~

~~(b) Where a subdivision with individual wells is proposed:~~

~~(i) Configuration of each lot to allow a one hundred-foot radius water supply protection zone to fit within the lot lines; or~~

~~(ii) Establishment of a one hundred-foot protection zone around each existing and proposed well site;~~

~~(c) Where preliminary approval of a subdivision is requested, provision of at least one soil log per proposed lot, unless the local health officer determines existing soils information allows fewer soil logs;~~

~~(d) Determination of the minimum lot size or minimum land area required for the development using Method I and/or Method II:~~

~~METHOD I. Table X, Single-Family Residence Minimum Lot Size or Minimum Land Area Required Per Unit Volume of Sewage, shows the minimum lot size required per single-family residence. For developments other than single-family residences, the minimum land areas shown are required for each unit volume of sewage. However, the local health officer may require larger lot sizes where the local health officer has identified nitrogen as a concern either through planning activities described in WAC 246-272A-0015 or another process.~~

**TABLE X  
Minimum Land Area Requirement  
Single-Family Residence or Unit Volume of Sewage**

Type of Water Supply	Soil Type (defined by WAC 246-272A-0220)					
	1	2	3	4	5	6
Public	0.5 acre	12,500 sq. ft.	15,000 sq. ft.	18,000 sq. ft.	20,000 sq. ft.	22,000 sq. ft.
	2.5 acre <sup>1</sup>					
Individual, on each lot	1.0 acre	1-acre	1-acre	1-acre	2-acres	2-acres
	2.5 acres <sup>1</sup>					

<sup>1</sup>See WAC 246-272A-0234(6).

~~METHOD II. A minimum land area proposal using Method II is acceptable only when the applicant:~~

- ~~(i) Justifies the proposal through a written analysis of the:~~
  - ~~(A) Soil type and depth;~~
  - ~~(B) Area drainage, and/or lot drainage;~~
  - ~~(C) Public health impact on ground and surface water quality;~~
  - ~~(D) Setbacks from property lines, water supplies, etc.;~~
  - ~~(E) Source of domestic water;~~
  - ~~(F) Topography, geology, and ground cover;~~
  - ~~(G) Climatic conditions;~~
  - ~~(H) Availability of public sewers;~~
  - ~~(I) Activity or land use, present, and anticipated;~~
  - ~~(J) Growth patterns;~~
  - ~~(K) Reserve areas for additional subsurface treatment and dispersal;~~
  - ~~(L) Anticipated sewage volume;~~
  - ~~(M) Compliance with current planning and zoning requirements;~~
  - ~~(N) Types of proposed systems or designs, including the use of systems designed for removal of nitrogen;~~
  - ~~(O) Existing encumbrances, such as those listed in WAC 246-272A-0200 (1)(c)(v) and 246-272A-0220 (2)(a)(vii); and~~
  - ~~(P) Estimated nitrogen loading from OSS effluent to existing ground and surface water;~~
  - ~~(Q) Any other information required by the local health officer.~~
- ~~(ii) Shows development with public water supplies having:~~
  - ~~(A) At least twelve thousand five hundred square feet lot sizes per single-family residence;~~

- ~~(B) No more than 3.5 unit volumes of sewage per day per acre for developments other than single-family residences; and~~
- ~~(iii) Shows development with individual water supplies having at least one acre per unit volume of sewage; and~~
- ~~(iv) Shows land area under surface water is not included in the minimum land area calculation; and~~
- ~~(e) Regardless of which method is used for determining required minimum lot sizes or minimum land area, submittal to the health officer of information consisting of field data, plans, and reports supporting a conclusion the land area provided is sufficient to:~~
- ~~(i) Install conforming OSS;~~
- ~~(ii) Assure preservation of reserve areas for proposed and existing OSS;~~
- ~~(iii) Properly treat and dispose of the sewage; and~~
- ~~(iv) Minimize public health effects from the accumulation of contaminants in surface and groundwater.~~
- ~~(3) The department shall develop guidelines for the application of Method II by (insert date one year from the effective date).~~
- ~~(4) The local health officer shall require lot areas of twelve thousand five hundred square feet or larger except when a person proposes:~~
- ~~(a) OSS within the boundaries of a recognized sewer utility having a finalized assessment roll; or~~
- ~~(b) A planned unit development with:~~
- ~~(i) A signed, notarized, and recorded deed covenant restricting any development of lots or parcels above the approved density with the overall density meeting the minimum land area requirements of subsection (2)(d) of this section;~~
- ~~(ii) A public entity responsible for operation and maintenance of the OSS, or a single individual owning the OSS;~~
- ~~(iii) Management requirements under chapter 246-272B WAC when installing a LOSS; and~~
- ~~(iv) Extinguishment of the deed covenant and higher density development allowed only when the development connects to public sewers.~~
- ~~(5) The local health officer may:~~
- ~~(a) Allow inclusion of the area to the centerline of a road or street right of way in a Method II determination under subsection (2)(d) of this section to be included in the minimum land area calculation if:~~
- ~~(i) The dedicated road or street right of ways are along the perimeter of the development;~~
- ~~(ii) The road or street right of ways are dedicated as part of the proposed development; and~~
- ~~(iii) Lots are at least twelve thousand five hundred square feet in size.~~
- ~~(b) Require detailed plot plans and OSS designs prior to final approval of subdivision proposals;~~
- ~~(c) Require larger land areas or lot sizes to achieve public health protection;~~
- ~~(d) Prohibit development on individual lots within the boundaries of an approved subdivision if the proposed OSS design does not protect public health by meeting requirements of these regulations; and~~
- ~~(e) Permit the installation of an OSS, where the minimum land area requirements or lot sizes cannot be met, only when all of the following criteria are met:~~
- ~~(i) The lot is registered as a legal lot of record created prior to the effective date of this chapter;~~

~~(ii) The lot is outside an area identified by the local plan developed under WAC 246-272A-0015 where minimum land area has been listed as a design parameter necessary for public health protection; and~~

~~(iii) The proposed system meets all requirements of these regulations other than minimum land area.~~

~~(6) The use of a reduced-sized SSAS does not provide for a reduction in the minimum land area requirements established in this section. Site development incorporating reduced-sized SSAS must meet the minimum land area requirements established in state and local codes.)~~

(1) Prior to approving any development, the local health officer shall:

(a) Require site evaluations under WAC 246-272A-0220;

(b) Require information consisting of field data, plans, and reports supporting a conclusion that the proposed land area is sufficient to:

(i) Install conforming OSS;

(ii) Preserve reserve areas for proposed and existing OSS; and

(iii) Properly treat and dispose of the sewage;

(c) Require information demonstrating that the proposed development will minimize adverse public health effects from the accumulation of contaminants in groundwater and surface water;

(d) Determine the minimum land area required for the development using Table XI of this section, or the alternative methodology in Table XII of this section. The local health officer may require larger lot sizes than the minimum standards established in Table XI or Table XII of this section;

**Table XI**

**Minimum Land Area Requirement For Each Single-Family Residence or Unit Volume of Sewage and Minimum Usable Land Area**

		Soil Type (defined by WAC 246-272A-0220)					
		<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
<b>Minimum Land Area</b>	<b>Public Water Supply</b>	<u>21,780 sq. ft. (.5 acre)</u> <u>2.5 acres<sup>1</sup></u>	<u>13,000 sq. ft.</u>	<u>16,000 sq. ft.</u>	<u>19,000 sq. ft.</u>	<u>21,000 sq. ft.</u>	<u>23,000 sq. ft.</u>
	<b>Nonpublic Water Supply</b>	<u>1.0 acre</u> <u>2.5 acres<sup>1</sup></u>	<u>1.0 acre</u>	<u>1.0 acre</u>	<u>1.0 acre</u>	<u>2.0 acres</u>	<u>2.0 acres</u>
<b>Minimum Usable Land Area</b>		<u>2,000 sq. ft.</u>	<u>2,000 sq. ft.</u>	<u>2,500 sq. ft.</u>	<u>3,333 sq. ft.</u>	<u>5,000 sq. ft.</u>	<u>10,000 sq. ft.</u>

<sup>1</sup>OSS consisting of only sewage tanks and gravity SSAS must have a minimum land area of 2.5 acres per WAC 246-272A-0234(6).

**Table XII**

**Maximum Allowable Total Nitrogen (TN) Load Per Day by Type of Water Supply, Soil Type, and Land Area<sup>1</sup>**

<b>Water Supply Type</b>	<b>Maximum Daily TN Load</b>	Soil Type <sup>2</sup>					
		<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>	<u>5</u>	<u>6</u>
<b>Public</b>	<b>mg per sq. ft.</b>	<u>3.8</u>	<u>6.3</u>	<u>5.1</u>	<u>4.3</u>	<u>3.9</u>	<u>3.6</u>
	<b>lb per acre</b>	<u>0.36</u>	<u>0.60</u>	<u>0.49</u>	<u>0.41</u>	<u>0.37</u>	<u>0.34</u>
<b>Nonpublic</b>	<b>mg per sq. ft.</b>	<u>1.9</u>	<u>1.9</u>	<u>1.9</u>	<u>1.9</u>	<u>0.9</u>	<u>0.9</u>
	<b>lb per acre</b>	<u>0.18</u>	<u>0.18</u>	<u>0.18</u>	<u>0.18</u>	<u>0.09</u>	<u>0.09</u>

<sup>1</sup>Based on 60 mg/L TN and 360 gal/day OSS effluent.

<sup>2</sup>As defined in Table V in WAC 246-272A-0220.

(e) Require all proposals not meeting the minimum land area requirements in Table XI of this section to demonstrate the proposed development:

(i) Minimizes adverse impacts to public health, surface water, or groundwater quality;

(ii) Considers:

(A) Topography, geology, and ground cover;

(B) Climactic conditions;

(C) Availability of public sewers; and

(D) Present and anticipated land use and growth patterns;

(iii) Complies with current planning and zoning requirements;

(iv) Does not exceed the nitrogen limit per land area as identified in Table XII of this section; and

(v) Does not allow new lots smaller than 13,000 square feet if served by nonpublic water supplies;

(f) Require minimum land area of 13,000 square feet or larger, except when a proposal includes:

(i) OSS within the boundaries of a recognized sewer utility having a finalized assessment roll; or

(ii) A planned unit development with a signed, notarized, and recorded deed covenant restricting any development of lots or parcels above the approved density with the overall density meeting the minimum land area requirements of (d) or (e) of this subsection in perpetuity or until the OSS is no longer needed as identified in WAC 246-272A-0200(6);

(g) Require that developments other than single-family residences:

(i) Meet the minimum land areas required for each unit's volume of sewage;

(ii) Do not exceed 3.35 unit volumes of sewage per day per acre if served by public water supplies; and

(iii) Do not exceed 1.0 unit volume of sewage per day per acre for nonpublic water supplies; and

(h) Require that the use of a reduced-sized dispersal component does not result in a reduction of the minimum land area requirements established in this section.

(2) The local health officer shall require the following prior to approving any subdivision:

(a) A recommendation for approval as required by RCW 58.17.150;

(b) Where a subdivision with nonpublic wells are proposed:

(i) Configuration of each lot line to allow a supply protection zone to fit within the lot lines; or

(ii) Water supply protection zones on more than one lot when the person proposing the subdivision or development provides a copy of a recorded restrictive covenant to each property that is sited partially or completely within the water supply protection zone;

(iii) Water supply protection zone of at least 100 foot radius for each existing or proposed well site.

(3) The local health officer may:

(a) Require detailed site plans and OSS designs prior to final approval of subdivision proposals;

(b) Require larger land areas or lot sizes to achieve public health protection;

(c) Prohibit development on individual lots within the boundaries of an approved subdivision if the proposed OSS design does not meet the requirements of this chapter; and

(d) Permit the installation of an OSS, where the minimum land area requirements or lot sizes in Table XI of this section or maximum total nitrogen in Table XII of this section cannot be met, only when the following criteria are met:

(i) The lot is registered as a legal lot of record created prior to the effective date of the rule;

(ii) The lot is not within an area identified in the local management plan developed under WAC 246-272A-0015 where minimum land area is listed as a design parameter necessary for public health protection; and

(iii) The proposed OSS meets all requirements of this chapter without the use of a waiver under WAC 246-272A-0420.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 7/1/07)

**WAC 246-272A-0340 ((Certification)) Approval of installers, pumpers, and maintenance service providers.** (1) OSS installers ((and)), pumpers ((must)), and maintenance service providers shall obtain approval from the local health officer prior to providing services including, but not limited to, conducting inspections in accordance with WAC 246-272A-0260 and 246-272A-0270, within a local health jurisdiction.

(2) The local health officer ((may)) shall establish ((programs and requirements)) procedures for approving OSS installers, pumpers, and maintenance service providers no later than February 1, 2025. These procedures must include, but are not limited to, conducting inspections in accordance with WAC 246-272A-0260 and 246-272A-0270. The local health officer may approve OSS installers, pumpers, and maintenance service providers through reciprocity by other Washington local health jurisdictions.

(3) The local health officer may establish a homeowner OSS inspection certification process.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0400 Technical advisory ((committee)) group (TAG).** ((1)) The department shall:

((a)) (1) Maintain a ((technical advisory committee)) TAG to advise the department regarding:

((i)) (a) OSS design and siting;

((ii)) (b) Public domain technologies ((and recommended standards and guidance)), DS&G for ((their)) product use; and

((iii)) (c) Testing and design standards used for proprietary product registration and ((recommended standards and guidance)) DS&G for use of proprietary products.

((b)) (2) Select members for the ((technical advisory committee with)) TAG for three-year terms that have technical or scientific knowledge applicable to OSS from agencies, professions, and organizations including:

((i)) (a) Local health ((departments)) jurisdictions;

((ii)) (b) Engineering firms;

~~((iii))~~ (c) The Washington department of ecology;  
~~((iv))~~ (d) Land sales, development and building industries;  
~~((v))~~ (e) Public sewer utilities;  
~~((vi))~~ ~~On-site sewage system design and installation firms;~~  
~~((vii))~~ (f) OSS:  
 (i) Designers;  
 (ii) Installers;  
 (iii) Maintenance service providers;  
 (iv) Product manufacturers;  
 (g) Environmental organizations;  
~~((viii))~~ (h) University~~(/)~~ and college academic communities;  
~~((ix))~~ ~~On-site sewage system or related product manufacturers)~~  
 (i) Certified professional soil scientists; and  
~~((x))~~ (j) Other interested organizations or groups.  
~~((c))~~ ~~Convene meetings as needed.~~  
~~(2) The department may have a representative on the technical advisory committee.)~~

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0410 Policy advisory ((committee)) group.** ~~((1))~~  
 The department shall:  
~~((a))~~ (1) Maintain a policy advisory ((committee)) group to:  
~~((i))~~ (a) Make recommendations concerning OSS departmental policy and ((regulations)) rules;  
~~((ii))~~ (b) Review OSS program services; and  
~~((iii))~~ (c) Provide input to the department regarding the ((on-site sewage)) OSS program;  
~~((b))~~ (2) Select members for three-year terms from agencies, professions, organizations having knowledge and interest in OSS, and ((groups)) communities which are affected by ((the regulations; and  
~~(c))~~ ~~Convene meetings as needed.~~  
~~(2) The department may have a representative on the policy advisory committee))~~ this chapter.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0420 Waivers ((of state regulations)).** (1) The local health officer may grant a waiver from specific requirements of this chapter ((if)). A request for waiver must be:  
 (a) ((The waiver request is)) Evaluated by the local health officer on an individual, site-by-site basis;  
 (b) ((The local health officer determines that the waiver is)) Consistent with the ((standards in, and the intent of, these rules; (c)) purposes of this chapter.  
 (2) (a) The local health officer must submit((s)) quarterly reports to the department ((regarding any)) showing waivers approved or denied((; and  
~~(d))~~ ~~Based on review of the quarterly reports).~~  
 (b) Upon review, if the department finds that the waivers previously granted ((have not been)) are inconsistent, consistent with the



~~((standards in, and the intent of these rules))~~ purposes of this chapter, and DS&G for granting waivers, the department shall provide technical assistance to the local health officer to correct the inconsistency, and may notify the local and state boards of health of the department's concerns.

~~(c) If upon further review ((of the quarterly reports)),~~ the department finds ~~((that the inconsistency between the waivers granted and the state board of health standards has not been corrected))~~ waivers previously granted continue to be inconsistent with the purposes of this chapter and DS&G, the department may suspend the authority of the local health officer to grant waivers under this section until such inconsistencies have been corrected.

~~((2))~~ (3) The department shall ((develop)) maintain and update guidance to assist local health officers in the application of waivers.

(4) The department shall publish an annual report summarizing the waivers issued over the previous year.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0425 Required ((rule)) review of rules.** The department shall review this chapter to evaluate the effectiveness of the rules ~~((and determine areas where revisions may be necessary. The department will provide the results of their review along with their)),~~ determine where revisions may be necessary, and make recommendations to the state board of health and all local health officers by September ((2009)) 2026 and every four years thereafter.

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0430 Enforcement.** (1) When an OSS is out of compliance with any law or rule regulating OSS and administered by the department or the local health officer, the department or the local health officer ~~((:~~

~~(a) Shall enforce the rules of chapter 246-272A WAC; or~~

~~(b) May refer cases within their jurisdiction to the local prosecutor's office or office of the attorney general, as appropriate.~~

~~(2) When a person violates the provisions under this chapter, the department, local health officer, local prosecutor's office, or office of the attorney general may initiate enforcement or disciplinary actions, or any other legal proceeding authorized by law including, but not limited to, any one or a combination of the following:~~

~~(a) Informal administrative conferences, convened at the request of the department or owner, to explore facts and resolve problems;~~

~~(b) Orders directed to the owner and/or operator of the OSS and/or person causing or responsible for the violation of the rules of chapter 246-272A WAC;~~

~~(c) Denial, suspension, modification, or revocation of permits, approvals, registrations, or certification;~~

~~(d) The penalties under chapter 70.05 RCW and RCW 43.70.190; and~~

~~(e) Civil or criminal action.~~

~~(3) Orders authorized under this section include the following:~~

~~(a) Orders requiring corrective measures necessary to effect compliance with chapter 246-272A WAC which may include a compliance schedule; and~~

~~(b) Orders to stop work and/or refrain from using any OSS or portion of the OSS or improvements to the OSS until all permits, certifications, and approvals required by rule or statute are obtained.~~

~~(4) Enforcement orders)) may initiate enforcement action. Enforcement action may include, but is not necessarily limited to:~~

~~(a) A notice of correction describing the condition that is not in compliance and the text of the specific section or subsection of the applicable state or federal law or rule, a statement of what is required to achieve compliance, and the date by which compliance is to be achieved;~~

~~(b) A notice of violation with or without a civil penalty;~~

~~(c) An order requiring specific actions or ceasing unacceptable activities within a designated time period;~~

~~(d) Suspension, revocation, or modification or denial of permits and licenses as authorized by RCW 43.70.115;~~

~~(e) Civil or criminal penalties authorized under chapter 70.05 RCW and RCW 43.70.190;~~

~~(f) An informal conference may be held at the request of any party to resolve disputes arising from enforcement of this chapter.~~

~~(2) Notices and orders issued under this section ((shall)) must:~~

~~(a) Be in writing;~~

~~(b) Name the person or persons to whom the order is directed;~~

~~(c) Briefly describe each action or inaction constituting a violation of the rules of chapter 246-272A WAC, or applicable local ((code)) rules;~~

~~(d) Specify any required corrective action, if applicable;~~

~~(e) Specify the effective date of the order, with time or times of compliance;~~

~~(f) Provide notice of the consequences of failure to comply or repeated violation, as appropriate((. Such notices may include a statement that continued or repeated violation may subject the violator to:~~

~~(i) Denial, suspension, or revocation of a permit approval, or certification;~~

~~(ii) Referral to the office of the county prosecutor or attorney general; and/or~~

~~(iii) Other appropriate remedies.~~

~~(g) Provide the name, business address, and phone number of an appropriate staff person who may be contacted regarding an order).~~

~~((+5)) (3) Enforcement orders shall be personally served in the manner of service of a summons in a civil action or in ((a)) another manner showing proof of receipt.~~

~~((+6)) (4) The department shall have cause to deny the application or reapplication for ((an operational)) a permit or to revoke, suspend, or modify a required ((operational)) permit of any person who has:~~

~~(a) Failed or refused to comply with the provisions of chapter 246-272A WAC, or any other statutory provision or rule regulating the operation of an OSS; or~~

~~(b) Obtained or attempted to obtain a permit or any other required certificate or approval by misrepresentation.~~

~~((+7) For the purposes of subsection (6) of this section and WAC 246-272A-0440, a person is defined to include:~~

- ~~(a) Applicant;~~
- ~~(b) Reapplicant;~~
- ~~(c) Permit holder; or~~
- ~~(d) Any individual associated with (a), (b) or (c) of this subsection including, but not limited to:~~
  - ~~(i) Board members;~~
  - ~~(ii) Officers;~~
  - ~~(iii) Managers;~~
  - ~~(iv) Partners;~~
  - ~~(v) Association members;~~
  - ~~(vi) Agents; and~~
  - ~~(vii) Third persons acting with the knowledge of such persons.)~~

AMENDATORY SECTION (Amending WSR 05-15-119, filed 7/18/05, effective 9/15/05)

**WAC 246-272A-0440 Notice of decision—Adjudicative proceeding.**

- (1) All local boards of health shall:
- (a) Maintain an (~~administrative appeals~~) adjudicative process to (~~consider~~) resolve procedural and technical conflicts arising from the administration of local regulations; and
  - (b) Establish rules for conducting hearings requested to contest a local health officer's actions.
- (2) The department shall provide notice of the department's denial, suspension, modification or revocation of a permit, certification, or approval consistent with RCW 43.70.115, chapter 34.05 RCW, and chapter 246-10 WAC.
- (3) A person contesting a departmental decision regarding a permit, certificate, or approval may file a written request for an adjudicative proceeding consistent with chapter 246-10 WAC.
- (4) Department actions are governed (~~under the Administrative Procedure Act~~) by chapter 34.05 RCW, RCW 43.70.115, this chapter, and chapter 246-10 WAC.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-272A-0020 Applicability.
- WAC 246-272A-0125 Transition from the list of approved systems and products to the registered list—Treatment products.
- WAC 246-272A-0135 Transition from the list of approved systems and products to the registered list—Bacteriological reduction.
- WAC 246-272A-0150 Transition from the list of approved systems and products to the registered list—Distribution products.

WAC 246-272A-0175 Transition from the experimental system  
program to application for product  
registration.

## WSR 23-22-086

## PROPOSED RULES

## DEPARTMENT OF ECOLOGY

[Order 22-15—Filed October 30, 2023, 8:20 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-010.

Title of Rule and Other Identifying Information: Ecology is proposing rule language for new chapter 173-408 WAC, Landfill methane emissions. The purpose of this new chapter is to implement reducing methane emissions from landfills (E2SHB 1663, chapter 179, Laws of 2022, codified as chapter 70A.540 RCW).

For more information on this rule making, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-408>.

Hearing Location(s): On December 6, 2023, at 10:00 a.m., via webinar. Join online and see instructions [https://waecy-wa-gov.zoom.us/joining/register/tZModOmvvrzIoGdIvgOc\\_AR8q0WV-INQGfOS](https://waecy-wa-gov.zoom.us/joining/register/tZModOmvvrzIoGdIvgOc_AR8q0WV-INQGfOS); or join by phone 253-215-8782, Meeting ID 875 3071 9236. Presentation, question, and answer session followed by the hearing.

Date of Intended Adoption: April 1, 2024.

Submit Written Comments to: Bill Flagg, US mail: Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600; or parcel delivery services: Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503, submit comments by mail, online, or at the hearing, <https://aq.ecology.commentinput.com/?id=riShmbYcF>, by December 13, 2023 (close of comment period).

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, Washington relay service or TTY call 711 or 877-833-6341, email [ecyADAACoordinator@ecy.wa.gov](mailto:ecyADAACoordinator@ecy.wa.gov), visit <https://ecology.wa.gov/About-us/Accessibility-equity/Accessibility> for more information, by November 29, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 70A.540 RCW, Landfills—Methane emissions, establishes requirements for municipal solid waste (MSW) landfills that received solid waste after January 1, 1992. Ecology is required to adopt rules to implement new requirements, including:

## Technology and Performance Requirements:

- Gas collection and control system (GCCS) installation.
- GCCS design plan.
- Gas control system equipment requirements.
- GCCS performance requirements.
- Adopting methane destruction efficiency requirements for flares and energy recovery control devices.
- Adopting requirements for open flare systems.
- Adopting requirements for landfill gas treatment and processing.
- Wellhead gauge pressure requirements.
- Requirements for devices measuring gauge pressure.
- Requirements for instruments used to measure methane.
- Control device destruction efficiency calculation requirements.
- Gas generation flow rate calculation requirements.
- Source testing requirements for any gas control device or devices.

## Monitoring Requirements:

- Instantaneous and integrated surface emissions monitoring.

- Surface monitoring design plan.
- Remonitoring and corrective action(s) for methane limit exceedances.
- GCCS component monitoring.
- Adopting methane leak rate limits for treatment systems that process routed gas.
- Wellhead gauge pressure monitoring.
- Requirements for shutdown and removal of the GCCS.

Reporting and Recordkeeping Requirements:

- Waste in place reporting.
- Landfill gas heat input capacity calculation and reporting.
- Surface emissions monitoring reporting.
- GCCS operations reporting.
- Records maintenance for monitoring, source testing, landfill operations, operation of the GCCS, methane level exceedances, and actions involving the disturbance or removal of areas of the landfill surface.
- Reporting for capping of landfill gas collection wells, removal, or cessation of GCCS equipment.
- Landfill closure reporting to ecology or the local clean air agency.

Other Requirements:

- Incorporating new statutory civil penalties for violation of the law and implementing rules.
- Adopting maximum methane concentration limits for both owners and operators of active and closed MSW landfills.
- Adopting exemptions for methane concentration limit exceedances due to activities defined in RCW 70A.540.050(3).
- Establishing a method for landfills to claim exemption from the rule.
- Establishing alternative compliance measures.
- Terms and definitions.

Ecology's rule making must be informed by landfill methane regulations adopted by the California Air Resources Board, the Oregon Environmental Quality Commission, and the United States Environmental Protection Agency.

This rule making applies to owners and operators of MSW landfills that have received solid waste after January 1, 1992. This includes both active and closed MSW landfills, as defined in RCW 70A.540.010. The proposed rule exempts the following types of landfills from these new requirements:

- Landfills that receive or received only hazardous waste(s).
- Landfills regulated under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Chapter 103 (CERCLA, also known as Superfund), if they meet the criteria for exemption set forth in the rule.
- Landfills that receive or received "only inert waste or non-decomposable wastes," as defined in WAC 173-350-100.
- Limited purpose landfills, as defined in WAC 173-350-100.

Reasons Supporting Proposal: Chapter 70A.540 RCW states that no location on an MSW landfill surface may exceed the following methane concentration limits:

- Five hundred parts per million by volume as determined by instantaneous surface emissions monitoring; or
- An average methane concentration limit of 25 parts per million by volume as determined by integrated surface emissions monitoring.

The law requires these limits to go into effect beginning January 1st of the year following ecology's adoption of rules to implement chapter 70A.540 RCW, or upon commencing operation of a newly installed GCCS or modification of an existing GCCS, whichever is later. In addition, ecology may postpone the effective date of these limits to accommodate significant technological improvements, such as the installation of an energy recovery device or devices, for up to 24 months after ecology's adoption of these rules.

If ecology does not adopt rules to implement the law, then the above statutory methane concentration limits cannot go into effect.

MSW landfills are the third largest source of human-related methane emissions in the United States.<sup>1</sup> Methane is a potent greenhouse gas (GHG) that has approximately 83 times the global warming potential of CO<sub>2</sub> over a 20-year period. Reducing methane emissions is one of the best strategies for mitigating the impacts of climate change in the near term.<sup>2</sup>

<sup>1</sup> [https://19january2021snapshot.epa.gov/lmop/basic-information-about-landfill-gas\\_.htm](https://19january2021snapshot.epa.gov/lmop/basic-information-about-landfill-gas_.htm)

<sup>2</sup> IPCC AR6, WG I, The Physical Science Basis at 7-125.

This legislation and rule making align with Washington state's 2030, 2040, and 2050 GHG reduction goals. Based on current science and emissions trends, Washington must achieve these limits to support the global effort to mitigate the most significant impacts of climate change.

Statutory Authority for Adoption: Chapter 70A.540 RCW, Landfills—Methane emissions.

Statute Being Implemented: Chapter 70A.540 RCW, Landfills—Methane emissions.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Bill Flagg, Lacey, Washington, 564-669-1385; Implementation and Enforcement: Kathy Taylor, Lacey, Washington, 360-584-5104.

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 Bill Flagg, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 564-669-1385, Washington relay service or TTY call 877-833-6341, email [bill.flagg@ecy.wa.gov](mailto:bill.flagg@ecy.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(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 30, 2023  
Heather R. Bartlett  
Deputy Director

OTS-4735.2

**Chapter 173-408 WAC  
LANDFILL METHANE EMISSIONS**

NEW SECTION

**WAC 173-408-010 Policy and purpose.** (1) Ecology's policy under chapter 70A.540 RCW is to reduce methane emissions from municipal solid waste (MSW) landfills.

(2) This rule establishes requirements to reduce methane emissions from both active and closed MSW landfills that have received solid waste after January 1, 1992.

(3) These rules are informed by landfill methane regulations adopted by the California Air Resources Board, the Oregon Environmental Quality Commission, and the United States Environmental Protection Agency.

NEW SECTION

**WAC 173-408-020 Definitions.** When used in this chapter, the following terms have the meanings given below. These definitions should not be interpreted to apply to any other chapter unless expressly provided for therein.

