

**WSR 22-15-004**  
**PROPOSED RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed July 6, 2022, 3:03 p.m.]

Supplemental Notice to WSR 22-05-039 [22-10-093].

Preproposal statement of inquiry was filed as WSR April 27, 2021 [21-10-029].

Title of Rule and Other Identifying Information: Original notice was provided in WSR 21-10-029 [22-10-093] to change the public records WAC, updating them to current practices and procedures for chapter 139-02 WAC.

Hearing Location(s): On August 31, 2022, at 10 a.m. - 12 p.m., at 19010 1st Avenue South, Burien, WA 98148; or virtual at [cjtc.wa.gov](http://cjtc.wa.gov).

Date of Intended Adoption: August 31, 2022.

Submit Written Comments to: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, email [derek.zable@cjtc.wa.gov](mailto:derek.zable@cjtc.wa.gov), by August 26, 2022.

Assistance for Persons with Disabilities: Contact Derek Zable, phone 206-835-7350, email [derek.zable@cjtc.wa.gov](mailto:derek.zable@cjtc.wa.gov), by August 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule updates the commission's public records WAC to current best practices and to the current procedures within the commission. It also updates the format of the existing WAC for accessibility and referencing.

Reasons Supporting Proposal: Updating the public records WAC for the commission allows clarity for requestors, notice of what our current practices and procedures are, and a common reference of the requirements of the public record officer.

Statutory Authority for Adoption: RCW 43.101.080, 42.56.040.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Derek Zable, 19010 1st Avenue South, Burien, WA 98148, 206-835-7350.

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 rule content is explicitly and specifically dictated by statute.

July 6, 2022  
Derek Zable  
Records Manager

**OTS-3600.3**

AMENDATORY SECTION (Amending WSR 09-13-066, filed 6/16/09, effective 7/17/09)

**WAC 139-02-010 Authority and purpose.** (~~((1) RCW 42.56.070(1) requires each agency to make available for inspection and copying non-exempt "public records" in accordance with published rules. The act defines "public record" 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. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act (the act), that exempts or prohibits the disclosure of public records held by that agency.~~

~~(2) The purpose of these rules is to establish the procedures the Washington state criminal justice training commission shall follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the Washington state criminal justice training commission and establish processes for both requestors and Washington state criminal justice training commission staff that are designed to best assist members of the public in obtaining such access.~~

~~(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. In carrying out its responsibilities under the act, the Washington state criminal justice training commission shall be guided by the provisions of the act describing its purposes and interpretation.)~~ (1) These rules establish procedures the Washington state criminal justice training commission will follow to provide full access to public records. These rules:

(a) Provide information to persons wishing to request commission public records; and

(b) Establish processes for both requestors and commission staff to fully assist the public in obtaining such access.

(2) In carrying out its public records responsibilities the commission will be guided by the provisions of chapter 42.56 RCW, the Public Records Act.

[Statutory Authority: RCW 43.56.040 [42.56.040] and 43.101.080. WSR 09-13-066, § 139-02-010, filed 6/16/09, effective 7/17/09. Statutory Authority: RCW 43.101.080. WSR 00-17-017, § 139-02-010, filed 8/4/00, effective 9/4/00.]

NEW SECTION

**WAC 139-02-021 Definitions.** The definitions set forth in RCW 42.56.010 apply throughout this chapter. In addition, the definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) **Commercial purposes** means a business activity by any form of business enterprise intended to generate revenue or financial benefit.

(2) **Customary business hours** refers to Burien administrative office hours which are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays and days the commission is closed.

(3) **Electronic format or electronic records or electronic records format** refer to digital records as distinct from paper; examples include email, Word or Excel documents, PDF, or media files.

(4) **Executive director** means the executive director of the Washington state criminal justice training commission.

(5) **Page** means one impression/image on a single side of a sheet of paper. It also applies to one electronic image of a single side of a sheet of paper. For example, the commission considers a physical sheet of paper with an impression/image on both sides as two pages.

(6) **Public Records Act** means the same as chapter 42.56 RCW.

(7) **Public records officer** means the public records officer or designee for the commission appointed by the executive director.

(8) **Request or public records request** means a public records request made pursuant to chapter 42.56 RCW.

[ ]

AMENDATORY SECTION (Amending WSR 21-07-039, filed 3/10/21, effective 4/10/21)

**WAC 139-02-040 About the Washington state criminal justice training commission and public records officer.** (1) The Washington state criminal justice training commission is the state training academy for law enforcement and corrections professionals. The ~~((Washington state criminal justice training))~~ commission's campus is located in Burien, WA at 19010 1st Avenue South. The ~~((Washington state criminal justice training))~~ commission has a fiscal office in Lacey, WA located at 3060 Willamette Drive N.E.

(2) Any person wishing to request access to public records of the ~~((Washington state criminal justice training))~~ commission, or seeking assistance in making such a request, should contact the public records officer of the ~~((Washington state criminal justice training))~~ commission:

Public Records Officer  
Washington State Criminal Justice Training Commission  
MS: TB-35  
19010 1st Avenue South  
Burien, WA 98148  
Phone: 206-835-7300  
Email: Recordsrequests@cjtc.wa.gov

Public records requests can be made and additional information is ~~((also))~~ available at the ~~((Washington state criminal justice training))~~ commission's website at [cjtc.wa.gov](http://cjtc.wa.gov).

(3) The public records officer will oversee compliance with the act, but another ~~((Washington state criminal justice training))~~ commission staff member may process the request. Therefore, these rules will refer to the public records officer or designee. The public records officer or designee and the ~~((Washington state criminal justice training))~~ commission will:

(a) Provide the fullest assistance to requestors;

(b) Create and maintain for use by the public and ~~((Washington state criminal justice training))~~ commission officials an index to public records of the ~~((Washington state criminal justice training))~~ commission;

(c) Ensure ((that)) public records are protected from damage or disorganization; and

(d) Prevent fulfilling public records requests from causing excessive interference with essential functions of the ((Washington state criminal justice training)) commission.

[Statutory Authority: RCW 43.101.080. WSR 21-07-039, § 139-02-040, filed 3/10/21, effective 4/10/21. Statutory Authority: RCW 43.56.040 [42.56.040] and 43.101.080. WSR 09-13-066, § 139-02-040, filed 6/16/09, effective 7/17/09. Statutory Authority: RCW 43.101.080. WSR 05-01-109, § 139-02-040, filed 12/15/04, effective 1/15/05; WSR 00-17-017, § 139-02-040, filed 8/4/00, effective 9/4/00.]

AMENDATORY SECTION (Amending WSR 21-07-039, filed 3/10/21, effective 4/10/21)

**WAC 139-02-050 Availability of public records. (1) Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the ((Washington state criminal justice training)) commission; 8:00 a.m. ((to noon, and 1:00 p.m. to 4:00)) to 5:00 p.m., Monday through Friday, excluding legal holidays and days the campus is closed. Records must be inspected at the ((offices)) Burien campus of the ((Washington state criminal justice training)) commission.

**(2) Records index.** ((An index of public records is available for use by members of the public. The index includes a list of current manuals of the Washington state criminal justice training commission, a current list of laws, other than those listed in chapter 42.56 RCW, that exempts or prohibits disclosure of specific information or records, and current Washington Administrative Code agency rules. The index may be accessed online at [ejtc.wa.gov](http://ejtc.wa.gov) or at the Washington state criminal justice training commission in Burien.))

(a) The commission shall have available to all persons at its offices in Burien a current index which provides identifying information as to the following records:

(i) All records issued before July 1, 1990, for which the commission has maintained an index;

(ii) Final orders entered after June 30, 1990, that are issued in adjunctive proceedings as defined in RCW 34.05.010(1) and contain an analysis or decision of substantial importance to the commission in carrying out its duties;

(iii) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and contain an analysis or decision of substantial importance to the commission in carrying out its duties;

(iv) Interpretive statements as defined in RCW 34.05.010(8) that were entered after June 30, 1990;

(v) Policy statements as defined in RCW 34.05.010(14) that were entered after June 30, 1990; and

(vi) Meeting minutes of the governing body of commission.

(b) The system of indexing shall be as follows:

(i) The indexing system shall be administered by the commission's public records officer and shall be located at the Burien campus.

(ii) Copies of indexes shall be available for public inspection and copying in the same manner provided for the inspection and copying of public records.

(iii) The public records officer shall establish and maintain a separate index for each item contained in (a) (i) through (vi) of this subsection as follows:

(A) All final orders and declaratory orders determined by the commission to contain analyses or decisions of substantial importance to the commission shall be listed alphabetically by the titles of the hearing or controversy and shall contain a phrase describing the important issue or issues.

(B) Interpretive statements and policy statements shall be indexed by the applicable program.

(C) The meeting minutes of the governing body of the commission shall be indexed chronologically.

(iv) The public records officer shall update all indexes at least once a year and shall revise such indexes when deemed necessary.

**(3) Organization and protection of records.**

(a) The ((Washington state criminal justice training)) commission maintains its records in a reasonably organized manner and takes reasonable actions to protect records from damage and disorganization. ((A requestor shall not take Washington state criminal justice training commission records from Washington state criminal justice training commission offices without the permission of the public records officer or designee.)) If commission records are maintained in a digital format, they will be provided digitally in response to a public records request. If records are maintained and inspected on paper, a requestor may ask for copies.

(b) Records will be made available to the requestor for inspection subject to the following restrictions:

(i) Only the public records officer will remove records from the designated inspection area.

(ii) The quantity of records may be limited in accordance with the available space.

(iii) All possible care shall be taken by the requestor to prevent damage to the records.

(iv) Records shall not be marked, altered, cut or mutilated in any way.

(v) During inspection, eating, drinking, and smoking are prohibited.

(vi) Records shall not be defaced in any way including writing on, folding or folding anew if in folded form, tracing or fastening with clips or other fasteners except those that already exist in the file.

(vii) Records must be kept in the order in which received.

(viii) Commission personnel will provide all requested copies of records.

(ix) The public records officer will remove the records from the inspection area when no longer required by the requestor and no later than the end of the customary business hours.

(c) Records may be available on the ((Washington state criminal justice training)) commission website at [cjtc.wa.gov](http://cjtc.wa.gov). Requestors are encouraged to view the documents available on the website prior to submitting a records request.

**(4) Making a request for public records.**

(a) Any person wishing to inspect or obtain copies of public records of the ((Washington state criminal justice training)) commission

shall make the request in writing using the ~~((Washington state criminal justice training))~~ commission public record request ~~((form, or))~~ website, by letter, or email addressed to the public records officer. Each request should include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and/or an email address; and
- Identification of the public records adequate for the public records officer or designee to locate the records.

(b) Communications seeking commission records sent or provided to unauthorized locations, addresses or staff, will not be accepted or processed as public records request. Any such communication will be processed as general informal inquiries, general correspondence, general requests for information, or discovery as appropriate. The requestor may resubmit his/her request to the public records officer at the Burien office.

(c) If the requestor wishes to have copies of the records made instead of inspecting them, the request should so indicate. Costs will be assessed in compliance with WAC 139-02-070.

(d) If requestors wish to inspect rather than obtain copies of records, they must indicate this preference in their requests ~~((Pursuant to WAC 139-02-070, standard photocopies are provided at fifteen cents per page, plus postage))~~ and the requestor must follow the rules of requesting to inspect public records provided in WAC 139-02-090(6).

[Statutory Authority: RCW 43.101.080. WSR 21-07-039, § 139-02-050, filed 3/10/21, effective 4/10/21. Statutory Authority: RCW 43.56.040 [42.56.040] and 43.101.080. WSR 09-13-066, § 139-02-050, filed 6/16/09, effective 7/17/09. Statutory Authority: RCW 43.101.080. WSR 00-17-017, § 139-02-050, filed 8/4/00, effective 9/4/00.]

AMENDATORY SECTION (Amending WSR 09-13-066, filed 6/16/09, effective 7/17/09)

**WAC 139-02-070 Costs for providing copies of public records.**

~~((1) Costs for paper copies. There is no fee charged for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. Before beginning to make copies, the public records officer or designee may estimate costs of copying the records, and may require a deposit of up to ten percent of all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The Washington state criminal justice training commission will not charge sales tax when it makes copies of public records.~~

~~(2) Costs for electronic records. The cost of electronic copies of records shall be the actual cost of the CD, DVD, audio or video tape, or disc.~~

~~(3) Costs of mailing. The Washington state criminal justice training commission may also charge actual costs of mailing, including the cost of the shipping container.~~

~~(4) Payment. Payment may be made by check or money order only, payable to the Washington state criminal justice training commis-~~

sion.)) (1) The following copy fees and payment procedures apply to requests to the agency under chapter 42.56 RCW.

(2) **Actual costs.** Pursuant to RCW 42.56.120 (2) (b), the agency is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:

(a) The agency does not have the resources to conduct a study to determine all its actual copying costs;

(b) To conduct such a study would interfere with other essential agency functions; and

(c) Through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2) (b) and (c), (3), and (4).

(3) There is no fee charged for inspecting public records.

(4) **Costs for paper copies.** The agency will charge for copies of paper records pursuant to the fees in RCW 42.56.120 (2) (b) and (c).

(a) Before beginning to make copies, the public records officer or designee may estimate costs of copying the records and may require a deposit of up to 10 percent of all the records selected by the requestor.

(b) The public records officer or designee may require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.

(c) The commission shall not charge sales tax when it makes copies of public records.

(5) **Costs for electronic records.** Electronic copies of records shall be charged as follows pursuant to the fees in RCW 42.56.120 (2) (b) and (c), which includes:

(a) Charge for scanned records or for use of agency equipment for scanning.

(b) Charge for each four electronic files or attachments uploaded to email, or cloud-based data storage service, or other means of electronic delivery.

(c) Charge per gigabyte for records transmitted in an electronic format or for use of agency equipment to send records electronically.

(d) Actual costs of any digital storage media or devices provided by the agency.

(e) Actual costs of a "customized service charge" when the request would require the use of information technology expertise to prepare data compilations or when such customized access services are not used by the agency for other business purposes.

(i) The agency will notify the requestor and take other steps if it will be doing a customized service charge.

(ii) The public records officer or designee may require a deposit of up to 10 percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment.

(iii) Copy charges may be combined to the extent more than one type of charge applies to copies responsive to a particular request.

(iv) Public records request fees do not supersede other statutory provisions for copying fees.

(6) **Costs of mailing.** The commission may also charge actual costs of mailing, including the cost of the shipping container.

(7) **Payment.** Payment shall be made payable to the Washington state criminal justice training commission by check or money order only.

(8) **Payment date.** The payment date for fees, deposits, or other costs will be scheduled at a minimum of 30 days, but no more than 45 days, after the required payment is communicated with the requestor. If a requestor fails to pay by the payment date, the request will be closed per WAC 139-02-090(8).

(9) **Summary of charges.** Upon request the commission will provide a summary of the applicable charges before copies are made and the requestor may revise the request to reduce the number of copies, thereby reducing the applicable charges.

(10) **Waiver of charges (reserved).** It is within the discretion of the public records officer or designee to waive copying fees when:

(a) All of the records responsive to an entire request are paper copies only and are 25 or fewer pages; or

(b) All of the records responsive to an entire request are electronic and no more than the equivalent of 100 printed pages.

[Statutory Authority: RCW 43.56.040 [42.56.040] and 43.101.080. WSR 09-13-066, § 139-02-070, filed 6/16/09, effective 7/17/09. Statutory Authority: RCW 43.101.080. WSR 00-17-017, § 139-02-070, filed 8/4/00, effective 9/4/00.]

AMENDATORY SECTION (Amending WSR 09-13-066, filed 6/16/09, effective 7/17/09)

**WAC 139-02-090 Processing requests for public records.** (1) **Providing fullest assistance.** The Washington state criminal justice training commission is charged by statute with adopting rules which provide for how it shall "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee (~~((shall process requests in the order they are received and allowing for the most requests to be processed in the most efficient manner))~~) will evaluate and process requests according to the nature of the request, clarity, volume, and availability of requested records.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer or designee will do one or more of the following:

(a) Make the records available for inspection;

(b) Provide the requested records (or provide a bill for the records if applicable) to the requestor;

(c) Provide a reasonable estimate of when records will be available (the public records officer may revise the estimate of when records will be available); (~~((or))~~)

(d) Deny the request and provide a statutory explanation as to the reason for the denial; or

(e) Acknowledge receipt of the request and ask the requestor to clarify all or any part of the request that is unclear and provide to the greatest extent possible a reasonable estimate of the time the



commission will require to respond to the unclear request or unclear part of a request if it is not clarified.

(i) Such clarification may be requested and provided by telephone and memorialized in writing, or by email or letter;

(ii) Clarification may include identifying a record with specificity sufficient for the commission to locate or produce the record;

(iii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the commission need not respond to it. The commission will respond to those portions of a request that are clear.

(3) **Additional time to respond.** Additional time for the commission to respond to a request may be based upon the need to clarify the request, locate and assemble the records requested, notify affected others or agencies affected by the request, or determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

~~((3))~~ (4) **Consequences of failure to respond.** If the ((Washington state criminal justice training)) commission does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

~~((4))~~ (5) **Protecting rights of others.** In the event ((that)) the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. This notice is given so affected persons may seek an order from a court to prevent or limit the disclosure. The notice to the affected persons may include a copy of the request.

~~((5))~~ (6) **Records exempt from disclosure.** ((Some records are exempt from disclosure, in whole or in part.))

(a) The commission reserves the right to determine a public record is exempt in whole or in part consistent with provisions of the Public Records Act or other applicable provision of law.

(b) If the ((Washington state criminal justice training)) commission believes ((that)) a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

~~((6))~~ (c) **Certain exemptions other than the Public Records Act itself restrict the disclosure of documents held by the commission. Some examples of such other applicable statutory exemptions include, but are not limited to:**

RCW 5.60.060: Attorney-client privileged records.

Chapter 19.108 RCW: Trade secrets.

(7) The commission reserves the right to delete identifying details when producing any public record when there is reason to believe disclosure of such details would be an invasion of personal privacy protected by RCW 42.56.050.

(8) The commission is prohibited by statute from disclosing lists of individuals or records that may be manipulated to created lists of individuals for commercial purposes pursuant to RCW 42.56.070.

(9) **Inspection of public records.**

~~(a) ((Consistent with other demands, the Washington state criminal justice training commission will provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document without approval from the public records officer or designee. The requestor will indicate which documents he or she wishes the agency to copy.~~

~~(b) The requestor must claim or review the assembled records within thirty days of the Washington state criminal justice training commission's notification to him or her that the records are available for inspection or copying. The Washington state criminal justice training commission will notify the requestor in writing of this requirement and inform the requestor that he or she is to contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the Washington state criminal justice training commission may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which may be processed as a new request.~~

~~(7) **Providing copies of records.** After inspection is complete or in lieu of inspection, the public records officer or designee will make the requested copies or arrange for copying and provide them to the requestor.~~

~~(8-)) A requestor must notify the commission in advance of their intent to inspect public records. Using the tracking ID the commission assigns to each public records request a requestor must identify with specificity and in advance the records the requestor wishes to inspect. The commission will assist the requestor in scheduling an appointment for inspection and may propose convenient alternatives to an in-person visit. Public records will be available for inspection during customary business hours and when staff are available to assist the requestor.~~

~~(b) When the request to inspect is for a large number of records, the public records officer may schedule inspection in installments.~~

~~(c) The commission will notify the requestor of the scheduled appointment. The requestor must inspect the requested records within 30 days of the scheduled appointment. If the requestor or a representative of the requestor fails to inspect the records within the 30-day period or fails to make other arrangements, the commission may close the request and refile the assembled records. If the requestor makes a request for the same records it will be processed as a new request.~~

~~(d) Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency.~~

~~(e) Inspections are conducted in accordance with the requirement that agencies protect the requested records from damage or disorganization. No member of the public shall remove a document from the inspection area or disassemble or alter any public record.~~

~~(f) After inspection is complete, the requestor may wish to identify which documents the requestor wishes the agency to copy.~~

~~(i) Where the commission charges for copies, the requestor must pay for the copies prior to the copies being provided to the requestor.~~

~~(ii) Electronic records will be provided as a link to the records on the commission public records website if the records are located on~~

the public records website, or in a format used by the commission and which is generally commercially available.

(g) When the inspection of the requested records is complete and any requested copies are provided the public records officer will close the records request.

**(10) Providing records in installments.**

(a) When the request is for a large number of records, the public records officer or designee may provide access for inspection and copying in installments, if he or she reasonably determines that it would be more practical.

(b) If, within ~~((thirty))~~ 30 days, the requestor fails to inspect one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

~~((9) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the Washington state criminal justice training commission has completed the request and provided all available (nonexempt) records.~~

~~(10))~~ (c) When the request is for copies of public records, the public records officer may require payment for each installment either prior to providing the installment or prior to providing subsequent installments. In addition, the requestor may be required to provide a deposit up to 10 percent of the estimated cost of copying all records selected by the requestor. If the requestor fails to pay the required cost by the scheduled payment date, the public records officer may close the request.

**(11) Closing withdrawn or abandoned request.** ~~((When the requestor either))~~

(a) The public records officer will close a request when the requestor:

(i) Withdraws the request ~~((or))~~;

(ii) Fails to fulfill his or her obligations to inspect the records ~~((or))~~ 30 days after the scheduled inspection date;

(iii) Fails to clarify an entirely unclear request 30 days after clarification was requested;

(iv) Fails to claim an installment 30 days after records were provided;

(v) Fails to pay required fees for an installment by the scheduled payment date;

(vi) Fails to pay the deposit or final payment for the requested copies ~~((or))~~ by the scheduled payment date.

(b) The public records officer will close the request and indicate to the requestor that the Washington state criminal justice training commission has closed the request and refile the assembled records.

~~((11))~~ **(12) Later discovered documents.** If, after the Washington state criminal justice training commission has informed the requestor that it has provided all available records, the Washington state criminal justice training commission becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

(13) The commission is not required to create a record that does not otherwise exist.

[Statutory Authority: RCW 43.56.040 [42.56.040] and 43.101.080. WSR 09-13-066, § 139-02-090, filed 6/16/09, effective 7/17/09. Statutory Authority: RCW 43.101.080. WSR 00-17-017, § 139-02-090, filed 8/4/00, effective 9/4/00.]

#### NEW SECTION

**WAC 139-02-095 Review of denials of public records.** (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the executive director or designee. The executive director or designee shall immediately consider the petition and either affirm or reverse the denial within two business days following the Washington state criminal justice training commission's receipt of the petition, or within such other time as the commission and the requestor mutually agree upon.

(3) **Exhausting administrative remedies.** Administrative remedies will not be considered exhausted until the commission has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

(4) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the commission denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure the requestor may request the attorney general's office review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(5) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative approval.

[ ]

#### NEW SECTION

**WAC 139-02-105 Commercial purposes.** No provisions of any rule contained in this title shall be construed as giving authority to any commission records or public records officer or employee to give, sell, or provide access to lists of individuals requested for commercial purposes. If a list of individuals is included in the records requested, the commission may require requestors to identify themselves and the purpose of their request, and provide a signed statement that the requestor will not use the list of individuals for commercial purposes.

When the commission has credible indication that a requested list of individuals might be used for commercial purposes, the commission

will investigate the request further. The commission will determine on a case-by-case basis whether such further investigation is necessary, based on the identity of the requestor, the nature of the records requested, and any other information available to the commission. When the commission determines further investigation is necessary, the commission will require requestors to identify the purpose of their request.

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## WSR 22-15-012

## PROPOSED RULES

## EVERETT COMMUNITY COLLEGE

[Filed July 7, 2022, 3:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-024.

Title of Rule and Other Identifying Information: Chapter 132T-90 WAC, Implementation of the Family Rights and Privacy Act [FERPA] of 1974. Directory information, WAC 132E-122-130 Disclosure of student information.

Hearing Location(s): On September 20, 2022, at 5:00 p.m., at EvCC Jackson Conference Center.

Date of Intended Adoption: September 20, 2022.

Submit Written Comments to: Sindie Howland, 2000 Tower Street, Everett, WA 98201, email showland@everettcc.edu.

Assistance for Persons with Disabilities: Contact Sindie Howland, phone 425-388-8280, email showland@everettcc.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state community college state system has defined and approved a uniform FERPA directory information policy. This policy will provide students across the state attending community colleges a uniform directly information policy, for ease of understanding across the state.

Reasons Supporting Proposal: FERPA (20 U.S.C. § 1232g; 34 C.F.R. Part 99) is a federal law that protects the privacy of student education records. Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.

Statutory Authority for Adoption: RCW 28B.50.140; chapters 34.05 and 42.56 RCW. Washington Higher Education Administrative Procedure Act, FERPA (20 U.S.C. § 1232g) and its implementing regulation (34 C.F.R. § 99).

Statute Being Implemented: All policies, procedures and presidential directives will be updated to align with any substantive changes in applicable state and federal law. Any changes will be drafted and approved as follows: Policies - president, VP staff, and board of trustees. President, VP staff, and board of trustees approved new rule.

Rule is necessary because of federal law, rule is necessary because of federal law, FERPA (20 U.S.C. § 1232g) and its implementing regulation (34 C.F.R. § 99).

Name of Proponent: Everett Community College, governmental.

Name of Agency Personnel Responsible for Drafting: Rita Belvill, 2000 Tower Street, Everett, WA 98201, 425-388-9202; Implementation and Enforcement: Office of the President, Everett Community College, 425-388-9573.

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; 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 pro-

grams 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

July 7, 2022  
Rita Belvill  
Executive Assistant  
to the President

### OTS-3882.1

AMENDATORY SECTION (Amending WSR 18-01-119, filed 12/19/17, effective 1/19/18)

**WAC 132E-122-130 Disclosure of student information.** (1) Unless the student has provided the office of enrollment services with written notice which specifically requests otherwise, designated officials of the college may routinely respond to requests for the following directory information about a student:

- (a) Student's name;
- (b) Major field of study;
- (c) ~~((Extracurricular activities;~~
- ~~(d) Height and weight of athletic team members;~~
- ~~(e) Quarters of attendance;~~
- ~~(f) Degrees and awards received;~~
- ~~(g) The most recent previous educational agency or institutions attended;~~

~~(h) Date of birth;~~

~~(i) Email address;~~

~~(j) Student enrollment status.~~

~~(2) Recognized college student organizations, such as scholastic and service clubs, may obtain information relating to a student's academic record and status; requests of this nature are handled on an individual basis and only through the organization's appointed advisor.)~~ Dates of attendance;

(d) Degrees or certificates earned;

(e) Term degree or certificate awarded;

(f) Honors;

(g) Enrollment status;

(h) Participation in recognized sports.

(2) Pursuant to the National Defense Authorization Act for Fiscal Year 1995, the college must release directory information to military recruiters unless the student specifically denies permission. The college shares selected records with organizations with which the college has contractual agreements for services. The college may also release enrollment data for loan processing, enrollment and degree verification, and records archiving purposes through contractual agreements, and to other schools in which a student seeks or intends to enroll.

The college releases Social Security and enrollment data to the Federal Government for Financial Aid and Veterans' eligibility evaluation and for Hope Scholarship/Lifetime Learning tax credit programs. The college may release records following a receipt of a lawfully issued subpoena, attempting to notify the student beforehand. The college does not disclose records to family members without student consent.

(3) No other information is to be given without the prior consent of the student or parent/guardian as appropriate. The college registrar or their designee will be responsible for reviewing unusual requests for information and assistance in the interpretation of the provisions of the Federal Family Educational Rights and Privacy Act (Buckley Amendment). See Family Educational Rights and Privacy Act of 1974 in the student handbook for more information on confidentiality of student information and records.

[Statutory Authority: RCW 28B.50.140. WSR 18-01-119, § 132E-122-130, filed 12/19/17, effective 1/19/18.]



## WSR 22-15-025

## PROPOSED RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed July 12, 2022, 10:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-08-070.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-106-1900 What definitions apply to MAC and TSOA services?, 388-106-1905 Am I eligible for MAC services?, 388-106-1910 Am I eligible for TSOA services?, 388-106-1915 What services may I receive in MAC and TSOA?, 388-106-1931 What are the TCARE screening measures?, 388-106-1932 How is the TCARE screening scored to determine if my caregiver is eligible for a TCARE assessment and related step three services?, 388-106-1945 When do my MAC or TSOA services begin?, and 388-106-1950 How do I remain eligible for MAC and TSOA services?

Hearing Location(s): On August 23, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID-19 pandemic, hearings are held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than August 24, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m. on August 23, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [tenczsa@dshs.wa.gov](mailto:tenczsa@dshs.wa.gov) [[tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov)], by 5:00 p.m. on August 9, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The intent of this rule making is to amend qualifications for TCARE assessments, indicate changes made to TCARE screening and assessment process, modify the TCARE screening measures, indicate changes in the screening scores due to the changed screening measures, and indicate changes made to the GetCare screening questions and scores for step three services.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 74.08.090 and 74.39A.030.

Statute Being Implemented: RCW 74.08.090 and 74.39A.030.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debbie Johnson, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2531.

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 not a significant legislative rule pursuant to RCW 34.05.328, and is exempt under RCW 34.05.328 (5) (b) (vii), rules of DSHS 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(4) because the proposed amendments do not impact small businesses and impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

Explanation of exemptions: RCW 34.05.328 (5)(b)(vii), rules of DSHS relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

July 12, 2022  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4937.2

AMENDATORY SECTION (Amending WSR 18-08-033, filed 3/27/18, effective 4/27/18)

**WAC 388-106-1900 What definitions apply to MAC and TSOA services?** The following definitions apply to MAC and TSOA services:

"**Care plan**" means the plan developed by the department in ((~~TCARE~~ ~~or~~)) GetCare that summarizes the services described in WAC 388-106-1915 that you chose to receive.

"**Care receiver**" means an adult age ((~~fifty-five~~)) 55 and over who has been authorized for MAC or TSOA services.

"**Caregiver**" means a spouse, relative, or friend (age ((~~eighteen~~)) 18 and over) who has primary responsibility for the care or supervision of an adult who meets eligibility criteria and does not receive direct, public, or private payment such as a wage for the caregiving services they provide.

"**Caregiver assistance services**" are services that take the place of those typically performed by an unpaid caregiver in support of the care receiver's unmet needs for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

"**Caregiver phases**" means the phases a caregiver experiences as the needs of the care receiver change, which in turn changes the responsibilities and tasks of caregiving. The change in responsibilities and tasks impacts the relationship between the caregiver and the care receiver. There are five phases showing the change in relationship roles from primarily family member to primarily caregiver. The five phases are:

- (1) Phase one - Acting as a relative/friend almost all of the time;
- (2) Phase two - Acting most often as a relative/friend, but sometimes as a caretaker;
- (3) Phase three - Acting equally as a relative/friend and as a caregiver;
- (4) Phase four - Acting most often as a caregiver, but sometimes you are still a relative/friend; and
- (5) Phase five - Acting as a caregiver almost all of the time.

"**Family caregiver**" means the same as "caregiver."

**"GetCare"** means a statewide web-based information system that includes a client management component that includes screening and assessment tools for use by area agencies on aging (AAA) and other aging and disability network partners.

**"GetCare assessment"** is a process during which the department gathers information for an individual without a caregiver in the following areas: Functional needs, diagnoses and conditions, behavior health supports, oral health, and nutritional health to assist the individual with choosing step three services.

**"GetCare screening"** is a process during which the department gathers information for an individual without a caregiver in order to determine risk scores. The information covers the following areas: Function needs, fall risk, availability of informal help, memory and decision-making issues, and emotional well-being. The risk scores are used to determine if the individual is referred for a full GetCare assessment.

**"Health maintenance and therapies"** are clinical or therapeutic services that assist the care receiver to remain in their home or the caregiver to remain in their caregiving role and provide high quality care. Services are provided for the purpose of preventing further deterioration, improving, or maintaining current level of functioning.

**"Identity discrepancy"** means a negative psychological state that occurs when the activities and responsibilities that a caregiver assumes with regard to the care receiver are inconsistent with the caregiver's expectations or personal norms concerning these activities and responsibilities.

**"MAC"** means medicaid alternative care, which is a federally funded program authorized under section 1115 of the Social Security Act. It enables an array of person-centered services to be delivered to unpaid caregivers caring for a medicaid eligible person who lives in a private residence (such as their own home or a family member's home) and chooses to receive community-based services.

**"Medicaid transformation demonstration"** refers to the authority granted to the state by the federal government under section 1115 of the Social Security Act. This waiver is a five year demonstration to support health care systems prepare for and implement health reform and provide new targeted medicaid services to eligible individuals with significant needs. It includes MAC and TSOA programs.

**"Personal assistance services"** are supports involving the labor of another person to help the care receiver complete activities of daily living and instrumental activities of daily living that they are unable to perform independently. Services may be provided in the care receiver's home or to access community resources.

**"RDAD"** means reducing disability in Alzheimer's disease. This program is designed to improve the ability of the person with memory problems to complete activities of daily living while also helping caregivers provide assistance to the person.

**"Service provider"** means an agency or organization contracted with the department.

**"Specialized medical equipment and supplies"** are goods and supplies needed by the care receiver that are not covered under the medicaid state plan, medicare, or private insurance.

**"TCARE"** means tailored caregiver assessment and referral, which is an evidence-based caregiver coordination process designed to assist department assessors who work with family caregivers to support adults living with disabilities. TCARE is designed to tailor services to the unique needs of each caregiver to help reduce stress, depression, and

burdens associated with caregiving. TCARE was developed by a research team at the University of Wisconsin-Milwaukee led by Dr. Rhonda Montgomery in collaboration with over (~~thirty~~) 30 organizations serving family caregivers. The TCARE process is licensed for use by Tailored Care Enterprises, Inc.

**"TCARE assessment"** is a part of the TCARE process during which the department assessors gather responses to all of the TCARE screening questions and additional questions focused on both the caregiver's experience and the care receiver's situation, such as memory issues, behavioral needs, assistance needs with activities of daily living and instrumental activities of daily living, and diagnoses/conditions.

**"TCARE screening"** is a part of the TCARE process during which the department gathers information from the caregiver to determine scores and ranges for the caregiver's identity discrepancy, burdens, uplifts, and depression. The ranges are used to determine if the caregiver is referred for a full TCARE assessment.

**"Training and education"** are services and supports to help caregivers gain skills and knowledge to implement services and supports needed by the care receiver to remain at home and skills needed by the caregiver to remain in their role.

**"TSOA"** means tailored supports for older adults, which is a federally-funded program approved under section 1115 of the Social Security Act. It enables the delivery of person-centered services to:

- (1) Caregivers who care for an eligible person as defined in WAC 388-106-1910; and
- (2) Eligible persons as defined in WAC 388-106-1910, without a caregiver.

[Statutory Authority: RCW 74.08.090. WSR 18-08-033, § 388-106-1900, filed 3/27/18, effective 4/27/18.]

AMENDATORY SECTION (Amending WSR 18-08-033, filed 3/27/18, effective 4/27/18)

**WAC 388-106-1905 Am I eligible for MAC services?** (1) You are eligible to receive MAC services if you, as a care receiver, meet the following criteria:

- (a) Are age (~~fifty-five~~) 55 or older;
- (b) Meet nursing facility level of care as defined in WAC 388-106-0355;
- (c) Meet medicaid financial eligibility requirements as defined in WAC 182-513-1605;
- (d) Have an unpaid caregiver who:
  - (i) Is age (~~eighteen~~) 18 or older;
  - (ii) Has participated in the following:
    - (A) Care plan for step one services;
    - (B) TCARE screening and care plan for step two services; or
    - (C) TCARE assessment and care plan for step three services;
- (e) Live in a private residence (such as your own home or a family member's home) and choose to receive community based services; and
- (f) Do not receive any other medicaid funded long-term services and supports (LTSS) while receiving MAC services.

(2) The department may use preliminary information you provide through a presumptive eligibility screening to determine if you, as the care receiver, meet the eligibility criteria in subsection (1) of

this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.

(a) Your presumptive eligibility period ends with the earlier date of:

(i) The date you were confirmed not to meet full functional eligibility criteria; or

(ii) The last day of the month following the month when your MAC services were first authorized.

(b) In the event the department implements a waitlist under WAC 388-106-1970 for MAC services, your presumptive eligibility ends.

(c) You may only receive services under presumptive eligibility once within a (~~twenty-four~~) 24 month period.

(d) Under presumptive eligibility you may receive services as described in WAC 388-106-1915.

[Statutory Authority: RCW 74.08.090. WSR 18-08-033, § 388-106-1905, filed 3/27/18, effective 4/27/18.]

AMENDATORY SECTION (Amending WSR 18-08-033, filed 3/27/18, effective 4/27/18)

**WAC 388-106-1910 Am I eligible for TSOA services?** (1) You are eligible to receive TSOA services if you, as a care receiver, meet the following criteria:

(a) Are age (~~fifty-five~~) 55 or older;

(b) Meet nursing facility level of care as defined in WAC 388-106-0355;

(c) Meet financial eligibility requirements defined in WAC 182-513-1615 or 182-513-1620;

(d) Live in a private residence (such as your own home or a family member's home) and choose to receive community-based services; and

(e) Meet the criteria in either (e)(i) or (ii) of this subsection:

(i) Have an unpaid caregiver who is age (~~eighteen~~) 18 or older and has participated in the following:

(A) A care plan for step one services;

(B) A TCARE screening and care plan for step two services; or

(C) A TCARE assessment and care plan for step three services; or

(ii) You do not have an available caregiver and have participated in the following:

(A) A care plan for step one services;

(B) A GetCare screening and care plan for step two services; or

(C) A GetCare assessment and care plan for step three services.

(2) The department may use preliminary information you provide through a presumptive eligibility screening to determine if you, as the care receiver, meet the eligibility criteria in subsection (1) of this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.

(a) Your presumptive eligibility period ends with the earlier date of:

(i) The day the decision was made on your TSOA application;

(ii) The date you were confirmed not to meet full functional eligibility criteria; or

(iii) The last day of the month following the month in which your presumptive eligibility services were authorized if you did not submit your TSOA application.

(b) In the event the department implements a waitlist under WAC 388-106-1970 for TSOA services, your presumptive eligibility ends.

(c) You may only receive services under presumptive eligibility once within a (~~twenty-four~~) 24 month period.