"Active mining" means actively excavating a landfill or a portion thereof using conventional mining technology to recover and reuse minerals and/or metals until such a time that the landfill cover is replaced.

"Active municipal solid waste (MSW) landfill" means a municipal solid waste landfill that has accepted or is accepting solid waste for disposal and has not been closed in accordance with the requirements set forth in WAC 173-351-500 as it existed on January 10, 2022.

"Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution does not include air contaminants emitted in compliance with chapter 17.21 RCW.

"Ambient air" means the surrounding outside air.

"Authority" or "local authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

"CERCLA regulated landfill" means the portion of a municipal solid waste landfill that has been designated as on-site for purposes of a CERCLA response action(s).

"CERCLA response action" means a removal or remedial action conducted pursuant to 42 U.S.C. Sections 9604, 9606, 9620, 9621, or 9622.

"Closed municipal solid waste landfill" means a municipal solid waste landfill that is no longer accepting solid waste for disposal



and has been closed in accordance with the requirements set forth in WAC 173-351-500 as it existed on January 10, 2022.

"Component" means any equipment that is part of a gas collection and control system and that contains landfill gas including, but not limited to, wells, pipes, flanges, fittings, valves, flame arrestors, knock-out drums, sampling ports, blowers, compressors, or connectors.

"Component leak" means the concentration of methane measured one half of an inch or less from a component source that exceeds 500 parts per million by volume (ppmv), other than "nonrepeatable, momentary readings," as defined in this section. Measurements from any vault must be taken within three inches above the surface of the vault exposed to the ambient air.

"Continuous operation" means that a gas collection and control system is operated continuously, the existing gas collection wells are operating under vacuum while maintaining landfill gas flow, and the collected landfill gas is processed by a gas control system 24 hours per day.

"Department" means the department of ecology.

"Destruction efficiency" means a measure of the ability of a gas control device to combust, transform, or otherwise prevent emissions of methane into the ambient air.

"Emission" means a release of air contaminants into the ambient air.

"Enclosed combustor" means an enclosed flare, steam generating boiler, internal combustion engine, or gas turbine.

"Energy recovery device" means any combustion device that uses landfill gas to recover energy in the form of steam or electricity including, but not limited to, gas turbines, internal combustion engines, boilers, and boiler-to-steam turbine systems.

"Exceedance" means the concentration of methane measured within three inches above the landfill surface that exceeds 500 ppmv, other than "nonrepeatable, momentary readings," as defined in this section, as determined by instantaneous surface emissions monitoring; or the average methane concentration measurements that exceed 25 ppmv, as determined by integrated surface emissions monitoring.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

"Facility boundary" means the boundary surrounding the entire area on which MSW landfill activities occur and are permitted.

"Gas collection system" means any portion of a gas collection and control system that employs various gas collection wells and connected piping, and mechanical blowers, fans, pumps, or compressors to create a pressure gradient, actively extract landfill gas, and convey the gas to the gas control system.

"Gas control device" means any device used to dispose of or treat collected landfill gas including, but not limited to, enclosed flares, internal combustion engines, boilers and boiler-to-steam turbine systems, fuel cells, and gas turbines. A gas control device is a component used in a gas control system.

"Gas control system" means any portion of a gas collection and control system that disposes of or treats collected landfill gas by one or more of the following means: Combustion; gas treatment for subsequent sale, or sale for processing offsite, including for transportation fuel and injection into a natural gas pipeline.

"Hazardous waste" has the same meaning as set forth in RCW 70A.300.010(11).

"Heat input capacity (HIC)" means the hourly heat content available on a steady state basis in the form of landfill gas generated from a landfill's waste source material.

"Hydrocarbon detector" means an instrument used for the measurement of methane that meets the calibration, specifications, and performance criteria of EPA Reference Method 21, Determination of Volatile Organic Compound Leaks, 40 C.F.R. Part 60, Appendix A.

"Inactive area" means an area of an active MSW landfill where waste has been placed and a temporary cover system has been installed, but where additional waste is planned to be placed in the future as the facility's waste filling sequence proceeds.

"Inert waste or nondecomposable waste(s)" has the same meaning as "inert waste" in WAC 173-350-100.

"Landfill" has the same meaning as set forth in RCW 70A.205.015(12).

"Landfill gas" means any untreated, raw gas derived through a natural process from the decomposition of organic waste deposited in a MSW landfill, from the evolution of volatile species in the waste, or from chemical reactions of substances in the waste.

"Landfill surface" means the area of the landfill under which decomposable solid waste has been placed, excluding the working face.

"Limited purpose landfill" has the same meaning as set forth in WAC 173-350-100.

"Municipal solid waste (MSW)" means a subset of solid waste which includes unsegregated garbage, refuse and similar solid waste material discarded from residential, commercial, institutional, and industrial sources and community activities, including residue after recyclables have been separated. Solid waste that has been segregated by source and characteristic may qualify for management as a non-MSW solid waste, at a facility designed and operated to address the waste's characteristics and potential environmental impacts. The term MSW does not include:

(a) "Dangerous wastes," as defined in RCW 70A.300.010, other than wastes expressly excluded from the requirements of chapter 173-303 WAC, Dangerous waste regulations, as set forth in WAC 173-303-071, such as household hazardous wastes;

(b) Any solid waste, including contaminated soil and debris, generated by a "CERCLA response action," as defined in this section, or by a remedial action taken under the Model Toxics Control Act, chapters 70A.305 RCW and 173-340 WAC; nor

(c) Mixed or segregated recyclable material that has been source-separated from garbage, refuse and similar solid waste. However, the residual from source separated recyclables is MSW.

"Municipal solid waste landfill" means a discrete area of land or an excavation that receives municipal solid waste, including household waste, and that is not a land application site, surface impoundment, injection well, or pile.

"Nonrepeatable, momentary readings" means indications of the presence of methane, which persist for less than five seconds and do not recur when the sampling probe of a portable gas detector is placed in the same location.

"On-site" has the same meaning as set forth in 40 C.F.R. 300.400(e)(1).

"Operator" means any "person," as defined in this section, that:

(a) Operates a MSW landfill;

(b) Is responsible for complying with any federal, state, or local requirements relating to methane emissions from a source located

on real property used for MSW landfill purposes and subject to this chapter; or

(c) Operates any stationary equipment for the collection of landfill gas from a MSW landfill subject to this chapter.

"Owner" means any "person," as defined in this section, that:

(a) Holds title to any portion of the real property on which a MSW landfill subject to this chapter is located including, but not limited to, title held by joint tenancy, tenancy in common, community property, life estate, estate for years, lease, sublease, or assignment, except title held solely as security for a debt such as mortgage;

(b) Is responsible for complying with any federal, state, or local requirements relating to methane emissions from a source located on real property used for MSW landfill purposes and subject to this chapter; or

(c) Owns any stationary equipment for the collection of landfill gas from a MSW landfill subject to this chapter.

"Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

"Professional engineer" means an individual who is registered in Washington and holds a valid certificate to practice engineering in Washington as provided under chapter 18.43 RCW.

"Putrescible waste" means solid waste which contains material capable of being readily decomposed by microorganisms and which is likely to produce offensive odors.

"Solid waste" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, commercial waste, swill, sewage sludge, demolition, and construction wastes, abandoned vehicles or parts thereof, discarded commodities and recyclable materials.

"Third-party owner or operator" means any "person," as defined in this section, that:

(a) Owns any stationary equipment for the collection of landfill gas from a MSW landfill subject to this chapter; or

(b) Purchases or otherwise obtains untreated landfill gas from an owner or operator of a MSW landfill subject to this chapter and owns any stationary equipment for the treatment and/or combustion of the landfill gas.

"Waste in place" means the total amount of solid waste placed in the MSW landfill estimated in tons. The solid waste density is assumed to be 1,300 pounds per cubic yard, and the decomposable fraction is assumed to be 70 percent by weight, unless the department or local authority approves alternative values.

"Working face" means the open area of a MSW landfill where solid waste is deposited daily and compacted with landfill equipment.

#### NEW SECTION

**WAC 173-408-030 Applicability.** Except as provided in subsection (1) of this section, this chapter applies to all MSW landfills that received solid waste after January 1, 1992.

(1) This chapter does not apply to the following landfills:

(a) Landfills that receive or received only "hazardous waste(s)" as defined in WAC 173-408-020.

(b) "CERCLA regulated landfill" as defined in WAC 173-408-020, if it meets the criteria for exemption set forth in WAC 173-408-040.

(c) Landfills that receive or received only "inert waste or non-decomposable waste(s)" as defined in WAC 173-408-020.

(d) A "limited purpose landfill" as defined in WAC-173-408-020.

(2) Jurisdiction.

(a) The owner or operator of a landfill that is located within the jurisdiction of a local authority activated in accordance with chapter 70A.15 RCW must submit all reports and other information required by this chapter to the local authority unless otherwise stated in this chapter.

(b) The owner or operator of a landfill that is not located within any jurisdiction of a local authority activated in accordance with chapter 70A.15 RCW must submit all reports and other information required by this chapter to the department unless otherwise stated in this chapter.

#### NEW SECTION

**WAC 173-408-040 CERCLA exemption.** (1) CERCLA exemption process: This subsection establishes the process for an owner or operator of a "CERCLA regulated landfill," as defined in WAC 173-408-020, to claim an exemption from the requirements of this chapter. To claim exemption from the requirements of this chapter, the owner or operator of a CERCLA regulated landfill shall submit the following information to the department:

(a) The applicable CERCLA removal action memorandum or remedial action record of decision, including any amendments.

(b) A map of the portion of the landfill that has been designated as on-site for purposes of the CERCLA response action.

(c) Additional information as needed to establish that the CERCLA regulated landfill meets the criteria for exemption set forth in subsection (2) of this section.

(2) (a) The department will review the submitted information and determine whether the CERCLA regulated landfill meets the following criteria for exemption from the requirements of this chapter:

(i) The CERCLA response action(s) must be currently under way at the CERCLA regulated landfill;

(ii) The owner or operator must demonstrate that complying with the requirements of this chapter would compromise the efficacy of the ongoing CERCLA response action(s);

(iii) The CERCLA response action(s) must require the installation or modification of a landfill gas collection and control system (GCCS); and

(iv) The owner or operator must demonstrate that the GCCS influences methane capture in the landfill.

(b) The department may consult with the U.S. Environmental Protection Agency while determining whether the CERCLA regulated landfill meets the above criteria for exemption from the requirements of this chapter.

(c) For zones or areas of a MSW landfill that are adjacent to but outside the area designated as on-site for purposes of the CERCLA response action(s), the substantive requirements of this chapter shall be considered as applicable or relevant and appropriate requirements (ARARs) in the selection of a removal or remedial action, and in eval-

uations of a removal or remedial action's compliance with ARARs during any subsequent five-year reviews required by CERCLA.

NEW SECTION

**WAC 173-408-050 Request for demonstration.** The department or local authority may request that any owner or operator of a MSW landfill demonstrate that the landfill does not meet the applicability criteria specified in WAC 173-408-030. Such a demonstration must be submitted to the department or local authority, as applicable, within 90 days of a written request received from the department or local authority.

NEW SECTION

**WAC 173-408-060 Waste in place reporting.** (1) Each owner or operator of a MSW landfill that received solid waste after January 1, 1992, must submit an initial waste in place report to the department pursuant to WAC 173-408-170(1).

(2) Each owner or operator of an active MSW landfill having fewer than 450,000 tons of waste in place must submit an annual waste in place report to the department and local authority pursuant to WAC 173-408-170 (3) and (4) until either:

(a) The active MSW landfill reaches a size of greater than or equal to 450,000 tons of waste in place; or

(b) The owner or operator submits a closure notification pursuant to WAC 173-408-170 (8) (h).

NEW SECTION

**WAC 173-408-070 Landfill gas heat input capacity (HIC).** (1) This section applies to each owner or operator of:

(a) An active MSW landfill having waste in place of 450,000 tons or greater; or

(b) A closed MSW landfill having waste in place of 750,000 tons or greater.

(2) Each owner or operator subject to this section must submit an initial landfill gas HIC report to the department pursuant to WAC 173-408-170(2).

(3) Each owner or operator subject to this section must submit an annual landfill gas HIC report to the department and local authority pursuant to WAC 173-408-170 (3) and (5) until either:

(a) The MSW landfill reaches a HIC of 3,000,000 British thermal units per hour recovered or greater; or

(b) The owner or operator submits a closure notification pursuant to WAC 173-408-170(8).

(4) Each owner or operator of a MSW landfill that has a HIC of 3,000,000 British thermal units per hour recovered or greater must either:

(a) Meet the requirements of WAC 173-408-080; or

(b) Demonstrate to the satisfaction of the department or local authority that after four consecutive quarterly monitoring periods there is no measured concentration of 200 parts per million by volume or greater of methane using the instantaneous surface monitoring procedures specified in WAC 173-408-120 (3)(b). If there is no measured concentration of 200 parts per million by volume or greater of methane, then the following apply:

(i) The owner or operator of an active MSW landfill must recalculate the HIC annually, and submit an annual landfill gas HIC report pursuant to subsection (3) of this section, until such time that the owner or operator submits a closure notification pursuant to WAC 173-408-170(8).

(ii) The owner or operator of a closed MSW landfill that meets the requirements of this subsection no longer has to comply with any other requirements of this chapter, provided that the following information is submitted to and approved by the department or local authority:

(A) A waste in place report prepared pursuant to WAC 173-408-170 (3) and (4).

(B) All instantaneous surface monitoring records.

#### NEW SECTION

**WAC 173-408-080 Gas collection and control systems.** (1) General requirements: Except as provided by (a) of this subsection, any owner or operator of a MSW landfill that exceeds the HIC threshold specified in WAC 173-408-070(4) must install a gas collection and control system that meets the requirements of this section.

(a) This section does not apply if, pursuant to WAC 173-408-070 (4)(b), the owner or operator has demonstrated to the satisfaction of the department or local authority that after four consecutive quarterly monitoring periods there is no measured concentration of 200 parts per million by volume or greater of methane, using the instantaneous surface monitoring procedures specified in WAC 173-408-120 (3)(b).

(b) If a MSW landfill partners with a third-party owner or operator, as defined in WAC 173-408-020, to operate all or a portion of the gas collection and control system or energy recovery device, the owner or operator of the relevant portion of the gas collection and control system or energy recovery device is the responsible party obligated to comply with the requirements of this chapter.

(2) Design plan and installation: If a gas collection and control system that meets the requirements of either subsection (3), (4), or (5) of this section has not been installed, the owner or operator of a MSW landfill must submit a design plan to the department or local authority within one year after the effective date of this chapter, or within one year of detecting any leak on the landfill surface exceeding a methane concentration of 200 ppmv pursuant to WAC 173-408-070 (3)(b). The department or local authority must review and either approve or disapprove the design plan within 120 days of receipt. The department or local authority may request that the owner or operator submit additional information as part of the review of the design plan.

(a) The design plan must meet the following requirements:

(i) The design plan must be prepared and certified by a professional engineer, as defined in WAC 173-408-020.

(ii) The following issues must be addressed in the design plan: Depths of solid waste; solid waste gas generation rates and flow characteristics; cover properties; gas system expandability; leachate and condensate management; accessibility; compatibility with filling operations; integration with closure end use; air intrusion control; corrosion resistance; fill settlement; resistance to the solid waste decomposition heat; and ability to isolate individual components or sections for repair or troubleshooting without shutting down the entire collection system.

(iii) A description of the density of wells, horizontal collectors, surface collectors, or other gas extraction devices necessary to achieve compliance with the concentration limits set forth in WAC 173-408-100(2).

(iv) The design plan must include approved equipment maintenance, calibrations, and schedules according to 40 C.F.R. Part 60, Appendix A, as well as vendor specifications.

(v) The design plan must provide for the control of the collected gas through the use of a gas collection and control system meeting the requirements of either subsection (3), (4), or (5) of this section.

(vi) The design plan must include any proposed alternatives to the applicable test methods, procedures, compliance measures, or monitoring requirements, pursuant to WAC 173-408-130.

(vii) The design plan must include a description of potential mitigation measures to be used to prevent the release of methane or other air pollutants into the ambient air during the installation or preparation of wells, piping, or other equipment; during repairs or the temporary shutdown of gas collection system components, or, when solid waste is to be excavated and moved; during active mining activities; or, during law enforcement activities requiring excavation.

(viii) For active MSW landfills, the design plan must identify areas of the landfill that are closed or inactive.

(ix) The design plan must demonstrate how the gas collection and control system will handle the expected gas generation flow rate from the entire area of the MSW landfill and collect gas at an extraction rate to comply with the surface methane emission limits in WAC 173-408-100(2) and the component leak standard in subsection (3)(b) of this section. The expected gas generation flow rate from the MSW landfill must be calculated pursuant to WAC 173-408-120(5).

Any areas of the landfill that contain only "inert waste or non-decomposable waste(s)," as defined in WAC 173-408-020, may be excluded from gas collection provided that the owner or operator submits documentation to the department or local authority containing the nature, date of deposition, location and amount of inert waste or nondecomposable waste(s) deposited in the area. This documentation may be included as part of the design plan.

(x) The owner or operator must develop acceptable pressure limits for the wellheads and include them in the design plan.

(xi) The owner or operator must place each well or design component as specified in the approved design plan. Following initial construction, each new component must be installed no later than 60 days after the date on which the area controlled by the well is required to be controlled pursuant to this chapter.

(xii) Any owner or operator of an active MSW landfill must install and operate a gas collection and control system within 18 months after approval of the design plan by the department or local authority, in accordance with the approved design plan.

(xiii) Any owner or operator of a closed MSW landfill must install and operate a gas collection and control system within 30 months after approval of the design plan by the department or local authority, in accordance with the approved design plan.

(xiv) If an owner or operator is modifying an existing gas collection and control system to meet the requirements of this chapter, the existing design plan must be amended to include any necessary updates or addenda and must be certified by a professional engineer.

(xv) An amended design plan must be submitted to the department or local authority within 90 days of any event that warrants a change to the design plan.

(xvi) The gas collection and control system must be operated, maintained, and expanded in accordance with the procedures and schedules in the approved design plan.

(3) Gas collection and control system requirements: The owner or operator must satisfy the following requirements when operating a gas collection and control system:

(a) Route the collected gas to a gas control device or devices and operate the gas collection and control system continuously except as provided in subsections (7), (8), and (9) of this section, and WAC 173-408-090.

(b) Operate the gas collection and control system so that there is no landfill gas leak that exceeds 500 ppmv, measured as methane, at any component under positive pressure.

(c) The gas collection system must be designed and operated to draw all the gas toward the gas control device or devices.

(d) The landfill gas extraction components must be constructed of polyvinyl chloride (PVC), high density polyethylene (HDPE) pipe, fiberglass, stainless steel, or other nonporous corrosion resistant material of suitable dimensions to: Convey projected amounts of gases; withstand installation, static, and settlement forces; and withstand planned overburden or traffic loads. The collection system must extend as necessary to comply with emission and migration standards. Collection devices such as wells and horizontal collectors must be perforated to allow gas entry without head loss sufficient to impair performance across the intended extent of control. Perforations must be situated with regard to the need to prevent excessive air infiltration.

(e) Vertical wells must be placed so as not to endanger underlying liners and must address the occurrence of water within the landfill. Holes and trenches constructed for piped wells and horizontal collectors must be of sufficient cross-section so as to allow for their proper construction and completion including, for example, centering of pipes and placement of gravel backfill. Collection devices must be designed so as not to allow indirect short circuiting of air into the cover, into the solid waste, into the collection system, or gas into the air. Any gravel used around pipe perforations should be of a dimension so as not to penetrate or block perforations.

(f) Collection devices may be connected to the collection header pipes below or above the landfill surface. The connector assembly must include a positive closing throttle valve, any necessary seals and couplings, access couplings and at least one sampling port. The collection devices must be constructed of PVC, HDPE, fiberglass, stainless steel, or other nonporous material of suitable thickness.

(4) Requirements for flares: An MSW landfill owner or operator who operates a flare must ensure the gas collection and control system achieves a methane destruction efficiency of at least 99 percent by



weight. The owner or operator must also satisfy the following requirements:

- (a) Route the collected gas to an enclosed flare that meets the following requirements:
    - (i) Is equipped with automatic dampers, an automatic shutdown device, a flame arrester, and continuous recording temperature sensors.
    - (ii) During restart or startup there must be sufficient flow of propane or commercial natural gas to the burners to prevent unburned collected methane from being emitted to the ambient air.
    - (iii) The gas control device must be operated within the parameter ranges established during the initial or most recent source test.
  - (b) Route the collected gas to an open flare that meets the following requirements:
    - (i) The open flare must meet the requirements of 40 C.F.R. § 60.18 (as last amended by 73 Fed. Reg. 78209, December 22, 2008);
    - (ii) An open flare installed and operating prior to December 31, 2022, may operate until January 1, 2032, unless the owner or operator demonstrates to the satisfaction of the department or local authority that the landfill gas HIC is less than 3,000,000 British thermal units per hour pursuant to WAC 173-408-120(2), and is insufficient to support the continuous operation of an enclosed flare or other gas control device; and
    - (iii) The owner or operator may temporarily operate an open flare during the repair or maintenance of the gas control system, or while awaiting the installation of an enclosed flare, or to address offsite gas migration issues. Any owner or operator seeking to temporarily operate an open flare must submit a written request to the department or local authority pursuant to WAC 173-408-130.
- (5) Requirements of gas control devices other than flares: An MSW landfill owner or operator who operates a gas control device other than a flare must satisfy one of the following requirements:
- (a) If a gas collection and control system routes the collected gas to an energy recovery device or devices, the owner or operator of the energy recovery device or devices must comply with the following requirements:
    - (i) The device or devices must achieve a methane destruction efficiency of at least 97 percent by weight, except for lean-burn internal combustion engines that were installed and operating prior to January 1, 2022, which must reduce the outlet methane concentration to less than 3,000 parts per million by volume, dry basis corrected to 15 percent oxygen; and
    - (ii) If a boiler or a process heater is used as the gas control device, the landfill gas stream must be introduced into the flame zone, except that where the landfill gas is not the primary fuel for the boiler or process heater, introduction of the landfill gas stream into the flame zone is not required.
    - (iii) The gas control device must be operated within the parameter ranges established during the initial or most recent source test.
  - (b) If a gas collection and control system routes the collected gas to a treatment system that processes the collected gas for subsequent sale or use, the owner or operator of the treatment system must ensure the system achieves a methane leak rate of three percent or less by weight. Venting of processed landfill gas to the ambient air is not allowed. If the processed landfill gas cannot be routed for subsequent sale or use, then the treated landfill gas must be controlled according to this subsection (5).

(6) Source test requirements: The owner or operator of a municipal solid waste landfill must conduct a source test for any gas control device or devices subject to subsection (4)(a) or (5)(a) of this section using the test methods identified in WAC 173-408-120(6). The gas control device or devices must meet the following requirements:

(a) An initial source test must be conducted within 180 days of initial start-up of the gas collection and control system.

(b) If a gas control device was in compliance with source testing requirements as of June 9, 2022, the owner or operator must conduct the source test no less frequently than once every five years.

(c) If a gas control device was not in compliance with source testing requirements as of June 9, 2022, or if a subsequent source test shows the gas control device is out of compliance, the owner or operator must conduct the source test no less frequently than once per year until two subsequent consecutive tests both show compliance. Upon two subsequent consecutive compliant tests, the owner or operator may return to conducting the source test no less frequently than once every five years.

(7) Wellhead gauge pressure requirement: Each wellhead must be operated under a vacuum (negative pressure), except as provided in subsections (8) and (9) of this section, WAC 173-408-090, or under any of the following conditions:

(a) Use of a geomembrane or synthetic cover; or

(b) A decommissioned well.

(8) Gas collection well casing extension: The requirements of subsections (3)(a) and (b) and (7) of this section do not apply to individual wells involved in well raising, provided the following conditions are met:

(a) New fill is being added or compacted in the immediate vicinity around the well.

(b) Once installed, a gas collection well extension is sealed or capped until the raised well is reconnected to a vacuum source.

(9) Repairs and temporary shutdown of gas collection system components: The requirements of subsections (3)(a) and (b) and (7) of this section do not apply to individual landfill gas collection system components that must be temporarily shut down to repair or modify components of the gas collection system, to connect new landfill gas collection system components to the existing system, to extinguish landfill fires, or if the MSW landfill engages in construction, active mining, or law enforcement activities, provided the following requirement is met:

(a) Methane emissions are minimized during shutdown pursuant to subsection (2)(a)(vii) of this section.

(b) In the event the collection or control system is inoperable, the gas mover system shall be shut down and all valves in the collection and control system contributing to venting of the gas to the atmosphere shall be closed within one hour of the collection or control system not operating.

Efforts to repair the collection or control system must be initiated and completed in a manner such that downtime is kept to a minimum, and the collection and control system must be returned to operation.

(c) Records of the description of the actions being taken; the areas of the MSW landfill that will be affected by these actions; the reason the actions are required; start and finish dates; projected shut down times for individual gas collection system components; and any landfill gas collection system components that will be affected by

these actions are provided to the department or local authority within five business days of a request, pursuant to WAC 173-408-160(1).

NEW SECTION

**WAC 173-408-090 Permanent shutdown and removal of the gas collection and control system.** The owner or operator of a closed MSW landfill may propose to the department or local authority that a gas collection and control system be decommissioned and removed provided the following requirements are met:

(1) The gas collection and control system has been in operation for at least 15 years, or the owner or operator demonstrates to the satisfaction of the department or local authority that, due to declining methane production rates, the MSW landfill will be unable to operate the gas collection and control system for a 15-year period; and

(2) The owner or operator conducts a provisional shutdown of the gas collection and control system meeting the following conditions:

(a) The owner or operator of the landfill shuts down the collection and control system and conducts surface emissions monitoring over the portion of the landfill served by the shut-down gas collection and control system, pursuant to WAC 173-408-120(3) and (b) of this subsection, for at least eight consecutive calendar quarters.

(b) During the provisional shutdown period, the surface emissions monitoring walking grid described in WAC 173-408-120 (3)(a)(ii) may be increased to 100-foot spacing so long as the walking grid is offset by 25 feet each quarter so that by the end of one year of monitoring, the entire surface area has been monitored every 25 feet.

(c) During the provisional shutdown period, if any measured concentration of methane from the surface of the closed landfill exceeds the applicable limit specified in WAC 173-408-100(2), the owner or operator must restart the shut-down portion of the gas collection and control system.

(3) If no surface emissions monitoring result exceeds the applicable limit specified in WAC 173-408-100(2) during the provisional shutdown period, and with the approval of the department or local authority, the owner or operator may proceed with permanent shutdown and removal of the gas collection and control system.

(4) Following approval by the department or local authority for a permanent shutdown of the gas collection and control system, the owner or operator may decommission and remove the gas collection and control system and must submit an equipment removal report to the department or local authority pursuant to WAC 173-408-170(9).

(5) Subsequent to permanent shutdown of the gas collection and control system, any exceedance of the surface methane concentration limits may be cause for the department or local authority to require an owner or operator to control surface methane emissions. The required actions may include reestablishing a gas collection and control system.

(6) Nothing in this subsection may be interpreted to modify or supersede requirements related to the capping or removal of gas collection and control systems that may exist under the state Clean Air Act, the Federal Clean Air Act, or rules adopted pursuant to either the state Clean Air Act or the Federal Clean Air Act.

NEW SECTION

**WAC 173-408-100 Methane concentration limits.** (1) Except as provided in WAC 173-408-080, the methane concentration limits set forth in subsection (2) of this section apply to a MSW landfill subject to this chapter beginning on whichever of the following dates is later:

(a) January 1, 2025;

(b) Upon commencing operation of a newly installed gas collection and control system or modification of an existing gas collection and control system pursuant to WAC 173-408-080;

(c) A date established by the department to accommodate significant technological improvements, which may include the installation of an energy recovery device or devices, which does not exceed 24 months after the department adopts rules to implement this chapter.

(2) No location on a MSW landfill surface may exceed the following methane concentration limits, dependent upon whether the owner or operator of the MSW landfill conducts instantaneous surface emissions monitoring or integrated surface emissions monitoring pursuant to WAC 173-408-110(1):

(a) Five hundred parts per million by volume, other than when measured by nonrepeatable, momentary readings, as determined by instantaneous surface emissions monitoring; or

(b) An average methane concentration limit of 25 parts per million by volume as determined by integrated surface emissions monitoring.

(3) Any reading exceeding the applicable limit set forth in subsection (2) of this section must be recorded as an exceedance and the following actions must be taken:

(a) The owner or operator must record the date, location, and value of each exceedance, along with retest dates and results. The location of each exceedance must be clearly marked and identified on a topographic map, at a minimum, of the MSW landfill, drawn to scale, with the location of both the monitoring grids and the gas collection system clearly identified;

(b) The owner or operator must take corrective action, which may include, but not be limited to, maintenance or repair of the cover, and well vacuum adjustments. The location or locations of any exceedance must be remonitored within 10 calendar days of a measured exceedance; and

(c) The owner or operator must notify the department or local authority pursuant to WAC 173-408-110 (1)(b).

(4) The requirements of this section do not apply to:

(a) The working face of the landfill;

(b) Areas of the landfill surface where the landfill cover material has been removed for the purpose of installing, expanding, replacing, or repairing components of the landfill cover system, the landfill gas collection and control system, the leachate collection and removal system, or a landfill gas condensate collection and removal system;

(c) Areas of the landfill in which the owner or operator, or a designee, which is a person or entity that has express, written permission from the owner or operator, is engaged in active mining for minerals or metals; or

(d) Areas of the landfill surface where the landfill cover material has been removed for law enforcement activities requiring excavation.

NEW SECTION

**WAC 173-408-110 Monitoring.** (1) Surface emissions monitoring: The owner or operator of a MSW landfill with a gas collection and control system must conduct quarterly instantaneous or integrated surface monitoring of the landfill surface according to this subsection and the procedures specified in WAC 173-408-120(3).

(a) A surface monitoring design plan must be developed that includes a topographical map, at a minimum, with the monitoring traverse, exempt areas, and the rationale for any site-specific deviations, and the surface monitoring design plan must be provided upon request by the department or local authority.

(b) The owner or operator of a MSW landfill must notify the department or local authority within two working days of any corrective actions taken to address exceedances detected pursuant to (c) or (d) of this subsection, and subsection (2)(c) of this section. The notification must include a description of the corrective actions taken. The owner or operator of a MSW landfill may request alternative compliance measures to replace the requirements of this subsection pursuant to WAC 173-408-130.

(c) Instantaneous surface monitoring: Any reading exceeding the limit specified in WAC 173-408-100 (2)(a) must be recorded and reported as an exceedance and the following actions must be taken:

(i) The owner or operator must record the date, location, and value of each exceedance, along with retest dates and results. The location of each exceedance must be clearly marked and identified on a topographic map, at a minimum, of the MSW landfill, drawn to scale with the location of both the grids and the gas collection system clearly identified.

(ii) Corrective action must be taken by the owner or operator such as, but not limited to, cover maintenance or repair, and well vacuum adjustments, and the location must be remonitored within 10 calendar days of a measured exceedance.

(A) If the remonitoring of the location shows a second exceedance, additional corrective action must be taken, and the location must be remonitored again within 10 calendar days of the second exceedance.

(B) If the remonitoring required by (c)(ii)(A) of this subsection shows a third exceedance, the owner or operator must install a new or replacement well, or an alternative active methane control approved by the department or local authority, as needed to achieve compliance no later than 120 calendar days after detecting the third exceedance.

(iii) Any closed MSW landfill that has no monitored exceedances of the limit specified in WAC 173-408-100 (2)(a) after four consecutive quarterly monitoring periods may monitor annually. Any exceedances of the limit specified in WAC 173-408-100 (2)(a) detected during the annual monitoring that cannot be remediated within 10 calendar days will result in a return to quarterly monitoring of the landfill.

(iv) Any exceedances of the limit specified in WAC 173-408-100 (2)(a) detected during any compliance inspections that cannot be remediated within 10 calendar days will result in a return to quarterly monitoring of the landfill.

(d) Integrated surface monitoring: Any reading exceeding the limit specified in WAC 173-408-100 (2)(b) must be recorded and reported as an exceedance and the following actions must be taken:

(i) The owner or operator must record the average surface methane concentration measured for each grid along with retest dates and re-

sults. The location of the grids and the gas collection system must be clearly marked and identified on a topographic map, at a minimum, of the MSW landfill drawn to scale.

(ii) Within 10 calendar days of a measured exceedance, corrective action must be taken by the owner or operator such as, but not limited to, cover maintenance or repair, and well vacuum adjustments, and the grid must be remonitored.

(A) If the remonitoring of the grid shows a second exceedance, additional corrective action must be taken, and the location must be remonitored again within 10 calendar days after the second exceedance.

(B) If the remonitoring required by (d)(ii)(A) of this subsection shows a third exceedance, the owner or operator must install a new or replacement well, or an alternative active methane control approved by the department or local authority, as needed to achieve compliance no later than 120 calendar days after detecting the third exceedance.

(iii) Any closed MSW landfill that has no monitored exceedances of the limit specified in WAC 173-408-100 (2)(b) after four consecutive quarterly monitoring periods may monitor annually. Any exceedances of the limits specified in WAC 173-408-100 (2)(b) detected during the annual monitoring event that cannot be remediated within 10 calendar days will result in a return to quarterly monitoring of the landfill.

(iv) Any exceedances of the limits specified in WAC 173-408-100 (2)(b) detected during any compliance inspections will result in a return to quarterly monitoring of the landfill.

(e) An owner or operator of a closed MSW landfill that can demonstrate that, in the three years before the effective date of this chapter, there were no exceedances of the limits specified in WAC 173-408-100(2), as measured by annual or quarterly monitoring, may monitor annually. Any exceedances of the limits specified in WAC 173-408-100(2) detected during the annual monitoring event that cannot be remediated within 10 calendar days will result in a return to quarterly monitoring of the landfill.

(2) Gas control system equipment monitoring: The owner or operator of a MSW landfill with a gas collection and control system must monitor the system according to the following procedures:

(a) For enclosed flares, the following equipment must be installed, calibrated, maintained, and operated according to the manufacturer's specifications:

(i) A temperature monitoring device equipped with a continuous recorder which has an accuracy of plus or minus ( $\pm$ ) one percent of the temperature being measured expressed in degrees Celsius or Fahrenheit.

(ii) At least one gas flow rate measuring device which must record the flow to the control device(s) at least every 15 minutes.

(b) For a gas control device other than an enclosed flare, the owner or operator must demonstrate compliance by providing information describing the operation of the gas control device, the operating parameters that would indicate proper performance, and appropriate monitoring procedures. The owner or operator may request alternative compliance measures to replace the requirements of this subsection pursuant to WAC 173-408-130. The department may specify additional monitoring procedures as a condition of approving alternative compliance measures.

(c) Components containing landfill gas must be monitored quarterly for leaks. Any component leak must be tagged and repaired within 10 calendar days, and the department or local authority must be notified pursuant to subsection (1)(b) of this section.

At facilities which combust landfill gas for energy production, or which treat landfill gas for other beneficial uses, and which are located at MSW landfill facilities subject to this chapter, component leak testing may be conducted prior to scheduled maintenance or planned outage periods, if the maintenance or planned outage periods would conflict with the quarterly monitoring schedule.

(3) Wellhead monitoring: The owner or operator of a MSW landfill with a gas collection and control system must monitor each individual wellhead monthly to determine the gauge pressure. If there is any positive pressure reading other than as provided in WAC 173-408-080(7), the owner or operator must take the following actions:

(a) Initiate corrective action within five calendar days of the positive pressure measurement.

(b) If the problem is not corrected within 15 days of the date the positive pressure was first measured, the owner or operator must initiate further corrective action including, but not limited to, any necessary expansion of the gas collection system, to mitigate any positive pressure readings.

(c) Corrective actions, including any expansion of the gas collection and control system, must be completed and any new wells must be operating within 120 days of the date the positive pressure was first measured.

#### NEW SECTION

**WAC 173-408-120 Test methods and procedures.** (1) Hydrocarbon detector specifications: Any instrument used for the measurement of methane must be a hydrocarbon detector or other equivalent instrument approved by the department or local authority that meets the following calibration, specifications, and performance criteria, as applicable:

(a) EPA Reference Method 21, Determination of Volatile Organic Compound Leaks, 40 C.F.R. Part 60, Appendix A (as last amended 65 Fed. Reg. 61744 (October 17, 2000)), which is incorporated by reference herein, except as follows:

(i) "Methane" replaces all references to volatile organic compounds (VOC).

(ii) The calibration gas shall be methane.

(b) Other approved EPA test methods with concurrent department or local authority approval.

(2) Determination of landfill gas heat input capacity: The landfill gas HIC must be determined pursuant to this subsection:

(a) MSW landfills without carbon adsorption or passive venting systems: The HIC must be calculated using the procedure as specified in Appendix I. Additional information may be requested by the department or local authority as necessary to verify the HIC from the MSW landfill. Site-specific data may be substituted when available.

(b) MSW landfills with carbon adsorption systems: The landfill gas HIC must be determined by measuring:

(i) The actual total landfill gas flow rate, in standard cubic feet per minute (scfm), using a flow meter or other flow measuring device such as a standard pitot tube; and

(ii) The methane concentration (percent by volume) using a hydrocarbon detector meeting the requirements of subsection (1) of this section. The total landfill gas flow rate must be multiplied by the

methane concentration and then multiplied by the gross heating value (GHV) of methane of 1,012 Btu/scf to determine the landfill gas HIC.

(c) MSW landfills with passive venting systems: The landfill gas HIC must be determined pursuant to both of the following and is the higher of those determined values:

(i) The calculation described in (a) of this subsection; and

(ii) The owner or operator must measure:

(A) The actual landfill gas flow rates (in units of scfm), using a flow meter or other flow measuring device such as a standard pitot tube; and

(B) The methane concentration (percent by volume), using a hydrocarbon detector meeting the requirements of subsection (1) of this section, from each venting pipe that is within the waste mass. Each gas flow rate must then be multiplied by its corresponding methane concentration to obtain the individual methane flow rate. The individual methane flow rates must be added together and then multiplied by the GHV of methane of 1,012 Btu/scf to determine the landfill gas HIC.

(3) Surface emissions monitoring procedures: The owner or operator of a MSW landfill must measure the landfill surface concentration of methane using a hydrocarbon detector meeting the requirements of subsection (1) of this section. The landfill surface must be inspected using the following procedures:

(a) Monitoring area: The entire landfill surface must be divided into individually identified 50,000 square foot grids. The grids must be used for both instantaneous and integrated surface emissions monitoring.

(i) Testing must be performed by holding the hydrocarbon detector's probe within three inches of the landfill surface while traversing the grid.

(ii) The walking pattern must be no more than 25-foot spacing intervals and must traverse each monitoring grid.

(A) If the owner or operator measures no exceedances of the limits specified in WAC 173-408-100(2), after any four consecutive quarterly monitoring periods, the walking pattern spacing may be increased to 100-foot intervals. The owner or operator must return to a 25-foot spacing interval upon detection of any exceedances of the limits specified in WAC 173-408-100(2) that cannot be remediated within 10 calendar days or upon any exceedances detected during a compliance inspection.

(B) If an owner or operator of a MSW landfill can demonstrate that in the past three years before the effective date of this chapter that there were no measured exceedances of the limits specified in WAC 173-408-100(2), by annual or quarterly instantaneous surface emissions monitoring, the owner or operator may increase the walking pattern spacing to 100-foot intervals. The owner or operator must return to a 25-foot spacing interval upon detection of any exceedances of the limits specified in WAC 173-408-100(2) that cannot be remediated within 10 calendar days, or upon any exceedances detected during a compliance inspection. The demonstration must prove to the satisfaction of the department or local authority that any instrument used for methane detection meets the requirements of subsection (1) of this section.

(iii) Surface testing must be terminated when the average wind speed exceeds five miles per hour, or the instantaneous wind speed exceeds 10 miles per hour. Surface testing can continue when the average wind speed is five miles per hour or less. The department or local authority may approve alternatives to this wind speed surface testing termination for MSW landfills consistently having measured winds in



excess of these specified limits. Average wind speed must be determined on a 15-minute average using an on-site anemometer with a continuous recorder for the entire duration of the monitoring event.

(iv) Surface emissions testing must be conducted only when there has been no measurable precipitation in the preceding 72 hours. The department or local authority may approve alternatives to this procedure for MSW landfills that cannot meet the requirements of this subsection.

(v) Monitoring should be conducted during average barometric pressure conditions to the extent possible.

(b) Instantaneous surface emissions monitoring procedures:

(i) The owner or operator must record any instantaneous surface readings of methane 200 ppmv or greater, other than those measured by "nonrepeatable, momentary readings," as defined in WAC 173-408-020.

(ii) Surface areas of the MSW landfill that exceed a methane concentration limit of 500 ppmv must be marked and remediated pursuant to WAC 173-408-110 (1)(b) and (c).

(iii) The landfill surface areas with cover penetrations, distressed vegetation, cracks, or seeps must also be inspected visually and with a hydrocarbon detector that meets the requirements of subsection (1) of this section. Exceedances of a methane concentration limit of 500 ppmv must be marked and remediated pursuant to WAC 173-408-110 (1)(b) and (c).

(iv) The location of each monitored exceedance must be marked, and the location and concentration recorded. The location must be recorded using an instrument with an accuracy of at least 14 feet. The coordinated must be in decimal degrees with at least five decimal places.

(iv) The wind speed and barometric pressure must be recorded during the sampling period.

(c) Integrated surface emissions monitoring procedures:

(i) Integrated surface readings must be recorded and then averaged for each grid.

(ii) Individual monitoring grids that exceed an average methane concentration of 25 ppmv must be identified and remediated pursuant to WAC 173-408-110 (1)(b) and (d).

(iii) The wind speed and barometric pressure must be recorded during the sampling period.

(4) Gas collection and control system leak procedures: The owner or operator of a MSW landfill must measure leaks using a hydrocarbon detector meeting the requirements of subsection (1) of this section.

(5) Determination of expected gas generation flow rate: The expected gas generation flow rate must be determined as prescribed by the 2006 Intergovernmental Panel on Climate Change (IPCC) Guidelines for National Greenhouse Gas Inventories, Chapter 3, which is incorporated by reference herein, using a recovery rate of 75 percent.

(6) Control device destruction efficiency determination: The control device destruction efficiency must be determined according to the following methods:

(a) Enclosed combustors: One of the following test methods, all of which are incorporated by reference herein (and all as promulgated in 40 C.F.R., Part 60, Appendix A, as last amended by 65 Fed. Reg. 61744 (October 17, 2000)) must be used to determine the efficiency of the control device:

(i) U.S. EPA Reference Method 18, Measurement of Gaseous Organic Compound Emissions by Gas Chromatography (65 Fed. Reg. at 62007);

(ii) U.S. EPA Reference Method 25, Determination of Total Gaseous Nonmethane Organic Emissions as Carbon (65 Fed. Reg. at 62044);

(iii) U.S. EPA Reference Method 25A, Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer (65 Fed. Reg. at 62062); or

(iv) U.S. EPA Reference Method 25C, Determination of Nonmethane Organic Compounds in Landfill Gases (65 Fed. Reg. at 62066).

(v) The following equation must be used to calculate destruction efficiency:

$$\text{Destruction Efficiency} = \left[ 1 - \left( \frac{\text{Mass of Methane} - \text{Outlet}}{\text{Mass of Methane} - \text{Inlet}} \right) \right] \times 100\%$$

(b) Open Flares: Open flares must meet the requirements of 40 C.F.R. § 60.18 (as last amended by 73 Fed. Reg. 78209 (December 22, 2008)).

(7) Determination of gauge pressure: Gauge pressure must be determined using a hand-held manometer, magnehelic gauge, or other pressure measuring device approved by the department or local authority. The device must be calibrated and operated in accordance with the manufacturer's specifications.

(8) Alternative test methods: Alternative test methods may be used if they are approved in writing by the department or local authority.

**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 173-408-130 Alternative compliance measures.** (1) The owner or operator of a MSW landfill may request alternatives to the compliance measures, monitoring requirements, and test methods and procedures set forth in WAC 173-408-080, 173-408-110, and 173-408-120. Any alternatives requested by the owner or operator must be submitted in writing to the department.

(2) The criteria that the department may use to evaluate alternative compliance option requests include, but are not limited to:

(a) Compliance history;

(b) Documentation containing the landfill gas flow rate and measured methane concentrations for individual gas collection wells or components;

(c) Permits;

(d) Component testing and surface monitoring results;

(e) Gas collection and control system operation, maintenance, and inspection records;

(f) Historical meteorological data; and

(g) Other approved EPA test methods and procedures.

(3) The department will review the requested alternatives and either approve or disapprove the alternatives within 120 days of receipt of a complete request.

(a) The department may request that additional information be submitted as part of the review of the requested alternatives. Until the requested information is submitted, the request will be determined

as incomplete and no department actions will be taken to approve or deny the request.

(b) If the department denies a request for an alternative compliance option, the department will provide written reasons for the denial.

(c) The department must deny a request for alternative compliance measures if the request does not provide levels of performance or enforceability or methane emissions control that are equivalent to those set forth in this chapter.

#### NEW SECTION

**WAC 173-408-140 Communications and submittals format.** Any communications, submittals, or requests required by this chapter must be in a format acceptable to the department or the local authority, as applicable.

#### NEW SECTION

**WAC 173-408-150 Certification.** Any application form, report, compliance certification, or other information submitted pursuant to this chapter shall contain the following written certifications made and signed by the person making the submission:

(1) "I certify under penalty of perjury under the laws of the state of Washington that I am duly authorized to make this submission on behalf of the party that is required to provide the information contained therein pursuant to Chapter 173-408 WAC."

(2) "I certify under penalty of perjury under the laws of the state of Washington that, based on information and belief formed after reasonable inquiry, all statements and information contained in the submitted document are true, accurate, and complete."

#### NEW SECTION

**WAC 173-408-160 Recordkeeping requirements.** (1) The owner or operator of a MSW landfill must maintain records as prescribed in this subsection. The records must be provided by the owner or operator to the department or local authority within five business days of a request. Records described in this subsection must be retained in the operating record required by WAC 173-351-200 (10)(a).

(a) An owner or operator must maintain the following records for at least five years:

(i) All surface emission monitoring plans and monitoring records.

(ii) All records of gas collection system downtime exceeding five calendar days, including individual well shutdown and disconnection times, and the reason for the downtime.

(iii) All records of gas control system downtime in excess of one hour, the reason for the downtime, and the length of time the gas control system was shutdown.

(iv) Expected gas generation flow rate calculated pursuant to WAC 173-408-120(5).

(v) Records of all instantaneous surface readings of 200 ppmv or greater, pursuant to WAC 173-408-120 (3)(b)(i).

(vi) All exceedances of the limits set forth in WAC 173-408-100(2), including the location of the leak (or affected grid), leak concentration in ppmv, date and time of measurement, the action(s) taken to repair the leak, date of repair, any required remonitoring and the remonitored concentration in ppmv, wind speed and barometric pressure during surface sampling; and the installation date and location of each well installed as part of a gas collection system expansion.

(vii) Records of any component leak exceedances and corrective actions taken, pursuant to WAC 173-408-110 (2)(c).

(viii) Records of any positive wellhead gauge pressure measurements, the date of the measurements, the well identification number, and the corrective action taken, pursuant to WAC 173-408-110(3).

(ix) Annual solid waste acceptance rate and the current amount of waste in place.

(x) Records of the nature, location, amount, and date of deposition of nondecomposable waste for any landfill areas excluded from the collection system.

(xi) Results of any source tests conducted pursuant to WAC 173-408-120(6).

(xii) Records describing the mitigation measures taken to prevent the release of methane or other emissions into the ambient air:

(A) When solid waste was brought to the surface during the installation or preparation of wells, piping, or other equipment;

(B) During repairs or the temporary shutdown of gas collection system components; or

(C) When solid waste was excavated and moved.

(xiii) Records of the equipment operating parameters specified to be monitored under WAC 173-408-110 (2)(a) and (b), as well as records for periods of operation during which the parameter boundaries established during the most recent source test are exceeded. The records must include the following information:

(A) For enclosed flares, all three-hour periods of operation during which the average temperature difference was more than 28 degrees Celsius (or 50 degrees Fahrenheit) below the average combustion temperature during the most recent source test at which compliance with WAC 173-408-080 (4) and (5) was determined.

(B) For boilers or process heaters, whenever there is a change in the location at which the vent stream is introduced into the flame zone pursuant to WAC 173-408-080 (5)(a)(ii).

(C) For any owner or operator who uses a boiler or process heater with a design heat input capacity of 44 megawatts (150 MMBtu/hr) or greater to comply with WAC 173-408-080(5), all periods of operation of the boiler or process heater (e.g., steam use, fuel use, or monitoring data collected pursuant to other federal, state, or local regulatory requirements).

(xiv) Records of any actions involving disturbance or removal of areas of the landfill surface where the landfill cover material has been removed for the purpose of installing, expanding, replacing, or repairing components of the landfill cover system, the landfill gas collection and control system, the leachate collection and removal system, or a landfill gas condensate collection and removal system. The records must contain the following information:

(A) A description of the actions being taken, the areas of the MSW landfill that will be affected by these actions, the reason the

actions are required, and any landfill gas collection system components that will be affected by these actions.

(B) Disturbance or removal start and finish dates, projected equipment installation dates, and projected shut down times for individual gas collection system components.

(C) A description of the mitigation measures taken to minimize methane emissions and other potential air quality impacts.

(xv) Records of any active mining activities, as defined in WAC 173-408-020. The records must contain the following information:

(A) A description of the actions being taken, the areas of the MSW landfill that will be affected by these actions, the reason the actions are required, and any landfill gas collection system components that will be affected by these actions.

(B) Active mining start and finish dates and projected shut down times for individual gas collection system components.

(C) A description of the mitigation measures taken to minimize methane emissions and other potential air quality impacts.

(xvi) Records of any law enforcement activities requiring excavation. The records must contain the following information:

(A) A description of the actions being taken, the areas of the MSW landfill that will be affected by these actions, the reason the actions are required, and any landfill gas collection system components that will be affected by these actions.

(B) Law enforcement activity start and finish dates and projected shut down times for individual gas collection system components.

(C) A description of the mitigation measures taken to minimize methane emissions and other potential air quality impacts.

(b) The owner or operator must maintain the following records for the life of each gas control device, as measured during the initial source test or compliance determination:

(i) The control device vendor specifications.

(ii) The expected gas generation flow rate as calculated pursuant to WAC 173-408-120(5).

(iii) The percent reduction of methane achieved by the control device determined pursuant to WAC 173-408-120(6).

(iv) For a boiler or process heater, the description of the location at which the collected gas vent stream is introduced into the boiler or process heater over the same time-period of the performance test.

(v) For an open flare: The flare type (i.e., steam-assisted, air-assisted, or nonassisted); all visible emission readings, heat content determination, flow rate or bypass flow rate measurements, and exit velocity determinations made during the performance test as specified in 40 C.F.R. § 60.18 (as last amended by 73 Fed. Reg. 78209 (December 22, 2008)), which is incorporated by reference herein; and records of the flare pilot flame or flare flame monitoring and records of all periods of operations during which the pilot flame or the flare flame is absent.

#### NEW SECTION

**WAC 173-408-170 Reporting requirements.** The owner or operator of a MSW landfill must prepare and submit reports as prescribed in this section. Reports required by this subsection must be retained in the operating record required by WAC 173-351-200 (10) (a).

(1) Initial waste in place report: Each owner or operator of a MSW landfill that meets the requirements of WAC 173-408-060(1) must submit an initial waste in place report to the department. The report must be submitted within 90 days of the effective date of this chapter and include information set forth in subsection (3) of this section.

(2) Initial landfill gas heat input capacity report: Any owner or operator of a MSW landfill subject to the requirements of WAC 173-408-070(2) must calculate the landfill gas HIC, using the procedures specified in WAC 173-408-120(2), and submit the calculation to the department. The calculation must be submitted within 90 days of the effective date of this chapter.

(3) Annual reports: The owner or operator of a MSW landfill must prepare an annual report containing the information set forth in subsections (3) through (7) of this section, as applicable.

(a) The annual report must be prepared for the period of January 1st through December 31st of each year and be submitted to the department and local authority by April 1st of the subsequent year.

(b) In each annual report, the following information must be included:

(i) MSW landfill name, owner and operator, address, and facility/site ID (FS ID) number.

(ii) Most recent topographic map, at a minimum, of the site showing all types of cover (e.g., final, interim, daily) with corresponding percentages over the landfill surface.

(4) Annual waste in place report: Any owner or operator of a MSW landfill subject to the requirements of WAC 173-408-060(2) must include the following information in the annual report required by subsection (3) of this section. The estimated waste in place, in tons, as of December 31st of the previous year.

(5) Annual landfill gas heat input capacity report: Any owner or operator subject to the requirements of WAC 173-408-070(3) must calculate the landfill gas HIC, using the procedures specified in WAC 173-408-120(2), and include the calculation in the annual report required by subsection (3) of this section.

(6) Surface emissions monitoring report: Any owner or operator who conducts surface emissions monitoring pursuant to WAC 173-408-110 must include the following information in the annual report required by subsection (3) of this section:

(a) Date(s) of monitoring.

(b) Location of the monitoring grid coordinates, as well as coordinates of areas exempted from monitoring on a topographic map.

(c) Measured concentration of methane in ppmv, exceedances, and all corrective actions taken.

(7) Gas collection and control system operations: Any owner or operator of a MSW landfill that has a gas collection and control system must include the following in the annual report required by subsection (3) of this section:

(a) Total volume of landfill gas collected (reported in standard cubic feet).

(b) Average composition of the landfill gas collected over the reporting period (reported in percent methane and percent carbon dioxide by volume).

(c) Gas control device type, year of installation, rating, fuel type, and total amount of landfill gas combusted in each control device.

(d) The date that the gas collection and control system was installed and in full operation.

(e) The percent methane destruction efficiency of each gas control device(s).

(f) Type and amount of supplemental fuels burned with the landfill gas in each device.

(g) Total volume of landfill gas shipped off-site, the composition of the landfill gas collected (reported in percent methane and percent carbon dioxide by volume), and the recipient of the gas.

(h) A copy of the most recent source test for each gas control device.

(8) Closure notification report: The owner or operator of a MSW landfill that ceases to accept waste must submit a closure notification to the department or local authority within 30 days of ceasing to accept waste.

(a) The closure notification must include the last day solid waste was accepted, the anticipated closure date of the MSW landfill, and the estimated waste in place.

(b) If a MSW landfill with greater than or equal to 450,000 tons of waste in place submits a closure notification pursuant to this section, the owner or operator of the landfill must submit a 30-year projection of their estimated HIC calculation, according to the procedures in Appendix I, as part of this report.

(c) Additional information may be requested as necessary to verify that permanent closure has taken place in accordance with the requirements of any applicable federal, state, or local statutes, regulations, and ordinances in effect at the time of closure.

(d) If a closure report has been submitted, no additional wastes may be placed into the landfill without filing a notification with the department or local authority.

(9) Equipment removal report: The owner or operator of a MSW landfill must submit a gas collection and control system equipment removal report to the department or local authority within 30 days of well capping or the removal or cessation of operation of the gas collection, treatment, or control system equipment. The report must contain the following information:

(a) A copy of the closure notification report submitted pursuant to subsection (8) of this section.

(b) A copy of the initial source test report, prepared pursuant to WAC 173-408-080 (6)(a), or other documentation demonstrating that the gas collection and control system has been installed and operated for a minimum of 15 years, unless the owner or operator can demonstrate that due to declining methane rates the landfill is unable to operate the gas collection and control system for a 15-year period.

(c) Eight consecutive quarterly instantaneous or integrated emissions monitoring results, collected pursuant to WAC 173-408-090(2), as needed to verify that landfill surface methane concentration measurements do not exceed the limits specified in WAC 173-408-100(2).

#### NEW SECTION

**WAC 173-408-180 Civil penalty.** (1) Any person who violates any requirement of chapter 70A.540 RCW or this chapter may incur a civil penalty of up to \$10,000 per day for each violation, pursuant to RCW 70A.15.3160.

(2) The department will waive penalties under RCW 70A.15.3160, in accordance with this subsection, in the event the owner or operator of

the landfill is actively taking corrective actions to control any methane exceedances.

(a) At least 30 calendar days prior to the department's issuance of a civil penalty, the department will send the owner or operator of the landfill a notice of violation, in accordance with RCW 70A.15.3010.

(b) In order to demonstrate eligibility for waiver of a civil penalty under this subsection, the owner or operator of the landfill must provide the following information to the department within 30 calendar days of issuance of the notice of violation:

(i) A description of all corrective action(s) that have been initiated to control methane exceedances;

(ii) A description of all corrective action(s) that are being planned to control methane exceedances, including an implementation schedule of the actions;

(iii) Any supporting documentation associated with the corrective actions; and

(iv) A written certification meeting the requirements of WAC 173-408-150.

(c) If the owner or operator does not provide the information required by (b) of this subsection within 30 calendar days of issuance of the notice of violation, and has not received a written extension by the department, the department may proceed with issuance of a civil penalty as appropriate.

(d) The department will determine whether the owner or operator is eligible for waiver of a civil penalty on the basis of the information submitted pursuant to (b) of this subsection.

(i) The department may request additional information from the owner or operator before making a final determination. If the owner or operator does not respond to the department's request for additional information within 30 calendar days, the department may proceed with issuance of a civil penalty as appropriate.

(ii) The department will waive issuance of a civil penalty for the violation(s) identified in the notice of violation if the owner or operator demonstrates to the department's satisfaction that the corrective actions that have been initiated, or that are being planned, resolve the violation(s).

(iii) The department may condition its waiver of a civil penalty under this subsection on the owner or operator's continued implementation and/or completion of the identified corrective action(s). If the owner or operator does not comply with any such condition(s), the department may reconsider its prior determination of eligibility for waiver.

(e) If the department waives issuance of a civil penalty under this subsection, the department may subsequently request submission of documentation regarding the implementation status of the identified corrective action(s). If the owner or operator does not respond to the department's subsequent request(s) within 30 calendar days, the department may reconsider its prior determination of eligibility for waiver.



NEW SECTION

**WAC 173-408-190 Severability.** If any provision of this chapter or its application is held invalid, the remainder of the chapter or application of the provision is not affected.

NEW SECTION**WAC 173-408-990 APPENDIX I.****1.0 Calculate Heat Input Capacity****Equation 1**

$$\begin{aligned} \text{Heat Input Capacity} \left( \frac{\text{MMBtu}}{\text{hr}} \right) \\ = \text{Methane Gas Generation (scfm)} \times \frac{60 \text{ minutes}}{1 \text{ hour}} \\ \times \text{Collection Efficient} \times \text{GHV}_{\text{Methane}} \times \frac{1 \text{ MMBtu}}{1,000,000 \text{ Btu}} \end{aligned}$$

Where:

- Collection Efficiency = The landfill gas collection efficiency in percent (%), which is 75 percent.
- GHV (Gross Heating Value) = Gross heating value of methane, which is 1,012<sup>1</sup> in units of British thermal units per standard cubic feet, or Btu/scf.