(d) Under presumptive eligibility, you may receive services as described in WAC 388-106-1915.

[Statutory Authority: RCW 74.08.090. WSR 18-08-033, § 388-106-1910, filed 3/27/18, effective 4/27/18.]

AMENDATORY SECTION (Amending WSR 18-08-033, filed 3/27/18, effective 4/27/18)

**WAC 388-106-1915 What services may I receive in MAC and TSOA?**

MAC and TSOA services include the following three benefit levels referred to as steps in subsections (1) through (3) of this section. You and your family caregiver may receive services under any of the three steps depending upon your requests and needs identified in the screening process for step two and the assessment process for step three. Steps do not need to be used in order. For example, you may begin services at step two or three. In general, step one services are used by caregivers or care receivers requesting lesser supports than those using step three services.

(1) Step one: After the department obtains your demographics and approves your program eligibility, you may receive the following services:

(a) Information and referrals to family caregiver or community resources;

(b) A selection of the following services up to a one time limit of (~~two hundred and fifty dollars~~) \$250:

(i) Training and education, which includes but is not limited to:

(A) Support groups;

(B) Group training;

(C) Caregiver coping and skill building training;

(D) Consultation on supported decision making;

(E) Caregiver training to meet the needs of the care receiver;

(F) Financial or legal consultation; and

(G) Health and wellness consultation;

(ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:

(A) Supplies;

(B) Specialized medical equipment, which includes durable medical equipment; and

(C) Assistive technology;

(iii) Caregiver assistance services, which includes but is not limited to short term respite to allow the caregiver to attend an educational event or training series; and

(iv) Health maintenance and therapy supports, which may include but are not limited to:

(A) Adult day health;

(B) RDAD and evidence based exercise programs;

(C) Health promotion and wellness services; and

(D) Counseling related to caregiving role.

(2) Step two: After the department obtains your demographics, approves your program eligibility, and completes a GetCare or TCARE screening, you may receive the following:

(a) Information and referrals to family caregiver or community resources;

(b) The following services up to an annual limit of (~~five hundred dollars~~) \$500 minus any expenditures for step one services:

(i) Training and education, which includes but is not limited to:

(A) Support groups;

(B) Group training;

(C) Caregiver coping and skill building training;

(D) Consultation on supported decision making;

(E) Caregiver training to meet the needs of the care receiver;

(F) Financial or legal consultation; and

(G) Health and wellness consultation;

(ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:

(A) Supplies;

(B) Specialized medical equipment, which includes durable medical equipment;

(C) Assistive technology; and

(D) Personal emergency response system (PERS);

(iii) Caregiver assistance services, which include but are not limited to:

(A) Short-term respite to allow the caregiver to attend an educational event or training series;

(B) Home delivered meals for the care receiver and caregiver;

(C) Minor home modifications and repairs to the care receiver's home;

(D) Home safety evaluation of the care receiver's home; and

(E) Transportation, only in conjunction with the delivery of a service; and

(F) Bath aide;

(iv) Health maintenance and therapy supports, which include but are not limited to:

(A) Adult day health;

(B) RDAD and evidence based exercise programs;

(C) Health promotion and wellness services such as massage therapy and acupuncture therapy; and

(D) Counseling related to the caregiving role; and

(v) Personal assistance services for the TSOA without an unpaid caregiver, as described in WAC 388-106-1910(e)(ii), which include but are not limited to:

(A) Adult day care;

(B) Transportation, only in conjunction with the delivery of a service;

(C) Home delivered meals;

(D) Home safety evaluation of the care receiver's home; and

(E) Minor home modifications and repairs to the care receiver's home.

(3) Step three:

(a) For MAC and TSOA care receivers with caregivers:

(i) You may receive information and referrals to family caregiver or community resources.

(ii) After the department has obtained your demographics and approved your program eligibility, your caregiver must complete a TCARE

assessment in order to access step three services. In order to qualify for a TCARE assessment, the TCARE screening must result in at least three medium scores or one high score for the TCARE measures described in WAC 388-106-1932. TCARE uses an evidence-based algorithm to identify a primary goal based on your caregiver's answers to the TCARE assessment questions. The department will assist you to develop an individualized care plan containing the services chosen by you and your caregiver up to the limits established in WAC 388-106-1920.

(iii) The table below lists the available step three services. The Xs in the table indicate the services that may be recommended by the TCARE strategies, defined in WAC 388-106-1930, from your caregiver's assessment. You may request services in this step that the TCARE assessment does not list as a recommendation.

Services	Strategies				
	A	B	C	D	E
<b><i>Training and education</i></b>					
Group training		X			
Caregiver coping and skill building training	X	X	X	X	
Consultation on supported decision making	X	X	X		
Caregiver training to meet needs of care receiver	X	X	X		
Financial or legal consultation		X			
Health and wellness consultation		X			
Support groups	X	X	X		
<b><i>Specialized medical equipment and supplies</i></b>					
Supplies		X			
Specialized medical equipment		X			
Assistive technology		X			
Personal emergency response system		X			
<b><i>Caregiver assistance services</i></b>					
Home delivered meals		X			
Minor home modifications and repairs		X			
Housework/errands and yard work		X			
In-home respite, including a bath aide		X			
OT/PT evaluation	X	X		X	
Home safety evaluation		X			
Out-of-home respite		X			
Transportation		X			
<b><i>Health maintenance and therapy supports</i></b>					
Adult day health		X			
RDAD and evidence based exercise programs		X		X	
Health promotion and wellness services such as acupuncture and massage therapy				X	X
Counseling related to the caregiver role	X		X	X	

(b) For TSOA care receivers who do not have an available caregiver:

(i) You may receive information and referrals to community resources.

(ii) After the department has obtained your demographics and approved your program eligibility, you must complete a GetCare assessment in order to access step three services. In order to qualify for a



GetCare assessment, the GetCare screening must result in a risk score of moderate or high as described in WAC 388-106-1933. The department will assist you to develop an individualized care plan that includes the services you have chosen up to the limits established in WAC 388-106-1920.

(iii) The services available include any step one and step two services noted in subsections (1) and (2) of this section (except for respite) and the following personal assistance services:

- (A) Personal care;
- (B) Nurse delegation; and
- (C) Housework/errands and yard work.

[Statutory Authority: RCW 74.08.090. WSR 18-08-033, § 388-106-1915, filed 3/27/18, effective 4/27/18.]

AMENDATORY SECTION (Amending WSR 18-08-033, filed 3/27/18, effective 4/27/18)

**WAC 388-106-1931 What are the TCARE screening measures?** The following six TCARE screening measures and response options will be presented to your caregiver in order to receive step two services and to determine whether a TCARE assessment is needed for step three services:

(1) Identity discrepancy: ~~((How much do you agree or disagree with each statement?))~~ The following are some thoughts and feelings that people sometimes experience when they assist their receiver:

~~((a) The things I am responsible for do not fit very well with what I want to do.))~~

~~((b))~~ (a) I am not always able to be the person I want to be when I am with my care receiver.

~~((c))~~ (b) It is difficult for me to accept all the responsibility for my care receiver.

~~((d) I am having trouble accepting the way I relate to my care receiver.))~~

~~((e))~~ (c) I am not sure that I can accept any more responsibility than I have right now.

~~((f) It is difficult for me to accept the responsibilities that I now have to assume.))~~

(2) Relationship burden: Have your caregiving responsibilities:

(a) Caused conflicts with your care receiver?

(b) Increased the number of unreasonable requests made by your care receiver?

(c) Caused you to feel that your care receiver makes demands over and above what they need?

~~((d) Made you feel you were being taken advantage of by your care receiver?~~

~~(e) Increased attempts by your care receiver to manipulate you?))~~

(3) Objective burden: Have your caregiving responsibilities:

~~((a) Decreased time you have to yourself?~~

~~(b) Kept you from recreational activities?~~

~~(c) Caused your social life to suffer?))~~

~~((d))~~ (a) Changed your routine?

~~((e) Given you little time for friends and relatives?))~~

~~((f))~~ (b) Left you with almost no time to relax?

(4) Stress burden: Have your caregiving responsibilities:

- ~~((a) Created a feeling of hopelessness?~~
- ~~(b) Made you nervous?)~~
- ~~((e)) (a) Depressed you?~~
- ~~((d) Made you anxious?)~~
- ~~((e)) (b) Caused you to worry?~~
- (5) Depression: ~~((How often have you felt this way during the past week))~~ How many days have you felt this way in the past week?
  - ~~((a) I was bothered by things that usually don't bother me.)~~
  - ~~((b) I had trouble keeping my mind on what I was doing.)~~
  - (a) Had trouble keeping your mind on what you were doing?
  - ~~((e) I f)) (b) Felt depressed((-))?~~
  - ~~((d) I felt that everything I did was an effort.)~~
  - ~~((e) I f)) (c) Felt hopeful about the future((-))?~~
  - ~~((f) I felt fearful.~~
  - ~~(g) My sleep was restless.~~
  - ~~(h) I was happy.~~
  - ~~(i) I felt lonely.~~
  - ~~(j) I could not "get going.")~~
  - (d) Had restless sleep?
- (6) Uplifts: Have your caregiving responsibilities:
  - (a) Given your life more meaning?
  - (b) Made you more satisfied with your relationship?
  - (c) Given you a sense of fulfillment?
  - ~~((d) Left you feeling good?~~
  - ~~(e) Made you enjoy being with your care receiver more?~~
  - ~~(f) Made you cherish your time with your care receiver?)~~

[Statutory Authority: RCW 74.08.090. WSR 18-08-033, § 388-106-1931, filed 3/27/18, effective 4/27/18.]

AMENDATORY SECTION (Amending WSR 18-08-033, filed 3/27/18, effective 4/27/18)

**WAC 388-106-1932 How is the TCARE screening scored to determine if my caregiver is eligible for a TCARE assessment and related step three services?**

(1) The TCARE screening measures are scored with a number value of one through six for the measure on identity discrepancy or one through five for the remaining measures based upon the caregiver's responses. Ranges for each measure determine whether the measure score is high, medium, or low. One high or three medium scores from the table in this subsection, except for the uplifts measure, will make a caregiver eligible for a TCARE assessment and step three services as described in WAC 388-106-1915 (3) (a) (ii). The following table indicates the score ranges for each measure:

	High	Medium	Low
Identity discrepancy	<del>((22-36))</del> <u>13-18</u>	<del>((14-21))</del> <u>8-12</u>	<del>((6-13))</del> <u>3-7</u>
Relationship burden	<del>((13-25))</del> <u>10-18</u>	<del>((8-12))</del> <u>6-9</u>	<del>((5-7))</del> <u>3-5</u>
Objective burden	<del>((24-30))</del> <u>9-12</u>	<del>((18-23))</del> <u>5-8</u>	<del>((6-17))</del> <u>2-4</u>
Stress burden	<del>((17-25))</del> <u>9-12</u>	<del>((12-16))</del> <u>6-8</u>	<del>((5-11))</del> <u>2-5</u>

	High	Medium	Low
Uplifts	<del>((19-30))</del> <u>10-18</u>	<del>((13-18))</del> <u>6-9</u>	<del>((6-12))</del> <u>3-5</u>
Depression- CESD	<del>((26-40))</del> <u>14-16</u>	<del>((19-25))</del> <u>7-13</u>	<del>((10-18))</del> <u>4-6</u>

(2) The scale used to score the responses within the identity discrepancy, relationship, objective, stress, and uplift measures are ~~((is))~~:

- (a) Strongly disagree = one;
- (b) Disagree = two;
- (c) Disagree a little = three;
- (d) Agree a little = four;
- (e) Agree = five; and
- (f) ~~((Agree-s))~~ Strongly agree = six.

~~((3))~~ The scale used to score the responses to the relationship, objective, stress, and uplift measures are:

- ~~(a) Not at all = one;~~
- ~~(b) A little = two;~~
- ~~(c) Moderately = three;~~
- ~~(d) A lot = four; and~~
- ~~(e) A great deal = five.)~~

~~((4))~~ (3) The scale used to score the responses within the depression measures in WAC 388-106-1931 (5) (a), (b), (c), and (d) ~~((f), (g), (i) and (j))~~ are:

- (a) Rarely or none of the time (less than one day in the last week) = one;
- (b) Some or a little of the time (one to two days in the last week) = two;
- (c) Occasionally or a moderate amount of time (three to four days in the last week) = three; and
- (d) All of the time (five to seven days in the last week) = four.

~~((5))~~ The scale used to score the responses within the depression measures in WAC 388-106-1931 (5) (e) and (h) are:

- ~~(a) Rarely or none of the time (less than one day in the last week) = four;~~
- ~~(b) Some or a little of the time (one to two days in the last week) = three;~~
- ~~(c) Occasionally or a moderate amount of time (three to four days in the last week) = two; and~~
- ~~(d) All of the time (five to seven days in the last week) = one.)~~

[Statutory Authority: RCW 74.08.090. WSR 18-08-033, § 388-106-1932, filed 3/27/18, effective 4/27/18.]

AMENDATORY SECTION (Amending WSR 18-08-033, filed 3/27/18, effective 4/27/18)

**WAC 388-106-1945 When do my MAC or TSOA services begin?** Your MAC or TSOA services may begin once you have approved your care plan and as early as the date authorized by the department.

[Statutory Authority: RCW 74.08.090. WSR 18-08-033, § 388-106-1945, filed 3/27/18, effective 4/27/18.]

AMENDATORY SECTION (Amending WSR 18-08-033, filed 3/27/18, effective 4/27/18)

**WAC 388-106-1950 How do I remain eligible for MAC and TSOA services?** (1) In order to remain eligible for MAC and TSOA services, you, as the care receiver must:

(a) Remain functionally eligible as defined in WAC 388-106-0355 and financially eligible as defined in WAC 182-513-1605, 182-513-1615, and 182-513-1620; (~~and~~)

(b) Have your functional and financial eligibility reviewed at least annually(~~(-)~~); and

(c) Have participated in the assessment and care plan process at least annually.

(2) If eligibility laws, regulations, or rules change, and if you as the caregiver or the care receiver do not meet the changed eligibility requirements, the department will terminate services, even if your circumstances have not changed. You will receive advance notice of any termination or change in your services and an opportunity to appeal.

[Statutory Authority: RCW 74.08.090. WSR 18-08-033, § 388-106-1950, filed 3/27/18, effective 4/27/18.]

**WSR 22-15-030**

**WITHDRAWAL OF PROPOSED RULES**

**GAMBLING COMMISSION**

(By the Code Reviser's Office)

[Filed July 13, 2022, 8:52 a.m.]

WAC 230-19-001, 230-19-005, 230-19-010, 230-19-015, 230-19-020, 230-19-025, 230-19-030, 230-19-035, and 230-19-040, proposed by the gambling commission in WSR 22-01-213, appearing in issue 22-01 of the Washington State Register, which was distributed on January 5, 2022, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the 180-day period allowed by the statute.

Jennifer C. Meas, Editor  
Washington State Register

**WSR 22-15-032**  
**PROPOSED RULES**  
**OLYMPIC REGION**  
**CLEAN AIR AGENCY**

[Filed July 13, 2022, 3:12 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency (ORCAA) Regulations: Rule 1.11 Federal Regulation Reference Date and Rule 1.12 State Regulations Reference Date.

Hearing Location(s): On September 14, 2022, at 10:00 a.m., at ORCAA, 2940 Limited Lane N.W., Olympia, WA 98502.

Date of Intended Adoption: September 14, 2022.

Submit Written Comments to: Mark Goodin, 2940 Limited Lane N.W., email mark.goodin@orcaa.org, fax 360-491-6308, by September 13, 2022.

Assistance for Persons with Disabilities: Contact Dan Nelson, phone 360-539-7610 ext. 111, fax 360-491-6308, email dan.nelson@orcaa.org, by September 7, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA proposes to update the effective date of the federal regulations and state regulations that were previously adopted by the agency. Currently, where federal and state rules are referenced in agency regulations, the effective date of the regulations are July 1, 2021. The agency intends to update the effective date annually. This proposal would change the reference date to July 1, 2022.

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

Statute Being Implemented: Chapter 70A.15 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Lauren Whybrew, 2940 Limited Lane N.W., Olympia, 360-539-7610; Implementation and Enforcement: Jeff C. Johnston, Ph.D., 2940 Limited Lane N.W., Olympia, 360-539-7610.

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 applies to state government. It does not apply to local air agencies per 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 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.

Is exempt under RCW 19.85.011.

Explanation of exemptions: Chapter 19.85 RCW applies to "rules adopted by state agencies." RCW 70A.15.2040(1) states: "An air pollu-

tion control authority shall not be deemed to be a state agency." ORCAA is an air pollution control authority.

July 13, 2022  
Jeff C. Johnston, Ph.D.  
Executive Director

**AMENDATORY SECTION**

**RULE 1.11 FEDERAL REGULATION REFERENCE DATE**

Whenever federal regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202((±))2.

**AMENDATORY SECTION**

**RULE 1.12 STATE REGULATION REFERENCE DATE**

Whenever state regulations are referenced in ORCAA's rules, the effective date shall be July 1, 202((±))2.

## WSR 22-15-036

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed July 14, 2022, 8:10 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Chapter 246-232 WAC, Radioactive material—Licensing applicability; chapter 246-235 WAC, Radioactive materials—Specific licenses; and chapter 246-240 WAC, Radiation protection—Medical use of radioactive material. The department of health (department) is proposing to revise these chapters to be consistent with the United States Nuclear Regulatory Commission's (NRC) rules and to make nonsubstantive editorial changes.

Hearing Location(s): On August 23, 2022, at 1:30 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department will not provide a physical location for this hearing. This is to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar [https://us02web.zoom.us/webinar/register/WN\\_yDX\\_rBzMTCi30QGEFQaxiA](https://us02web.zoom.us/webinar/register/WN_yDX_rBzMTCi30QGEFQaxiA). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: August 30, 2022.

Submit Written Comments to: Nina Helpling, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, [radruleupdates@doh.wa.gov](mailto:radruleupdates@doh.wa.gov), by August 23, 2022.

Assistance for Persons with Disabilities: Contact Nina Helpling, phone 360-236-3065, TTY 711, email [nina.helpling@doh.wa.gov](mailto:nina.helpling@doh.wa.gov), by August 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making amends three chapters of rules to adopt federally required rule changes without material change as related to licensing radioactive materials. This rule making adopts the NRC rule changes that are identified by the Regulation Amendments Tracking System (RATS) and corresponding federal registers (F.R.). The RATS reference the section of Title 10, C.F.R. that is being updated along with an associated adoption reference category. The department uses these adoption categories to determine the necessary changes as outlined by the category definition. The adoption reference categories are as follows:

Category A: Basic radiation protection standard or related definitions, signs, labels, or terms necessary for a common understanding of radiation protection principles. The state program element should be essentially identical to that of NRC;

Category B: Program element with significant direct transboundary implications. The state program element should be essentially identical to that of NRC;

Category C: Program element, the essential objectives of which should be adopted by the state to avoid conflicts, duplications, or gaps. The manner in which the essential objectives are addressed need not be the same as NRC, provided the essential objectives are met;

Category D: Not required for purposes of compatibility;

Category NRC: Not required for purposes of compatibility. These are NRC program elements that address areas of regulation that cannot be relinquished to agreement states pursuant to the Atomic Energy Act



or provisions of 10 C.F.R. regulations. The state should not adopt these program elements; or

Category H&S: Program elements are not required for purposes of compatibility; however, they do have particular health and safety significance. The state should adopt the essential objectives of such program elements in order to maintain an adequate program.