<sup>1</sup> Landfill Methane Outreach Program (LMOP) Interactive Conversion Tool

**2.0 Methane Gas Generation**

CH<sub>4</sub> Generation is calculated using the following equation:

**Equation 2**

$$\begin{aligned} \text{CH}_4 \text{ Generation (Mg)} \\ = \left\{ \text{ANDOC}_{\text{year-start}} \times [1 - e^{-k}] \right. \\ \left. - \text{ANDOC}_{\text{deposited-last year}} \right. \\ \left. \times \left[ \frac{1}{k} \times \left( e^{-k \times \left(1 - \frac{M}{12}\right)} - e^{-k} \right) - \frac{M}{12} \times e^{-k} \right] \right. \\ \left. + \text{ANDOC}_{\text{deposited-same year}} \right. \\ \left. \times \left[ 1 - \left( \frac{1}{k} \times \left( 1 - e^{-k \times \left(1 - \frac{M}{12}\right)} + \frac{M}{12} \right) \right) \right] \right\} \times \text{FCH}_4 \end{aligned}$$

Where:

- CH<sub>4</sub> Generation = CH<sub>4</sub> generated in the inventory year (Mg of CH<sub>4</sub>).
- FCH<sub>4</sub> = Fraction of decomposing carbon converted into CH<sub>4</sub> (Default = 0.5).<sup>2</sup>
- ANDOC<sub>year-start</sub> = ANDOC in place at the beginning of the inventory year.
- ANDOC<sub>deposited-last year</sub> = ANDOC deposited during the previous inventory year.

ANDOC<sub>deposited-same year</sub> = ANDOC deposited during the inventory year.

<sup>2</sup> 2006 IPCC Guidelines for National Greenhouse Gas Inventories

### 3.0 To Convert Methane Generated from Mg of CH<sub>4</sub> to SCFM

#### Equation 3

$$\begin{aligned}
 & CH_4 \text{ Gas Generated (scfm)} \\
 &= \frac{CH_4 \text{ Generation (Mg)}}{\text{(year)}} \times \frac{1 \text{ (year)}}{525,600 \text{ (minutes)}} \times \frac{1,000,000 \text{ (g)}}{1 \text{ (Mg)}} \\
 &\times \frac{1 \text{ (mole } CH_4)}{16.0426 \text{ (g } CH_4)} \times \frac{0.83662 \text{ (scf)}}{1 \text{ (mole landfill gas)}}
 \end{aligned}$$

### 4.0 Define ANDOC%

#### Equation 4

$$ANDOC\% = \sum WIPFRAC_j \times TDOC_j \times DANF_j$$

Where:

- WIPFRAC<sub>i</sub> = Fraction of the i<sup>th</sup> component in the waste in place.
- TDOC<sub>i</sub> = Total Degradable Organic Carbon fraction of the i<sup>th</sup> waste component (Mg of that component/Mg of Total waste in place).
- DANF<sub>i</sub> = Decomposable Anaerobic Fraction of the i<sup>th</sup> waste component, that fraction capable of decomposition in anaerobic conditions (Mg of decomposable carbon for that component/Mg TDOC<sub>i</sub> for that component).

### 5.0 Define ANDOC

#### Equation 5

$$ANDOC = WIP \text{ (tons)} \times \frac{0.9072 \text{ (Mg)}}{\text{(ton)}} \times ANDOC\%$$

Where:

- ANDOC = Anaerobically Degradable Organic Carbon, carbon that is capable of decomposition in an anaerobic environment (Mg of carbon).
- WIP = Waste in place estimate of all the landfilled waste (wet weight) as reported to Ecology's Solid Waste Management Program (tons).

### 6.0 Calculate ANDOC<sub>year-end</sub>

Equation 6

$$\begin{aligned}
 ANDOC_{year-end} &= ANDOC_{year-start} \times e^{-k} \\
 &+ ANDOC_{deposited-last\ year} \\
 &\times \left[ \frac{1}{k} \times \left( e^{-k \times \left(1 - \frac{M}{12}\right)} - e^{-k} \right) - \frac{M}{12} \times e^{-k} \right] \\
 &+ ANDOC_{deposited-same\ year} \times \left[ \frac{1}{k} \times \left( 1 - e^{-k \times \left(1 - \frac{M}{12}\right)} + \frac{M}{12} \right) \right]
 \end{aligned}$$

Where:

- ANDOC<sub>year-end</sub> = ANDOC remaining undecomposed at the end of the inventory year.
- ANDOC<sub>year-start</sub> = ANDOC in place at the beginning of the inventory year.
- ANDOC<sub>deposited-last year</sub> = ANDOC deposited during the previous inventory year.
- ANDOC<sub>deposited-same year</sub> = ANDOC deposited during the inventory year.
- M = Assumed delay before newly deposited waste begins to undergo anaerobic decomposition (Months, Default = 6).
- k = Assumed rate constant for anaerobic decomposition; k = ln2/half-life (years); half-life is the number of years required for half of the original mass of carbon to degrade.

Table 1 lists the accepted constant values for the anaerobic decomposition rate ("k").

**Table 1: K Values**

K for Average Rainfall (Inches/Year)			
Inches Rain	<20	20-40	>40
K Value	0.02	0.038	0.057

**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.

**WSR 23-22-088**  
**PROPOSED RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**  
[Filed October 30, 2023, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-090.

Title of Rule and Other Identifying Information: WAC 363-116-360  
Exempt vessels.

Hearing Location(s): On January 18, 2024, at 10:00 a.m., at 2901 3rd Avenue, Agate Conference Room, Seattle, WA 98121; and via Microsoft Teams. Please contact Jolene Hamel at HamelJ@wsdot.wa.gov for a meeting link.

Date of Intended Adoption: January 18, 2024.

Submit Written Comments to: Jaimie Bever, Executive Director, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, email BeverJ@wsdot.wa.gov, fax 206-515-3906, by January 11, 2024.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, fax 206-515-3906, email HamelJ@wsdot.wa.gov, by January 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to update the pilotage exemption fee schedule to better align with administrative costs of exemption processing and to conduct minor house-keeping of the language for clarity.

Reasons Supporting Proposal: The processing of vessel exemptions has changed since the last fee increase. The board of pilotage commissioners (board) requires more documentation before granting an exemption. The increase will provide additional financial support for that increased effort.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Statute Being Implemented: Chapter 88.16 RCW, Pilotage Act.

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: The board received a recommendation from the vessel exemption committee (VEC) favoring implementation of the proposed language.

Name of Proponent: Board of pilotage commissioners, governmental.

Name of Agency Personnel Responsible for Drafting: Jaimie C. Bever, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3887; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, 206-515-3887.

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 the adoption of these rules. The board is not a listed agency in RCW 34.05.328 (5) (a) (i).

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.

Scope of exemption for rule proposal:

Is fully exempt.

October 30, 2023

Jaimie C. Bever  
Executive Director

**OTS-5045.1**

AMENDATORY SECTION (Amending WSR 17-14-005, filed 6/22/17, effective 7/23/17)

**WAC 363-116-360 Exempt vessels.** (1) Under the authority of RCW 88.16.070, application via petition may be made to the board of pilotage commissioners to seek exemption from the pilotage requirements for the operation of a limited class of small passenger vessels, which are not more than (~~one thousand three hundred~~) 1,300 gross tons (international), do not exceed (~~two hundred~~) 200 feet in length, is manned by United States-licensed deck and engine officers appropriate to the size of the vessel with merchant mariner credentials issued by the United States coast guard or Canadian deck and engine officers with Canadian-issued certificates of competency appropriate to the size of the vessel, and are operated exclusively in the waters of the Puget Sound pilotage district and lower British Columbia, or yachts, which are not more than (~~one thousand three hundred~~) 1,300 gross tons (international), and do not exceed (~~two hundred~~) 200 feet in length. For purposes of this section, any vessel carrying passengers for a fee, including yachts under charter where both the vessel and crew are provided for a fee, shall be considered a passenger vessel.

The owners or operators of the vessel for which exemption is sought must:

(a) Complete and file with the board a petition requesting an exemption at least (~~forty-eight~~) 48 hours prior to planned vessel operations where possible. Petitions filed with less than (~~forty-eight~~) 48 hours notice may be considered by the chair at the chair's discretion on a board-approved form. The form shall include a description of the vessel, the contemplated use of vessel, the proposed area of operation, the names and addresses of the vessel's owner and operator, the areas and dates of planned operations, and such other information as the board shall require.

(b) Pay the appropriate (~~initial~~) application (~~or renewal~~) fee with the submittal of the petition or upon receipt of invoice from the BPC, which is listed in subsection (5) of this section.

(2) All petitions for exemption filed with the board shall be considered at its next regularly (~~or specially~~) scheduled meeting. Consistent with the public interest, the chair may grant an interim exemption to a petitioner subject to final approval at the next board meeting, where special time or other conditions exist.

(3) Any grant of an exemption, including interim exemptions, may contain such conditions as the board, or in the case of an interim exemption, the chair, deems necessary to protect the public interest in order to prevent the loss of human life and property and to protect the marine environment of the state of Washington.

Such conditions may include: A requirement that the vessel employ the services of a pilot on its initial voyage into state pilotage waters; the vessel master attends an orientation meeting with a pilot as determined by the board; the vessel master review all written orienta-

tion materials; and/or that the master of the vessel at all times hold as a minimum, a United States government license as a master of ocean or near coastal steam or motor vessels of not more than (~~sixteen hundred~~) 1,600 gross tons or as a master of inland steam or motor vessels of not more than (~~five hundred~~) 500 gross tons, such license to include a current radar endorsement; and/or that the vessel possess specific navigational charts, publications and navigational equipment necessary to ensure safe operation.

(4) The board shall annually, or at any other time when in the public interest, review any exemptions granted to the specified class of small vessels to ensure that each exempted vessel remains in compliance with the original exemption and any conditions to the exemption. The board shall have the authority to revoke such exemption when there is not continued compliance with the requirements for exemption.

(5) Fee Schedule for Petitioners for Exemption

	<u>(3 Months or Less</u>	<u>1-Year or Less</u>	<u>Annual Renewal</u>
<u>A. Yachts</u>			
Up to and including 50 feet LOA	\$50	\$50	\$50
Up to and including 100 feet LOA	700	1000	600
Up to and including 200 feet LOA and 750-gt	1000	1400	800
Up to and including 200 feet LOA and 751 to 1300-gt	1500	1500	1500
<u>B. Passenger Vessels</u>			
Up to and including 100 feet LOA	1125	1500	1000
Up to and including 200 feet LOA	1500	1500	1200))

	<u>1 Year or Less</u>	<u>Annual Renewal</u>
<u>A. Yachts</u>		
<u>LOA 65 feet and under</u>	<u>\$100</u>	<u>\$100</u>
<u>LOA 66-125 feet</u>	<u>1100</u>	<u>900</u>
<u>LOA 126-200 feet</u>	<u>1500</u>	<u>1400</u>
<u>B. Passenger Vessels</u>		
<u>Up to and including 200 feet LOA</u>	<u>1500</u>	<u>1500</u>

(6) Petitions for annual renewals must be submitted to the board within one year of the expiration of the previous exemption.

## WSR 23-22-090

## PROPOSED RULES

## EMPLOYMENT SECURITY DEPARTMENT

[Filed October 30, 2023, 10:24 a.m.]

Continuance of WSR 23-19-005.

Preproposal statement of inquiry was filed as WSR 23-12-017.

Title of Rule and Other Identifying Information: WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1) (b) (ii) and (2) (b) (ii).

Hearing Location(s): On December 8, 2023, at 9:00 a.m., via Zoom. Join Zoom meeting <https://esd-wa-gov.zoom.us/j/84354600235?pwd=d2d0dDJUVk4xTHdHY0tQYllScHBJQT09>, Meeting ID 843 5460 0235, Passcode 554784; or call in +12532158782,,84354600235#,,,,\*554784# US (Tacoma), +12532050468,,84354600235#,,,,\*554784# US.

Date of Intended Adoption: December 9, 2023.

Submit Written Comments to: Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), fax 844-652-7096, by December 8, 2023.

Assistance for Persons with Disabilities: Contact Teresa Eckstein, phone 360-507-9890, fax 360-507-9890, TTY 711, email [Teresa.eckstein@esd.wa.gov](mailto:Teresa.eckstein@esd.wa.gov) [Teresa.eckstein@esd.wa.gov], by December 1, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will update WAC 192-150-055 to reflect ESHB 1106 (2023), which expanded good cause for voluntarily quitting a job due to death, illness, or disability. Specifically, this rule making will change "immediate family" to "family member" effective September 3, 2023, and will require that, to establish good cause for leaving work voluntarily because of illness or disability or the illness, disability, or death of a family member, a claimant must request changes in working conditions, changes to work schedule, or a leave of absence.

Reasons Supporting Proposal: This rule making is necessary to implement ESHB 1106.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040 provide general rule-making authority to the employment security department (department). The department has authority to adopt rules to implement ESHB 1106, which amended RCW 50.20.050.

Statute Being Implemented: RCW 50.20.050.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Frazee, Olympia, Washington, 425-465-0313; Implementation and Enforcement: J.R. Richards, Olympia, Washington, 360-463-1079.

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 Stephanie Frazee, P.O. Box 9046, Olympia, WA 98507-9046, phone 425-465-0313, fax 844-652-7096, TTY 771 [711], email [rules@esd.wa.gov](mailto:rules@esd.wa.gov), <https://esd.wa.gov/newsroom/rulemaking/>.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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. The proposed rule implements SHB 1106's expansion of good cause for voluntarily quitting a job by updating the department's rules. The rule changes will not impose more-than-minor costs to small businesses.

October 30, 2023

Joy Adams, Acting Director

Employment Security Policy and Integrity Division

## OTS-4924.1

AMENDATORY SECTION (Amending WSR 23-15-009, filed 7/6/23, effective 8/6/23)

**WAC 192-150-055 Leaving work because of illness or disability—General rules and definitions—RCW 50.20.050 (1) (b) (ii) and (2) (b) (ii).** (1) For separations occurring before September 3, 2023:

(a) General rule. To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

~~((a))~~ (i) You left work primarily because of such illness, disability, or death; and

~~((b))~~ (ii) The illness, disability, or death made it necessary for you to leave work; and

~~((c))~~ (iii) You first exhausted all reasonable alternatives prior to leaving work, including:

~~((i))~~ (A) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060; ~~(and~~

~~((ii))~~ (B) Requesting changes in working conditions, changes to your work schedule, or a leave of absence; and

(C) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

~~((2))~~ (b) For claims with an effective date of January 4, 2004, or later, you ~~((are not eligible for unemployment benefits))~~ will not be deemed to have left work with good cause unless, in addition to the requirements of ((subsection (1) (a) through (c) of this section)) (a) (i) through (iii) of this subsection, you terminate your employment and are not entitled to be reinstated in the same or similar position.

~~((3))~~ (c) Exception. You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by ~~((subsection (1) (c) of this section)) (a) (iii) of this subsection~~ if you can show that doing so would have been a futile act.

~~((4))~~ (d) Definitions. For purposes of this chapter:

~~((a))~~ (i) "Disability" means a sensory, mental, or physical condition that:

~~((i))~~ (A) Is medically recognizable or diagnosable;

~~((ii))~~ (B) Exists as a record or history; and

~~((iii))~~ (C) Substantially limits the proper performance of your job ~~((+))~~.



~~((b))~~ (ii) "Immediate family" means your spouse, domestic partner, and the children (including unborn children), siblings, step-children, foster children, or parents of either spouse or domestic partner, whether living with you or not, and other relatives who temporarily or permanently reside in your household.

~~((e))~~ (iii) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work.

~~((d))~~ (iv) "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency that is active on the date of the request to enter isolation or quarantine, even if you or your immediate family member have not been actually diagnosed with the disease that is the subject of a public health emergency.

(2) For separations occurring on or after September 3, 2023:

(a) **General rule.** To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a family member, you must demonstrate that:

(i) You left work primarily because of such illness, disability, or death; and

(ii) The illness, disability, or death made it necessary for you to leave work; and

(iii) You first exhausted all reasonable alternatives prior to leaving work, including:

(A) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060;

(B) Requesting changes in working conditions, changes to your work schedule, or a leave of absence; and

(C) Asking to be reemployed when you are able to return to work. (You are not required to request reemployment after the job separation has occurred to establish good cause.)

(b) You will be deemed to not have left work with good cause unless, in addition to the requirements of (a)(i) through (iii) of this subsection, you terminate your employment and are not entitled to be reinstated in the same or similar position.

(c) **Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by (a)(iii) of this subsection if you can show that doing so would have been a futile act.

(d) **Definitions.** For purposes of this chapter:

(i) "Disability" means a sensory, mental, or physical condition that:

(A) Is medically recognizable or diagnosable;

(B) Exists as a record or history; and

(C) Substantially limits the proper performance of your job.

(ii) "Family member" means your child, grandchild, grandparent, parent, sibling, or spouse, and also includes any individual who regularly resides in your home or with whom you are in a relationship that creates an expectation that you care for the person, and that individual depends on you for care. "Family member" includes any individual who regularly resides in your home, except that it does not include an individual who simply resides in your home with no expectation that you care for the individual.

(iii) "Child" includes a biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom you stand in loco pa-

rentis, are a legal guardian, or are a de facto parent, regardless of age or dependency status of the child, and including an unborn child.

(iv) "Grandchild" means a child of your child.

(v) "Grandparent" means a parent of your parent.

(vi) "Parent" means your or your spouse's biological, adoptive, de facto, or foster parent, stepparent, or legal guardian, or an individual who stood in loco parentis to you when you were a child.

(vii) "Sibling" means an individual with whom you share at least one parent.

(viii) "Spouse" means a husband or wife or a state-registered domestic partner.

(ix) "De facto parent" means an adult who has fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in a child's life in which the natural or legal parent consented to and fostered the parent-like relationship.

(x) "In loco parentis" means a situation in which an individual acts in place of a parent, intentionally takes over parental duties, and is responsible for exercising day-to-day care and control fulfilling the child's physical and psychological needs.

(xi) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work.

(xii) "Illness" includes a request from a medical professional, local health official, or the Secretary of Health to be isolated or quarantined as a consequence of an infection from a disease that is the subject of a public health emergency, even if you or your family member have not been actually diagnosed with the disease that is the subject of a public health emergency.

## WSR 23-22-094

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed October 30, 2023, 2:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-184.

Title of Rule and Other Identifying Information: Nursing home administrator retired active license fee. The department of health (department) is proposing to establish a retired active fee for the nursing home administrator license in WAC 246-843-990.

Hearing Location(s): On December 5, 2023, at 10:00 a.m., at Department of Health, Town Center 2, Room 166/167, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_BmYAxgEpRiyknKpwpBZIug](https://us02web.zoom.us/webinar/register/WN_BmYAxgEpRiyknKpwpBZIug). After registering, you will receive a confirmation email containing information about joining the webinar. The public hearing will be hybrid. Participants can attend in person at the physical location or virtually by registering on Zoom.

Date of Intended Adoption: December 12, 2023.

Submit Written Comments to: Kendra Pitzler, P.O. Box 47852, Olympia, WA 98504-4852, email <https://fortress.wa.gov/doh/policyreview/>, fax 360-236-2901, by December 5, 2023.

Assistance for Persons with Disabilities: Contact Kendra Pitzler, phone 360-236-4723, fax 360-236-2901, TTY 711, email [nha@doh.wa.gov](mailto:nha@doh.wa.gov), by November 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to establish a fee for the retired active status license. The retired active status license type has been proposed by the board of nursing home administrators (board) under WSR 23-20-116 filed on October 3, 2023. The board anticipates that some individuals who would otherwise drop their nursing home administrator license due to the high fee will choose to keep the retired active status at the reduced rate. This will allow these individuals to fill in for nursing homes that need a temporary license while recruiting a new administrator and to immediately assist in emergent circumstances such as a pandemic.

Reasons Supporting Proposal: RCW 18.130.250 allows the board to establish a retired active status license. RCW 43.70.250 requires the secretary of health to establish the amount of all application, license, and renewal fees, and any other fee associated with licensing or regulation of the profession.

Statutory Authority for Adoption: RCW 18.130.250 and 43.70.250.

Statute Being Implemented: RCW 43.70.250.

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

Name of Proponent: Department of health and the board of nursing home administrators, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kendra Pitzler, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4723.

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 is exempt from analysis according to RCW 34.05.328 (5)(b)(vi) because it is a rule that sets or adjusts fees pursuant to legislative 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 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.

Explanation of exemptions: The proposed rule establishes a fee for a retired active license.

Scope of exemption for rule proposal:

Is fully exempt.

October 30, 2023  
 Todd Mountin, PMP  
 Deputy Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

**OTS-5032.1**

AMENDATORY SECTION (Amending WSR 21-16-002, filed 7/22/21, effective 11/1/21)

**WAC 246-843-990 Nursing home administrator fees and renewal cycle.** ~~((1))~~ Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC.

~~((2) Between the effective date of this rule and October 31, 2022, the following fees will apply:~~

<b>Title of Fee</b>	<b>Fee</b>
<b>Application-Original license</b>	\$690.00
<b>Administrator-in-training</b>	285.00
<b>Application-Endorsement</b>	715.00
<b>License renewal</b>	
Renewal	835.00
Late renewal penalty	300.00
Expired license reissuance	285.00
<b>Inactive license</b>	
Inactive license renewal	315.00
Late renewal penalty	160.00
Expired inactive license reissuance	190.00
<b>Temporary permit</b>	325.00
<b>Duplicate license</b>	10.00
<b>Verification of license</b>	25.00

~~((3) On and after November 1, 2022, the following fees apply:))~~

<b>Title of Fee</b>	<b>Fee</b>
<b>Application-Original license</b>	\$805.00
<b>Administrator-in-training</b>	285.00
<b>Application-Endorsement</b>	805.00
<b>License renewal</b>	

<b>Title of Fee</b>	<b>Fee</b>
Renewal	975.00
Late renewal penalty	300.00
Expired license reissuance	285.00
<b>Inactive license</b>	
Inactive license renewal	315.00
Late renewal penalty	160.00
Expired inactive license reissuance	190.00
<b><u>Retired active license</u></b>	<b><u>150.00</u></b>
<b>Temporary permit</b>	<b>325.00</b>
<b>Duplicate license</b>	<b>10.00</b>
<b>Verification of license</b>	<b>25.00</b>

## WSR 23-22-105

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed October 31, 2023, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-19-087.

Title of Rule and Other Identifying Information: WAC 182-513-1110 Presumptive eligibility (PE)—Long-term services and supports (LTSS) in a home setting or in an alternate living facility (ALF) authorized by home and community services (HCS).

Hearing Location(s): On December 5, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_3tyz-700QNW4WTLeVvp-jA](https://us02web.zoom.us/webinar/register/WN_3tyz-700QNW4WTLeVvp-jA). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not earlier than December 6, 2023.

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 December 5, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by November 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-513-1110 to remove presumptive eligibility for LTSS in an ALF. This change is currently effective by emergency rule filed under WSR 23-19-050. HCA adopted WAC 182-513-1110 anticipating federal government approval from the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). Currently, CMS has approved presumptive eligibility for LTSS in the person's home, but discussions continue for ALFs. Because federal funding is not yet available, HCA is amending the rule to remove language related to LTSS in an ALF and hopes to restore that language through future rule making upon CMS approval.

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: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Paige Lewis, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-0757.

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(4).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose any costs on businesses.

Scope of exemption for rule proposal:  
Is fully exempt.

October 31, 2023  
Wendy Barcus  
Rules Coordinator

## OTS-4950.1

AMENDATORY SECTION (Amending WSR 23-14-101, filed 6/30/23, effective 9/1/23)

**WAC 182-513-1110 Presumptive eligibility (PE)—Long-term services and supports (LTSS) in a home setting (~~or in an alternate living facility (ALF)~~) authorized by home and community services (HCS).** (1)

A person may be determined presumptively eligible for long-term services and supports (LTSS) in their own home, as defined in WAC 388-106-0010 (~~, or in an alternate living facility, as defined in WAC 182-513-1100~~):

- (a) Upon completion of a screening interview; and
- (b) When authorized by home and community services (HCS).

(2) The screening interview described in subsection (3) of this section may be conducted by either:

- (a) A HCS case manager or social worker;
- (b) An area agency on aging (AAA) or their subcontractor; or
- (c) A state designated tribal entity.

(3) To be presumptively eligible (PE), the person must:

(a) Be determined to meet nursing facility level of care under WAC 388-106-0355 during the screening interview; and

(b) Attest to information that meets the:

(i) Income limits at or below the average monthly state nursing facility rate;

(ii) Resource limits defined under WAC 182-513-1350;

(iii) Social security requirement under WAC 182-503-0515;

(iv) Residency requirement under WAC 182-503-0520; and

(v) Aged, blind, or disabled requirement under WAC 182-512-0050.

(4) The agency or the agency's designee determines how much client responsibility must be paid to the provider for PE home and community-based services authorized by HCS when living at home (~~or in an alternate living facility~~) as outlined in WAC 182-513-1215, 182-515-1507, and 182-515-1509.

(5) The client or the client's representative must submit an on-line application through Washington connection or an HCA 18-005 application for aged, blind, disabled/long-term care coverage to HCS within 10 calendar days of PE determination.

(6) The PE period begins on the date the screening interview is completed and:

(a) Ends on the last day of the month following the month of the PE determination if an LTSS application is not completed and submitted within 10 calendar days of PE determination; or

(b) Ends the last day of the month that the final eligibility determination is made if a LTSS application is submitted under subsection (5) of this section within 10 calendar days of PE determination.

(7) For application processing times, refer to WAC 182-503-0060.

(8) If the applicant is determined not financially eligible for LTSS under WAC 182-513-1315, there is no overpayment for services received during the PE period; however, client responsibility applies as described in WAC 182-513-1215, 182-515-1507, and 182-515-1509.

(9) People who qualify for PE under this section receive categorically needy (CN) medical coverage under WAC 182-501-0060 through the PE period. CN medical coverage begins as described in WAC 182-503-0070(1).

(10) When PE services described in WAC 388-106-1810 and 388-106-1820 are approved or denied, the agency or the agency's designee sends written notice as described in WAC 182-518-0010.

(11) A person may receive services under a PE period only once within a consecutive 24-month period.

(12) The applicant does not have a right to an administrative hearing on PE decisions under chapter 182-526 WAC.

(13) Institutional resource and income standards are found at <https://www.hca.wa.gov/free-or-low-cost-health-care/i-help-others-apply-and-access-apple-health/program-standard-income-and-resources>.

(14) This section does not apply to medical assistance programs described in WAC 182-507-0125 or 182-508-0005.



## WSR 23-22-106

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed October 31, 2023, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-109.

Title of Rule and Other Identifying Information: WAC 182-558-0020 Definitions, 182-558-0030 Overview of eligibility, 182-558-0060 PPP for a client with a qualified employer-sponsored group health insurance plan, 182-558-0070 Program monitoring, and 182-558-0080 Administrative hearings.

Hearing Location(s): On December 5, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_3tyz-700QNW4WTLvvp-jA](https://us02web.zoom.us/webinar/register/WN_3tyz-700QNW4WTLvvp-jA). If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: December 6, 2023.

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 December 5, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email [Johanna.larson@hca.wa.gov](mailto:Johanna.larson@hca.wa.gov), by November 22, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is revising the premium payment program (PPP) rules to: (a) Update eligibility requirements for clients enrolled in individual health plans; and (b) clarify when and how HCA recovers overpayments from PPP clients.

The amended rules:

- Allow clients with individual health plans through the Washington health benefit exchange (HBE) to enroll in the PPP.
- Require clients enrolled in an individual health plan purchased through the Washington HBE who are eligible for the PPP to undergo an eligibility telephone consultation within 30 days of submitting a completed application.
- Limit PPP enrollment to clients with employer-sponsored insurance (ESI) or individual health plans purchased through the Washington HBE; clients purchasing individual health plans outside of the Washington HBE are not eligible for PPP.
- Update and clarify exceptions to the comprehensive health insurance requirement for clients enrolled in the PPP if the client meets certain criteria.
- Describe the documentation required for payment of a comprehensive health insurance premium that is more than the average cost per user and describe the approval process.
- Clarify actions HCA may take if a PPP client has been identified as being encouraged into PPP enrollment for the purpose of maximizing revenue.
- Clarify situations in which HCA may adjust the premium reimbursement if the client's premiums or medicaid eligibility have changed. HCA may also recover an overpayment for a retroactive disenrollment from a health plan.

- Remove language that would have grandfathered certain PPP clients.

Reasons Supporting Proposal: See purpose above.

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: Michaela Snook, P.O. Box 45518, Olympia, WA 98504-5518, 360-725-1486.

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.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

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 does not impose more-than-minor costs on small businesses.

October 31, 2023  
Wendy Barcus  
Rules Coordinator

### OTS-4701.3

AMENDATORY SECTION (Amending WSR 19-11-129, filed 5/22/19, effective 6/22/19)

**WAC 182-558-0020 Definitions.** The following definitions, and those definitions found in chapter 182-500 WAC, apply to this chapter.

**"Average cost per user"** means the average medicaid expenditure for a person of the same age, sex, and eligibility type as the applicant, per fiscal year, as calculated by the agency.

**"Comprehensive"** means coverage comparable to the services offered under the agency's medicaid state plan that provides at least the following: Physician-related services, inpatient hospital services, outpatient hospital services, prescription drugs, immunizations, and laboratory and X-ray costs.

**"Cost-effective"** means it would cost less for the agency to pay premium assistance than not to pay premium assistance. The agency determines cost-effectiveness by comparing the anticipated cost of premiums, cost-sharing, and administrative costs to:

(a) The average cost per user; or

(b) The medicaid expenditures to be incurred if the client does not receive the premium assistance, based on the client's documented medical condition.

**"Employer-sponsored group health insurance"** means a comprehensive group health plan provided through an employer or other entity, for which the employer or entity pays some portion of the cost. Group health plans must cover all applicants whose employment qualifies them for coverage and cannot increase the cost for an applicant with a pre-existing condition.

**"Flexible health spending arrangement"** means the portion of an employee's wages set aside in an account to pay for qualified expenses such as medical or child care costs.

**"Health savings account"** means a medical savings account available to employees enrolled in a high-deductible health insurance plan.

**"High-deductible health insurance plan"** means coverage that meets the definition in Section 223 (c) (2) of the Internal Revenue Code.

**"Individual health insurance plan"** means any plan sold on the individual market, as defined by RCW 48.43.005.

**"Overpayment"** has the same definition for purposes of this chapter as that term is defined in RCW 41.05A.010.

**"Premium tax credit"** has the same definition for purposes of this chapter as defined in 26 C.F.R. 1.36B-1 through 1.36B-5.

**"Qualified employer-sponsored group health insurance"** means a comprehensive group health plan provided through an employer that is offered in a nondiscriminatory manner under 26 U.S.C. Sec. 105(h) (3), and for which the employer subsidizes at least forty percent of the cost of the premium.

AMENDATORY SECTION (Amending WSR 19-11-129, filed 5/22/19, effective 6/22/19)

**WAC 182-558-0030 Overview of eligibility.** (1) **Eligibility.** To be eligible for the premium payment program (PPP):

(a) A member of the client's medical assistance unit, as described in chapter 182-506 WAC, must be receiving benefits under the medicaid agency's:

- (i) Alternative benefits plan coverage;
- (ii) Categorically needy coverage; or
- (iii) Medically needy coverage.

(b) The client must provide the medicaid agency with proof of:

- (i) Enrollment in a comprehensive individual or comprehensive employer-sponsored health insurance plan;
- (ii) A Social Security Number or tax identification number for the policy holder; and
- (iii) Premium expenditures.

(c) A client enrolled in a qualified individual health insurance plan purchased through the Washington health benefit exchange must complete an eligibility telephone consultation with the medicaid agency within 30 calendar days of submitting a completed application.

(i) The telephone consultation must occur between the agency and the client, or the client's legal representative, or both.

(A) Within seven business days of receipt of the client's completed application, the agency attempts to schedule the consultation with the client by telephone. If the client is not reached within two business days from the first attempt, the agency attempts to reach the client in the manner in which the application was received (i.e., mail or email).

(B) The client must schedule their telephone consultation by responding to the agency by telephone or email within 10 business days of the agency's outreach.

(C) Upon completion of the telephone consultation, premium payment enrollment begins as outlined in subsection (7) of this section.

(ii) The agency may deny the client's application if the client fails to timely complete their telephone consultation.

(d) If the agency suspects that a client has been encouraged by any entity into enrollment in the premium payment program for the purpose of maximizing the revenue of a provider or a health plan, the agency immediately informs the client of their right to disenroll from the program. The agency may take other legal actions, as appropriate, which could result in the exclusion of a provider from the medicaid program under chapter 182-502 WAC.

(2) **Comprehensive health insurance plans.** A comprehensive health insurance plan includes:

(a) An individual health insurance plan purchased from the Washington health benefit exchange, also known as a qualified health plan (QHP);

(b) An employer-sponsored group health insurance plan; or

(c) A qualified employer-sponsored group health insurance plan.

(3) **Comprehensive health insurance plan exclusions.** A comprehensive health insurance plan does not include:

(a) A health savings account ((~~or~~)), flexible health spending arrangement, or other surcharge deductions (i.e., tobacco and spousal deductions);

(b) A high-deductible plan;

(c) A high-risk plan, including a Washington state health insurance pool (WSHIP) plan;

(d) A ((limited or supplemental plan, including a medicare supplemental plan)) medicare advantage or supplemental plan, including medicare Part C;

(e) ((A medicare advantage plan (medicare Part C));

(f) A qualified health plan (QHP)) A QHP purchased through the Washington health benefit exchange with a premium tax credit; ((~~or~~

(g)) (f) A plan that is the legal obligation of a noncustodial parent, or any other liable party under RCW 74.09.185; or

(g) Any individual health insurance plan that was not purchased through the Washington health benefit exchange.

(4) **Exceptions to comprehensive health insurance plan requirement:**

(a) The agency allows an exception to the comprehensive health insurance requirement for clients enrolled in the PPP based on a plan as described in subsection (3) ((~~(e)~~)) (d) ((~~7~~)) and (e) of this section when the client:

(i) Has been enrolled in the same plan continuously since January 1, 2012;

(ii) Was approved for and continuously enrolled in the PPP since January 1, 2012; and

(iii) Remained eligible for a medicaid program identified in subsection (1)(a) of this section continuously since January 1, 2012.

(b) If a client's medicaid eligibility for a program identified in subsection (1)(a) of this section or their enrollment in their health plan changes or terminates, the exception to the comprehensive health insurance requirement terminates.

(5) **Cost-effective comprehensive health insurance plan.** A comprehensive health insurance plan must be cost-effective as defined in WAC 182-558-0020.

(6) **Comprehensive health insurance premium above average cost.**

~~(a) If the agency determines that a client's comprehensive health insurance premium is more than the average cost per user, the client must provide the agency proof from the client's provider(s):~~

~~(a) Of an existing medical condition that requires or will be requiring extensive medical care; and~~

~~(b) That the cost of the medicaid expenditures would be greater if the agency does not pay premium assistance.)~~ agency pays a greater amount for a medicaid client on the health insurance plan if the following criteria are met:

(i) The client must provide the following completed information to the agency:

(A) A written request that the agency pay a greater amount than the average cost per user for a medicaid client on the health insurance plan.

(I) The client must currently have a medical condition or conditions requiring ongoing medical care.

(II) The request must include the cost of the premium for each member on the comprehensive health insurance.

(B) Written documentation from the client's provider of a medical condition or conditions that require ongoing medical care. (For example, a client's providers could submit treatment plans, medication or durable medical equipment lists, or other documentation.)

(ii) The agency reviews the submitted documentation and determines that the cost of the greater premium is less than the cost of covering the client under medicaid.

(A) The agency's clinical staff reviews the written documentation from the client's providers to determine if the client has a medical condition or conditions requiring ongoing medical care.

(B) The agency notifies the client within 60 days of the initial request if additional documentation is required.

(b) The agency notifies the client in writing of the approval or denial of the client's request within 90 calendar days from the date the agency received:

(i) All requested information from the client; or

(ii) The client's written request.

(c) The agency may deny the request if the client fails to submit all requested information in (a) (i) of this subsection within 90 calendar days of the client's request or fails to participate in consultation as required in subsection (1) (c) of this section.

(d) The agency determines the updated premium amount based on the client's portion of the total premium using the information submitted by the client under (a) (i) of this subsection.

(e) If approved, the effective date of the increased premium amount is the date the client submitted the written request to the agency.

(7) **Premium limit.** The agency pays no more than one premium per client, per month. PPP enrollment begins no sooner than the date on which:

(a) A client is approved for a medicaid program identified in subsection (1) (a) of this section;

(b) The agency receives and accepts the completed Application for HCA Premium Payment Program (HCA 13-705) form; ((and))

(c) A client's apple health managed care enrollment, if applicable, ends; and

(d) A client completes the telephone eligibility phone consultation, if applicable under subsection (1)(c) of this section.

(8) **Integrated managed care exemption.** A client enrolled in the PPP is exempt from ~~((mandatory))~~ integrated managed care under chapter 182-538 ~~((and 182-538A))~~ WAC.

(9) **Premium assistance subsidy.** The agency's premium assistance subsidy may not exceed the minimum amount required to maintain comprehensive health insurance for the medicaid-eligible client.

(10) **Proof of premium expenditures.** Proof of premium expenditures must be submitted to the agency by the client or the client's representative no later than the end of the third month following the last month of coverage.

(11) **Cost-sharing benefit limitations.** The agency's cost-sharing benefit for copays, coinsurance, and deductibles is limited to services covered under the medicaid state plan.

(12) **Proof of cost-sharing required.** Proof of cost-sharing must be submitted to the agency no later than the end of the sixth month following the date of service.

(13) **Client eligibility review.**

(a) The agency ~~((may))~~ reviews a client's eligibility annually for the PPP ~~((at any time including, but not limited to,))~~ or when the client's:

~~((a))~~ (i) Health insurance plan has an annual open enrollment;

~~((b))~~ (ii) Medicaid eligibility for a program identified in subsection (1)(a) of this section changes or ends;

~~((c))~~ (iii) Medical assistance unit changes;

~~((d))~~ (iv) Premium changes; or

~~((e))~~ (v) Private health insurance coverage changes or ends.

(b) If the agency finds that the client's premiums or medicaid eligibility have changed, the agency may adjust the premium reimbursement or terminate eligibility for the PPP. The agency notifies the client of any changes in PPP eligibility under this subsection.

AMENDATORY SECTION (Amending WSR 19-11-129, filed 5/22/19, effective 6/22/19)

**WAC 182-558-0060 PPP for a client with a qualified employer-sponsored group health insurance plan.** (1) **General rule.** Under section 1906A of the Social Security Act, the agency pays an eligible person's premium assistance subsidy and other cost-sharing obligations when the agency determines it is cost-effective as defined in WAC 182-558-0020.

(2) **Eligible persons.** An eligible person is:

(a) A client under age nineteen who is:

(i) Covered under a qualified employer-sponsored group health insurance plan as defined in WAC 182-558-0020;

(ii) Receiving benefits under:

(A) Alternative benefits plan coverage;

(B) Categorically needy coverage; or

(C) Medically needy coverage.

(b) The parent of the client in (a) of this subsection, if:

(i) Enrollment in the health plan depends on a parent's enrollment; and

(ii) The client is a dependent of the parents.

(3) **Cost-sharing benefit.** The premium payment (~~(plan)~~) program (PPP) may provide cost-sharing reimbursement to nonmedicaid-eligible parents for medicaid-covered services under this section.

AMENDATORY SECTION (Amending WSR 17-03-014, filed 1/5/17, effective 3/1/17)

**WAC 182-558-0070 Program monitoring.** (1) The agency monitors payments under the premium payment program.

(2) Under (~~chapter 41.05A~~) RCW 41.05A.110, the agency may recover any over-payment of a premium assistance subsidy or cost-sharing amount (~~(, whether due to an)~~). Events that may cause an overpayment for purposes of this section include agency administrative error, (~~(or)~~) client error (~~(or)~~), misrepresentation, or retroactive disenrollment from a health plan.

AMENDATORY SECTION (Amending WSR 17-03-014, filed 1/5/17, effective 3/1/17)

**WAC 182-558-0080 Administrative hearings.** A client may request an administrative hearing under (~~(RCW 41.05A.110, 74.09.741, and)~~) chapter 182-526 WAC if the client does not agree with an agency decision regarding eligibility for the premium payment program, the amount of a premium assistance subsidy, or an overpayment of a premium assistance subsidy.

**WSR 23-22-109**

**WITHDRAWAL OF PROPOSED RULES**

**DEPARTMENT OF HEALTH**

[Filed October 31, 2023, 11:22 a.m.]

This memo serves as notice that the department of health (department) is withdrawing the CR-102 for criteria for trauma designation (WAC 246-976-580), which was filed on May 24, 2023, and published under WSR 23-11-166.

The department is withdrawing this CR-102 because the comments received from interested parties during the public comment process indicated substantial opposition to the rule as proposed. As a result, the department will continue to use its existing authority and rules to determine the need for new trauma centers and the optimal distribution of trauma services to ensure equitable access to trauma care.

Individuals requiring information on this rule should contact Anthony Partridge, program manager, at [anthony.partridge@doh.wa.gov](mailto:anthony.partridge@doh.wa.gov).

Tami M. Thompson  
Regulatory Affairs Manager



**WSR 23-22-118**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 2020-08—Filed October 31, 2023, 3:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-07-022 on March 12, 2019.

Title of Rule and Other Identifying Information: WAC 220-450-230 Beaver relocation permits—Requirements and restrictions.

Hearing Location(s): On December 15-16, 2023, at 8:00 a.m., at the Natural Resources Building (NRB), 1111 Washington Street S.E., Room 175, Olympia, WA 98504. Information on how to register to testify at the public hearing is available at <http://wdfw.wa.gov/about/commission.meetings>, or contact the commission office at 360-902-2267.

Date of Intended Adoption: On or after January 26-27, 2024.

Submit Written Comments to: Wildlife Program, P.O. Box 43200, Olympia, WA 98504, email [beaver@publicinput.com](mailto:beaver@publicinput.com), fax 360-902-2162, <http://publicinput.com/beaver>, comment by phone 855-925-2801, project code 2514, SEPA email [beaver\\_SEPA@publicinput.com](mailto:beaver_SEPA@publicinput.com), by December 18, 2023.

Assistance for Persons with Disabilities: Contact Title VI/ADA compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov), <http://wdfw.wa.gov/accessibility/requests-accommodation>, by December 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington department of fish and wildlife proposes to create a new section in chapter 220-450 WAC, Wildlife in captivity and wildlife rehabilitation. The agency's purpose for this rule, if adopted, is to create a permit program allowing citizens to offer relocation as an alternative to lethal removal of conflict beaver. This section will:

- Specify the requirements for permittees and subpermittees, including qualifications, training, husbandry facilities, and reporting.
- Identify which beavers are candidates for relocation, which must be conflict-causing and have exhausted all methods of coexistence.
- Specify the requirements for release sites, which must be assessed for a combination of abiotic and biotic factors to determine the suitability of the site in addition to the factors listed in RCW 77.32.585 and with the agreement of the landowner.
- Specify the conditions during temporary captivity, including duration, avoiding disease transmission, preventing habituation and imprinting, and outline the steps to take when a beaver shows illness, injury, or mortality.
- Identify the conditions under which a permit may be revoked, modified, or suspended and the steps taken by the permittee, subpermittee, and the agency.

RCW 77.32.585 is a significant legislative rule permitting the agency to release wild beavers. This section will create the permitting program to oversee the citizens performing these relocations.

Reasons Supporting Proposal: This new section will build from the existing beaver relocation permit pilot program to a permanent program permitting the program to have enforceable rules. RCW 77.32.585 re-

quired that the department permit the release of wild beavers under certain conditions and introduced guidelines for allowing relocation. The proposed rule incorporates aspects of the pilot program to establish, if finalized as proposed, a permitting process for overseeing and regulating beaver relocation through enforceable rules.

Citizens relocating wildlife is an unlawful practice, but this section will allow the permit program which trains and supports permittees to continue. The proposed rule would establish conditions and requirements related to the beaver relocation permits, as well as processes for administering the program. This section will also outline the requirements for beaver release sites to encourage release site fidelity and prevent future conflict events with the beaver in question. The new rule will also identify penalties for not following the department's requirements on relocating beaver.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, 77.15.005, 77.15.075, and 77.32.585.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.047, 77.15.005, 77.15.075, and 77.32.585.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Gardner, 1111 Washington Street S.E., Olympia, WA 98501, 360-902-2515; Enforcement: 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 not required under RCW 34.05.328. This proposal does not require a cost-benefit analysis under RCW 34.05.328 (5) [(a)] (i).

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

Is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

Scope of exemption for rule proposal:

Is fully exempt.

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. [No information supplied by agency.]

October 31, 2023  
Scott Bird  
Rules Coordinator

**OTS-5028.1**

NEW SECTION

**WAC 220-450-230 Beaver relocation permits—Requirements and restrictions.**

**Purpose**

(1) Wildlife is property of the state, and as such it is unlawful to keep wildlife captive, feed wildlife, or relocate wildlife without expressed permission from the Washington department of fish and wildlife. The purpose of the beaver relocation permit is to grant the permission for citizens to perform relocation of wild American beaver (*Castor canadensis*) while establishing criteria to:

(a) Reduce lethal removal of beaver by allowing permittees to relocate conflict beaver;

(b) Ensure humane care and treatment is provided to beaver during the process of trapping, temporary captivity, and relocation; and

(c) Select release sites which maximize relocation success by providing suitable habitat for beaver with minimal likelihood for future human-beaver conflict as described in RCW 77.32.585.

**Definitions**

(2) For the purpose of this section, the following terms apply:

(a) "Beaver husbandry facility" means the authorized site(s), as shown on the beaver relocation permit, for the temporary holding of beaver involved in relocation.

(b) "Beaver relocation permit" means a permit issued by WDFW to allow the relocation of beaver.

(c) "Euthanasia" means compassionate killing with minimal pain and distress, in a timely manner, and safely to prevent disease transmission, public health or human safety risks, or prolonged or unremitting animal suffering due to illness, injury, or unremitting pain as outlined in WAC 220-450-180.

(d) "Habitat suitability" means a combination of abiotic and biotic factors used to assess the likelihood of beavers occupying and thriving in a site.

(e) "Humane care" means providing care such as water, food, safe handling, clean facilities, medical treatment, and euthanasia if needed, and conditions including environments sensitive to species-typical biology and behavior, with the intent to minimize fear, pain, stress, and suffering.

(f) "Permittee" means the person listed on the beaver relocation permit who applies for and receives a beaver relocation permit and is responsible for monitoring and approving the relocation activities conducted under the permit.

(g) "Release site" means a location in a stream where beavers will be relocated to. The site is assessed by a permittee using the criteria and methods discussed in the required training, is not in proximity of ungulate grazing territory, is not in proximity to buildings or infrastructure which may impart damage from beaver activity, does not currently show beaver occupation, and is analyzed for the factors listed in RCW 77.32.585.

(h) "Subpermittee" means a person listed on the permittee's beaver relocation permit who may assist the permittee with specified aspects of beaver relocation activities limited by the criteria in this section.

**Application requirements and general criteria**

(3) Applicants must meet all the following criteria to be issued a beaver relocation permit:

(a) Must be at least 18 years of age;

(b) Must not have within the last three years:

(i) More than one finding of "paid" or "committed," as final disposition, for an infraction under chapter 77.15 RCW; or

(ii) A conviction for a fish and wildlife crime under chapter 77.15 RCW.

(c) Must complete and submit a beaver relocation application on-line to the department's beaver relocation manager any time after March 1st for a permit of the same year.

(d) Must operate or have access to a beaver husbandry facility that meets minimum requirements outlined in the Beaver Relocation Handbook.

(e) Must submit a beaver relocation plan that describes the intent of relocations, area of work, and methods for identifying source beaver, capture, handling, transport, release site selection, release, and monitoring following release site factors listed in RCW 77.32.585.

(f) Must submit a statement of qualifications and relevant experience.

(g) Must demonstrate willingness and ability to comply with all requirements of the permit.

(h) Must complete a comprehensive training on beaver relocation in Washington as identified by the department within the past three years.

(4) The department may refuse a permit if the applicant submits an incomplete application or does not meet any of the requirements in this section.

(5) Permits will be valid within the dates listed on the permit and no more than one year after the application is approved.

(6) The permittee and subpermittees must provide all beavers with humane care during capture, transport, holding, and release.

(7) The permit does not authorize the permittee or any subpermittees to practice veterinary medicine.

(8) Permittees and subpermittees are responsible for abiding by all permit terms and conditions, reporting and record requirements, and compliance with state and federal regulations when conducting beaver relocation or actions associated with beaver relocation.

(9) Beaver acquired and held by a permittee, including deceased animals and parts, remain the property of the state and will not be offered for sale, sold, traded, or bartered.

(10) Beaver acquired and held by a permittee for the purposes of relocation must not be exported out of state or imported into Washington. A violation of this section is punishable under RCW 77.15.290 Unlawful transportation of fish or wildlife—Penalty.

(11) The permittee and any subpermittees must carry a digital or paper copy of the current year's beaver relocation permit while trapping, transporting, releasing, or holding beaver.

(12) Only beaver which cause human-wildlife conflict including, but not limited to, damage to private or public property or infrastructure, may be relocated. The human-wildlife conflict must be verified by the permittee. Mitigation of such conflict must be discussed with the landowner before trapping for relocation.

(13) Additional staff or volunteers may assist in the capture, transport, and relocation of beaver but only with the direct in-person supervision of the permittee.

(14) An annual report using the department's designated report form is required by the date listed on the permit so that information can be included on the department's website per RCW 77.36.160.

(15) Permittees assume all responsibility for the action of subpermittees listed on their annual permit. Subpermittees must be supervised by permittees and the permittee may assign subpermittee duties

under their current year's permit for the following activities: Transport of beaver to or from the husbandry facility, feeding of beaver while in captivity, observation of beaver while in captivity, intake or prerelease measurements of beaver, and/or completion and submission of required reports.

(16) Proposed subpermittees must meet the requirements of subsection (3)(a), (b), and (f) of this section.

(17) The following subpermittees are authorized to also conduct the following activities under a valid, current year's permit depending on their current, valid certifications and licenses:

(a) A wildlife control operator (WCO) listed as a subpermittee may capture and transport beaver to an approved beaver husbandry facility or to a release site unsupervised. They may only trap beaver within the regulations of their WCO certification and may charge a fee for capturing beaver pursuant to WAC 220-440-110. Wildlife control officers listed as subpermittees cannot release beaver or select release sites without the permittee being present.

(b) A WDFW trapping license holder listed as a subpermittee may capture and transport beaver to an approved beaver husbandry facility or to a release site unsupervised. WDFW trapping license holders cannot release beaver or select release sites without the permittee being present. Participation as subpermittee does not authorize licensed trappers to harvest beaver outside of the trapping license season.

(18) Permittees or subpermittees listed on a beaver relocation permit may not trap commercially or recreationally for beaver within two miles in any direction from any site where beaver were released under a permit for two years after the release date.

(19) The permittee is responsible for performing the habitat suitability assessment per the WDFW-approved site assessment form, selecting the site for release, and ensuring that post-release monitoring is conducted by appropriately trained personnel. A subpermittee may not select sites for beaver release or release beaver without supervision by the permittee.

#### **Beaver capture**

(20) Captured beaver must be checked for lactation at the trap site. Any lactating beaver should be brought to the beaver husbandry facility while an attempt is made to capture the kits so the family group may be relocated together. If a captured beaver is lactating, it must be noted in the annual report.

(21) The permit does not authorize the use of body-gripping traps (as defined in RCW 77.15.192). A special trapping permit is required for the use of body-gripping traps (WAC 220-417-040).

#### **Beaver housing and caretaking - Generally applicable provisions**

(22) A permittee must operate or have access to at least one beaver husbandry facility that meets the minimum requirements outlined in the permit. This facility is subject to inspection by WDFW staff each permit year.

(23) The permittee and subpermittees may not house beaver at a site different than the facility(ies) indicated on their permit except in an emergency situation requiring veterinary care. Documentation of such events must be submitted to WDFW within seven days of the advent of the emergency.

(24) The normal interval for holding beaver captive before release will be less than 14 days, but permittees may hold beaver for longer if they notify the WDFW program coordinator by the 14-day mark and receive approval from the department's beaver relocation manager (or their designee).

(25) A permittee must keep beaver which are the same sex and from different family groups separate to prevent beaver-beaver conflict.

(26) The permittee will ensure that beaver held at a beaver husbandry facility prior to relocation shall have minimal contact with humans and domestic animals to prevent habituation and/or disease transmission. Domestic animals should not be allowed at the husbandry facility. If this is unavoidable, domestic animals should be fully vaccinated and should have no direct contact with, nor direct exposure to, wildlife.

(27) The permittee will ensure that beaver housed in a beaver husbandry facility are observed daily for disease or injury and will maintain a daily log of observations. This log will be submitted to WDFW with the annual report. If disease or injury of a captive beaver is suspected, the permittee must contact a WDFW wildlife veterinarian. No beaver may be relocated that appears sick or injured without approval from a WDFW wildlife veterinarian.

(28) In cases where a captive beaver is suffering and humane euthanasia is necessary, but the permittee is unable to reach a WDFW wildlife veterinarian, the permittee may contact a local veterinarian to perform humane euthanasia. Euthanasia must be provided in accordance with an animal's welfare, using humane techniques and at a reasonable time after admission to prevent unnecessary suffering of the animal. Permittees must follow the most current American Veterinary Medical Association Guidelines on Euthanasia.

(29) The permittee must report any beaver illness or death within 24 hours to a WDFW wildlife veterinarian and the WDFW permit program coordinator and abide by the following criteria:

(a) Any beaver which has expired from or is suspected of expiring from the zoonotic diseases such as tularemia, leptospirosis, yersiniosis, or giardia must be submitted for necropsy per a WDFW wildlife veterinarian's instructions.

(b) In the case of a beaver expiring from any cause besides disease, the permittee is encouraged to donate the carcass to a permitted museum, research institution, or tribal organization; a WDFW transfer authorization must accompany any transfer of a beaver carcass unless the institution is permitted to receive specimens. Otherwise, the permittee or subpermittee will dispose of deceased beaver through lawful burial, incineration, or a licensed rendering facility (WAC 220-440-090).

(30) The permit authorizes the use of commonly used ear tags and passive integrated transponder (PIT) tags. Nonpermanent, superficial marks such as nontoxic paint or tape may be used as appropriate for distinguishing individuals in temporary captivity. The permit does not authorize the application of other devices (such as VHF transmitters).

#### **Beaver release**

(31) Permittee is responsible for selecting the release site and is required to select sites which meet the following criteria:

(a) Show no current sign of beaver occupancy within 2,000 feet both up and downstream of the site;

(b) Show no culverts, buildings, or infrastructure which may be impacted by flooding or beaver structures within 2,000 feet both up and downstream of the site;

(c) Does not show sign of heavy livestock or native ungulate presence within 2,000 feet both up and downstream of the site;

(d) Have been assessed for habitat suitability criteria listed in RCW 77.32.585; and

(e) Does not violate movement of beavers across the division of Eastern and Western Washington as defined in WAC 220-450-150.

(32) The permit does not authorize trespass or the relocation of beaver to any site without the express permission of the property owner, land manager, or their designee.

(33) The permittee must conduct a site evaluation of the property to receive beaver(s) and assess habitat suitability following WDFW protocols prior to capture, handling, and holding of beaver. The permittee or subpermittee may not capture beaver before securing a release site for that animal.

(34) The permittee must receive a signed Landowner Attestation Form from the release site landowner, land manager, or their designee before any beaver may be captured for release on the property which includes an agreement to gain approval from neighboring property owners within one mile downstream of the release site. The permittee must submit a copy of each signed Landowner Attestation Form to WDFW as part of their annual report. A formal agreement with a government or tribal land management agency is acceptable in lieu of a Landowner Attestation Form for releases on public or tribal land.

(35) Permittees and subpermittees may not be held liable for property damage caused by beaver released using a beaver relocation permit per RCW 77.32.585.

(36) A violation of this section by a person who engages in wildlife relocation without a department permit is punishable under RCW 77.15.190, 77.15.430, or other applicable sections of the RCW and WAC, depending on the circumstances of the violation.

(37) A violation of this section by a person who has a beaver relocation permit is punishable under RCW 77.15.750(1).

**Permit modification, suspension, or revocation**

(38) The department may modify, suspend, or revoke a beaver relocation permit if the primary permittee or a subpermittee violates any department rule related to beaver relocation, wildlife possession, wildlife rehabilitation, wildlife trafficking, or permit conditions. Violations include, but are not limited to, mal-imprinting, which is the over-habituation to where animals lose fear of humans and predators, or taming wildlife in relation to humans or domestic animals at the beaver relocation facility. In addition, the department may modify, suspend, or revoke a beaver relocation permit if a permittee or a subpermittee, within the last 10 years, was convicted of any offense involving animal or child cruelty, neglect, abuse, or found guilty practicing veterinary medicine without an active license as determined by the veterinary board of governors.

(39) A primary permittee who is in violation of permit conditions or department beaver relocation rules, or whose subpermittee is in violation of permit conditions or department beaver relocation rules shall, in this order:

(a) Receive written warning(s) outlining remedies and a deadline of not less than seven days to come into compliance after which time the department may impose permit modification to remedy those violations such as restriction of permitted counties or increased frequency of beaver husbandry facility inspections.

(b) If the permittee is noncompliant after 14 days, the permit will be suspended. A permit will only be reinstated again if the permittee successfully implements a corrective action plan within the compliance deadline.

(c) A primary permittee will have the permit revoked if written warnings, permit modifications, compliance plan remedies, and permit

suspension processes with concurrent inspections do not result in permittee compliance. Nothing in this section prevents the department from acting immediately to remove animals or suspend or revoke beaver relocation permits in case of documented animal cruelty or adverse animal welfare.

(40) The department's revocation, modification, or suspension of a beaver relocation permit under this section does not preclude the department from referring a matter for potential criminal prosecution against the primary permittee, subpermittee, or both.

(41) Permittees whose beaver relocation permit is revoked may re-apply for a new permit three years after the date of revocation. Upon application, the department will consider previous beaver relocation permit performance and the nature of the previous noncompliance or violations when determining whether to issue a new permit. The department will deny an application if the basis for revocation has not been or is not likely to be resolved.

(42) Any permittee whose beaver relocation permit is revoked, modified, or suspended under this section may request an administrative hearing to appeal the department's action. The department will administer such appeals in accordance with chapter 34.05 RCW.



## WSR 23-22-124

## PROPOSED RULES

## DEPARTMENT OF AGRICULTURE

[Filed November 1, 2023, 7:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-20-098.

Title of Rule and Other Identifying Information: Chapter 16-157 WAC, Organic food standards and certification.