This rule making amends three chapters of rules to adopt NRC categories B, C, D, and H&S rule changes related to the medical use of radioactive material without material change to the licensing of radioactive materials and protection. The amendments are being made to 10 C.F.R., Parts 30, 32, and 35 that are identified in the following NRC RATS ID and F.R. numbers:

Current RATS update:

RATS 2018.1, 83 F.R. 33046, published April 24, 2002, chapters 246-232, 246-235, and 246-240 WAC:

Amends the reporting and notification requirements for a medical event for permanent implant brachytherapy;

Amends the training and experience requirement to obtain a written attestation for an individual who is certified by a specialty board whose certification process has been recognized by the NRC or an agreement state, as well as exempt certain board-certified individuals from certain training and experience requirements if certification was obtained by a specified date;

Amends the requirements for measuring molybdenum contamination;

Adds a new requirement for the reporting of failed technetium and rubidium generators; and

Allows licensees to name associate radiation safety officers on a medical license.

During the review of RATS ID# 2018.1, the department determined that during previous rule makings, some drafting errors were discovered, and identified some rule language clarifications were needed as follows:

Previous updates:

Category B Corrections:

RATS ID# 2002.2, 67 F.R. 20348, WAC 246-240-075 (2)(a):

Corrected an error made when adopting the language, regarding the completed number of hours of structured education and program experience required by a pharmacist to become a nuclear pharmacist from 200 hours to 700 hours.

RATS ID# 2005.2, 70 F.R. 16336, WAC 246-240-075 (2)(a)(i):

Removed: "Didactic training in the following areas:"

Replaced with: "Two hundred hours of classroom and laboratory training in the following areas:"

Category B language clarifications to mirror equivalent 10 C.F.R. language:

RATS ID# 2005.2, 70 F.R. 16336, WAC 246-240-154 (1)(a), 246-240-163 (1)(a), and 246-240-210 (1)(b);

RATS ID# 2007.3, 72 F.R. 55864, WAC 246-235-010(9).

Category C and D language clarifications to mirror equivalent 10 C.F.R. language:

No RATS ID # (Pre 1991), 30 F.R. 8185, WAC 246-232-050 (3) and (5), 246-235-010(4), and 246-235-020(2);

No RATS ID# (Pre 1991), 49 F.R. 9403, WAC 246-235-010(10);

No RATS ID# (Pre 1991), 52 F.R. 49371, WAC 246-232-004;

No RATS ID# (Pre 1991), 53 F.R. 24044, WAC 246-235-010(8);

No RATS ID# (Pre 1991), 54 F.R. 14061, WAC 246-232-050(6);

RATS ID# 1998.1, 63 F.R. 1890, WAC 246-232-005;

RATS ID# 2005.1, 70 F.R. 2001, WAC 246-232-050(14);  
RATS ID# 2007.3, 72 F.R. 55864, WAC 246-232-050(7),  
246-232-050(15) and 246-240-022(6);  
RATS ID# 2011.1, 76 F.R. 35512, WAC 246-232-050 (2)(b)(i) and  
(ii).

Editorial changes were made to conform to the code reviser's Bill Drafting Guide such as number formatting and proper citations.

Reasons Supporting Proposal: The rule making is required to comply with RCW 70A.388.040 State radiation control agency, and RCW 70A.388.110 Federal-state agreements. Under the formal state agreement between the governor and NRC, the department is required to remain compatible with NRC rules. This is done through rule amendments to make state rules consistent with, and at-least-as-stringent-as, the NRC's rules. Additional nonsubstantive formatting changes are being proposed to comply with the code reviser's 2021 Bill Drafting Guide.

Statutory Authority for Adoption: RCW 70A.388.040.

Statute Being Implemented: RCW 70A.388.040 and 70A.388.110.

Rule is necessary because of federal law, Federal registers 30 F.R. 8185, 49 F.R. 9403, 52 F.R. 49371, 53 F.R. 24044, 54 F.R. 14061, 63 F.R. 1890, 67 F.R. 20348, 70 F.R. 2001, 70 F.R. 16336, 72 F.R. 55864, 76 F.R. 35512, and 83 F.R. 33046.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Raj Maharjan, 111 Israel Road S.E., Tumwater, WA 98501, 360-522-0613; Implementation and Enforcement: Earl Fordham, 111 Israel Road S.E., Tumwater, WA 98501, 509-946-0234.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards. RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 30 F.R. 8185, 49 F.R. 9403, 52 F.R. 49371, 53 F.R. 24044, 54 F.R. 14061, 63 F.R. 1890, 67 F.R. 20348, 70 F.R. 2001, 70 F.R. 16336, 72 F.R. 55864, 76 F.R. 35512, and 83 F.R. 33046 identify updates to 10 C.F.R. Energy, Chapter I—Nuclear Regulatory Commission. Per RCW 70A.388.040, State Radiation Control Agency, and RCW 70A.388.110, Federal-state agreements. Under the formal state agreement between the governor and NRC, the department is required to remain compatible with NRC rules. If the department did not adopt these proposed changes, the department would be out of compliance with state compatibility requirements of NRC, and RCW 70A.388.110 Federal-state agreements.

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.

July 14, 2022  
Lauren Jenks  
Assistant Secretary

OTS-3837.3

#### GENERAL PROVISIONS

##### NEW SECTION

##### **WAC 246-232-004 Completeness and accuracy of information.** (1)

Information provided to the department by an applicant for a license or by a licensee or information required by statute or by the department's rules, orders, or license conditions to be maintained by the applicant or the licensee must be complete and accurate in all material respects.

(2) Each applicant or licensee must notify the department of information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety. An applicant or licensee violates this subsection only if the applicant or licensee fails to notify the department of information that the applicant or licensee has identified as having a significant implication for public health and safety. Notification must be provided to the department within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the department by other reporting or updating requirements.

[]

NEW SECTION

**WAC 246-232-005 Deliberate misconduct.** (1) Any licensee; certificate of registration holder; applicant for a license or certificate of registration; employee of a licensee or certificate of registration holder or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or certificate of registration holder or applicant for a license or certificate of registration; who knowingly provides to any licensee, applicant, certificate holder, contractor, or subcontractor, any components, equipment, materials, or other goods or services that relate to a licensee's, certificate holder's, or applicant's activities in chapters 246-220 through 246-254 WAC, may not:

(a) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate of registration holder, or applicant to be in violation of any rule or order; or any term, condition, or limitation of any license issued by the department; or

(b) Deliberately submit to the department, a licensee, certificate of registration holder, an applicant, or a licensee's, certificate holder's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the department.

(2) A person who violates subsection (1)(a) or (b) of this section may be subject to enforcement action under chapter 70A.388 RCW.

(3) For the purposes of subsection (1)(a) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(a) Would cause a licensee, certificate of registration holder, or applicant to be in violation of any rule or order; or any term, condition, or limitation, of any license issued by the department; or

(b) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate of registration holder, applicant, contractor, or subcontractor.

[ ]

**EXEMPTIONS**

AMENDATORY SECTION (Amending WSR 17-01-034, filed 12/12/16, effective 1/12/17)

**WAC 246-232-006 Exemption of certain source material.** (1) A person is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that the person receives, possesses, uses, transfers, or delivers, source material in any chemical mixture, compound, solution or alloy in which the source material is by weight less than 1/20 of one percent (0.05 percent) of the mixture, compound, solution, or alloy.

(2) A person is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that the person receives, possesses, uses or transfers unrefined and unprocessed ore containing source material, provided such person shall not refine or process such ore unless authorized to do so in a specific license.

(3) A person is exempt from the requirements for a license and from this chapter and chapters 246-221, 246-246, 246-222, 246-233, and 246-235 WAC to the extent that the person receives, possesses, uses or transfers:

(a) Any quantities of thorium contained in:

(i) Incandescent gas mantles;

(ii) Vacuum tubes;

(iii) Welding rods;

(iv) Electric lamps for illuminating purposes if each lamp contains (~~fifty~~) 50 milligrams or less of thorium;

(v) Germicidal lamps, sunlamps and lamps for outdoor or industrial lighting if each lamp contains two grams or less of thorium;

(vi) Rare earth metals and compounds, mixtures, and products containing 0.25 percent or less by weight thorium, uranium, or any combination of these; or

(vii) Personnel neutron dosimeters if each dosimeter contains 1.85 gigabecquerels (50 milligrams) or less of thorium.

(b) Source material contained in the following products:

(i) Glazed ceramic tableware manufactured before August 27, 2013, if the glaze contains (~~twenty~~) 20 percent or less by weight source material;

(ii) Piezoelectric ceramic containing two percent or less by weight source material; and

(iii) Glassware containing not more than two percent by weight source material or, for glassware manufactured before August 27, 2013, (~~ten~~) 10 percent by weight source material; but not including commercially manufactured glass brick, pane glass, ceramic tile, or other glass or ceramic used in construction.

(c) Photographic film, negatives and prints containing uranium or thorium;

(d) Any finished product or part fabricated of, or containing, tungsten-thorium or magnesium-thorium alloys if the thorium content of the alloy is four percent or less by weight. The exemption contained in this subparagraph shall not be deemed to authorize the chemical, physical or metallurgical treatment or processing of any such product or part;

(e) Thorium or uranium contained in or on finished optical lenses and mirrors, provided that each lens or mirror does not contain more than (~~ten~~) 10 percent by weight of thorium or uranium or, for lenses manufactured before August 27, 2013, (~~thirty~~) 30 percent by weight of thorium. The exemption contained in this subparagraph shall not be deemed to authorize either:

(i) The shaping, grinding or polishing of such lens or mirror or manufacturing processes other than the assembly of such lens or mirror into optical systems and devices without alteration of the lens or mirror; or

(ii) The receipt, possession, use or transfer of thorium or uranium contained in contact lenses, or in spectacles, or in eyepieces in binoculars or other optical instruments.

(f) Uranium contained in detector heads for use in fire detection units if each detector head contains 185 becquerels (0.005 microcuries) or less of uranium; or

(g) Thorium contained in any finished aircraft engine part containing nickel-thoria alloy if:

(i) The thorium is dispersed in the nickel-thoria alloy in the form of finely divided thoria (thorium dioxide); and

(ii) The thorium content in the nickel-thoria alloy is four percent or less by weight.

(4) The exemptions in subsection (3) of this section do not authorize the manufacture of any of the products described.

(5) No person may initially transfer for sale or distribution a product containing source material to persons exempt under this section, or equivalent regulations of an agreement state or the NRC, unless authorized by a license issued under 10 C.F.R. 40.52 to initially transfer such products for sale or distribution.

(a) Persons initially distributing source material in products covered by the exemptions in this section before August 27, 2013, without specific authorization may continue such distribution for one year beyond this date. Initial distribution may also be continued until NRC takes final action on a pending application for license or license amendment to specifically authorize distribution submitted no later than one year beyond this date.

(b) Persons authorized by an agreement state to manufacture, process, or produce these materials or products containing source material, and persons who import finished products or parts for sale or distribution must be authorized by a license issued under 10 C.F.R. 40.52 for distribution only and are exempt from the requirements of chapters 246-221 and 246-222 WAC, and WAC 246-235-020 (1) and (2).

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 17-01-034, § 246-232-006, filed 12/12/16, effective 1/12/17; WSR 16-13-054, § 246-232-006, filed 6/10/16, effective 7/11/16. Statutory Authority: RCW 70.98.050. WSR 13-24-025, § 246-232-006, filed 11/22/13, effective 12/23/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-232-006, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 01-02-068, § 246-232-006, filed 12/29/00, effective 1/29/01.]

AMENDATORY SECTION (Amending WSR 13-24-025, filed 11/22/13, effective 12/23/13)

**WAC 246-232-008 Exemption of certain timepieces, hands or dials.**

No person may introduce radioactive material into a product or material, knowing or having reason to believe that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555. A person is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that the person receives, possesses, uses, transfers, owns or acquires, and does not apply radioactive material to, or incorporate radioactive material into, the following timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified levels of radiation(≠):

(\*Note: No person may introduce radioactive material into a product or material, knowing or having reason to believe that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555.)

- (1) (a) (~~925~~) Nine hundred twenty-five megabecquerels (25 millicuries) of tritium per timepiece;
- (b) (~~185~~) One hundred eighty-five megabecquerels (~~(5)~~) five millicuries) of tritium per hand;
- (c) (~~555~~) Five hundred fifty-five megabecquerels (15 millicuries) of tritium per dial (bezels when used shall be considered as part of the dial);
- (d) 3.7 megabecquerels (100 microcuries) of promethium-147 per watch or 7.4 megabecquerels (200 microcuries) of promethium-147 per any other timepiece;
- (e) (~~740~~) Seven hundred forty kilobecquerels (20 microcuries) of promethium-147 per watch hand or 1.48 megabecquerels (40 microcuries) of promethium-147 per other timepiece hand;
- (f) 2.22 megabecquerels (60 microcuries) of promethium-147 per watch dial or 4.44 megabecquerels (120 microcuries) of promethium-147 per other timepiece dial (bezels when used shall be considered as part of the dial);
- (2) The levels of radiation from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:
- (a) For wrist watches, (~~(1)~~) one microgray (0.1 millirad) per hour at 10 centimeters from any surface;
- (b) For pocket watches, (~~(1)~~) one microgray (0.1 millirad) per hour at (~~(1)~~) one centimeter from any surface;
- (c) For any other timepiece, (~~(2)~~) two micrograys (0.2 millirad) per hour at 10 centimeters from any surface.
- (3) (~~(37)~~) Thirty-seven kilobecquerels (~~(1)~~) one microcurie) of radium-226 per timepiece in intact timepieces manufactured prior to November 30, 2007.

[Statutory Authority: RCW 70.98.050. WSR 13-24-025, § 246-232-008, filed 11/22/13, effective 12/23/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-232-008, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 01-02-068, § 246-232-008, filed 12/29/00, effective 1/29/01.]

AMENDATORY SECTION (Amending WSR 17-01-034, filed 12/12/16, effective 1/12/17)

**WAC 246-232-009 Exemption of certain items containing radioactive material.** No person may introduce radioactive material into a product or material, knowing or having reason to believe that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555. A person is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent the person receives, possesses, uses, transfers, owns or acquires, and does not apply radioactive material to, or incorporate radioactive material into, the following products: (~~(\*)~~)

(\*Note: No person may introduce radioactive material into a product or material, knowing or having reason to believe that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555.)

(1) Static elimination devices which contain, as a sealed source or sources, by-product material consisting of a total of not more than 18.5 MBq (500 microcuries) of Po-210 per device.

(2) (a) Ion generating tubes designed for ionization of air that contain, as a sealed source or sources, by-product material consisting of a total of not more than 18.5 MBq (500 microcuries) of Po-210 per device or a total of not more than 1.85 GBq (50 millicuries) of hydrogen-3 (tritium) per device.

(b) Such devices authorized before October 23, 2012, for use under the general license then provided in this section and equivalent regulations of an agreement state or the NRC, and manufactured, tested, and labeled by the manufacturer in accordance with the specifications contained in a specific license issued by the department, an agreement state, or the NRC.

(3) Balances of precision containing not more than 37 megabecquerels ((±) one millicurie) of tritium per balance or 18.5 megabecquerels (0.5 millicurie) of tritium per balance part manufactured before December 17, 2007.

(4) Marine compasses containing not more than 27.8 gigabecquerels (750 millicuries) of tritium gas and other marine navigational instruments containing not more than 9.25 gigabecquerels (250 millicuries) of tritium gas manufactured before December 17, 2007.

(5) Ionization chamber smoke detectors containing not more than 37 kilobecquerels ((±) one microcurie) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(6) For purposes of this subsection, "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and any other completely sealed tube that is designed to conduct or control electrical currents. Electron tubes((\*) provided that each tube contains no more than one of the following specified quantities of radioactive material and the levels of radiation from each electron tube do not exceed 10 micrograys ((±) one millirad) per hour at ((±) one centimeter from any surface when measured through ((7) seven milligrams per square centimeter of absorber:

(a) 5.55 gigabecquerels (150 millicuries) of tritium per microwave receiver protector tube or 370 megabecquerels (10 millicuries) of tritium per any other electron tube;

(b) ((37) Thirty-seven kilobecquerels ((±) one microcurie) of cobalt-60;

(c) ((185) One hundred eighty-five kilobecquerels ((5) five microcuries) of nickel-63;

(d) 1.11 megabecquerels (30 microcuries) of krypton-85;

(e) ((185) One hundred eighty-five kilobecquerels ((5) five microcuries) of cesium-137;

(f) 1.11 megabecquerels (30 microcuries) of promethium-147.

((\*Note: For purposes of this subsection, "electron tubes" include spark gap tubes, power tubes, gas tubes including glow lamps, receiving tubes, microwave tubes, indicator tubes, pick-up tubes, radiation detection tubes, and any other completely sealed tube that is designed to conduct or control electrical currents.))

(7) Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material, provided that:

(a) Each source contains not more than one exempt quantity set forth in WAC 246-232-120, Schedule B, exempt quantities of radioactive materials; and



(b) Each instrument contains no more than 10 exempt quantities. For purposes of this subsection, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in WAC 246-232-120, Schedule B, exempt quantities of radioactive materials, provided that the sum of such fractions must not exceed unity.

(c) For purposes of this subsection, 1.85 kilobecquerels (0.05 microcurie) of americium-241 is considered an exempt quantity.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 17-01-034, § 246-232-009, filed 12/12/16, effective 1/12/17. Statutory Authority: RCW 70.98.050. WSR 13-24-025, § 246-232-009, filed 11/22/13, effective 12/23/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-232-009, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 01-02-068, § 246-232-009, filed 12/29/00, effective 1/29/01.]

AMENDATORY SECTION (Amending WSR 16-13-054, filed 6/10/16, effective 7/11/16)

**WAC 246-232-014 Exemption of C-14 urea diagnostic capsules for human use.** (1) Except as provided in subsections (2) and (3) of this section, a person is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC if the person receives, possesses, uses, transfers, owns, or acquires, and does not apply radioactive material to, or incorporate radioactive material into, capsules containing 37 kilobecquerels ((~~4~~) one microcurie) of carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for "in-vivo" diagnostic use for humans.

(2) A person who desires to use the capsules for research involving human subjects must apply for and receive a specific license under chapters 246-240 and 246-235 WAC.

(3) A person who desires to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution these capsules must do so in accordance with a specific license issued by the NRC, Washington, D.C. 20555.

(4) Nothing in this section relieves persons from complying with applicable United States Food and Drug Administration, federal, and state requirements governing receipt, administration, and use of drugs.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 16-13-054, § 246-232-014, filed 6/10/16, effective 7/11/16. Statutory Authority: RCW 70.98.050. WSR 13-24-025, § 246-232-014, filed 11/22/13, effective 12/23/13; WSR 06-05-019, § 246-232-014, filed 2/6/06, effective 3/9/06; WSR 01-02-068, § 246-232-014, filed 12/29/00, effective 1/29/01.]