Hearing Location(s): On December 12, 2023, at 9:00 a.m., via Microsoft Teams meeting. Join on your computer, mobile app, or room device with the following link [https://teams.microsoft.com/l/meetup-join/19%3ameeting\\_MjkkxNWZjNWMtNzJiNy00ZDk5LTk1MzAtMWIzNTlhOTkzMVj%40thread.v2/0?](https://teams.microsoft.com/l/meetup-join/19%3ameeting_MjkkxNWZjNWMtNzJiNy00ZDk5LTk1MzAtMWIzNTlhOTkzMVj%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d)

Meeting ID 282 304 706 472, Passcode 0tEKs9; or call in (audio only) +1 564-999-2000, Phone Conference ID 833 267 921.

Date of Intended Adoption: December 19, 2023.

Submit Written Comments to: Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email [wsdarulescomments@agr.wa.gov](mailto:wsdarulescomments@agr.wa.gov), fax 360-902-2092, by December 12, 2023.

Assistance for Persons with Disabilities: Contact Leah Doyle, phone 360-902-2070, fax 360-902-2087, TTY 800-833-6388, email [ldoyle@agr.wa.gov](mailto:ldoyle@agr.wa.gov), by December 5, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to increase the following fees throughout WAC 16-157-251 to ensure that the full cost of operating the program is recovered. The fee increases are as follows: New applicant fee - increased from \$375 to \$500; Renewal fees - increased 38 percent on average for all income ranges; Minimum renewal fee - increased from \$412.50 to \$570; Inspection fees for crop producers increased from \$375 to \$500; Inspection fees for livestock producers increased from \$250 to \$500; Inspection fees for wild crop producers increased from \$100 to \$200; and Inspection fees for handlers, processors, or retailers increased from \$500 to \$750.

Additionally, this proposal removes the new product application fee. The new product fee was intended to recover the additional costs of reviewing a new product. In practice, this fee disproportionately affected specific business types that had multiple types or variations of products with very small differences. While it had a significant impact on businesses, the total revenue it generated for the program was minimal. These costs will instead be covered by the increase in renewal fees.

Reasons Supporting Proposal: The Washington state department of agriculture (WSDA) organic program is the seventh largest certification agency in the United States, serving over 1,100 certified organic operations and over 300 businesses manufacturing or distributing input materials for use in organic production. The program is funded solely by certification and registration fees.

The current fee structure was revised in 2018 with a goal of simplifying the fee schedule by consolidating renewal fees, which were previously split by scope, and replacing the new application, which required an estimate and reevaluation, with a flat fee. Additionally, the revised fee structure included an annual inspection fee, which is a flat fee not based on the scale of the operation, to promote consis-

tency. The restructure succeeded in simplifying how fees are assessed and consolidating fees into a streamlined system. However, overall program operating costs have also continued to increase more rapidly than expected since the revised certification fee schedule was implemented. Over the last five years, state salaries and benefit expenses for the organic positions have risen along with increases in overall operating expenses. An increase in the fees charged is needed to fill necessary vacancies and ensure the local fund balance can meet the requirements for a six-month reserve.

In addition, USDA organic regulations are being updated in the most significant new rule making in 20 years. Regulatory changes in response to growing and evolving markets will require increased technical assistance and resources to support the organic industry in Washington state. New regulations will also include added accreditation requirements for WSDA, resulting in added operating costs to meet expectations around oversight and enforcement of the federal organic standards.

RCW 15.86.070 requires the fee schedule adopted in rule to provide for the recovery of the full cost of the program. In other words, these fees must be adequate to ensure resources are in place to continue certification services in line with current operating costs and the updated federal requirements. For these reasons, the WSDA organic program is proposing increases to multiple fees throughout WAC 16-157-251 to ensure the continuation of quality services to all Washington businesses who want to produce, handle, and market organic products, domestically and abroad.

Statutory Authority for Adoption: RCW 15.86.065, 15.86.070.

Statute Being Implemented: Chapter 15.86 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brenda Book, 1111 Washington Street S.E., Olympia, WA, 360-902-2090.

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. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does impose more-than-minor costs on businesses.

### **Small Business Economic Impact Statement**

**SECTION 1: Describe 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 WSDA organic program is the seventh largest certification agency in the United States, serving over 1,100 certified organic operations and over 300 businesses manufacturing or distributing input materials for use in organic production. The program is funded solely by certification and registration fees.

The current fee structure was revised in 2018 with a goal of simplifying the fee schedule by consolidating renewal fees, which were

previously split by scope, and replacing the new application, which required an estimate and reevaluation, with a flat fee. Additionally, the revised fee structure included an annual inspection fee, which is a flat fee not based on the scale of the operation, to promote consistency. The restructure succeeded in simplifying how fees are assessed and consolidating fees into a streamlined system.

However, overall program operating costs have also continued to increase since the revised certification fee schedule was implemented. Over the last five years, state salaries and benefit expenses for the organic positions have risen along with increases in overall operating expenses. An increase in the fees charged is needed to fill necessary vacancies and ensure the local fund balance can meet the requirements for a six-month reserve.

In addition, USDA organic regulations are being updated in the most significant new rule making in 20 years. Regulatory changes in response to growing and evolving markets will require increased technical assistance and resources to support the organic industry in Washington state. New regulations will also include added accreditation requirements for WSDA, resulting in added operating costs to meet expectations around oversight and enforcement of the federal organic standards.

RCW 15.86.070 requires the fee schedule adopted in rule to provide for the recovery of the full cost of the program. In other words, these fees must be adequate to ensure resources are in place to continue certification services in line with current operating costs and the updated federal requirements. For these reasons, the WSDA organic program is proposing increases to multiple fees throughout WAC 16-157-251 to ensure the continuation of quality services to all Washington businesses who want to produce, handle, and market organic products, domestically and abroad.

Additionally, this proposal removes the new product application fee. The new product fee was intended to recover the additional costs of reviewing a new product. In practice, this fee disproportionately affected specific business types that had multiple types or variations of products with very small differences. While it had a significant impact on businesses, the total revenue it generated for the program was minimal. These costs will instead be covered by the increase in renewal fees.

In order to comply with the proposed rule, businesses will pay higher fees for certification services; however, no professional services will be required by these businesses.

**SECTION 2: Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.**

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Minor Cost Threshold = 1% of Average Annual Payroll±	Minor Cost Threshold = 0.3% of Average Annual Revenue*
1111	Oilseed and Grain Farming	\$649.81	\$1,166.56
1112	Vegetable and Melon Farming	\$4,439.00	\$10,116.53
1113	Fruit and Tree Nut Farming	\$5,736.58	\$3,026.00
1119	Other Crop Farming	\$5,733.68	\$3,555.04
1121	Cattle Ranching and Farming	\$4,003.44	\$4,242.34
1122	Hog and Pig Farming	Data not available	\$232.59
1123	Poultry and Egg Production	\$5,319.63	\$8,119.99
1124	Sheep and Goat Farming	Data not available	\$470.46

NAICS Code (4, 5 or 6 Digit)	NAICS Business Description	Minor Cost Threshold = 1% of Average Annual Payroll±	Minor Cost Threshold = 0.3% of Average Annual Revenue*
3111	Animal Food Manufacturing	\$8,060.25	\$31,836.93
3112	Grain and Oilseed Milling	\$34,486.39	\$96,991.35
3113	Sugar and Confectionery Product Manufacturing	\$6,603.42	\$11,477.95
3114	Fruit and Vegetable Preserving and Specialty Food Manufacturing	\$58,132.14	\$154,370.38
3115	Dairy Product Manufacturing	\$25,618.88	\$186,581.58
3116	Animal Slaughtering and Processing	\$36,767.05	\$72,714.80
3118	Bakeries and Tortilla Manufacturing	\$5,615.34	\$7,200.91
3119	Other Food Manufacturing	\$14,184.44	\$26,621.42
3121	Beverage Manufacturing	\$5,358.20	\$6,182.35
4244	Grocery and Related Product Merchant Wholesalers	\$9,757.66	\$45,779.52
4245	Farm Product Raw Material Merchant Wholesalers	\$6,365.54	\$12,589.00
4451	Grocery Stores	\$11,227.61	\$26,576.83
4452	Specialty Food Stores	\$2,861.55	\$3,439.51
4931	Warehousing and Storage	\$25,152.17	\$10,534.99
7224	Drinking Places (Alcoholic Beverages)	\$1,386.88	\$1,376.99
7225	Restaurants and Other Eating Places	\$3,026.40	\$2,847.10

\* Data source: 2020 Department of Revenue.

± Data source: 2020 Quarterly Census of Employment and Wages (Bureau of Labor Statistics).

Organic certification is a voluntary certification program that is only required if operations wish to represent their crops and/or products as organic, typically at a premium over conventional prices. Certification services can be provided by any accredited certification agencies, including both private and public institutions.

The types of businesses listed above represent the types of operations that have currently chosen to seek certification with WSDA; most operations in these categories are not seeking organic certification and will not be impacted by the proposal.

**SECTION 3: Analyze the probable cost of compliance. Identify 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.**

The proposed revision is not likely to have an appreciable impact on the cost of equipment, supplies, labor, professional services, or administrative costs. It should not cause any changes to sales or revenue.

While the proposed revision aims to increase fees for organic certification, it does not rely on any additional recordkeeping or administrative actions beyond those currently present in the existing rule.

The probable cost of compliance will be dependent primarily on the scope and scale of the operation:

Business Type	Business scale*	Number of businesses	Average reported organic income	Average current fee	Average proposed fee	Average change as percent of reported income
Crop Producer	Exempt	74	\$836.37	\$513.85	\$752.70	28.56%

Business Type	Business scale*	Number of businesses	Average reported organic income	Average current fee	Average proposed fee	Average change as percent of reported income
Crop Producer	Very Small	121	\$24,912.49	\$585.12	\$822.15	0.95%
Crop Producer	Small	180	\$134,447.39	\$1,233.40	\$1,686.50	0.34%
Crop Producer	Large	105	\$364,918.81	\$2,186.73	\$3,003.48	0.22%
Crop Producer	Very Large	228	\$2,492,779.97	\$5,406.42	\$7,227.32	0.07%
Handler or Processor	Exempt	36	\$473.93	\$637.50	\$1,000.00	76.49%
Handler or Processor	Very Small	20	\$21,573.41	\$685.63	\$1,045.50	1.67%
Handler or Processor	Small	53	\$137,725.55	\$1,379.48	\$1,965.28	0.43%
Handler or Processor	Large	29	\$361,309.17	\$2,287.50	\$3,220.00	0.26%
Handler or Processor	Very Large	153	\$6,664,148.85	\$8,567.01	\$11,148.30	0.04%
Livestock Producer	Exempt	1	\$0.00	\$762.50	\$1,250.00	---
Livestock Producer	Very Small	7	\$20,748.61	\$816.07	\$1,315.71	2.41%
Livestock Producer	Small	4	\$109,476.75	\$1,278.13	\$1,902.50	0.57%
Livestock Producer	Large	3	\$380,384.49	\$2,595.83	\$3,723.33	0.30%
Livestock Producer	Very Large	1	\$5,626,606.20	\$9,736.58	\$13,590.55	0.07%
Multiscope	Exempt	5	\$0.00	\$1,062.50	\$1,600.00	---
Multiscope	Very Small	6	\$25,177.83	\$1,139.58	\$1,681.67	2.15%
Multiscope	Small	16	\$138,952.46	\$1,789.06	\$2,536.25	0.54%
Multiscope	Large	3	\$366,146.94	\$2,745.83	\$3,886.67	0.31%
Multiscope	Very Large	10	\$6,589,081.88	\$8,340.04	\$10,626.23	0.03%
Retailer	Exempt	17	\$0.00	\$1,637.50	\$1,750.00	---

\* Scale: Scale is based off the USDA's classification of farms: Very large (greater than \$500,000.00 income annually); large (between \$250,000.00 and \$500,000.00 income annually); and small (less than \$250,000.00 income annually).

To better assess the impact on the affected operations, two additional scales were created: Very small (between \$5,000 and \$50,000 income annually); and exempt (less than \$5,000 income annually). Small was revised to accommodate this change (between \$50,000 and \$250,000 income annually).

Data provided is based off income reported with 2022 organic certification renewals. Operations identified as exempt are reporting less than \$5,000.00 in gross annual organic income and are typically exempt from organic certification pursuant to 7 C.F.R. 205.101(a).

Only income generated from organic sales or activities is reported above. Operations which may be producing both organic and nonorganic crops or products do not report income from nonorganic sales or services.

Retailers do not report gross annual income, additionally all multiscope exempt operations and exempt livestock producers reported no income with their 2022 renewals. Average change as percent of reported income could not be reported for these operations and is identified by three dashes in the table above.

**SECTION 4: Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry.**

NAICS does not differentiate between organic and nonorganic production and handling activities; as such, the values from the department of revenue and the United States Department of Labor's quarterly census of employment and wages (QCEW), identified in Section 2 above, are not an ideal comparison for evaluating the impact on businesses in the "organic" industry.

The WSDA organic program compiled information from our records, including gross annual income from organic sales and services, and used this information to calculate the cost of fees under the current fee structure as well as the theoretical cost following the proposed increase for each operation currently certified with the WSDA organic program that renewed their certification in 2022. The WSDA organic program used comparisons between these two sets of data to analyze the impact of the proposed rule on currently certified operations.

When comparing organic production and handling as a single commodity, the average reported gross annual income from the 1,073 evaluated operations was \$1,631,065.62. The average current effective fee\* of evaluated operations\*\* is \$3,236.32 and the average effective proposed fee would be \$4,320.21. The resulting increase in fees from the proposal would represent 0.0665 percent of gross annual income from organic sales and services. Since many of the evaluated operations would have income from both organic and nonorganic activities; this value should serve as a conservative analog to an "organic" industry wide minor cost threshold (0.3 percent average annual revenue).

To better analyze the impact of this proposed revision, the evaluation was extended to consider the impact of the proposal based on the scope and scale of operation; see the highlighted rows in the table in Section 3. The proposal is projected to exceed the minor cost threshold for the following types of businesses:

- Businesses reporting less than \$5,000 in gross annual income (exempt).
- While these businesses can expect a significant impact from the proposed fee restructuring, businesses that are reporting less than \$5,000 in gross annual income are typically exempt from organic certification pursuant to 7 C.F.R. 205.101(a).
- Businesses reporting between \$5,000 and \$250,000 in gross annual income (very small and small).
- Businesses of this scale can expect an average increase of about 0.45 percent of their reported organic income to their annual fees. Efforts taken to mitigate the impact of the proposed change on this scale of business are discussed in Section 6.
- Businesses reporting between \$250,000 and \$500,000 in gross annual income which are certified to both produce crops and processing or handling activities (large).
- Businesses of this scale and specific scope can expect an average increase of about 0.31 percent of their reported organic income to their annual fees. Efforts taken to mitigate the impact of the proposed change on this scale and scope of business are discussed in Section 6.

\* Effective fee: WAC 16-157-251 outlines the fee schedule for organic certification. It is comprised primarily of a renewal fee based on gross annual income and an inspection fee based on the scope of certification services provided. It also includes a small collection of additional fees. These additional fees are only incurred for additional services, such as new products or new site evaluations, not as part of the annual certification process. Since there are no changes being proposed to these fees, they would not impact the effective change relative to reported gross annual income and are omitted from the calculations above.

\*\* Evaluated operations: Gross annual income is reported annually for each certified operation with their renewal application. Gross annual income is not reported with new applicants. The 1073 operations being evaluated includes all renewing operations and excludes new applications accepted in 2022.

**SECTION 5: Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.**

**RCW 19.85.040(1) requires the department to compare the cost of compliance for small businesses with the cost of compliance for the 10 percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs: (a) Cost per employee; (b) cost per hour of labor; or (c) cost per \$100 of sales.**

Organic certification is a relatively unique service in that it is a voluntary certification program. Businesses are not required to be certified organic to operate; additionally, operations that choose to pursue organic certification are not required to be certified by WSDA organic program. They may choose from any USDA accredited certifying agent, which includes both public and private institutions.

While efforts have been taken to adjust fees based on operation size, as a fee increase with fixed rate costs, this proposal will inevitably incur a greater cost per \$100 of sales for small businesses when compared to large businesses. At their simplest, organic fees are composed of two portions: A renewal fee based on gross annual income and an inspection fee based on the scope of the business.

The current renewal fee scales with gross annual income, increasing in total cost but decreasing in percent of gross annual income. Currently, it ranges from 0.55 percent of gross annual income up to \$250,000 to 0.17 percent of gross annual income up to \$5,000,000. The proposal increases all renewal fees by 38.18 percent, but otherwise follows this same fee structure. That means increasing the amount of gross annual income reported does increase your total renewal fee, but also lowers the cost per \$100 of sales.

The inspection fee is a fixed cost based on the scope of the operation. The increase ranges from \$125 for crop producers up to \$725 for multiscope operations. Since the inspection fee is not adjusted based on the size or scale of an operation, increasing the amount of gross annual income reported does not increase your total inspection fee, but does reduce the cost per \$100 of sales.

If we follow the logical assumption that small businesses will be reporting less gross annual income than the 10 percent of the largest businesses seeking organic certification with WSDA, we can infer for those operations that choose to be certified by the WSDA organic program the impact of this rule will be more significant for small businesses when compared to the largest 10 percent of businesses seeking certification.

**SECTION 6: If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced, provide a clear explanation of why.**

RCW 19.85.030(2) requires consideration of the following methods of reducing the impact of the proposed amendment on small businesses:

a. *Reducing, modifying, or eliminating substantive regulatory requirements:* The regulatory requirements of organic certification are set by the USDA National Organic Program and are outside the scope of the WSDA organic program. Reducing, modifying, or eliminating regula-

tory requirements are not an option to reduce the cost of the rule on small businesses.

b. *Simplifying, reducing, or eliminating recordkeeping and reporting requirements:* The recordkeeping and reporting requirements of organic certification are set by the USDA National Organic Program and are outside the scope of the WSDA organic program. Simplifying, reducing, or eliminating recordkeeping and reporting requirements are not an option to reduce the cost of the rule on small businesses.

c. *Reducing the frequency of inspections:* The scope and frequency of inspections are set by the USDA National Organic Program and are outside the scope of the WSDA organic program. Reducing the frequency of inspections is not an option to reduce the cost of the rule on small businesses.

d. *Delaying compliance timetables:* The proposed changes to the rule are intended to increase fees to ensure the WSDA organic program is able to provide continued certification services to Washington state organic businesses. Delaying compliance timetables would be counterintuitive to this goal.

e. *Reducing or modifying fine schedules for noncompliance:* The proposed change is limited to increasing fees associated with annual renewal and inspection costs. It does not modify fine schedules for noncompliance: Late fees and mediation fees. Late fees and mediation fees are infrequent and do not contribute to a significant impact on certified organic businesses.

f. *Any other mitigation techniques, including those suggested by small businesses or small business advocates:* The proposed change is effectively comprised of two parts: An increase to the renewal fee based on gross annual income and an increase to the inspection fee based on the scope of the operation. The renewal fees are weighted against gross annual income in an effort to adjust fees based on the scale of the business. The inspection fee is based on the scope of the operation and not adjusted based on the size of the operation. Fixed fees, such as the inspection fee, are necessary to provide a level of consistency in anticipated fees; however, they tend to disproportionately impact smaller businesses.

USDA offers a cost share program (Organic Certification Cost Share Program) that reimburses certified organic businesses for a portion of their certification fees. The WSDA organic program administers this program for organic businesses in Washington state, certified by WSDA. The potential refund from this program is currently set at 75 percent of certification fees (up to \$750 per scope of certification).

When taking this increase into consideration:

- Businesses reporting between \$5,000 and \$250,000 can expect a decrease of about 0.02 percent of their reported organic income to their annual fees.
- Businesses reporting between \$250,000 and \$500,000 in gross annual income which are certified to both produce crops and processor handle activities can expect an increase of about 0.08 percent of their reported organic income to their annual fees.

**SECTION 7: Describe how small businesses were involved in the development of the proposed rule.**

The WSDA's organic advisory board (OAB) was established in 1987 to advise WSDA concerning the implementation of the organic program. OAB consists of small and large businesses in Washington state. It includes and supports: Organic farmers, processors, handlers, input material suppliers, and other interested parties. They provide feedback



on how the program can improve the services. In 2018, WSDA worked closely with OAB to restructure the fee schedule to enable periodic increases every five years to cover increases in costs. The current proposed rule builds on this past work. Member organizations that represent small organic businesses were also notified about the rule-making activity and need to increase fees in order to recover costs. These organizations include, but are not limited to: Tilth Alliance, Washington Tree Fruit Association, and the Farm Bureau.

**SECTION 8: Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.**

The proposed change only modifies the fee schedule for organic businesses certified by the WSDA organic program; it is unlikely to have any appreciable effect on the creation or loss of any jobs.

A copy of the statement may be obtained by contacting Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1902, email wsdarulescomments@agr.wa.gov.

October 31, 2023  
Luisa F. Castro  
Assistant Director

**OTS-4923.1**

AMENDATORY SECTION (Amending WSR 19-01-062, filed 12/14/18, effective 1/14/19)

**WAC 16-157-251 Certification fee schedule.** (1) Producers and handlers of organic products must submit an application packet and fees to the department each year to receive or maintain certification.

(a) **New applicant fee:** A new application fee of (~~three hundred seventy five dollars~~) \$500 must be submitted with each new application.

(b) **Renewal fee:** A renewal fee must be submitted annually by March 1st with each renewal application. Renewal fees for producers, handlers, and processors are assessed based on the gross annual income received by the operation for the production or handling of organically certified products. The renewal fee is based on the following fee schedule:

GROSS ANNUAL INCOME RECEIVED FROM ORGANIC PRODUCTS IN PREVIOUS CALENDAR YEAR	RENEWAL FEE DUE ANNUALLY ON MARCH 1st
\$ 0 - \$25,000 .....	<del>(\$137.50)</del> <u>\$250.00</u>
\$25,001 - \$50,000 .....	<del>(\$275.00)</del> <u>\$380.00</u>
\$50,001 - \$75,000 .....	<del>(\$412.50)</del> <u>\$570.00</u>
\$75,001 - \$100,000 .....	<del>(\$550.00)</del> <u>\$760.00</u>
\$100,001 - \$150,000 .....	<del>(\$825.00)</del> <u>\$1,140.00</u>
\$150,001 - \$200,000 .....	<del>(\$1,100.00)</del> <u>\$1,520.00</u>
\$200,001 - \$250,000 .....	<del>(\$1,375.00)</del> <u>\$1,900.00</u>
\$250,001 - \$300,000 .....	<del>(\$1,512.50)</del> <u>\$2,090.00</u>
\$300,001 - \$400,000 .....	<del>(\$1,787.50)</del> <u>\$2,470.00</u>
\$400,001 - \$500,000 .....	<del>(\$2,062.50)</del> <u>\$2,850.00</u>

GROSS ANNUAL INCOME RECEIVED FROM ORGANIC PRODUCTS IN PREVIOUS CALENDAR YEAR	RENEWAL FEE DUE ANNUALLY ON MARCH 1st
\$500,001 - \$750,000 .....	<del>(\$2,406.25)</del> <u>\$3,325.00</u>
\$750,001 - \$1,00,000 .....	<del>(\$2,750.00)</del> <u>\$3,800.00</u>
\$1,000,001 - \$1,500,000 .....	<del>(\$3,437.50)</del> <u>\$4,750.00</u>
\$1,500,001 - \$2,000,000 .....	<del>(\$4,125.00)</del> <u>\$5,700.00</u>
\$2,000,001 - \$3,000,000 .....	<del>(\$5,500.00)</del> <u>\$7,600.00</u>
\$3,000,001 - \$4,000,000 .....	<del>(\$6,875.00)</del> <u>\$9,500.00</u>
\$4,000,001 - \$5,000,000 ....	<del>(\$8,250.00)</del> <u>\$11,400.00</u>
\$5,000,001 - and up ....	<del>(\$8,250 plus 0.1375%)</del> <u>\$11,400.00 plus 0.19%</u> of income over \$5,000,000

(i) The maximum renewal fee shall not exceed (~~twenty-five thousand dollars~~) \$25,000 per primary facility or location.

(ii) The minimum renewal fee is (~~four hundred twelve dollars and fifty cents~~) \$570 for operations with more than: (~~Twenty-five~~) 25 acres in production (excluding fallow, pasture, hay, haylage, and silage), or more than five production sites, or more than (~~fifteen~~) 15 products.

(iii) Operations certified to the retailer scope are exempt from the gross annual income assessment and are charged a (~~one thousand five hundred dollar~~) \$1,500 renewal fee per retail location or facility.

(iv) Renewal applications and fees submitted after March 1st must include a late fee in addition to the renewal fee.

**If a renewal application is  
submitted after March 1st but  
before:**

	<b>The late fee is:</b>
April 1st	\$100.00
May 1st	\$200.00
June 1st	\$300.00
July 1st	\$400.00
August 1st	\$500.00
September 1st	\$600.00

(c) **Inspection fee:** An inspection fee must be submitted after each annual and announced additional inspection conducted by the department. The inspection fee is the sum of the fees associated with the scopes of the inspection. Inspection fees are based on the following fee schedule:

INSPECTION SCOPE	INSPECTION FEE
Crop producer	- ( <del>(\$375)</del> ) <u>\$500</u>
Livestock producer	- ( <del>(\$250)</del> ) <u>\$500</u>
Wild crop producer	- ( <del>(\$100)</del> ) <u>\$200</u>
Handler, processor, or retailer	- ( <del>(\$500)</del> ) <u>\$750</u>

(i) Operations with a producer scope plus either the handler or processor scope and less than (~~two hundred fifty thousand dollars~~) \$250,000 in gross annual income qualify for a (~~three hundred dollar~~) \$300 reduction in their inspection fee.

(ii) Each primary location or facility must receive an annual on-site inspection. In the event more than one primary location or fa-

cility is included under one certification, the operation will be charged an inspection fee per primary location or facility.

(iii) Additional announced inspections, if necessary to determine compliance or requested by the operation, will be charged to the new applicant or certified operation per the inspection fee table. Unannounced inspections conducted by the department are not charged an inspection fee.

(iv) Out-of-state inspections, if necessary to determine compliance or requested by the operation, shall be charged (~~five hundred dollars~~) \$500 plus associated travel costs in addition to the inspection fee.

(2) New and renewal applicants may request additional evaluations throughout the year. A fee is charged to the operation based on the service requested.

(a) **New scope:** The request to add a new scope of certification will be charged to the certified operation at a rate of (~~one hundred dollars~~) \$100 per new organic system plan submitted.

(b) **New site application:** Each new site application submitted by a renewal applicant after March 1st will be charged (~~forty dollars~~) \$40 per application.

(c) **Land assessment:** A fee of (~~one hundred dollars~~) \$100 per inspection will be charged to a renewal applicant when an evaluation of one or more production sites is part of an inspection. The land assessment fee does not apply to the annual examination of a renewal applicant's existing certified sites.

(d) (~~**New product application:** A rate of forty dollars per handled or single ingredient processed product and a rate of sixty dollars per multi-ingredient processed product is charged to evaluate a new handled or processed product for certification. Product fees are not required when products are submitted with a new application packet.~~

(~~e~~) **New facility:** Certified operations are charged a fee of (~~one hundred dollars~~) \$100 per request to evaluate an additional facility.

(~~f~~) **(e) Expedited services:** New and renewing applicants may request expedited services. Expedited services are defined as inspections and reviews conducted outside of the normal timelines and may be provided by the department if sufficient staff is available to expedite the work.

(i) Expedited services that do not require an inspection are charged a rate of (~~five hundred dollars~~) \$500 to receive an evaluation and certification decision within five business days from the acceptance of the request.

(ii) Expedited services requiring an inspection prior to a certification decision are charged a rate of (~~seven hundred fifty dollars~~) \$750 to receive an inspection on an expedited and agreed upon timeline that takes the crop harvest or anticipated production or handling dates into consideration. The review of the inspection report will be completed within five business days from the date of the inspection. The expedite fee is in addition to the inspection fee outlined under the certification fee schedule.

(~~g~~) **(f) Mediation fee:** A (~~five hundred dollar~~) \$500 fee plus the cost of a formal mediator, if applicable, will be charged to a new or renewal applicant when mediation is accepted by the department.

## WSR 23-22-125

## PROPOSED RULES

## STATE BOARD OF EDUCATION

[Filed November 1, 2023, 10:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-168.

Title of Rule and Other Identifying Information: Chapter 180-19 WAC, Charter schools.

Hearing Location(s): On December 11, 2023, at 10:00 a.m., at the Washington State Board of Education, 600 Washington Street S.E., Olympia, WA 98502. Online access will also be provided; see sbe.wa.gov for details.

Date of Intended Adoption: February 14, 2024.

Submit Written Comments to: Viktoria Bobyleva, 600 Washington Street S.E., Olympia, WA 98504, email rulescoordinatorSBE@k12.wa.us, by February 1, 2024.

Assistance for Persons with Disabilities: Contact Jacki Verd, phone 360-725-6025, TTY 360-664-3631, email Jacki.Verd@k12.wa.us, by December 4, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to implement changes associated with the passage of ESHB 1744 during the 2023 legislative session (chapter 356, Laws of 2023). In addition, the state board of education (board) has reviewed and revised rules to streamline timelines set out in rule, correct references, and make other changes as needed to improve readability and ensure effective implementation of the law.

Reasons Supporting Proposal: ESHB 1744 makes various changes to provisions governing the administration and oversight of charter schools, including new and modified duties for charter schools, charter school boards, charter school authorizers, the charter school commission, and the board that required changes to the current rules. In addition, the board, in consultation with the authorizers, has identified a number of other issues in the rules that are either confusing or add administrative burden that the agencies would like to address during this revision. For example, the timeline for approval of new authorizers leaves little flexibility by inserting a number of steps and deadlines that are not called out in the underlying statute.

Statutory Authority for Adoption: RCW 28A.710.090.

Statute Being Implemented: RCW 28A.710.130, 28A.710.140, 28A.710.150.

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

Name of Proponent: State board of education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Randy Spaulding, 600 Washington Street S.E., Olympia, WA 98504, 360-725-6024.

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 rules are not subject to violation by a nongovernmental party, and the rules adopt Washington state statutes without material 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(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 30, 2023  
Randy Spaulding  
Executive Director

## OTS-5040.1

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

**WAC 180-19-010 Definitions.** (1) "At-risk student" or "systemically marginalized student" means a student who has an academic or economic disadvantage that requires assistance or special services to succeed in educational programs. The term includes, but is not limited to, students who do not meet minimum standards of academic proficiency, students who are at risk of dropping out of high school, students in chronically low-performing schools, students with higher than average disciplinary sanctions, students with lower participation rates in advanced or gifted programs, students who are limited in English proficiency, students who are members of economically disadvantaged families, and students who are identified as having special educational needs.

(2) "Authorizer" means a school district board of directors that has been approved to be a charter school authorizer under RCW 28A.710.090 and the charter school commission established under RCW 28A.710.070.

(3) "Board" means the state board of education.

~~((2))~~ (4) "Charter contract" means a fixed term, renewable contract between a charter school and an authorizer that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.

(5) "School district" or "district" means a school district board of directors.

~~((3))~~ (6) "Charter school" or "charter public school" means a public school that is established in accordance with chapter 28A.710 RCW, governed by a charter school board, and operated according to the terms of a charter contract executed under this chapter.

(7) "Charter school board" means the board of directors appointed or selected under the terms of a charter application to manage and operate the charter school.

(8) "Commission" means the Washington state charter school commission established in RCW 28A.710.070.

(9) "NACSA Principles and Standards" means the "Principles and Standards for Quality Charter Authorizing (2015 Edition or most current edition)" developed by the National Association of Charter School Authorizers (NACSA).

(10) "High percentage of charter school closures" means a higher percentage of closures than the national charter school closure rate as reported by NACSA.

(11) "Parent" means a parent, guardian, or other person or entity having legal custody of a child.

(12) "Student" means a child eligible to attend a public school in the state.

(13) "Undeveloped" means that the application response is wholly inadequate in that the applicant has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the *NACSA Principles and Standards*.

(14) "Partially developed" means that the application response contains some aspects of a well-developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the *NACSA Principles and Standards*.

(15) "Well-developed" means that the application response meets the expectations established by the board and the *NACSA Principles and Standards* in material respects and warrants approval subject to execution of an authorizing contract with the board.

(16) "Persistently unsatisfactory performance of an authorizer's portfolio of charter schools" shall consist, for any school or schools, of:

(a) Repeated failure during a contract term, or consecutive contract terms, to meet the expectations for academic performance set forth in the charter contract including, but not limited to, applicable state and federal accountability requirements, without evidence of a trend indicating the school will meet those expectations;

(b) Repeated failure during a contract term, or consecutive contract terms, to meet the financial performance targets within the charter contract;

(c) Repeated failure during a contract term, or consecutive contract terms, to meet the targets for organizational performance within the charter contract.

(17) "A pattern of well-founded complaints" means multiple complaints that are found by the board to be supported by sufficient factual information that:

(a) An authorizer is not in compliance with its authorizing contract, or its authorizer duties, including the failure to develop and follow nationally recognized principles and standards for charter authorizing; or

(b) Schools in the authorizer's portfolio that are not in compliance with a charter contract or applicable law.

(18) "Other objective circumstances" include, but are not limited to, failure of the authorizer or its charter schools to comply with an applicable state or federal law or regulation, or evidence that a charter school is not operating in a manner that fulfills the requirements of its charter contract or has a substantial risk of becoming operationally unable to fulfill those requirements.

AMENDATORY SECTION (Amending WSR 21-05-017, filed 2/5/21, effective 3/8/21)

**WAC 180-19-030 Submission of authorizer application.** (1) The state board of education shall develop and make available on its website, no later than May 15th of each year, an "authorizer application" that must be used by school districts seeking to be approved as a charter school authorizer. The application may include such attachments as deemed required by the board to support and complete the application.

(2) A school district seeking approval to be a charter school authorizer must submit an "authorizer application" to the state board of education ((by October 15th of the year prior to the year the district seeks approval as an authorizer)). The district's completed application must be submitted according to instructions posted by the board with the application. Completed applications must be received no less than 30 days prior to the board meeting at which they will be considered. The board shall post on its website each application received from a school district.

(3) ((A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) ~~**The district's strategic vision for chartering.**~~ The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to the findings and interests set forth in RCW 28A.710.005, as well as any district-specific purposes that are a priority for the district; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.

(b) ~~**A plan to support the vision presented,**~~ including explanations and evidence of the applicant's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW; and

(ii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.

(c) ~~**A draft or preliminary outline of the request for proposal**~~ that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.

(d) ~~**A draft of the performance framework**~~ that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein, and

shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

~~(e) A draft of the district's proposed renewal, revocation, and nonrenewal processes, consistent with RCW 28A.710.190 and 28A.710.200. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:~~

~~(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;~~

~~(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;~~

~~(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;~~

~~(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180.~~

~~(4) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:~~

~~(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;~~

~~(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;~~

~~(c) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;~~

~~(d) Ensure that any contract it may execute with the charter school board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited-English proficient, and any other special populations of students as required by state and federal laws;~~

~~(e) Include in any charter contract it may execute with the charter school board of an approved charter school, in accordance with RCW 28A.710.040 (2)(b), that the charter school must provide a program of basic education that at a minimum meets the requirements of RCW 28A.150.200 and 28A.150.220, and meets the goals in RCW 28A.150.210, including instruction in the essential learning requirements and participation in the statewide student assessment system as developed under RCW 28A.655.070.) A district seeking renewal of authorization shall submit a "renewal application" to the state board of education no less than 30 days prior to the board meeting at which they will be considered and no less than 90 days prior to expiration of the current authorization.~~



NEW SECTION

**WAC 180-90-035 Content of authorizer application.** (1) A school district must provide sufficient and detailed information regarding all of the following in the authorizer application submitted to the board:

(a) **The district's strategic vision for chartering.** The district must state the purposes that it expects to fulfill in being an authorizer of charter schools, with reference to any district-specific purposes that are a priority for the district; the educational goals it wishes to achieve; how it will give priority to serving at-risk students, as defined in RCW 28A.710.010(2), or students from low-performing schools; and how it will respect the autonomy and ensure the accountability of the charter schools it oversees.

(b) **A plan to support the vision presented,** including explanations and evidence of the district's budget and personnel capacity and commitment to execute the responsibilities of quality charter authorizing. "Budget and personnel capacity" means the district's capability of providing sufficient oversight, monitoring, and assistance to ensure that the charter schools it authorizes will meet all fiscal, academic and operational requirements under chapter 28A.710 RCW and comply with all applicable state and federal laws. A district's evidence of budget and personnel capacity shall consist, at a minimum, of a detailed description of the following:

(i) Staff resources to be devoted to charter authorizing and oversight under chapter 28A.710 RCW, in full-time equivalent employees, at a level sufficient to fulfill its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW; and

(ii) An estimate, supported by verifiable data, of the financial needs of the authorizer and a projection, to the extent feasible, of sufficient financial resources, supported by the authorizer oversight fee under RCW 28A.710.110 and any other resources, to carry out its authorizing responsibilities in accordance with the *NACSA Principles and Standards* and the provisions of chapter 28A.710 RCW.

(c) **A draft or preliminary outline of the request for proposal** that the district would, if approved as an authorizer, issue to solicit charter school applications. The draft or preliminary outline of the request for proposal(s) shall meet all of the requirements set forth in RCW 28A.710.130 (1)(b) and demonstrate that the district will implement a comprehensive charter application process that follows fair procedures and rigorous criteria, and an evaluation and oversight process based on a performance framework meeting the requirements of RCW 28A.710.170.

(d) **A draft of the performance framework** that the district would, if approved as an authorizer, use to guide the execution of a charter contract and for ongoing oversight and performance evaluation of charter schools. The draft of the performance framework shall, at a minimum, meet the requirements of RCW 28A.710.170(2) including descriptions of each indicator, measure and metric enumerated therein, and shall provide that student academic proficiency, student academic growth, achievement gaps in both proficiency and growth, graduation rates, and postsecondary readiness are measured and reported in conformance with the achievement index developed by the state board of education under RCW 28A.657.110.

(e) **A draft of the district's proposed renewal, revocation, non-renewal, and transfer processes for charter schools,** consistent with

RCW 28A.710.190, 28A.710.200, and 28A.710.210. The draft provided must, at a minimum, provide for the implementation of transparent and rigorous processes that:

(i) Establish clear standards for renewal, nonrenewal, and revocation of charters it may authorize under RCW 28A.710.100;

(ii) Set reasonable and effective timelines for actions that may be taken under RCW 28A.710.190 and 28A.710.200;

(iii) Describe how academic, financial and operational performance data will be used in making decisions under RCW 28A.710.190 and 28A.710.200;

(iv) Outline a plan to take appropriate corrective actions, or exercise sanctions short of revocation, in response to identified deficiencies in charter school performance or legal compliance, in accordance with the charter contract and the provisions of RCW 28A.710.180;

(v) Outline a plan to ensure timely notification to parents, orderly transition of students and student records to new schools, as necessary, and proper disposition of public school funds, property, and assets, in accordance with RCW 28A.710.210.

(2) A district must sign a statement of assurances submitted with its application, which shall be included as an attachment to the authorizing contract executed between the approved district and the state board of education, stating that it seeks to serve as an authorizer in fulfillment of the expectations, spirit, and intent of chapter 28A.710 RCW, and that if approved as an authorizer it will:

(a) Seek opportunities for authorizer professional development, and assure that personnel with significant responsibilities for authorizing and oversight of charter schools will participate in any authorizer training provided or required by the state;

(b) Provide public accountability and transparency in all matters concerning charter authorizing practices, decisions, and expenditures;

(c) Ensure that any charter school it oversees shall have a fully independent governing board and exercise autonomy in all matters, to the extent authorized by chapter 28A.710 RCW, in such areas as budgeting, personnel and instructional programming and design;

(d) Ensure that any contract it may execute with the charter school board of an approved charter school under RCW 28A.710.160 provides that the school will provide educational services to students with disabilities, students who are limited-English proficient, and any other special populations of students as required by state and federal laws;

(e) Include in any charter contract it may execute with the charter school board of an approved charter school, in accordance with RCW 28A-710-040 (2)(b), that the charter school must provide a program of basic education that at a minimum meets the requirements of RCW 28A.150.200 and 28A.150.220, and meets the goals in RCW 28A.150.210, including instruction in the essential learning requirements and participation in the statewide student assessment system as developed under RCW 28A.655.070.

AMENDATORY SECTION (Amending WSR 21-05-017, filed 2/5/21, effective 3/8/21)

**WAC 180-19-040 Evaluation and approval or denial of authorizer applications.** (1) The board shall evaluate an application submitted

by a school district seeking to be an authorizer and issue a decision (~~((approving or denying))~~) on the application (~~((by February 1st of each year))~~) at their next regularly scheduled meeting.

(2) In evaluating each application, the board will rate each part of the application as set forth in (~~(WAC 180-19-030 (3)(a) through (e))~~) this chapter as well-developed, partially developed, or undeveloped, based on criteria for evaluation included in the authorizer application developed and made publicly available pursuant to WAC 180-19-030 (~~((1))~~).

~~(a) "Well-developed" shall mean that the application response meets the expectations established by the board and the NACSA Principles and Standards in material respects and warrants approval subject to execution of an authorizing contract with the board.~~

~~(b) "Partially developed" shall mean that the application response contains some aspects of a well-developed practice, is limited in its execution, or otherwise falls short of satisfying the expectations established by the board and the NACSA Principles and Standards.~~

~~(c) "Undeveloped" shall mean that the application response is wholly inadequate in that the applicant district has not considered or anticipated the well-developed practice at all, or proposes to carry out its authorizing duties in a way that is not recognizably connected to the expectations established by the board and the NACSA Principles and Standards).~~

(3) In its evaluation the board will consider whether the district's proposed policies and practices are consistent with the *NACSA Principles and Standards* as required by RCW 28A.710.100(3), in at least the following areas:

(a) Organizational capacity: Commit human and financial resources necessary to conduct authorizing duties effectively and efficiently;

(b) Solicitation and evaluation of charter applications: Implement a comprehensive application process that includes clear application questions and rigorous criteria, and grants charters only to applicants who demonstrate strong capacity to establish and operate a charter school;

(c) Performance contracting: Execute contracts with charter schools that articulate the rights and responsibilities of each party regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms;

(d) Ongoing charter school oversight and evaluation: Conduct contract oversight that competently evaluates performance and monitors compliance, ensures schools' legally entitled autonomy, protects student rights, informs intervention, revocation and renewal decisions, and provides annual reports as required by chapter 28A.710 RCW; and

(e) Charter renewal and revocation (~~((processes))~~) decision making: Design and implement a transparent and rigorous process that uses comprehensive academic, financial and operational performance data to make merit-based renewal decisions, and revokes charters when necessary to protect student and public interests.

~~(4) ((The board shall develop and post on its public website rubrics for determination of the extent to which each criterion for evaluation has been met.~~

~~(5))~~) The board may utilize the services of external reviewers with expertise in educational, organizational, or financial matters in evaluating applications.

~~((6))~~) (5) Prior to approving any application, the board may require an interview with district leadership for the purpose of review-

ing and evaluating the application. The interview may be used to supplement or clarify information provided by the district in the written application. The information received in the interview may be considered in formulating the overall ratings of the application under subsection (2) of this section.

~~((7))~~ (6) For an application to be approved, the board must find it to be well developed in each part of the application as set forth in ~~((WAC 180-19-030(3)))~~ this chapter. A determination that an application does not meet standards of quality authorizing in any part shall constitute grounds for disapproval. If the state board disapproves an application, it shall state in writing the reasons for the disapproval, with specific reference to the criteria included in the authorizer application.

~~((8))~~ (7) The board shall post on its public website the applications of all school districts approved as authorizers within 10 business days of approval. A school district approved as an authorizer shall post ~~((its application))~~ an announcement of its approved application and a link to the board's website on a public website within 10 business days of approval.

AMENDATORY SECTION (Amending WSR 21-05-017, filed 2/5/21, effective 3/8/21)

**WAC 180-19-060 Authorizer oversight fee.** ~~((1))~~ The statewide formula for the authorizer oversight fee transmitted to an authorizer by the superintendent of public instruction, as provided for in RCW 28A.710.110, shall be calculated as a ~~((rate not to exceed four percent of state operating funding allocated))~~ percentage of the state operating funding distributed to charter schools under RCW 28A.710.220 to each charter school under the jurisdiction of an authorizer, but may not exceed four percent of each charter school's annual funding.

(1) The rate shall be determined annually by the state board of education in consultation with the school district authorizer or the commission as applicable.

(2) The determination of the rate shall take into consideration the performance of schools under the authorizer's oversight including, but not limited to, enrollment, financial stability, performance challenges, and other situations as identified by the authorizer or the board.

(3) Changes to the rates must be determined and reported to authorizers and the office of the superintendent of public instruction by ~~((May))~~ April 15th to take effect for the subsequent school year.

~~((2))~~ ~~Authorizers shall report on the adequacy and efficiency of the authorizer oversight fee in the annual report submitted to the board by each authorizer as set forth in RCW 28A.710.100(4). The board shall consider this information to determine whether the formula should be adjusted in order to ensure fulfilling the purposes of chapter 28A.710 RCW.)~~

AMENDATORY SECTION (Amending WSR 21-05-017, filed 2/5/21, effective 3/8/21)

**WAC 180-19-210 Annual report by authorizer.** (1) Each authorizer must, no later than January 21st of each year (~~(starting in 2021)~~), submit an annual report to the state board of education meeting the requirements of RCW 28A.710.100(4). The board shall develop and post on its website by (~~September~~) June 1st of each year a standard form which must be used, and instructions which must be followed by each authorizer in making its report. The completed report must be sent via electronic mail to sbe@k12.wa.us and shall be posted on the board's website.

(2) The report of district authorizers must include the information in (a) through (k) of this subsection, and the report of the commission must include (d) through (k) of this subsection:

(a) The date of authorizer approval by the board;

(b) The names and job titles of district personnel having principal authorizing responsibilities with contact information for each;

(c) The names and job titles of any employees or contractors to whom the district has delegated responsibilities under RCW 28A.710.100, with contact information for each;

(d) An executive summary including, but not limited to, an overview of authorizing activity during the prior year and the status and performance of the charter schools authorized;

(e) The authorizer's strategic vision for chartering, as submitted to the state board under WAC (~~(180-19-030-(3)(a))~~) 180-19-035 (1)(a), and its assessment of progress toward achieving that vision;

(f) The status of the (~~authorizer's~~) charter school portfolio, identifying all charter schools in each of the following categories:

(i) Approved but not yet open, including for each, the targeted student population and the community the school hopes to serve; the location or geographic area proposed for the school; the projected enrollment; the grades to be operated each year of the term of the charter contract; the names of and contact information for the charter school board, and the planned date for opening;

(ii) Operating, including for each, location; grades operated; enrollment in total and by grade; and for each student subgroup as defined in RCW 28A.300.042 in totals and as percentages of enrollment;

(iii) Charter renewed with date of renewal;

(iv) Charter transferred to another authorizer during the prior year, with date of transfer;

(v) Charter revoked during the prior year with date of and reasons for revocation;

(vi) Voluntarily closed;

(vii) Never opened, with no planned date for opening.

(g) The academic performance of each operating charter school overseen by the authorizer, based on the authorizer's performance framework, including:

(i) Student achievement on each of the required indicators of academic performance in RCW 28A.710.170 (2)(a) through (f), as applicable by grade, in absolute values and in comparison to the annual performance targets set by the charter school under RCW 28A.710.170(3). Student academic proficiency, student academic growth, achievement gaps, graduation rates and postsecondary readiness must be included as reported in the achievement index developed by the state board of education under RCW 28A.657.110.

(ii) Student achievement on each additional indicator of academic performance the authorizer has chosen to include in its performance framework to augment external evaluations of performance, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170.

(iii) Student achievement on each indicator must be disaggregated by major student subgroups including gender, race and ethnicity, poverty status, special education status, English language learner status, and highly capable status as required of performance frameworks in RCW 28A.710.170.

(h) The financial performance of each operating charter school overseen by the authorizer, based on the indicators and measures of financial performance and sustainability in the authorizer's performance framework, in absolute values and in comparison to the annual performance targets set by the authorizer under RCW 28A.710.170;

(i) The organizational performance of the charter school board of each operating charter school overseen by the authorizer, based on the indicators and measures of organizational performance in the authorizer's performance framework, including compliance with all applicable laws, rules and terms of the charter contract;

(j) ~~((The authorizer's))~~ Assessment of the adequacy of the authorizer oversight fee, operating costs and expenses for the prior year for fulfilling the responsibilities ~~((of an authorizer as))~~ enumerated in RCW 28A.710.100(1) and provided under the terms of each charter contract, detailed in annual financial statements that conform with generally accepted accounting principles and applicable reporting and accounting requirements of the office of the superintendent of public instruction;

(k) The contracted, fee-based services purchased from the authorizer by the charter schools under its jurisdiction under RCW 28A.710.110, including a brief description of each service purchased, an itemized accounting of the revenue received from the schools for the services, and the actual costs of these services to the authorizer.

AMENDATORY SECTION (Amending WSR 14-08-033, filed 3/25/14, effective 4/25/14)

**WAC 180-19-220 Oversight of authorizers—General provisions.**

(1) The state board of education is responsible under RCW 28A.710.120 for ~~((oversight of the performance and effectiveness of all authorizers approved under RCW 28A.710.090))~~ overseeing the effectiveness and the performance of authorizers. This oversight is ongoing and is not limited to the specific actions and procedures described in these rules. ~~((For the purposes of the board's rules governing the oversight of authorizers, the term "authorizer" means a school district board of directors that has been approved to be a charter school authorizer under RCW 28A.710.090.))~~

(2) In reviewing or evaluating the performance of authorizers against nationally recognized principles and standards for quality authorizing, the board will compare the authorizer's performance to the standards for quality set forth in the *Principles and Standards for Quality Charter School Authorizing* ~~((, 2012 edition, published by the~~

~~National Association of Charter School Authorizers. A link to this publication shall be posted on the board's public website).~~

(3) In carrying out its responsibilities for overseeing the performance and effectiveness of authorizers under RCW 28A.710.120, the board shall utilize information including, but not limited to, the annual authorizer reports submitted to the board under RCW 28A.710.100, all reports and data submitted to the office of the superintendent of public instruction under chapter 28A.710 RCW, charter contracts, and the findings of any special review conducted under RCW 28A.710.120(2). The board will require submission of, or access to, materials or data from the authorizer deemed reasonably necessary to evaluate the performance and effectiveness of the authorizer.

(4) The board may contract for services with persons or entities having relevant expertise in the performance of its duties under RCW 28A.710.120.

(5) The board may conduct site visits to charter schools in an authorizer's portfolio for the purpose of conducting oversight of the performance of an authorizer under these rules. The board shall provide reasonable notice to the authorizer and the charter governing board prior to a site visit.

(6) In carrying out its duties for oversight of the performance and effectiveness of authorizers under RCW 28A.710.120, the board shall respect the principal role and responsibility of the authorizer for monitoring and oversight of the charter school under RCW 28A.710.100, and the authority of the charter school board to manage and operate the charter school under RCW 28A.710.030 and the terms of its charter contract.

AMENDATORY SECTION (Amending WSR 14-08-033, filed 3/25/14, effective 4/25/14)

**WAC 180-19-230 Oversight of authorizers—Special review.** (1)

The board is authorized, upon a determination of persistently unsatisfactory performance of an authorizer's portfolio of charter schools, a pattern of well-founded complaints about the authorizer or its charter schools, a high percentage of charter school closures during the preceding 10-year period, or other objective circumstances, to conduct a special review of an authorizer's performance. The purpose of the special review is to determine the need for additional action by the board as provided in these rules.

(2) (~~"Persistently unsatisfactory performance of an authorizer's portfolio of charter schools" shall consist, for any school or schools, of:~~

~~(a) Repeated failure during a contract term, or consecutive contract terms, to meet the expectations for academic performance set forth in the charter contract including, but not limited to, applicable state and federal accountability requirements, without evidence of a trend indicating the school will meet those expectations;~~

~~(b) Repeated failure during a contract term, or consecutive contract terms, to meet the financial performance targets within the charter contract;~~

~~(c) Repeated failure during a contract term, or consecutive contract terms, to meet the targets for organizational performance within the charter contract.~~

~~(3) "A pattern of well-founded complaints" means multiple complaints that are found by the board to be supported by sufficient factual information alleging that an authorizer is not in compliance with a charter contract, its authorizing contract, or its authorizer duties, including the failure to develop and follow nationally recognized principles and standards for charter authorizing.~~

~~(a))~~ Any individual or entity may submit a written complaint to the board about an authorizer or its charter schools. The complaint should state in specific terms the alleged violation of law, failure to comply with a charter contract or its authorizing contract, or failure to develop and follow nationally recognized principles and standards for charter authorizing. The complaint must be signed and dated and provide contact information for use by the board in requesting additional information as deemed needed. The board shall post a standard form for submission of complaints on its public website.

~~((b))~~ (a) Upon receipt, the board shall transmit the complaint to the authorizer for its written response, which shall be submitted to the board within ~~((thirty))~~ 30 days of receipt.

~~((e))~~ (b) The board may request additional information from the complainant or the authorizer as deemed necessary to investigate the complaint.

~~((d))~~ (c) If the complaint is determined not to be well-founded, the board shall notify the complainant in writing and the board shall not be required to take further action.

~~((e))~~ (d) If the complaint is determined to be well-founded, the board shall provide written notification of such determination to the complainant and the authorizer.

~~((4) "Other objective circumstances" include, but are not limited to, failure of the authorizer or its charter schools to comply with an applicable state or federal law or regulation, or evidence that a charter school is not operating in a manner that fulfills the requirements of its charter contract or has a substantial risk of becoming operationally unable to fulfill those requirements.~~

~~(5))~~ (3) The board must provide written notice to the authorizer of initiation of a special review, documenting the reasons for the decision to conduct the review. The board must provide opportunity for the authorizer to respond in writing to the specific determinations of the need for the review and may take into consideration any corrective action by the authorizer or other considerations in the review.

~~((6))~~ (4) The board shall submit a written report of the results of the special review to the authorizer and other interested persons. The report may include recommended corrective actions. The report shall be posted on the board's public website.

(5) If the commission is the subject of the special review under this section, the state board of education shall have one year from the initiation of its review to complete the review and provide a report with findings and recommendations, including any recommendations for statutory revisions it deems necessary. The board will seek input from the commission on proposed findings and recommendations before completing the report, and will provide the commission the opportunity to provide a written response to the board's report that will be included when the board's report is provided to the governor, the superintendent of public instruction, and the appropriate committees of the house of representatives and the senate.



AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

**WAC 180-19-250 Oversight of authorizers—Revocation of authorizing contract.**

(1) Evidence of material or persistent failure by an authorizer to carry out its duties according to nationally recognized principles and standards for charter authorizing is grounds for revocation of an authorizer's chartering contract. This may include:

(a) Failure to comply with the terms of the authorizing contract between the authorizer and the board;

(b) Violation of a term of the charter contract between the authorizer and a charter school board;

(c) A high percentage of charter school closures during the preceding 10-year period;

(d) Demonstrated failure to develop and follow chartering policies and practices that are consistent with the principles and standards for quality charter authorizing developed by the National Association of Charter School Authorizers in any of the following areas, as required by RCW 28A.710.100:

(i) Organizational capacity;

(ii) Soliciting and evaluating charter applications;

(iii) Performance contracting;

(iv) Ongoing charter school oversight and evaluation;

(v) Charter renewal decision making.

(2) Notice of intent to revoke. If the board makes a determination, after due notice to the authorizer and reasonable opportunity to effect a remedy, that the authorizer continues to be in violation of a material provision of a charter contract or its authorizing contract, or has failed to remedy other identified authorizing problems:

(a) The board shall notify the authorizer in writing that it intends to revoke the authorizer's chartering authority under RCW 28A.710.120. The notification to the authorizer shall explain and document the reasons for the intent to revoke chartering authority.

(b) The authorizer shall, within (~~thirty~~) 30 days of notification, submit a written response showing that the authorizer has implemented or will implement within (~~sixty~~) 60 days of submitting the written response, a sufficient remedy for the violation or deficiencies that are the stated grounds for the intent to revoke chartering authority. The board shall within (~~thirty~~) 30 days of receipt provide written notice to the authorizer whether it finds the proposed remedy sufficient to correct the violation or deficiencies.

(3) Notice of revocation. If the district authorizer fails to provide a timely written response or if the response is found insufficient by the board to meet the requirement set forth in subsection (1) of this section:

(a) The board shall provide the authorizer with written notice of revocation of the authorizer's chartering authority. The notice of revocation shall state the effective date of revocation, which shall not be sooner than (~~twenty~~) 20 days from the date of receipt of the notice of revocation by the authorizer unless a timely notice of a request for an adjudicative proceeding is filed as set forth herein.

(b) The authorizer may request an adjudicative proceeding to contest the revocation. The request for an adjudicative proceeding must be submitted in writing by the authorizer to the board within (~~twenty~~) 20 days of receipt of the notice of revocation at the following email address: sbe@k12.wa.us or mailing address:

State Board of Education  
Old Capitol Building  
P.O. Box 47206  
600 Washington St. S.E. (~~(, Room 253)~~)  
Olympia, Washington 98504

Any adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act (APA).

AMENDATORY SECTION (Amending WSR 17-20-070, filed 10/2/17, effective 11/2/17)

**WAC 180-19-260 Authorizer oversight—Transfer of charter contract.** (1) In the event that a notice of revocation is provided to (~~the~~) a district authorizer under WAC 180-19-250, any charter contract held by that authorizer shall be transferred, for the remaining portion of the charter term, to the Washington charter school commission on documentation of mutual agreement to the transfer by the charter school board and the commission.

(2) Documentation of mutual agreement shall consist of a written agreement between the charter school board and the commission, signed and dated by the chair or president of the charter school board and the chair of the commission. The agreement shall include any modification or amendment of the charter contract as may be mutually agreed upon by the charter school and the commission.

(3) The commission shall submit the agreement to the state board of education. The board shall review the agreement and on a determination that the requirements of these rules have been met, issue written certification of the transfer of the charter contract to the charter school board and the commission.

(4) On certification by the board of the transfer of the charter contract, the prior authorizer shall transfer to the commission all student records and school performance data collected and maintained in the performance of its duties as an authorizer under RCW 28A.710.100 and 28A.710.170.

(5) The commission, in consultation with the charter school board, shall develop and implement a procedure for timely notification to parents of the transfer of the charter contract and any modifications or amendments to the charter included in the written agreement executed under subsection (2) of this section.

(6) If mutual agreement is not obtained on the transfer of the charter contract under RCW 28A.710.120(6) and this section, the charter school shall be closed under the provisions of RCW 28A.710.210. The district shall develop and implement a termination protocol to ensure timely notification to parents, orderly transition of students and student records to new schools, as necessary, and proper disposition of public school funds, property, and assets. The protocol must include, at a minimum, a plan for addressing the following:

(a) Adequate and timely communication with parents, school staff and the community regarding the closing of the charter school and the options for student transfer to another public school;

(b) Retention of student, personnel, governance and financial records in compliance with all applicable laws and policies;

(c) The transfer of all student records in accordance with privacy rules set forth in the Family Educational Rights and Privacy Act (FERPA) and any applicable state laws and school district policies;

(d) Resolution of all financial obligations associated with the closure of the charter school;

(e) Return of the public funds in the possession of the charter school as provided for in RCW 28A.710.201(2), or as required by any other state law; and

(f) A plan for the disposition of all other assets, in compliance with applicable state and federal laws or district policies governing the assets.