**LICENSES**

AMENDATORY SECTION (Amending WSR 13-24-025, filed 11/22/13, effective 12/23/13)

**WAC 246-232-040 Reciprocal recognition of licenses.** Before radioactive material can be used at any temporary job site, the jurisdictional status of the job site must be determined. Authorization for use of radioactive material at job sites under exclusive federal jurisdiction must be obtained from the appropriate regional office of the NRC, Washington, D.C. 20555. Before radioactive materials can be used as a temporary job site in another state, authorization must be obtained from that state if it is an agreement state, or from the NRC if it is a nonagreement state.

(1) A person authorized by a license issued by the NRC or an agreement state, may obtain authorization from the department to work in Washington state provided:

(a) The out-of-state license is issued by the NRC or agreement state with jurisdiction where the licensee maintains an office for directing the licensed work and for retaining radiation safety records;

(b) The out-of-state licensee must not possess or use radioactive materials or conduct authorized work in Washington state for more than (~~one hundred eighty~~) 180 days in that (~~twelve month~~) 12-month period which starts the date approval is granted, and the appropriate fee is received by the department, as required in chapter 246-254 WAC;

(c) The out-of-state licensing document authorizes the work conducted;

(d) The licensed work is not conducted in an area under exclusive federal jurisdiction;

(e) The appropriate fee is currently paid, as required in chapter 246-254 WAC. Licensees send fees to Washington State Department of Health, Revenue Accounting, P.O. Box 1099, Olympia, Washington 98504-1099;

(f) The out-of-state licensee notifies the department in writing at least three days before each entry into Washington state to conduct licensed work.

(i) The written notification must be sent to the Radioactive Materials Section, Department of Health, P.O. Box 47827, Olympia, Washington 98504-7827. Fax, email, or other notifications may be approved by the department.

(ii) The written notification must include use and storage location(s), start and end dates of licensed work, and type of proposed possession and use in Washington state, and must include licensing documents authorizing the licensed work.

(iii) If an unexpected need or emergency means the three-day notice is impossible or would impose an undue hardship on the out-of-state licensee, the out-of-state licensee may telephone the department (360-236-3221), for permission to proceed immediately.

(iv) The department may waive the requirement for filing additional written notifications during the remainder of the (~~twelve~~) 12 months following the receipt of the initial notification.

(g) The out-of-state licensee must:

(i) Comply with all terms and conditions of the licensing document issued by the licensing authority except such terms or conditions contrary to the requirements or rules of the department or this section;

(ii) Comply with all applicable rules, terms and conditions of the department; and

(iii) Promptly provide other information the department may request.

(h) The out-of-state licensee must request approval for changes in work locations, radioactive material, or work conducted if different from the most recent information provided to the department.

(i) The out-of-state licensee may not transfer or dispose of radioactive material except by transfer to a person specifically licensed by the department or by the NRC or an agreement state to receive such material.

(j) The out-of-state specific licensee may possess or use radioactive material or conduct authorized work in offshore waters for more than (~~one hundred eighty~~) 180 days in any calendar year, if the specific license issued by an agreement state or the NRC authorizes the specific licensee to possess or use radioactive material or conduct authorized work in offshore waters for an unlimited period of time.

(2) A person who holds a specific license issued by the NRC or an agreement state authorizing the holder to manufacture, install, or service a device described in WAC 246-233-020 within the areas subject to the jurisdiction of the licensing body is hereby granted a general license to install and service such device in this state in areas not under exclusive federal jurisdiction provided:

(a) Such person must file a report with the department within (~~thirty~~) 30 days after the end of each calendar quarter in which any device is transferred to or from, or installed in this state. Each report must identify each general licensee to or from whom such device is transferred by name and address, the device manufacturer (or initial transferor), model number and serial number, and the quantity and type of radioactive material contained in the device;

(b) The device has been, and is, manufactured, labeled, installed, and serviced in accordance with applicable provisions of the specific license issued to a person by the NRC or an agreement state;

(c) Such person must ensure that any labels required to be affixed to the device under rules of the authority which licensed the manufacture of the device bear a statement that removal of the label is prohibited; and

(d) The specific licensee must provide each general licensee to and from whom such device is transferred, or on whose premises such device is installed, a copy of the general license in WAC 246-233-020.

(3) The department may withdraw, limit, or qualify its acceptance of any specific license or equivalent licensing document issued by another agency, or any product distributed pursuant to such licensing document, upon determining that such action is necessary to prevent undue hazard to public health and safety, or to the environment, or to property.

[Statutory Authority: RCW 70.98.050. WSR 13-24-025, § 246-232-040, filed 11/22/13, effective 12/23/13; WSR 04-04-055, § 246-232-040, filed 1/30/04, effective 3/1/04; WSR 01-02-068, § 246-232-040, filed 12/29/00, effective 1/29/01; WSR 99-15-105, § 246-232-040, filed 7/21/99, effective 8/21/99; WSR 98-13-037, § 246-232-040, filed

6/8/98, effective 7/9/98. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 91-15-112 (Order 184), § 246-232-040, filed 7/24/91, effective 8/24/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-232-040, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-19-250, filed 12/11/86; WSR 83-19-050 (Order 2026), § 402-19-250, filed 9/16/83. Statutory Authority: RCW 70.98.050. WSR 81-01-011 (Order 1570), § 402-19-250, filed 12/8/80. Statutory Authority: RCW 70.98.080. WSR 79-12-073 (Order 1459), § 402-19-250, filed 11/30/79, effective 1/1/80. Formerly WAC 402-20-210.]

AMENDATORY SECTION (Amending WSR 13-24-025, filed 11/22/13, effective 12/23/13)

**WAC 246-232-050 Terms and conditions of licenses.** (1) Each license issued pursuant to ~~((this part shall be))~~ the rules in chapters 246-220 through 246-254 WAC is subject to all the provisions of ~~((the act, as now or hereafter in effect))~~ chapter 70A.388 RCW, and to all applicable rules ~~((, regulations,))~~ and orders of the department.

(2) (a) No license issued or granted under chapters ~~((246-232, 246-233, or 246-235 WAC and no right to possess or use radioactive material granted by any license issued pursuant to chapters 246-233 and 246-235 WAC shall))~~ 246-220 through 246-254 WAC nor any right under a license may be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person, unless the department ~~((shall))~~ finds, after securing full information, ~~((find))~~ that the transfer is in accordance with the provisions of ~~((the act))~~ chapter 70A.388 RCW, and gives its consent in writing.

(b) An application for transfer of license must include:

(i) The identity, technical and financial qualifications of the proposed transferee; and

(ii) Financial assurance for decommissioning information required by WAC 246-235-075.

(3) Each person licensed by the department pursuant to chapters ~~((246-233 and 246-235))~~ 246-220 through 246-254 WAC shall confine use and possession of the radioactive material ~~((licensed))~~ to the locations and purposes authorized by the license. Except as otherwise provided in the license, a license issued pursuant to the rules in chapters 246-220 through 246-254 WAC carries with it the right to receive, acquire, own, and possess radioactive material. Preparation for shipment and transport of radioactive material must be in accordance with the provisions of chapter 246-231 WAC.

(4) Approval of licensee's procedures by the department does not release the licensee from responsibility if adherence to these procedures results in undue exposure to individuals or loss of control of radioactive material.

(5) The department may incorporate, in any license issued pursuant to the rules in chapters 246-220 through 246-254 WAC, at the time of issuance, or thereafter by appropriate rule or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material as it deems appropriate or necessary in order to:

(a) Protect health or to minimize danger to life or property;

(b) Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be necessary or appropriate to effectuate the purposes of chapters 70A.388 RCW and 246-220 through 246-254 WAC.

(6) Licensees required to submit emergency plans by WAC 246-235-077 must follow the emergency plan approved by the department. The licensee may change the approved emergency plan without department approval only if the changes do not decrease the effectiveness of the plan. The licensee must furnish the change to the department and to affected offsite response organizations within six months after the change is made. Proposed changes that decrease, or potentially decrease, the effectiveness of the approved emergency plan may not be implemented without prior application to and prior approval by the department.

(7) Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators must test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with WAC 246-240-160. The licensee must record the results of each test and retain each record for three years after the record is made. The licensee must report the results of any test that exceeds the permissible concentration listed in WAC 246-240-160(1) at the time of generator elution, in accordance with WAC 246-240-660.

(8) Each specific licensee must notify the department of health, office of radiation protection, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code by or against:

(a) The licensee;

(b) An entity (as the term is defined in 11 U.S.C. 101(15)) controlling the licensee or listing the license or licensee as property of the estate; or

(c) An affiliate (as the term is defined in 11 U.S.C. 101(2)) of the licensee.

~~((+6))~~ (9) The specific licensee's bankruptcy notification must include:

(a) The bankruptcy court in which the petition for bankruptcy was filed;

(b) The date of the filing of the petition;

(c) A complete and detailed inventory of all radioactive material possessed under the license including nuclide, form, activity and planned disposition;

(d) An estimation of the type and quantities of radioactive material the licensee plans to continue to receive or use on a routine basis;

(e) A description of security and storage for the radioactive material currently possessed;

(f) A plan for radioactive waste disposal, the estimated completion date(s), and the cost;

(g) An evaluation of facility and equipment contamination, estimate of clean-up costs, and a decontamination plan which includes a thorough description of how the cleanup will be funded and how it will be accomplished;

(h) An organizational chart specifying sole owners, partnerships, or officers in the corporation who have legal and fiscal responsibilities for the licensee;

(i) A description of any other changes affecting the terms and conditions of the radioactive materials license.

~~((7))~~ (10) Each specific licensee must notify the department within five working days if any items in subsection ~~((6))~~ (9) of this section change during bankruptcy proceedings.

~~((8))~~ (11) The department will consider clean-up costs as part of the licensee's administrative costs if decontamination is necessary to comply with ~~((these regulations,))~~ chapters 246-220 through 246-254 WAC.

~~((9))~~ (12) Each general licensee required to register by WAC 246-233-020 (3)(k) must notify the department of health, radiation protection, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code by or against:

(a) The licensee;

(b) An entity (as that term is defined in 11 U.S.C. 101(15)) controlling the licensee or listing the license or licensee as property of the estate; or

(c) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

~~((10))~~ (13) The general licensee's bankruptcy notification must include:

(a) The bankruptcy court in which the petition for bankruptcy was filed; and

(b) The date of the filing of the petition.

~~((11) For the purposes of this section, "affiliate" means:~~

~~(a) A person as defined in WAC 246-220-010 that directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the licensee (unless that person holds such securities (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities, or (ii) solely to secure a debt, if such person has not in fact exercised such power to vote);~~

~~(b) A corporation, twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the licensee;~~

~~(c) A person whose business is operated under a lease or operating agreement by a licensee, or person substantially all of whose property is operated under an operating agreement with the licensee; or~~

~~(d) A person that operates the business or substantially all of the property of the licensee under a lease or operating agreement.)~~

(14) Security requirements for portable gauges. Each portable gauge licensee must use a minimum of two independent physical controls that form tangible barriers to secure portable gauges from unauthorized removal, whenever portable gauges are not under the control and constant surveillance of the licensee.

(15) (a) Authorization under WAC 246-235-010 to produce positron emission tomography radioactive drugs for noncommercial transfer to medical use licensees in its consortium does not relieve the licensee from complying with applicable United States Food and Drug Administration, other federal, and state requirements governing radioactive drugs.

(b) Each licensee authorized under WAC 246-235-010 to produce positron emission tomography radioactive drugs for noncommercial transfer to medical use licensees in its consortium shall:

(i) Satisfy the labeling requirements in WAC 246-235-100 for each positron emission tomography radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a positron emission tomography radioactive drug intended for noncommercial distribution to members of its consortium.

(ii) Possess and use instrumentation to measure the radioactivity of the positron emission tomography radioactive drugs intended for noncommercial distribution to members of its consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in WAC 246-235-100.

(c) A licensee that is a pharmacy authorized under WAC 246-235-010 to produce positron emission tomography radioactive drugs for noncommercial transfer to medical use licensees in its consortium must require that any individual that prepares positron emission tomography radioactive drugs must be:

(i) An authorized nuclear pharmacist that meets the requirements in WAC 246-235-100; or

(ii) An individual under the supervision of an authorized nuclear pharmacist as specified in WAC 246-240-057.

(d) A pharmacy, authorized under WAC 246-235-010 to produce positron emission tomography radioactive drugs for noncommercial transfer to medical use licensees in its consortium that allows an individual to work as an authorized nuclear pharmacist, must meet the requirements of WAC 246-235-100.

[Statutory Authority: RCW 70.98.050. WSR 13-24-025, § 246-232-050, filed 11/22/13, effective 12/23/13; WSR 04-04-055, § 246-232-050, filed 1/30/04, effective 3/1/04. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 92-06-008 (Order 245), § 246-232-050, filed 2/21/92, effective 3/23/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-232-050, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-19-300, filed 12/11/86; WSR 83-19-050 (Order 2026), § 402-19-300, filed 9/16/83. Statutory Authority: RCW 70.98.050. WSR 81-01-011 (Order 1570), § 402-19-300, filed 12/8/80. Statutory Authority: RCW 70.98.080. WSR 79-12-073 (Order 1459), § 402-19-300, filed 11/30/79, effective 1/1/80.]

AMENDATORY SECTION (Amending WSR 13-24-025, filed 11/22/13, effective 12/23/13)

**WAC 246-232-060 Termination of licenses and decommissioning of sites and separate buildings or outdoor areas.** (1) Each specific licensee shall immediately notify the department in writing when the licensee decides to permanently discontinue all activities involving materials authorized under the license and request termination of the license. This notification and request for termination of the license must include the reports and information specified in subsection (3)(c) and (d) of this section. The licensee is subject to the provisions of subsections (3) and (4) of this section, as applicable.

(2) No less than (~~thirty~~) 30 days before the expiration date specified in a specific license, the licensee shall either:

(a) Submit an application for license renewal under WAC 246-235-050; or

(b) Notify the department in writing if the licensee decides not to renew the license.

(3) If a specific licensee does not submit an application for license renewal under WAC 246-235-050, the licensee shall on or before the expiration date specified in the license:

(a) Terminate use of radioactive material;

(b) Properly dispose of radioactive material;

(c) Submit a completed departmental form "Certificate of disposition of radioactive material" or equivalent; and

(d) Submit a radiation survey report to confirm the absence of radioactive materials or establish the levels of radioactive contamination, unless the department determines a radiation survey report is not necessary.

(i) If no radioactive contamination attributable to activities conducted under the license is detected, the licensee shall submit a certification that no detectable radioactive contamination was found. If the information submitted under this paragraph and subsection

(3)(c) and (d) of this section is adequate, the department will notify the licensee in writing that the license is terminated.

(ii) If detectable levels of radioactive contamination attributable to activities conducted under the license are found, the license continues in effect beyond the expiration date, if necessary, with respect to possession of residual radioactive material present as contamination until the licensee meets the criteria established in chapter 246-246 WAC and the department notifies the licensee in writing that the license is terminated. During this time, the licensee is subject to the provisions of subsection (4) of this section. In addition to the information submitted under subsection (3)(c) and (d) of this section, the licensee shall submit a plan for decontamination, if necessary.

(4) Each specific licensee who possesses residual radioactive material under subsection (3)(d)(ii) of this section, following the expiration of the license, shall:

(a) Be limited to actions, involving radioactive material related to decontamination and preparation for release in accordance with chapter 246-246 WAC; and

(b) Continue to control entry to restricted areas until:

(i) Such areas are suitable for release in accordance with chapter 246-246 WAC;

(ii) Contaminated equipment complies with guidance contained in WAC 246-232-140, Schedule D; and

(iii) The department notifies the licensee in writing that the license is terminated.

(5) Each general licensee licensed under the provisions of WAC 246-233-040, shall immediately notify the department in writing when the licensee decides to discontinue all activities involving radioactive materials authorized under the general license. Such notification shall include a description of how the generally licensed material was disposed and the results of facility surveys, if applicable, to confirm the absence of radioactive materials.

(6) Within (~~sixty~~) 60 days of the occurrence of any of the following, each specific licensee shall provide notification to the department in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the site, building, or outdoor area is suitable for release in accordance with chapter 246-246 WAC, or submit within (~~twelve~~) 12 months of notification a decommissioning plan, if



required by subsection (10)(a) of this section, and begin decommissioning upon approval of that plan if:

(a) The license has expired or has been revoked by the department; or

(b) The licensee has decided to permanently cease principal activities, as defined in this section, at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the site, building, or outdoor area is unsuitable for release in accordance with chapter 246-246 WAC; or

(c) No principal activities under the license have been conducted for a period of (~~twenty-four~~) 24 months; or

(d) No principal activities have been conducted for a period of (~~twenty-four~~) 24 months in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with chapter 246-246 WAC.

(7) As used in this section, principal activities means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

(8) Coincident with the notification required by subsection (6) of this section, the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to WAC 246-235-075 or as required by this section. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to subsection (10)(d)(v) of this section. Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the department.

(9) The department may grant a request to extend the time periods established in subsection (6) of this section if the department determines that this relief is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than (~~thirty~~) 30 days before notification pursuant to subsection (6) of this section. The schedule for decommissioning set forth in subsection (6) of this section may not commence until the department has made a determination on the request.

(10)(a) A decommissioning plan must be submitted if required by license condition or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the department and these procedures could increase potential health and safety impacts to workers or to the public, such as in any of the following cases:

(i) Procedures would involve techniques not applied routinely during cleanup or maintenance operations;

(ii) Workers would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;

(iii) Procedures could result in significantly greater airborne concentrations of radioactive materials than are present during operation; or

(iv) Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(b) The department may approve an alternate schedule for submission of a decommissioning plan required pursuant to subsection (6) of this section if the department determines that the alternative schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(c) Procedures such as those listed in (a) of this subsection with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(d) The proposed decommissioning plan for the site or separate building or outdoor area must include:

(i) A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;

(ii) A description of planned decommissioning activities;

(iii) A description of methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;

(iv) A description of the planned final radiation survey;

(v) An updated detailed cost estimate for decommissioning, comparison of that estimate with present funds set aside for decommissioning, and a plan for assuring the availability of adequate funds for completion of decommissioning;

(vi) A description of the physical security plan and material control and accounting plan provisions in place during decommissioning;

(vii) For decommissioning plans calling for completion of decommissioning later than (~~twenty-four~~) 24 months after plan approval, the plan shall include a justification for the delay based on the criteria in subsection (12) of this section.

(e) The proposed decommissioning plan will be approved by the department if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

(11)(a) Except as provided in subsection (12) of this section, licensees shall complete decommissioning of the site or separate building or outdoor area as soon as practicable but no later than (~~twenty-four~~) 24 months following the initiation of decommissioning.

(b) Except as provided in subsection (12) of this section, when decommissioning involves the entire site, the licensee shall request license termination as soon as practicable but no later than (~~twenty-four~~) 24 months following the initiation of decommissioning.