The protocol must specify tasks, timelines, and responsible parties, including delineating the respective duties of the charter school and the authorizer. The district shall provide the board with a copy of the termination protocol. The board may review the protocol and request revisions for implementation.

(7) If a charter public school or its authorizer petitions the state board of education, under RCW 28A.710.210(3), for authorization to transfer a charter contract from one authorizer to another or from one charter school to another before the expiration of the charter contract, and if the potential transfer would entail a relocation to another school district, the petitioner shall transmit a written copy of the petition to the board and superintendent of the school district to which the charter public school may relocate, on the same date it submits the petition to the state board of education.

## WSR 23-22-131

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed November 1, 2023, 11:50 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-10-059.

Title of Rule and Other Identifying Information: Updating rules about dietitians and nutritionists. The department of health (department) is proposing amending, repealing, and creating new rule sections in chapter 246-822 WAC, Dietitians and nutritionists, to clarify, streamline, update, and modernize rules for licensing dietitians and nutritionists.

Hearing Location(s): On December 5, 2023, at 11:00 a.m., at the Department of Health, Town Center 2, Rooms 166 and 167, 111 Israel Road S.E., Tumwater, WA 98501; or virtual. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_0dh23C0vQaOUovVYGtO7Ug](https://us02web.zoom.us/webinar/register/WN_0dh23C0vQaOUovVYGtO7Ug). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: December 12, 2023.

Submit Written Comments to: Kim-Boi Shadduck, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, by December 5, 2023.

Assistance for Persons with Disabilities: Contact Kim-Boi Shadduck, phone 360-236-2912, TTY 711, email [kimboi.shadduck@doh.wa.gov](mailto:kimboi.shadduck@doh.wa.gov), by November 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to chapter 246-822 WAC clarify, streamline, and modernize rules for dietitians and nutritionists. The proposed amendments include: (1) Updating rules to align with national professional standards for dietitians; (2) setting clear standards for education, experience, and supervision requirements; (3) updating rules to reflect current department processes; (4) removing redundant mandatory reporting language; and (5) making other updates and clarifications as appropriate.

Reasons Supporting Proposal: Chapter 246-822 WAC has not been meaningfully updated in several decades. The proposed amendments will provide clear, accurate requirements for the regulated community. The proposed new rules reflect changes in professional standards, technology, and department processes.

Statutory Authority for Adoption: RCW 18.138.070.

Statute Being Implemented: Chapter 18.138 RCW.

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: Kim-Boi Shadduck, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2912.

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 Kim-Boi Shadduck, Office of Health Professions, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2912, TTY 711, email [kimboi.shadduck@doh.wa.gov](mailto:kimboi.shadduck@doh.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 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 rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed amendments impact rules regulating individual professional licenses, not businesses.

Scope of exemption for rule proposal:

Is fully exempt.

November 1, 2023  
 Todd Mountin, PMP  
 Deputy Chief of Policy  
 for Umair A. Shah, MD, MPH  
 Secretary

#### OTS-4875.4

AMENDATORY SECTION (Amending WSR 91-02-049, filed 12/27/90, effective 1/31/91)

**WAC 246-822-010 Definitions.** The definitions in this section and RCW 18.138.010 apply throughout this chapter unless the context clearly requires otherwise.

(1) "Accreditation council for education in nutrition and dietetics" or "ACEND" means a national organization that accredits dietetics education programs.

(2) "Accredited college or university" means a college or university accredited by a national or regional accrediting body recognized by the ((council on)) office of postsecondary education at the time the applicant completed the required education.

~~((2) "Continuous preprofessional experience" means a minimum of 900 hours of supervised competency-based practice in the field of dietetics accumulated over a maximum of thirty-six months. This competency-based practice should include, but not be limited to the following:~~

~~(a) Assuring that food service operations meet the food and nutrition needs of clients and target markets.~~

~~(b) Utilization of food, nutrition, and social services in community programs.~~

~~(c) Providing nutrition care through systematic assessment, planning, intervention, and evaluation of groups and individuals.~~

~~(d) Providing nutrition counseling and education to individuals and groups for health promotion, health maintenance, and rehabilitation.~~

- ~~(e) Applying current research information and methods to dietetic practice.~~
  - ~~(f) Utilizing computer and other technology in the practice of dietetics.~~
  - ~~(g) Integrating food and nutrition services in the health care delivery system.~~
  - ~~(h) Promoting positive relationships with others who impact on dietetic service.~~
  - ~~(i) Coordinating nutrition care with food service systems.~~
  - ~~(j) Participating in the management of cost-effective nutrition care systems.~~
  - ~~(k) Utilizing menu as the focal point for control of the food service system.~~
  - ~~(l) Participating in the management of food service systems, including procurement, food production, distribution, and service.~~
  - ~~(m) Participating in the management of human, financial, material, physical, and operational resources.~~
  - ~~(n) Providing education and training to other professionals and supportive personnel.~~
  - ~~(o) Engaging in activities that promote improved nutrition status of the public and advance the profession of dietetics.~~
  - ~~(p) Recognizing the impact of political, legislative, and economic factors on dietetic practice.~~
  - ~~(q) Utilizing effective communication skills in the practice of dietetics.~~
  - ~~(r) Participating in the management of a quality assurance program.~~
- ~~(3) "Supervision" means the oversight and responsibility for the dietitian's or nutritionist's continued practice by a qualified supervisor. Methods of supervision may include face-to-face conversations, direct observation, or review of written notes or tapes.~~
- ~~(4) "Qualified supervisor" means a dietitian who is certified under this chapter or who is qualified for certification under this chapter.~~
- ~~(5) "Coordinated undergraduate program" means supervised dietetic practice that is part of a course of study.) (3) "Client" means a person who receives services from a certified dietitian or certified nutritionist; this term may be used interchangeably with "patient."~~
- ~~(4) "Commission on dietetic registration" or "CDR" means the credentialing organization of the academy of nutrition and dietetics, a professional organization for nutrition and dietetics practitioners.~~
- ~~(5) "Coordinated program" means supervised dietetic practice that is part of a course of study under WAC 246-822-145.~~
- ~~(6) "Dietitian" or "certified dietitian" means a person certified to practice dietetics under this chapter and chapter 18.138 RCW.~~
- ~~(7) "Nutritionist" or "certified nutritionist" means a person certified to provide general nutrition services under this chapter and chapter 18.138 RCW.~~
- ~~(8) "Qualified supervisor" means a dietitian who is credentialed by the department under this chapter or registered by the commission on dietetic registration.~~
- ~~(9) "Registered dietitian," "registered dietitian nutritionist," "RD," or "RDN" means a person registered as such with the commission on dietetic registration.~~
- ~~(10) "Supervision" means the oversight and responsibility for an individual's supervised preprofessional experience or coordinated program by a qualified supervisor under WAC 246-822-147.~~

(11) "Supervised preprofessional experience" means at least 900 hours of supervised competency-based practice in the field of dietetics under WAC 246-822-141.

AMENDATORY SECTION (Amending WSR 21-02-002, filed 12/23/20, effective 1/23/21)

**WAC 246-822-120 Nutritionist application requirements.** (~~((1) Individuals applying for certification as a certified dietitian must submit:~~

- ~~(a) A completed application form with fee; and~~
- ~~(b) Verification of current registration status with the commission on dietetic registration.~~

~~(2) Individuals applying for certification as a certified dietitian who have not passed the required written examination or who are not registered with the commission on dietetic registration must:~~

- ~~(a) Provide transcripts forwarded directly from the issuing college or university showing completion of a baccalaureate degree or higher in a major course of study in human nutrition, foods and nutrition, dietetics, or food management;~~
- ~~(b) Provide evidence of completion of a continuous preprofessional experience or coordinated undergraduate program in dietetics under the supervision of a qualified supervisor; and~~
- ~~(c) Take and pass the required written examination.~~

~~(3) Individuals applying)) An applicant for certification as a ((certified)) nutritionist ((must submit)) shall:~~

- (1) Submit to the department:
  - ~~(a) A completed application on forms ((with fee; and~~
  - ~~(b) Documentation that the applicant meets the application requirements for certified dietitians, as set forth in subsection (1) or (2) of this section; or~~
  - ~~(c)) provided by the department;~~
  - (b) The applicable fee in WAC 246-822-990; and
- (2) Provide one of the following:
  - (a) Transcripts forwarded directly to the department from the issuing accredited college or university showing completion of a ((mas- ters)) master's or doctorate degree in one of the following subject areas: Human nutrition, nutrition education, foods and nutrition, or public health nutrition that satisfies standards in WAC 246-822-130; or
  - (b) Documentation to the department of meeting requirements for certified dietitians in WAC 246-822-132.

AMENDATORY SECTION (Amending WSR 91-02-049, filed 12/27/90, effective 1/31/91)

**WAC 246-822-130 Nutritionist minimum core curriculum.** (~~(Training for certified nutritionist should include)) To be eligible for certification as a nutritionist, an applicant shall:~~

(1) Successfully complete a master's or doctorate degree in one of the following subject areas: Human nutrition, nutrition education, foods and nutrition, public health nutrition, or a closely related field.

(2) Successfully complete coursework at the ((collegiate level or equivalent)) college or graduate level from an accredited college or university in the following areas:

((1)) (a) Basic science((~~— Which should include~~)), including courses in one or more of the following:

((a)) (i) Physiology.

((b)) (ii) Biochemistry.

((2)) (b) Foods((~~— Which should include~~)), including courses in one or more of the following:

((a)) (i) Selection.

((b)) (ii) Composition.

((e)) (iii) Food science.

((3)) (iv) Nutritional science.

((4)) (c) Applied nutrition((~~— Which should include~~)), including courses in one or more of the following:

((a)) (i) Diet therapy.

((b)) (ii) Nutrition of the life cycle.

((e)) (iii) Cultural/anthropological nutrition.

((d)) (iv) Public health nutrition.

((5)) (d) Counseling/education((~~— Which should include~~)), including courses in one or more of the following:

((a)) (i) Psychological counseling.

((b)) (ii) Educational psychology.

((e)) (iii) Communication.

((d)) (iv) Psychology.

((e)) (v) Education.

#### NEW SECTION

**WAC 246-822-132 Dietitian application requirements.** An applicant for certification as a dietitian shall:

(1) Submit to the department:

- (a) A completed application on forms provided by the department;
- (b) The applicable fee in WAC 246-822-990; and

(2) Provide to the department verification of current RDN registration or provide the following documentation:

(a) Transcripts sent directly from the issuing accredited college or university showing completion of a bachelor degree or higher with a major course of study in human nutrition, foods and nutrition, dietetics, or food systems management;

(b) Evidence of completing either supervised preprofessional experience under WAC 246-822-141 or a coordinated program under WAC 246-822-145; and

(c) Passing examination results sent directly from CDR to the department as provided in WAC 246-822-150.

#### NEW SECTION

**WAC 246-822-135 Dietitian minimum core curriculum.** (1) To apply for certification as a dietitian by completing a core curriculum, an applicant shall successfully complete a bachelor degree or higher from an accredited college or university with coursework that includes at least the following topics:



- (a) Research skills, including methodology and interpretation or research literature;
  - (b) Science of nutrition and dietetics, including organic chemistry, biochemistry, anatomy, physiology, pharmacology, genetics, microbiology, nutrient metabolism, and nutrition across the lifespan;
  - (c) Food science, food safety and sanitation, and recipe and menu development;
  - (d) Effective education and counseling techniques;
  - (e) Public health policy, including legislative and regulatory structures, and health equity; and
  - (f) Professional practice skills, including professional ethics, client communication, documentation standards, coding and billing practices, and health care delivery systems.
- (2) A didactic program in dietetics accredited by ACEND satisfies the requirements of this section.

#### NEW SECTION

##### **WAC 246-822-141 Dietitian supervised preprofessional experience.**

- (1) To apply for certification as a dietitian by completing supervised preprofessional experience, an applicant shall complete at least 900 hours of competency-based practice in the field of dietetics, supervised by a qualified supervisor. This must include practical experience that contributes to developing competency in the following practice areas:
- (a) Exhibiting professionalism in attitudes and interactions with clients;
  - (b) Understanding scientific research and incorporating new, evidence-based information into practice;
  - (c) Counseling and providing care to clients from diverse backgrounds, using culturally sensitive strategies; and
  - (d) Developing knowledge of health systems and referring clients to other professionals and services as appropriate.
- (2) A dietetic internship accredited by ACEND satisfies the requirements of this section.

#### NEW SECTION

**WAC 246-822-145 Dietitian coordinated program.** To apply for certification as a dietitian by completing a dietitian coordinated program, an applicant shall complete a coordinated program in dietetics that includes concurrent completion of:

- (1) At least 900 hours of practice supervised by a qualified supervisor; and
- (2) A dietetics education program that meets curriculum requirements in WAC 246-822-135.

#### NEW SECTION

**WAC 246-822-147 Supervision and qualified supervisors.** (1) A qualified supervisor provides oversight and takes responsibility for

an individual working to meet experience requirements. To be a qualified supervisor, an individual must be a dietitian certified by the department or registered by CDR.

(2) Methods of supervision may include face-to-face supervision, direct supervision, distance supervision, and review of written notes or recordings.

(a) "Direct supervision" means the supervisor is on the premises and available for immediate consultation.

(b) "Distance supervision" means supervision provided through remote technology, used when a qualified supervisor and an applicant are not working in the same physical location.

(3) Distance supervision is not appropriate when an individual is providing direct client services where a provider's physical presence is necessary.

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

**WAC 246-822-150 Examinations.** (~~((1) A written examination will be given at least once annually to qualified applicants at a time and place determined by the secretary.~~)

~~(2) Applications must be received sixty days in advance of the scheduled examination.~~

~~(3) Applicants who fail the examination shall submit the appropriate fee for reexamination.)~~ (1) The department requires passage of the CDR registered dietitian examination. To register for the examination, an applicant must meet the CDR's eligibility requirements.

(2) The department must receive the passing examination results directly from the testing organization.

AMENDATORY SECTION (Amending WSR 91-02-049, filed 12/27/90, effective 1/31/91)

**WAC 246-822-160 Foreign degree equivalency.** (~~(Applicants who obtained their education outside of the United States and its territories must have their academic degree(s) validated as substantially equivalent to the baccalaureate, master's, or doctorate degree conferred by a regionally accredited college or university recognized by the council on postsecondary education at the time the applicant completed the required degree.)~~) (1) To become credentialed as a nutritionist in Washington, an applicant educated outside the United States and its territories shall:

(a) Have their academic degree assessed by a credential evaluation service to be validated as substantially equivalent to the education requirements in WAC 246-822-120 and submit the assessment with the application or become credentialed by CDR as a registered dietitian; and

(b) Apply to the department under WAC 246-822-120.

(2) To become credentialed as a dietitian in Washington, an applicant educated outside the United States and its territories shall:

(a) Become credentialed by CDR as a registered dietitian; and

(b) Apply to the department under WAC 246-822-132.

NEW SECTION

**WAC 246-822-175 Providing services.** (1) A certified dietitian may provide nutrition counseling or other services that fall within the scope of dietetics as defined by RCW 18.138.010.

(2) A certified nutritionist may provide nutrition counseling or other services that fall within the scope of general nutrition services as defined by RCW 18.138.010.

(3) A certified dietitian or nutritionist may provide services in person or through telehealth, as appropriate, based on the needs of the client.

AMENDATORY SECTION (Amending WSR 15-19-149, filed 9/22/15, effective 1/1/16)

**WAC 246-822-990 Dietitian and nutritionist fees and renewal cycle.** (1) ~~((Certificates))~~ A certification must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC ~~((Part 2))~~.

(2) The following nonrefundable fees will be charged:

<b>Title</b>	<b>Fee</b>
<b>Original application</b>	
Application	\$65.00
HEAL-WA* surcharge	16.00
<b>Renewal</b>	
Renewal	45.00
HEAL-WA* surcharge	16.00
Late renewal penalty	45.00
<b>Expired certificate reissuance</b>	50.00
<b>Duplicate certificate</b>	30.00
<b>Verification of certificate</b>	30.00

\*HEAL-WA is the health resources for Washington online library. See RCW 43.70.110.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-822-020 General provisions.
- WAC 246-822-030 Mandatory reporting.
- WAC 246-822-040 Health care institutions.
- WAC 246-822-050 Dietitian or nutritionist associations or societies.
- WAC 246-822-060 Health care service contractors and disability insurance carriers.
- WAC 246-822-070 Professional liability carriers.
- WAC 246-822-080 Courts.

WAC 246-822-090 State and federal agencies.  
WAC 246-822-170 Certification for dietitians—  
Grandfathering.

**WSR 23-22-132**  
**PROPOSED RULES**  
**LAKE WASHINGTON**  
**INSTITUTE OF TECHNOLOGY**  
[Filed November 1, 2023, 11:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-07-017.

Title of Rule and Other Identifying Information: WAC 495-121-320, 495-121-330, 495-121-605, and 495-121-590, antihazing updates to student conduct code.

Hearing Location(s): On December 6, 2023, at 3 p.m., in the W305A Board Room.

Date of Intended Adoption: December 7, 2023.

Submit Written Comments to: Dr. Sheila Walton, 11605 132nd Avenue N.E., Kirkland, WA 98034, email sheila.walton@lwtech.edu, by December 6, 2023.

Assistance for Persons with Disabilities: Contact Dr. Sheila Walton, phone 425-739-8314, email Sheila.walton@lwtech.edu, by December 6, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Adoption of a new definition of hazing.

Institutions of higher education in Washington state are required to revise their student conduct codes to prohibit hazing both on and off campus. The act, which took effect on June 9, 2022, does not provide a deadline for completing conduct code revisions. Beginning in fall 2022, institutions of higher education must provide students with educational programming on hazing that includes information on hazing awareness, prevention, intervention, and the institutions of higher education policies prohibiting hazing. This programming can be provided either in person or electronically and must be part of the institutions of higher education new student orientation sessions. The program must also be posted on the institutions of higher education public website for the public, including parents, legal guardians, and volunteers to review.

Rule change includes adding this new legislation to the student conduct code.

Reasons Supporting Proposal: HB [2SHB] 1751 requires adoption of new antihazing rules.

Statutory Authority for Adoption: RCW 28B.50.140(13).

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dr. Sheila Walton, 425-739-8314.

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.

November 1, 2023  
Elsa J. Gossett, Director  
Planning and Operations  
Office of the President

## OTS-4011.1

AMENDATORY SECTION (Amending WSR 21-18-041, filed 8/24/21, effective 9/24/21)

- WAC 495D-121-320 Student conduct code—Jurisdiction.** (1) The student conduct code shall apply to student conduct that occurs:
- (a) On college premises;
  - (b) At or in connection with college sponsored activities;
  - (c) Off-campus when, in the judgment of the college, it adversely affects the college community or the pursuit of its objectives.
- (2) Jurisdiction extends to, but is not limited to, locations in which students engage in official college activities including, but not limited to:
- (a) Foreign or domestic travel;
  - (b) Activities funded by the associated students;
  - (c) Athletic events;
  - (d) Training internships;
  - (e) Cooperative and distance education;
  - (f) Online education;
  - (g) Practicums;
  - (h) Supervised work experiences;
  - (i) Any other college-sanctioned social or club activities.
- (3) Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment.
- (4) These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending.
- (5) The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct to students or student groups that occurs off campus.

AMENDATORY SECTION (Amending WSR 21-18-041, filed 8/24/21, effective 9/24/21)

- WAC 495D-121-330 Student conduct code—Definitions.** The following definitions apply for the purposes of this student conduct code:
- (1) "Business day" means a weekday, excluding weekends and official college holidays.
  - (2) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property the college owns, uses, or controls.
  - (3) "Complainant" means an alleged victim of sexual misconduct.
  - (4) "Conduct review officer" means the vice president of student services or other college administrator the president designates to have responsibility to receive and review or refer appeals of student disciplinary actions consistent with the procedures of this code. The president can reassign any and all of the conduct review officer's du-

ties or responsibilities as set forth in this chapter as reasonably necessary.

(5) "Disciplinary action" means the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(6) "Disciplinary appeal" means the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. The student conduct committee hears disciplinary appeals for a suspension in excess of (~~ten~~) 10 instructional days or a dismissal. The college will review appeals of all other appealable disciplinary action through brief adjudicative proceedings.

(7) "Filing" means the process by which a document is officially delivered to a college official responsible to facilitate a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by email or first class mail to the specified college official's office and college email address.

Papers required for filing are considered filed when the specified college official actually receives the papers during office hours.

(8) "Hazing" means any act committed as part of a person's recruitment, initiation, pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student or other person attending a public institution of higher education in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions.

(9) "President" means the president of the college. The president is authorized to:

(a) Delegate any of their responsibilities as set forth in this chapter as may be reasonably necessary; and

(b) Reassign any and all duties and responsibilities as set forth in this chapter as may be reasonably necessary.

~~((9))~~ (10) "Respondent" means the student against whom the college initiates disciplinary action.

~~((10))~~ (11) "Service" means the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by email or by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is emailed or deposited in the mail.

~~((11))~~ (12) "Sexual misconduct" has the meaning ascribed to this term in WAC 495D-121-590(18).

~~((12))~~ (13) "Student" includes all persons who take classes at or through the college, whether on a full-time or part-time basis, and whether such classes are credit courses, noncredit courses, online courses, or otherwise. People who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but

who have a continuing relationship with the college, or who were notified of their acceptance for admission are considered students for purposes of this chapter.

~~((13))~~ (14) "Student conduct committee" means a college committee as described in WAC 495D-121-400.

~~((14))~~ (15) "Student conduct officer" means a college administrator to whom the president or vice president of student services designates responsibility to implement and enforce the student conduct code. The president or vice president can reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as reasonably necessary.

~~((15))~~ (16) "Student group" is a student organization, athletic or intramural team, or living group including, but not limited to, student clubs and organizations, members of a class or student cohort, student performance groups, and student living groups within student housing.

(17) "Title IX coordinator" means a college administrator to whom the president designates responsibility to implement and enforce the guidelines of federal Title IX legislation.

AMENDATORY SECTION (Amending WSR 21-18-041, filed 8/24/21, effective 9/24/21)

**WAC 495D-121-590 Student conduct code—Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages, or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) Academic consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus. Further academic consequences may follow consistent with the provisions in any program handbook. Incidents of academic dishonesty may also be referred to the student conduct officer for disciplinary action consistent with this chapter in addition to the academic consequences identified above.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:



(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstructive or disruptive conduct.** Conduct, not otherwise protected by law, that interferes with, impedes, or otherwise unreasonably hinders:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity;

(b) The free flow of pedestrian or vehicular movement on college property or at a college activity;

(c) Any student's ability to profit from the instructional program; or

(d) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, and/or harassment.** Unwanted touching, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this code, "bullying" is defined as repeated or aggressive unwanted behavior, not otherwise protected by law that intentionally humiliates, harms, or intimidates the victim.

(5) **Imminent danger.** Where the student presents an imminent danger to college property, or to themselves, or other students or persons in college facilities on or off campus, or to the education processes of the college.

(6) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's email communications directly or through spyware, sending threatening emails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's email identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(7) **Property violation.** Damage to, misappropriation of, unauthorized use or possession of, vandalism, or other nonaccidental damaging or destruction of college property or the property of another person. Property for purposes of this subsection includes computer passwords, access codes, identification cards, personal financial account numbers, other confidential personal information, intellectual property, and college trademarks.

(8) **Noncompliance.** Failure to comply with:

(a) The direction of a college officer or employee who is acting in the legitimate performance of their duties, including failure to properly identify oneself to such a person when requested to do so;

(b) A college rule or policy as set forth in the *Lake Washington Institute of Technology Policies and Procedures Manual* which may be found in the library or online.

(9) **Weapons.** Possession, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, martial arts weapons, explosive device, dangerous chemicals, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A student with a valid concealed weapons permit may store a firearm in their vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or designee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in advance to bringing weapons to the college, in writing, and shall be subject to such terms or conditions incorporated therein.

(10) **Hazing.** (~~Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.~~)

(a) Hazing is any act committed as part of:

(i) A person's recruitment, initiation, pledging, admission into, or affiliation with a student group; or

(ii) Any pastime or amusement engaged in with respect to such a student group;

(iii) Any act that causes, or is likely to cause, bodily danger or physical harm, or serious psychological or emotional harm, to any student.

(b) Examples of hazing include, but are not limited to:

(i) Causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm;

(ii) Humiliation by ritual act;

(iii) Striking another person with an object or body part;

(iv) Causing someone to experience excessive fatigue, or physical and/or psychological shock; or

(v) Causing someone to engage in degrading or humiliating games or activities that create a risk of serious psychological, emotional, and/or physical harm.

(c) "Hazing" does not include customary athletic events or other similar contests or competitions.

(d) Consent is not a valid defense against hazing.

(11) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location where such use is prohibited, including (~~twenty-five~~) 25 feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(12) **Alcohol.** Being observably under the influence of any alcoholic beverage, or otherwise using, possessing, selling, or delivering

any alcoholic beverage, except as permitted by law and authorized by the college president.

(13) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(14) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. Being observably under the influence of any lawfully prescribed drug when enrolled in classes that require operation of heavy equipment or other dangerous equipment.

(15) **Disorderly conduct.** Conduct which is disorderly, lewd, obscene, or a breach of peace on college premises or at college sponsored activities that is not otherwise protected under the law.

(16) **Discriminatory conduct.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age; religion; creed; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(17) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence. Sexual harassment prohibited by Title IX is defined in the supplemental procedures to this code. See WAC 495D-121-680 (supplemental Title IX student conduct procedures).

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome sexual or gender-based conduct, including unwelcome sexual advances, requests for sexual favors, quid pro quo harassment, and other verbal, nonverbal, or physical conduct of a sexual or a gendered nature that is sufficiently severe, persistent, or pervasive as to:

(i) Deny or limit the ability of a student to participate in or benefit from the college's educational program;

(ii) Alter the terms or conditions of employment for a college employee(s); and/or

(iii) Create an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(d) **Nonconsensual sexual intercourse.** Any actual or attempted sexual intercourse (anal, oral, or vaginal), however slight, with any object or body part, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(e) **Nonconsensual sexual contact.** Any actual or attempted sexual touching, however slight, with any body part or object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(f) **Incest.** Sexual intercourse or sexual contact with a person known to be related to them, either legitimately or illegitimately, as an ancestor, descendant, brother, or sister of either wholly or half related. Descendant includes stepchildren(~~(7)~~) and adopted children under the age of (~~(eighteen)~~) 18.

(g) **Statutory rape.** Consensual intercourse between a person who is (~~(eighteen)~~) 18 years of age or older, and a person who is under the age of (~~(sixteen)~~) 16.

(h) **Domestic violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Washington, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Washington, RCW 26.50.010.

(i) **Dating violence.** Physical violence, bodily injury, assault, the infliction of fear of imminent physical harm, sexual assault, or stalking committed by a person:

(i) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(ii) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

(A) The length of the relationship;

(B) The type of relationship; and

(C) The frequency of interaction between the persons involved in the relationship.

(j) For purposes of this code, "consent" means knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(18) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental, or physical

disability; age; religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic communications.

(19) **Retaliation.** Harming, threatening, intimidating, coercing, or taking adverse action of any kind against a person because such person reported an alleged violation of this code or college policy, provided information about an alleged violation, or participated as a witness or in any other capacity in a college investigation or disciplinary proceeding.

(20) **Misuse of information resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization;

(i) Failure to comply with the college's acceptable use policy.

(21) **Breach of campus safety.** Safety violation includes any non-accidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community. Breaching campus safety or security includes, but is not limited to:

(a) Unauthorized access to college facilities; intentionally damaging door locks; unauthorized possession of college keys or access cards; duplicating college keys or access cards; propping open of exterior doors; or unauthorized entry onto or into college property;

(b) Tampering with fire safety equipment, such as fire extinguishers, smoke detectors, alarm pull stations or emergency exits or triggering false alarms or other emergency response systems;

(c) Placement of equipment or vehicles, including bicycles, so as to obstruct the means of access to/from college buildings;

(d) Entering or remaining in any closed college facility or entering after the closing time of the college facility without permission of a college official;

(e) Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(22) **Abuse of procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

- (b) Falsification or misrepresentation of information;
- (c) Disruption or interference with the orderly conduct of a proceeding;
- (d) Interfering with someone else's proper participation in a proceeding;
- (e) Destroying or altering potential evidence or attempting to intimidate or otherwise improperly pressure a witness or potential witness;
- (f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member;
- (g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(23) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(24) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college reserves the right to pursue student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

#### NEW SECTION

**WAC 495D-121-605 Student conduct code—Hazing prohibited—Sanctions.** (1) Hazing by a student or a student group is prohibited pursuant to WAC 495D-121-590(10).

(2) No student may conspire to engage in hazing or participate in hazing of another. State law provides that hazing is a criminal offense, punishable as a misdemeanor.

(3) Washington state law provides that:

(a) Any student group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or student living group is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages.

(b) Any person who participates in the hazing of another shall forfeit any entitlement to state-funded grants, scholarships, or awards for a period of time determined by the college.

(c) Student groups that knowingly permit hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

(d) Student groups found responsible for violating the code of student conduct, college antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault will be disclosed in a public report issued by the college setting forth the name of the student group, the date the investigation began, the date the investigation ended, a finding

of responsibility, a description of the incident(s) giving rise to the finding, and the details of the sanction(s) imposed.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 495D-121-550 Student conduct code—Hazing prohibited.