(12) The department may approve a request for an alternative schedule for completion of decommissioning of the site or separate building or outdoor area, and license termination if appropriate, if the department determines that the alternative is warranted by consideration of the following:

(a) Whether it is technically feasible to complete decommissioning within the allotted (~~twenty-four month~~) 24-month period;

(b) Whether sufficient waste disposal capacity is available to allow completion of decommissioning within the allotted (~~twenty-four month~~) 24-month period;

(c) Whether a significant volume reduction in wastes requiring disposal will be achieved by allowing short-lived radionuclides to decay;

(d) Whether a significant reduction in radiation exposure to workers can be achieved by allowing short-lived radionuclides to decay; and

(e) Other site-specific factors which the department may consider appropriate on a case-by-case basis, such as the regulatory requirements of other government agencies, lawsuits, groundwater treatment activities, monitored natural groundwater restoration, actions that could result in more environmental harm than deferred cleanup, and other factors beyond the control of the licensee.

(13) As the final step in decommissioning, the licensee shall:

(a) Certify the disposition of all licensed material, including accumulated wastes, by submitting a completed certificate of disposition of radioactive material or equivalent information; and

(b) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey, unless the licensee demonstrates in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in chapter 246-246 WAC. The licensee shall, as appropriate:

(i) Report levels of gamma radiation in units of millisieverts (microroentgen) per hour at one meter from surfaces, and report levels of radioactivity, including alpha and beta, in units of megabecquerels (disintegrations per minute or microcuries) per ~~((one hundred))~~ 100 square centimeters—removable and fixed—for surfaces, megabecquerels (microcuries) per milliliter for water, and becquerels (picocuries) per gram for solids such as soils or concrete; and

(ii) Specify the survey instrument(s) used and certify that each instrument is properly calibrated and tested.

(14) Specific licenses, including expired licenses, will be terminated by written notice to the licensee when the department determines that:

(a) Radioactive material has been properly disposed;

(b) Reasonable effort has been made to eliminate residual radioactive contamination, if present; and

(c) (i) A radiation survey has been performed which demonstrates that the premises are suitable for release in accordance with the criteria for decommissioning in chapter 246-246 WAC; or

(ii) Other information submitted by the licensee is sufficient to demonstrate that the premises are suitable for release in accordance with the criteria for decommissioning in chapter 246-246 WAC; and

(d) Records required by subsections (16) and (18) of this section have been received.

(15) Specific licenses for uranium and thorium milling are exempt from subsections (6)(d), (9) and (10) of this section with respect to reclamation of tailings impoundments or waste disposal areas.

(16) Prior to license termination, each licensee authorized to possess radioactive material with a half-life greater than ~~((one hundred twenty))~~ 120 days, in an unsealed form, shall forward the following records to the department:

(a) Records of disposal required by WAC 246-221-230 (8)(a); and

(b) Records of results required by WAC 246-221-230 (7)(h).

(17) If licensed activities are transferred or assigned in accordance with WAC 246-232-050(2), each licensee authorized to possess radioactive material, with a half-life greater than ~~((one hundred twenty))~~ 120 days, in an unsealed form, shall transfer the following

records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

- (a) Records of disposal required by WAC 246-221-230 (8)(a); and
- (b) Records of results required by WAC 246-221-230 (7)(h).

(18) Prior to license termination, each licensee shall forward the records required by WAC 246-235-075(6) to the department.

[Statutory Authority: RCW 70.98.050. WSR 13-24-025, § 246-232-060, filed 11/22/13, effective 12/23/13; WSR 04-04-055, § 246-232-060, filed 1/30/04, effective 3/1/04; WSR 00-07-085, § 246-232-060, filed 3/15/00, effective 4/15/00; WSR 99-15-105, § 246-232-060, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 97-08-095, § 246-232-060, filed 4/2/97, effective 5/3/97; WSR 91-15-112 (Order 184), § 246-232-060, filed 7/24/91, effective 8/24/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-232-060, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 83-19-050 (Order 2026), § 402-19-330, filed 9/16/83.]

AMENDATORY SECTION (Amending WSR 13-24-025, filed 11/22/13, effective 12/23/13)

**WAC 246-232-080 Transfer of material.** (1) No licensee shall transfer radioactive material except as authorized pursuant to this section.

(2) Except as otherwise provided in the license and subject to the provisions of this section, a licensee may transfer radioactive material:

- (a) To the department. A licensee may transfer material to the department only after receiving prior approval from the department;
- (b) To the United States Department of Energy;
- (c) To a person exempt from the rules in this part to the extent permitted under such exemption;
- (d) To a person authorized to receive such material under terms of a general license or its equivalent, or a specific license or equivalent licensing document, issued by the department, the NRC or an agreement state, or to a person otherwise authorized to receive such material by the federal government or an agency thereof, the department, or an agreement state; or
- (e) As otherwise authorized by the department in writing.

(3) Before transferring radioactive material to a specific licensee of the department, the NRC or an agreement state, or to a general licensee who is required to register with the department, the NRC or an agreement state prior to receipt of the radioactive material, the licensee transferring the material must verify that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred.

(4) The following methods for the verification required by subsection (3) of this section are acceptable:

- (a) The transferor may obtain for possession, and read, a current copy of the transferee's specific license or registration certificate;
- (b) The transferor may obtain for possession a written certification from the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of

radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date;

(c) For emergency shipments the transferor may accept oral certification by the transferee that the transferee is authorized by license or registration certificate to receive the type, form, and quantity of radioactive material to be transferred, specifying the license or registration certificate number, issuing agency, and expiration date: Provided, That the oral certification is confirmed in writing within (~~ten~~) 10 days;

(d) The transferor may obtain other sources of information compiled by a reporting service from official records of the department, the NRC or the licensing agency of an agreement state as to the identity of licensees and the scope and expiration dates of licenses and registration; or

(e) When none of the methods of verification described in subsection (4) of this section are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the department, the NRC or the licensing agency of an agreement state that the transferee is licensed to receive the radioactive material.

(5) Preparation for shipment and transport of radioactive material must be in accordance with the provisions of WAC 246-232-090.

(6) The requirements of subsection (4) of this section notwithstanding, no verification is required when returning used, unused or decayed sources of radiation to the original manufacturer, (e.g., industrial radiography sources, high dose-rate afterloader sources, tel-etherapy sources, portable moisture/density gauge sources, fixed gauge sources, and Mo-99/Tc-99m or Rb-82/Sr-82 generators).

[Statutory Authority: RCW 70.98.050. WSR 13-24-025, § 246-232-080, filed 11/22/13, effective 12/23/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 91-15-112 (Order 184), § 246-232-080, filed 7/24/91, effective 8/24/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-232-080, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-19-400, filed 12/11/86. Statutory Authority: RCW 70.98.050. WSR 81-01-011 (Order 1570), § 402-19-400, filed 12/8/80. Statutory Authority: RCW 70.98.080. WSR 79-12-073 (Order 1459), § 402-19-400, filed 11/30/79, effective 1/1/80. Formerly WAC 402-20-170.]

## SCHEDULES

AMENDATORY SECTION (Amending WSR 16-13-054, filed 6/10/16, effective 7/11/16)

**WAC 246-232-130 Schedule C, exempt concentrations.** (See WAC 246-232-010(1).)

Element (atomic number)	Radionuclide	Column I Gas concentration $\mu\text{Ci}/\text{ml}^1$	Column II Liquid and solid concentration $\mu\text{Ci}/\text{ml}^2$
Antimony (51)	Sb-122		$3 \times 10^{-4}$
	Sb-124		$2 \times 10^{-4}$
	Sb-125		$1 \times 10^{-3}$
Argon (18)	Ar-37	$1 \times 10^{-3}$	
	Ar-41	$4 \times 10^{-7}$	
Arsenic (33)	As-73		$5 \times 10^{-3}$
	As-74		$5 \times 10^{-4}$
	As-76		$2 \times 10^{-4}$
	As-77		$8 \times 10^{-4}$
Barium (56)	Ba-131		$2 \times 10^{-3}$
	Ba-140		$3 \times 10^{-4}$
Beryllium (4)	Be-7		$2 \times 10^{-2}$
Bismuth (83)	Bi-206		$4 \times 10^{-4}$
Bromine (35)	Br-82	$4 \times 10^{-7}$	$3 \times 10^{-3}$
Cadmium (48)	Cd-109		$2 \times 10^{-3}$
	Cd-115m		$3 \times 10^{-4}$
	Cd-115		$3 \times 10^{-4}$
Calcium (20)	Ca-45		$9 \times 10^{-5}$
	Ca-47		$5 \times 10^{-4}$
Carbon (6)	C-14	$1 \times 10^{-6}$	$8 \times 10^{-3}$
Cerium (58)	Ce-141		$9 \times 10^{-4}$
	Ce-143		$4 \times 10^{-4}$
	Ce-144		$1 \times 10^{-4}$
Cesium (55)	Cs-131		$2 \times 10^{-2}$
	Cs-134m		$6 \times 10^{-2}$
	Cs-134		$9 \times 10^{-5}$
Chlorine (17)	Cl-38	$9 \times 10^{-7}$	$4 \times 10^{-3}$
Chromium (24)	Cr-51		$2 \times 10^{-2}$
Cobalt (27)	Co-57		$5 \times 10^{-3}$
	Co-58		$1 \times 10^{-3}$
	Co-60		$5 \times 10^{-4}$
Copper (29)	Cu-64		$3 \times 10^{-3}$
Dysprosium (66)	Dy-165		$4 \times 10^{-3}$
	Dy-166		$4 \times 10^{-4}$
Erbium (68)	Er-169		$9 \times 10^{-4}$
	Er-171		$1 \times 10^{-3}$
Europium (63)	Eu-152 (9.2 h)		$6 \times 10^{-4}$
	Eu-155		$2 \times 10^{-3}$
Fluorine (9)	F-18	$2 \times 10^{-6}$	$8 \times 10^{-3}$
Gadolinium (64)	Gd-153		$2 \times 10^{-3}$
	Gd-159		$8 \times 10^{-4}$
Gallium (31)	Ga-72		$4 \times 10^{-4}$
Germanium (32)	Ge-71		$2 \times 10^{-2}$
Gold (79)	Au-196		$2 \times 10^{-3}$
	Au-198		$5 \times 10^{-4}$
	Au-199		$2 \times 10^{-3}$

Element (atomic number)	Radionuclide	Column I Gas concentration $\mu\text{Ci}/\text{ml}^1$	Column II Liquid and solid concentration $\mu\text{Ci}/\text{ml}^2$
Hafnium (72)	Hf-181		$7 \times 10^{-4}$
Hydrogen (1)	H-3	$5 \times 10^{-6}$	$3 \times 10^{-2}$
Indium (49)	In-113m		$1 \times 10^{-2}$
	In-114m		$2 \times 10^{-4}$
Iodine (53)	I-125	$3 \times 10^{-9}$	$2 \times 10^{-5}$
	I-126	$3 \times 10^{-9}$	$2 \times 10^{-5}$
	I-131	$3 \times 10^{-9}$	$2 \times 10^{-5}$
	I-132	$8 \times 10^{-8}$	$6 \times 10^{-4}$
	I-133	$1 \times 10^{-8}$	$7 \times 10^{-5}$
	I-134	$2 \times 10^{-7}$	$1 \times 10^{-3}$
Iridium (77)	Ir-190		$2 \times 10^{-3}$
	Ir-192		$4 \times 10^{-4}$
	Ir-194		$3 \times 10^{-4}$
Iron (26)	Fe-55		$8 \times 10^{-3}$
	Fe-59		$6 \times 10^{-4}$
Krypton (36)	Kr-85m	$1 \times 10^{-6}$	
	Kr-85		$3 \times 10^{-6}$
Lanthanum (57)	La-140		$2 \times 10^{-4}$
Lead (82)	Pb-203		$4 \times 10^{-3}$
Lutetium (71)	Lu-177		$1 \times 10^{-3}$
Manganese (25)	Mn-52		$3 \times 10^{-4}$
	Mn-54		$1 \times 10^{-3}$
	Mn-56		$1 \times 10^{-3}$
Mercury (80)	Hg-197m		$2 \times 10^{-3}$
	Hg-197		$3 \times 10^{-3}$
	Hg-203		$2 \times 10^{-4}$
Molybdenum (42)	Mo-99		$2 \times 10^{-3}$
Neodymium (60)	Nd-147		$6 \times 10^{-4}$
	Nd-149		$3 \times 10^{-3}$
Nickel (28)	Ni-65		$1 \times 10^{-3}$
Niobium (41)	Nb-95		$1 \times 10^{-3}$
	Nb-97		$9 \times 10^{-3}$
Osmium (76)	Os-185		$7 \times 10^{-4}$
	Os-191m		$3 \times 10^{-2}$
	Os-191		$2 \times 10^{-3}$
	Os-193		$6 \times 10^{-4}$
Palladium (46)	Pd-103		$3 \times 10^{-3}$
	Pd-109		$9 \times 10^{-4}$
Phosphorus (15)	P-32		$2 \times 10^{-4}$
Platinum (78)	Pt-191		$1 \times 10^{-3}$
	Pt-193m		$1 \times 10^{-2}$
	Pt-197m		$1 \times 10^{-2}$
	Pt-197		$1 \times 10^{-3}$
Potassium (19)	K-42		$3 \times 10^{-3}$
Praseodymium (59)	Pr-142		$3 \times 10^{-4}$
	Pr-143		$5 \times 10^{-4}$

Element (atomic number)	Radionuclide	Column I Gas concentration $\mu\text{Ci}/\text{ml}^1$	Column II Liquid and solid concentration $\mu\text{Ci}/\text{ml}^2$
Promethium (61)	Pm-147		$2 \times 10^{-3}$
	Pm-149		$4 \times 10^{-4}$
Radium (88)	Ra-226		$1 \times 10^{-7}$
	Ra-228		$3 \times 10^{-7}$
Rhenium (75)	Re-183		$6 \times 10^{-3}$
	Re-186		$9 \times 10^{-4}$
	Re-188		$6 \times 10^{-4}$
Rhodium (45)	Rh-103m		$1 \times 10^{-1}$
	Rh-105		$1 \times 10^{-3}$
Rubidium (37)	Rb-86		$7 \times 10^{-4}$
Ruthenium (44)	Ru-97		$4 \times 10^{-3}$
	Ru-103		$8 \times 10^{-4}$
	Ru-105		$1 \times 10^{-3}$
	Ru-106		$1 \times 10^{-4}$
Samarium (62)	Sm-153		$8 \times 10^{-4}$
Scandium (21)	Sc-46		$4 \times 10^{-4}$
	Sc-47		$9 \times 10^{-4}$
	Sc-48		$3 \times 10^{-4}$
Selenium (34)	Se-75		$3 \times 10^{-3}$
Silicon (14)	Si-31		$9 \times 10^{-3}$
Silver (47)	Ag-105		$1 \times 10^{-3}$
	Ag-110m		$3 \times 10^{-4}$
	Ag-111		$4 \times 10^{-4}$
Sodium (11)	Na-24		$2 \times 10^{-3}$
Strontium (38)	Sr-85		$1 \times 10^{-3}$
	Sr-89		$1 \times 10^{-4}$
	Sr-91		$7 \times 10^{-4}$
	Sr-92		$7 \times 10^{-4}$
Sulfur (16)	S-35	$9 \times 10^{-8}$	$6 \times 10^{-4}$
Tantalum (73)	Ta-182		$4 \times 10^{-4}$
Technetium (43)	Tc-96m		$1 \times 10^{-1}$
	Tc-96		$1 \times 10^{-3}$
Tellurium (52)	Te-125m		$2 \times 10^{-3}$
	Te-127m		$6 \times 10^{-4}$
	Te-127		$3 \times 10^{-3}$
	Te-129m		$3 \times 10^{-4}$
	Te-131m		$6 \times 10^{-4}$
	Te-132		$3 \times 10^{-4}$
Terbium (65)	Tb-160		$4 \times 10^{-4}$
Thallium (81)	Tl-200		$4 \times 10^{-3}$
	Tl-201		$3 \times 10^{-3}$
	Tl-202		$1 \times 10^{-3}$
	Tl-204		$1 \times 10^{-3}$
Thulium (69)	Tm-170		$5 \times 10^{-4}$
	Tm-171		$5 \times 10^{-3}$



Element (atomic number)	Radionuclide	Column I Gas concentration $\mu\text{Ci}/\text{ml}^1$	Column II Liquid and solid concentration $\mu\text{Ci}/\text{ml}^2$
Tin (50)	Sn-113		$9 \times 10^{-4}$
	Sn-125		$2 \times 10^{-4}$
Tungsten (Wolfram) (74)	W-181		$4 \times 10^{-3}$
	W-187		$7 \times 10^{-4}$
Vanadium (23)	V-48		$3 \times 10^{-4}$
Xenon (54)	Xe-131m	$4 \times 10^{-6}$	
	Xe-133	$3 \times 10^{-6}$	
	Xe-135	$1 \times 10^{-6}$	
Ytterbium (70)	Yb-175		$1 \times 10^{-3}$
Yttrium (39)	Y-90		$2 \times 10^{-4}$
	Y-91m		$3 \times 10^{-2}$
	Y-91		$3 \times 10^{-4}$
	Y-92		$6 \times 10^{-4}$
	Y-93		$3 \times 10^{-4}$
Zinc (30)	Zn-65		$1 \times 10^{-3}$
	Zn-69m		$7 \times 10^{-4}$
	Zn-69		$2 \times 10^{-2}$
Zirconium (40)	Zr-95		$6 \times 10^{-4}$
	Zr-97		$2 \times 10^{-4}$
Beta or gamma emitting radioactive material not listed above with half-life less than ((3)) <u>three</u> years		$1 \times 10^{-10}$	$1 \times 10^{-6}$

- Notes:
- <sup>1</sup> Values are given in Column I only for those materials normally used as gases
  - <sup>2</sup>  $\mu\text{Ci}/\text{gm}$  for solids
- Note 1: Many radionuclides decay into nuclides which are also radioactive. In expressing the concentrations in Schedule C the activity stated is that of the parent nuclide and takes into account the daughters.
- Note 2: For purposes of WAC 246-232-010(1) where there is involved a combination of nuclides, the limit for the combination should be derived as follows: Determine for each nuclide in the product the ratio between the concentration present in the product and the exempt concentration established in Schedule C for the specific nuclide when not in combination. The sum of such ratios may not exceed "1" (i.e., unity).

Example:

$$\frac{\text{Concentration of Nuclide A in Product}}{\text{Exempt concentration of Nuclide A}} + \frac{\text{Concentration of Nuclide B in Product}}{\text{Exempt concentration of Nuclide B}} \leq 1$$

- Note 3: For the purpose of determining concentration in a product or device, the total quantity of radioactive material present is divided by only that weight or volume of the discrete part or component throughout which the radioactive material is relatively uniformly distributed. If the weight or volume of this part or component cannot be determined then the product or device should be evaluated on the basis of the total quantity of radioactive material present.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 16-13-054, § 246-232-130, filed 6/10/16, effective 7/11/16. Statutory Authority: RCW 70.98.050. WSR 13-24-025, § 246-232-130, filed 11/22/13, effective 12/23/13; WSR 01-02-068, § 246-232-130, filed 12/29/00, effective 1/29/01. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 91-15-112 (Order 184), § 246-232-130, filed 7/24/91, effective 8/24/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-232-130, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-19-580, filed 12/11/86; WSR 83-19-050 (Order 2026), § 402-19-580, filed 9/16/83; WSR 79-12-073 (Order 1459), § 402-19-580, filed 11/30/79, effective 1/1/80. Formerly WAC 402-20-250.]

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

**WAC 246-232-140 Schedule D.**

ACCEPTABLE SURFACE CONTAMINATION LEVELS

NUCLIDES A	AVERAGE B C F	MAXIMUM B D F	REMOVABLE B E F WIPE LIMITS
U-nat, U-235, U-238, and associated decay products	5,000 dpm/100 cm <sup>2</sup>	15,000 dpm/100 cm <sup>2</sup>	1,000 dpm α/100 cm <sup>2</sup>
Transuranics, Ra-226, Ra-228, Th-230, Th-228, Pa-231, Ac-227, I-125, I-129	100 dpm/100 cm <sup>2</sup>	300 dpm/100 cm <sup>2</sup>	20 dpm/100 cm <sup>2</sup>
Th-nat, Th-232, Sr-90, Ra-223, Ra-224, U-232, I-126, I-131, I-133	1000 dpm/100 cm <sup>2</sup>	3000 dpm/100 cm <sup>2</sup>	200 dpm/100 cm <sup>2</sup>
Beta-gamma emitters (nuclides with decay modes other than alpha emission or spontaneous fission) except SR-90 and others noted above	5000 dpm/100 cm <sup>2</sup>	15,000 dpm/100 cm <sup>2</sup>	1000 dpm βγ/100 cm <sup>2</sup>

- A Where surface contamination by both alpha- and beta-gamma-emitting nuclides exists, the limits established for alpha-and beta-gamma-emitting nuclides should apply independently.
- B As used in this table, dpm (disintegrations per minute) means the rate of emission by radioactive material as determined by correcting the counts per minute observed by an appropriate detector for background, efficiency, and geometric factors associated with the instrumentation.
- C Measurements of average contaminant should not be averaged over more than ((±)) one square meter. For objects of less surface area, the average should be derived for each such object.
- D The maximum contamination level applies to an area of not more than 100 cm<sup>2</sup>.
- E The amount of removable radioactive material per 100 cm<sup>2</sup> of surface area should be determined by wiping that area with dry filter or soft absorbent paper, applying moderate pressure, and assessing the amount of radioactive material on the wipe with an appropriate instrument of known efficiency. When removable contamination on objects of less surface area is determined, the pertinent levels should be reduced proportionally and the entire surface should be wiped.
- F The average and maximum radiation levels associated with surface contamination resulting from beta-gamma emitters should not exceed 0.2 mrad/hr at ((±)) one cm and 1.0 mrad/hr at ((±)) one cm, respectively, measured through not more than ((7)) seven milligrams per square centimeter of total absorber.

[Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-232-140, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-232-140, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-19-590, filed 12/11/86; WSR 83-19-050 (Order 2026), § 402-19-590, filed 9/16/83.]

## FEES

## OTS-3843.3

AMENDATORY SECTION (Amending WSR 17-01-034, filed 12/12/16, effective 1/12/17)

**WAC 246-235-010 Filing application for specific licenses.** (1) ~~((Applications for))~~ An applicant applying for a specific license ~~((s must be filed on))~~ shall submit an application on a department approved form ~~((RHF-1))~~.

(2) The department may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the department to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Each application must be signed by the applicant or licensee or a person duly authorized to act for and on the applicant's behalf.

(4) ~~((An application for a license may include a request for a license authorizing one or more activities.))~~ An applicant may apply on one application for multiple licenses authorizing other activities under chapters 246-220 through 246-254 WAC and under chapter 70A.388 RCW, provided that the application specifies the activities for which licenses are requested.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the department provided such references are clear and specific.

(6) ~~(a)~~ Except as provided in ~~((e), (d), and (e))~~ (b), (c), and (d) of this subsection, an application for a specific license to use radioactive materials in the form of a sealed source or in a device that contains the sealed source must:

~~((a))~~ (i) Identify the source or device by manufacturer and model number as registered with the department under WAC 246-235-108, the NRC under 10 C.F.R. 32.210, an agreement state, or for a source or a device containing radium-226 or accelerator-produced radioactive material with a state under provisions comparable to 10 C.F.R. 32.210; or

~~((b))~~ (ii) Contain the information identified in WAC 246-235-108(3) ~~((; or))~~.

~~((e))~~ (b) For sources or devices manufactured before October 23, 2012, that are not registered with the NRC under 10 C.F.R. 32.210 or with an agreement state, and for which the applicant is unable to provide all categories of information specified in WAC 246-235-108(3), the application must include:

(i) All available information identified in WAC 246-235-108(3) concerning the source, and, if applicable, the device; and

(ii) Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of ~~((the most))~~ a recent leak test.

~~((d))~~ (c) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with WAC 246-235-108 (7) (a), the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

~~((e))~~ (d) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used, and the conditions under which they will be used, in lieu of identifying each sealed source and device.

(7) Applications and documents submitted to the department may be made available for public inspection except that the department may withhold any document or part thereof from public inspection if disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned.

(8) As provided by WAC 246-235-075, certain applications for specific licenses filed under chapters 246-220 through 246-254 WAC must contain a proposed decommissioning funding plan or a certification of financial assurance for decommissioning.

(9) An application from a medical facility, educational institution, or federal facility to produce positron emission tomography radioactive drugs for noncommercial transfer to licensees in its consortium authorized for medical use under chapter 246-240 WAC must include:

(a) A request for authorization for the production of positron emission tomography radionuclides or evidence of an existing license issued under chapters 246-220 through 246-254 WAC for a positron emission tomography radionuclide production facility within its consortium from which it receives positron emission tomography radionuclides.

(b) Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in WAC 246-235-100 (1) (b).

(c) Identification of individuals authorized to prepare the positron emission tomography radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in WAC 246-235-100 (2) (b).

(d) Information identified in WAC 246-235-100 (1) (c) on the positron emission tomography drugs to be noncommercially transferred to members of its consortium.

(10) An application for a license to receive and possess radioactive material for the conduct of any activity which the department has determined will significantly affect the quality of the environment must be filed at least nine months prior to commencement of construction of the plant or facility in which the activity will be conducted and must be accompanied by any environmental report required under WAC 246-235-086, chapter 197-11, or 246-03 WAC.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 17-01-034, § 246-235-010, filed 12/12/16, effective 1/12/17; WSR 16-13-054, § 246-235-010, filed 6/10/16, effective 7/11/16. Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-235-010, filed 2/23/15, effective 3/26/15; WSR 13-24-025, § 246-235-010, filed 11/22/13, effective 12/23/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-235-010, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-235-010, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 79-12-073 (Order 1459), § 402-22-020, filed 11/30/79, effective 1/1/80. Formerly WAC 402-20-050.]

AMENDATORY SECTION (Amending WSR 15-06-015, filed 2/23/15, effective 3/26/15)

**WAC 246-235-020 General requirements for the issuance of specific licenses.** ~~((A license application will be approved if the department determines that:))~~ Upon a determination that an application meets the requirements of this section, chapters 70A.388 RCW and 246-220 through 246-254 WAC, the department will issue a specific license authorizing the possession and use of radioactive material.

(1) The application is for a purpose authorized by chapter 70A.388 RCW;

(2) The applicant is qualified by ((reason of)) training and experience to use the material ((in question)) for the purpose requested ((in accordance with these regulations in a manner to minimize danger to public)) in such manner as to protect health and safety and minimize danger to life or property;

~~((2))~~ (3) The applicant's proposed equipment, facilities, and procedures are adequate to ((minimize danger to public)) protect health and safety and minimize danger to life or property;

~~((3))~~ (4) The issuance of the license will not harm the health and safety of the public; ((and

~~((4))~~ (5) The applicant satisfies any applicable special requirements in ((WAC 246-235-075 through 246-235-110, and chapters 246-240 through 246-252 WAC.

~~((5) When))~~ chapters 246-220 through 246-254 WAC; and

(6) In the case of an application for a license to receive and possess radioactive material for commercial waste disposal by land burial, source material milling, uranium enrichment facility construction and operation, production of uranium hexafluoride, or for the conduct of any other activity which the department determines will significantly affect the quality of the environment, the applicant may not begin construction until the department has weighed the environmental, economic, technical, and other benefits against the environmental costs, and, considering available alternatives, has concluded that the issuance of the license is appropriate, with any appropriate conditions to protect environmental values. Commencement of construction prior to approval by the department shall be grounds for denial of a license to receive and possess radioactive material in the plant or facility. Commencement of construction as defined in chapter 246-220 WAC may include nonconstruction activities if the activity has a reasonable nexus to radiological safety and security.

[Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-235-020, filed 2/23/15, effective 3/26/15; WSR 06-05-019, § 246-235-020, filed 2/6/06, effective 3/9/06; WSR 98-13-037, § 246-235-020, filed 6/8/98, effective 7/9/98. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 91-15-112 (Order 184), § 246-235-020, filed 7/24/91, effective 8/24/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-235-020, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-22-040, filed 12/11/86. Statutory Authority: Chapter 70.121 RCW. WSR 81-16-031 (Order 1683), § 402-22-040, filed 7/28/81. Statutory Authority: RCW 70.98.080. WSR 79-12-073 (Order 1459), § 402-22-040, filed 11/30/79, effective 1/1/80. Formerly WAC 402-20-060.]

AMENDATORY SECTION (Amending WSR 15-06-015, filed 2/23/15, effective 3/26/15)

**WAC 246-235-075 Financial assurance and recordkeeping for decommissioning.** (1) Each applicant for one of the following licenses shall submit a decommissioning funding plan as described in this section:

- (a) A specific license authorizing receipt of radioactive waste for the purpose of volume reduction, repackaging or interim storage.
- (b) Receipt of contaminated articles, scrap material, equipment, or clothing to be decontaminated at the licensee's facility.
- (c) A specific license authorizing the possession and use of radioactive material of half-life greater than (~~one hundred twenty~~) 120 days and in quantities for unsealed material exceeding  $10^3$  times and for sealed forms exceeding  $10^{10}$  times the applicable quantities set forth in WAC 246-221-300 Appendix B (for a combination of nuclides the unity rule applies. A decommissioning funding plan will be required if R is greater than 1, where R is defined as the sum of the ratios of the quantity for sealed and unsealed forms of each nuclide compared to the applicable value derived from WAC 246-221-300).
- (d) A specific license authorizing possession and use of source material in readily dispersible form and in quantities greater than 370 megabecquerels (10 millicuries).

(2) Each decommissioning funding plan must be submitted for review and approval and must contain the following:

- (a) A description of the facility and areas within the facility likely to require decommissioning as a result of routine operation.
- (b) A description of methods and general procedures for performing facility decontamination, maintaining security, and performing a final radiation survey.
- (c) A detailed cost estimate for decommissioning facilities impacted by the activities authorized in the specific license reflecting:
  - (i) The cost of an independent contractor to perform all decommissioning activities;
  - (ii) The cost of meeting WAC 246-246-020, Radiological criteria for unrestricted use, or the cost of meeting WAC 246-246-030, Criteria for license termination under restricted conditions, and WAC 246-246-040, Alternate criteria for license termination;
  - (iii) Any previous spills of radioactive material;

- (iv) An adequate contingency factor;
- (v) A means for adjusting cost estimates and associated funding levels periodically over the life of the facility or facilities;
- (vi) Anticipated labor, equipment, and material costs;
- (vii) Anticipated waste volume;
- (viii) Anticipated volume of on-site subsurface material containing residual radioactivity requiring remediation or disposal;
- (ix) Anticipated packaging, transportation, and waste disposal cost of decommissioning;
- (x) Routine costs for packaging, transportation, and waste disposal;
- (xi) On-site disposal; and
- (xii) Use of settling or evaporation ponds.

(d) A description of the method of assuring funds for decommissioning, pursuant to subsection (4) of this section, including means for adjusting levels periodically over the life of the facility or facilities.

(e) Identification of and justification for the key assumptions used and applied in the decommissioning cost estimate.

(f) A commitment to clean up accidental spills promptly and to begin decommissioning of the facility or facilities within ~~((twelve))~~ 12 months of ceasing operation involving radioactive material.

(3) Each cost estimate for decommissioning must include identification and justification of all key assumptions used in the plan and cost estimate.

(4) Each applicant shall submit a certification that financial assurance for decommissioning meets the amount of the approved decommissioning cost estimate prior to commencement of the use of any radioactive materials. The applicant or licensee shall provide a signed original of the financial instrument obtained to satisfy the financial surety requirement unless a previously submitted and accepted financial instrument continues to cover the plan and cost estimate for decommissioning. That financial instrument must be one or more of the following approved methods:

(a) Prepayment. Prepayment is the deposit of sufficient funds to pay decommissioning costs. Funds must be deposited prior to the start of operation into an account segregated from licensee assets and outside the licensee's administrative control. Prepayment may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The funding must be stipulated specifically for the purpose of decommissioning.

(b) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

(i) The surety method or insurance must be open-ended or, if written for a specified term, such as five years, must be renewed automatically unless ~~((ninety))~~ 90 days or more prior to the renewal date, the issuer notifies the department, the beneficiary, and the licensee of its intention not to renew. The surety method or insurance must also require that the full face amount be paid to the beneficiary automatically prior to the expiration without proof of forfeiture if the licensee fails to provide a replacement acceptable to the department within ~~((thirty))~~ 30 days after receipt of notification of cancellation.

(ii) The surety method or insurance must be payable to a trust established for decommissioning costs. Funds must be placed into a trust segregated from the licensee's assets, outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual one percent real rate of return on investment. The trustee and trust must be acceptable to the department. Acceptable trustees include an appropriate state or federal government agency or an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency.

(iii) The surety method or insurance must remain in effect until the department has terminated the license.

(c) An external sinking fund in which deposits are made at least annually, coupled with a surety method or insurance, the value of which may decrease by the amount being accumulated in the sinking fund. An external sinking fund is a fund established and maintained by setting aside funds periodically in an account segregated from licensee assets and outside the licensee's administrative control. The total amount of funds in the external sinking fund must be sufficient to pay decommissioning costs at the time termination of operation is expected. An external sinking fund may be in the form of a trust, escrow account, government fund, certificate of deposit, or deposit of government securities. The surety or insurance provisions must be as stated in subsection (4) (b) of this section.

(d) Statement of intent. In the case of state or local government licensees, a statement of intent containing a cost estimate for decommissioning and indicating that funds for decommissioning will be obtained when necessary.

(e) Other methods of financial assurance as approved by the department. The department may approve other financial mechanisms submitted by the applicant or licensee if the alternate method meets, at a minimum, the requirements of 10 C.F.R. 30.35 and associated NRC guidance.

(5) (a) The applicant or licensee shall submit to the department for approval, an initial or updated decommissioning funding plan with a detailed cost estimate prior to license issuance and shall submit an updated plan at intervals not to exceed three years.

(b) The decommissioning funding plan must be resubmitted with adjustments as necessary to account for changes in costs and the extent of contamination. The amount of the financial assurance may not be adjusted downward until the updated decommissioning funding plan is approved. The information submitted with the original or prior approved decommissioning funding plan must be updated and submitted with the adjusted decommissioning funding plan. It must specifically address the effect of the following events on decommissioning costs:

- (i) Facility modifications;
- (ii) Changes in authorized possession limits;
- (iii) Changes in process;
- (iv) Spills of radioactive material and actual remediation costs that exceed the previous cost estimate;
- (v) Spills of radioactive material producing additional residual radioactivity in on-site subsurface material;
- (vi) Waste inventory increase above the amount previously estimated;
- (vii) Waste disposal costs increase above the amount previously estimated;
- (viii) On-site disposal;



(ix) Use of settling or evaporation ponds; and

(x) Any alteration which might affect the overall cost of decommissioning.

(c) The applicant or licensee shall incorporate department comments into the decommissioning funding plan including its cost estimate and shall revise its financial surety accordingly.

(d) Applicants shall obtain the appropriate financial assurance as approved by the department prior to receipt of licensed material. The department may issue a new license if the applicant agrees to comply with the decommissioning funding plan as approved. If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of this section must be submitted to the department before receipt of licensed material.

(e) Licensees shall implement the financial assurance requirements within (~~thirty~~) 30 days of receiving department approval of the initial or updated decommissioning funding plan. Licensees shall submit copies of the financial surety within (~~thirty~~) 30 days of securing the surety and annually thereafter.

(6) Each person licensed under this chapter shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the site is released for unrestricted use. Before licensed activities are transferred or assigned in accordance with WAC 246-232-050(2), licensees shall transfer all records described in this subsection to the new licensee. In this case, the new licensee will be responsible for maintaining these records until the license is terminated by the department. If records of relevant information are kept for other purposes, reference to these records and their locations may be used.

(a) An application for transfer of license must include:

(i) The identity, technical, and financial qualifications of the proposed transferee; and

(ii) Financial assurance for decommissioning information required by WAC 246-235-075.

(b) Information the department considers important to decommissioning consists of:

(i) Records of spills or other unusual occurrences involving the spread of contamination in and around the facility, equipment, or site, including subsurface residual radioactivity. These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete. These records must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

(ii) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination. If required drawings are referenced, each relevant document need not be indexed individually. If drawings are not available, the licensee shall substitute appropriate records of available information concerning these areas and locations.

(iii) Except for areas containing only sealed sources (provided the sources have not leaked or no contamination remains after any leak) or depleted uranium used only for shielding or as penetrators in unused munitions, or radioactive materials having only half-lives of

less than (~~sixty-five~~) 65 days, a list contained in a single document and updated every two years, of the following:

- (A) All areas designated and formerly designated as restricted areas as defined under WAC 246-220-010;
- (B) All areas outside of restricted areas that require documentation under (b)(i) of this subsection;
- (C) All areas outside of restricted areas where current and previous wastes have been buried as documented under WAC 246-221-230 (8)(a); and
- (D) All areas outside of restricted areas which contain material such that, if the license expired, the licensee would be required to either decontaminate the area to meet the criteria for decommissioning in chapter 246-246 WAC or apply for approval for disposal under WAC 246-221-180. Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

[Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-235-075, filed 2/23/15, effective 3/26/15; WSR 13-24-025, § 246-235-075, filed 11/22/13, effective 12/23/13. Statutory Authority: RCW 70.98.095 and 70.98.050. WSR 07-03-049, § 246-235-075, filed 1/12/07, effective 2/12/07. Statutory Authority: RCW 70.98.050. WSR 00-07-085, § 246-235-075, filed 3/15/00, effective 4/15/00; WSR 99-15-105, § 246-235-075, filed 7/21/99, effective 8/21/99. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 97-08-095, § 246-235-075, filed 4/2/97, effective 5/3/97; WSR 92-06-008 (Order 245), § 246-235-075, filed 2/21/92, effective 3/23/92.]

AMENDATORY SECTION (Amending WSR 15-06-015, filed 2/23/15, effective 3/26/15)

**WAC 246-235-077 Special requirements for emergency planning.**

(1) Each application to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in WAC 246-235-150, "Schedule C—Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release," must contain either:

(a) An evaluation showing that the maximum dose to a (~~member of the public~~) person off-site due to a release of radioactive materials would not exceed (~~(±)~~) one rem effective dose equivalent or (~~(5)~~) five rems to the thyroid (~~(or an intake of 2 milligrams of soluble uranium)~~); or

(b) An emergency plan for responding to (~~the radiological hazards of an accidental~~) a release of radioactive material (~~(and to the chemical hazards associated with uranium hexafluoride, when present)~~).

(2) One or more of the following factors may be used to support an evaluation submitted under subsection (1)(a) of this section:

(a) The radioactive material is physically separated so that only a portion could be involved in an accident;

(b) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(c) The release fraction in the respirable size range would be lower than the release fraction listed in WAC 246-235-150 Schedule C due to the chemical or physical form of the material;

(d) The solubility of the radioactive material would reduce the dose received;

(e) Facility design or engineered safety features in the facility would cause the release fraction to be lower than listed in WAC 246-235-150 Schedule C;

(f) Operating restrictions or procedures would prevent a release fraction as large as that listed in WAC 246-235-150 Schedule C; or

(g) Other factors appropriate for the specific facility.

(3) An emergency plan for responding to a release of radioactive material submitted under subsection (1)(b) of this section must include the following information:

(a) Facility description. A brief description of the licensee's facility and area near the site.

(b) Types of accidents. An identification of each type of radioactive materials accident for which protective actions may be needed.

(c) Classification of accidents. A classification system for classifying accidents as alerts or site area emergencies.

(d) Detection of accidents. Identification of the means of detecting each type of accident in a timely manner.

(e) Mitigation of consequences. A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers on-site, and a description of the program for maintaining the equipment.

(f) Assessment of releases. A brief description of the methods and equipment to assess releases of radioactive materials.

(g) Responsibilities. A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying off-site response organizations and the department; also responsibilities for developing, maintaining, and updating the plan.

(h) Notification and coordination. A commitment ~~((7))~~ to and a brief description of the means ~~((available,))~~ to promptly ~~((to))~~ notify off-site response organizations and request off-site assistance, including medical assistance for the treatment of contaminated injured on-site workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee must also commit to notify the department immediately after notification of the appropriate off-site response organizations and not later than one hour after the licensee declares an emergency. These reporting requirements do not supersede or release licensees from complying with the requirements under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499 or other state or federal reporting requirements.

(i) Information to be communicated. A brief description of the types of information on facility status, radioactive releases, and recommended protective actions, if necessary, to be given to off-site response organizations and to the department.

(j) Training. A brief description of the frequency, performance objectives and plans for the training that the licensee will provide workers on how to respond to an emergency including any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training must famili-

arize personnel with site-specific emergency procedures. Also, the training must thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

(k) Safe shutdown. A brief description of the means of restoring the facility to a safe condition after an accident.

(l) Exercises. Provisions for conducting quarterly communications checks with off-site response organizations and biennial on-site exercises to test response to simulated emergencies. Quarterly communications checks with off-site response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite off-site response organizations to participate in the biennial exercises. Participation of off-site response organizations in biennial exercises although recommended is not required. Exercises must use accident scenarios postulated as most probable for the specific site, and the scenarios must not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel, and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

(m) Hazardous chemicals. A certification that the licensee or applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Pub. L. 99-499, if applicable to the licensee's or applicant's activities at the proposed place of use of the radioactive material.

(4) The licensee shall allow the off-site response organizations expected to respond in case of an accident (~~(sixty)~~) 60 days to comment on the licensee's emergency plan before submitting it to the department. The licensee shall provide any comments received within the (~~(sixty)~~) 60 days to the department with the emergency plan.

[Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-235-077, filed 2/23/15, effective 3/26/15; WSR 95-01-108, § 246-235-077, filed 12/21/94, effective 1/21/95.]

AMENDATORY SECTION (Amending WSR 15-06-015, filed 2/23/15, effective 3/26/15)

**WAC 246-235-080 Special requirements for possession and use of medical calibration and reference sources.** (1) Leak tests.

(a) Any licensee or registrant who possesses sealed sources as calibration or reference sources must test for leakage or contamination each sealed source containing radioactive material, other than Hydrogen-3, with a half-life greater than (~~(thirty)~~) 30 days in any form other than gas at least every six months. In the absence of a certificate from a transferor indicating that a test has been made within six months prior to the transfer, the sealed sources must not be used until tested. However, leak tests are not required when: The source contains 3.7 megabecquerels (100 microcuries) or less of beta or gamma emitting material or 370 kilobecquerels (10 microcuries) or less of alpha emitting material or the sealed source is stored and is not being used: Provided, a physical inventory of the source and wipe

surveys of the storage area or storage container are conducted as required by these rules or license condition.

(b) The leak test must be capable of detecting the presence of 185 becquerels (0.005 microcurie) of radioactive material on the test sample. The test sample must be taken from the sealed source or from the surfaces of the device in which the sealed source is mounted or stored on which contamination might be expected to accumulate. Records of leak test results must be kept in units of microcuries and maintained for inspection by the department.

(c) If the leak test reveals the presence of 185 becquerels (0.005 microcurie) or more of removable contamination, the licensee or registrant must immediately withdraw the sealed source from use and must cause it to be decontaminated and repaired or to be disposed of in accordance with chapters 246-235 and 246-221 WAC. The licensee must file a report within five days of the test with the department describing the equipment involved, the test results, and the corrective action taken.

(2) Any licensee or registrant who possesses and uses calibration and reference sources must:

(a) Follow the radiation safety and handling instructions approved by the department, the NRC or an agreement state and furnished by the manufacturer on the label attached to the source, or permanent container thereof, or in the leaflet or brochure that accompanies the source, and maintain the instructions in a legible and conveniently available form; and

(b) Conduct a quarterly or semi-annual physical inventory to account for all sources received and possessed. Records of the inventories must be maintained for inspection by the department and must include, at a minimum, the quantities and kinds of radioactive material, location of sources, name of person performing the inventory, and the date of the inventory.

[Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-235-080, filed 2/23/15, effective 3/26/15; WSR 13-24-025, § 246-235-080, filed 11/22/13, effective 12/23/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-235-080, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-235-080, filed 2/6/06, effective 3/9/06; WSR 00-08-013, § 246-235-080, filed 3/24/00, effective 4/24/00; WSR 98-13-037, § 246-235-080, filed 6/8/98, effective 7/9/98. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 91-15-112 (Order 184), § 246-235-080, filed 7/24/91, effective 8/24/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-235-080, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 87-01-031 (Order 2450), § 402-22-070, filed 12/11/86; WSR 83-19-050 (Order 2026), § 402-22-070, filed 9/16/83. Statutory Authority: RCW 70.98.050. WSR 81-01-011 (Order 1570), § 402-22-070, filed 12/8/80. Statutory Authority: RCW 70.98.080. WSR 79-12-073 (Order 1459), § 402-22-070, filed 11/30/79, effective 1/1/80. Formerly WAC 402-20-070.]

AMENDATORY SECTION (Amending WSR 15-06-015, filed 2/23/15, effective 3/26/15)

**WAC 246-235-086 Special requirements for environmentally significant licensing actions.** In addition to the requirements set forth in WAC 246-235-020, a specific license for any activity within the licensing authority of the department which the department determines will significantly affect the radiological quality of the human environment, including those specified in WAC 197-11-845(1) and 246-03-030 (1)(a)(ii) (i.e., licenses to operate low level waste burial facilities or licenses to operate or expand beyond the design capacity, mineral processing facilities or their tailings areas, whose products, or by-products, have concentrations of naturally occurring radioactive material in excess of exempt concentrations as specified in WAC 246-232-130, Schedule C), will be issued if the following conditions are met:

(1) Environmental impact statement.

(a) The application for a license or license amendment (other than administrative amendments) is accompanied or preceded by a final environmental impact statement or final declaration of nonsignificance completed in accordance with the SEPA procedures and guidelines specified in chapters 197-11 and 246-03 WAC. For any uranium or thorium mill in operation on or before the effective date of this regulation for which an environmental impact statement has not been prepared previously, an application for license renewal must be accompanied or preceded by a final environmental impact statement or final declaration of nonsignificance completed in accordance with SEPA guidelines. No construction shall be commenced until the license has been issued or unless an emergency exemption from SEPA requirements is granted in accordance with WAC 197-11-880. For the purposes of this subsection, the terms "commencement of construction" and "construction" have the same meaning as that defined in WAC 246-220-010. In the case where an exemption is granted, the applicant shall assume all financial risk for construction activity; waive any claim of entitlement to the issuance of a license based solely upon the grant of the exemption or the commencement of construction pursuant thereto; and furnish, if the circumstances warrant and the department so requires, a financial surety arrangement to ensure the protection of the public health, safety, and the environment in the event of abandonment, default, or inability of the licensed applicant to meet the requirements of the act or these regulations.

((Note: No construction shall be commenced until the license has been issued or unless an emergency exemption from SEPA requirements is granted in accordance with WAC 197-11-880. For the purposes of this subsection, the terms "commencement of construction" and "construction" have the same meaning as that defined in WAC 246-220-010. In the case where an exemption is granted, the applicant shall assume all financial risk for construction activity; waive any claim of entitlement to the issuance of a license based solely upon the grant of the exemption or the commencement of construction pursuant thereto; and furnish, if the circumstances warrant and the department so requires, a financial surety arrangement to insure the protection of the public health, safety and the environment in the event of abandonment, default, or inability of the license applicant to meet the requirements of the act or these regulations.))

(b) In addition to the information required in chapter 197-11 WAC, the following additional areas must be addressed in the final environmental impact statement:

(i) Alternative sites to those chosen by the applicant must include all alternative sites, whether or not those sites are under the control or ownership of the applicant.

(ii) Long-term impacts must include, but not be limited to, decommissioning, decontamination, reclamation impacts and material management associated with the proposed activities.

(iii) Environmental reviews, dose assessments, ecology, construction effects on biota, impact on the environment from the use of chemicals, and socioeconomic effects must be addressed.

(iv) Alternative disposal sites and techniques for disposal must be evaluated to determine if a site or technique is clearly superior.

(2) For uranium or thorium milling operations, a bond made payable to the department of health or other acceptable government agency, and in an amount specified by the department, must be posted to ensure the protection of the public health and safety in the event of abandonment, default or other inability of the licensee to meet the requirements for reclamation and disposal of tailings and for decommissioning the site. The bond, or a copy thereof when the bond is made payable to another government agency, must be received by the department prior to issuance of the license, or prior to license renewal for mills in operation on or before the effective date of this regulation. Other acceptable surety arrangements in addition to surety bonding include cash deposits, certificates of deposit, deposits of government securities, letters or lines of credit or combinations of the foregoing. The amount and mechanism of the surety arrangement may be reviewed by the department preceding each license renewal and adjustments may be required of the licensee prior to such renewal.

(3) The owner of the proposed uranium or thorium mill and tailings site(s) agrees to transfer or revert to the appropriate state or federal agency upon termination of the license, all lands, buildings and grounds, and any interest therein, necessary to fulfill the purposes of this subsection, except where the lands are held in trust for, or are owned by, any Indian tribe. For any uranium or thorium mill in operation on or before the effective date of this regulation, such an agreement will be required prior to license renewal.

(4) For all uranium and thorium milling operations, the owner or operator shall arrange to pay to the department or its designee a fee in accordance with WAC 246-254-150 for a special security fund for the further maintenance, surveillance or care which may be required after a licensee has ceased to operate.

A minimum fund of (~~two hundred fifty thousand dollars~~) \$250,000 must be provided by the licensee payable to the state. If a shortfall exists between the amount of money in the special security fund and the (~~two hundred fifty thousand dollars~~) \$250,000 minimum amount, a surety bond, or other acceptable surety instrument as defined (~~above~~) in this chapter must be arranged.

(5) The application for a license includes a description of an appropriate program for effluent monitoring, environmental monitoring and data reporting. The description must encompass locations, frequency, and types of sampling, analytical plans and procedures, minimum detection levels, sampling equipment and quality assurance programs.

(6) All licensees or registrants required to meet the additional requirements set forth in this subsection shall establish environmental monitoring programs adequate to determine the impact of their activity on the natural environment around the site of their environmentally significant activity. The established environmental and effluent monitoring program must address all environmentally significant radionuclide releases and external radiation sources caused or threatened to be caused by the licensee's activities.

(a) Effluent and environmental monitoring results must include the following minimum information as pertinent:

(i) Information as to flow rates, total volume of effluent, peak concentration, concentration of each radionuclide in the effluent

averaged over a period of one year at the point where the effluent leaves a stack, tube, pipe, or similar conduit;

(ii) A description of the properties of the effluents, including:

(A) Chemical composition;

(B) Physical characteristics, including suspended solids content in liquid effluents, and nature of gas aerosol for air effluents;

(C) The hydrogen ion concentrations (pH) of liquid effluents; and

(D) The size range of particulates in effluent released into air;

(iii) A description of the anticipated human occupancy in the unrestricted area where the highest concentration of radioactive material from the effluent is expected, and, in the case of a river or stream, a description of water uses downstream from the point of release of the effluent.

(iv) Information as to the highest concentration of each radionuclide in an unrestricted area, including anticipated concentrations averaged over a period of one year:

(A) In air at any point of human occupancy; or

(B) In water at points of use downstream from the point of release of the effluent;

(v) The background concentration of radionuclides in the receiving river or stream prior to the release of liquid effluent;

(vi) A description of the waste treatment facilities and procedures used to reduce the concentration of radionuclides in effluents prior to their release;

(vii) A written description of sampling techniques and sample analysis methods;

(viii) A written description of how all calculated results were obtained from sample analysis data. This explanation must include example calculations and estimates of the precision and sensitivity of monitoring results;

(ix) A written description of the licensee's quality control program including specification of control samples and standard samples used.

(b) The licensee shall submit in writing to the department within (~~sixty~~) 60 days after January 1<sup>st</sup> and July 1<sup>st</sup> of each year, reports specifying the quantities of each of the principle radionuclides released to unrestricted areas in liquid and in gaseous effluent during the previous six months of operations. This data must be reported in a manner that will permit the department to confirm the potential annual radiation doses to the public. All data from the radiological and non-radiological environmental monitoring program will also be submitted for the same time period and frequency as specified above. The data must be reported in a manner which will allow the department to confirm the potential annual radiation doses to the public.

(7) For land disposal of radioactive material, the provisions of chapter 246-250 WAC must also be met.

(8) For operation of mineral processing facilities, the provisions of chapter 246-252 WAC must also be met.

[Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-235-086, filed 2/23/15, effective 3/26/15; WSR 00-08-013, § 246-235-086, filed 3/24/00, effective 4/24/00.]



AMENDATORY SECTION (Amending WSR 15-06-015, filed 2/23/15, effective 3/26/15)

**WAC 246-235-090 Special requirements for specific licenses of broad scope.** This section prescribes requirements for the issuance of specific licenses of broad scope for radioactive material ("broad licenses") and certain regulations governing holders of these licenses. ((\*) A person may not introduce radioactive material into a product or material, knowing or having reasons to believe that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555. Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity or other product containing source material, by-product material or radioactive material, whose subsequent possession, use, transfer and disposal by all other persons exempted from regulatory requirements may be obtained only from the NRC, Washington, D.C. 20555.

(\*Note: A person may not introduce radioactive material into a product or material, knowing or having reasons to believe that it will be transferred to persons exempt under this section or other sections or equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by NRC, Washington, D.C. 20555. Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity or other product containing source material, by-product material or radioactive material, whose subsequent possession, use, transfer and disposal by all other persons exempted from regulatory requirements may be obtained only from the NRC, Washington, D.C. 20555.)

(1) *The different types of broad licenses are (~~listed below~~):*

(a) A "Type A specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of the radioactive material specified in the license, but not exceeding quantities specified in the license, for any authorized purpose. The quantities specified are usually in the multi-curie range.

(b) A "Type B specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in WAC 246-235-140 Schedule B, for any authorized purpose. The possession limit for a Type B broad license, if only one radionuclide is possessed thereunder, is the quantity specified for that radionuclide in WAC 246-235-140 Schedule B, Column I. If two or more radionuclides are possessed, the possession limit for each is determined as follows: For each radionuclide, determine the ratio of the quantity possessed to the applicable quantity specified in WAC 246-235-140 Schedule B, Column I, for that radionuclide. The sum of the ratios for all radionuclides possessed under the license must not exceed unity.

(c) A "Type C specific license of broad scope" is a specific license authorizing receipt, acquisition, ownership, possession, use and transfer of any chemical or physical form of radioactive material specified in WAC 246-235-140 Schedule B, for any authorized purpose. The possession limit for a Type C broad license, if only one radionuclide is possessed, is the quantity specified for that radionuclide in WAC 246-235-140 Schedule B, Column II. If two or more radionuclides are possessed, the possession limit is determined for each as follows: For each radionuclide determine the ratio of the quantity possessed to the applicable quantity specified in WAC 246-235-140 Schedule B, Column II, for that radionuclide. The sum of the ratios for all radionuclides possessed under the license must not exceed unity.

(2) *The department will approve an application for a Type A specific license of broad scope if:*

(a) The applicant satisfies the general requirements specified in WAC 246-235-020.

(b) The applicant has engaged in a reasonable number of activities involving the use of radioactive material; and

(c) The applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) The establishment of a radiation safety committee composed of a radiation safety officer, a representative of management, and persons trained and experienced in the safe use of radioactive material;

(ii) The appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(iii) The establishment of appropriate administrative procedures to assure:

(A) Control of procurement and use of radioactive material;

(B) Completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and

(C) Review, approval, and recording by the radiation safety committee of safety evaluation of proposed uses prepared in accordance with item (2)(c)(iii)(B) of this section prior to use of the radioactive material.

(3) *The department will approve an application for a Type B specific license of broad scope if:*

(a) The applicant satisfies the general requirements specified in WAC 246-235-020; and

(b) The applicant has established administrative controls and provisions relating to organization and management, procedures, recordkeeping, material control and accounting, and management review that are necessary to assure safe operations, including:

(i) The appointment of a radiation safety officer who is qualified by training and experience in radiation protection, and who is available for advice and assistance on radiation safety matters; and

(ii) The establishment of appropriate administrative procedures to assure:

(A) Control of procurement and use of radioactive material;

(B) Completion of safety evaluations of proposed uses of radioactive material which take into consideration such matters as the adequacy of facilities and equipment, training and experience of the user, and the operating or handling procedures; and

(C) Review, approval, and recording by the radiation safety officer of safety evaluations of proposed uses prepared in accordance with item (3)(b)(ii)(B) of this section prior to use of the radioactive material.

(4) *The department will approve an application for a Type C specific license of broad scope if:*

(a) The applicant satisfies the general requirements specified in WAC 246-235-020.

(b) The applicant submits a statement that radioactive material will be used only by, or under the direct supervision of individuals, who have received:

(i) A college degree at the bachelor level, or equivalent training and experience, in the physical or biological sciences or in engineering; and

(ii) At least (~~forty~~) 40 hours of training and experience in the safe handling of radioactive material, and in the characteristics of ionizing radiation, units of radiation dose and quantities, radiation detection instrumentation, and biological hazards of exposure to radiation appropriate to the type and forms of radioactive material to be used; and

(c) The applicant has established administrative controls and provisions relating to procurement of radioactive material, procedures, recordkeeping, material control and accounting, and management review necessary to assure safe operations.

(5) *Specific licenses of broad scope are subject to the following conditions:*

(a) Unless specifically authorized by the department, persons licensed under this section shall not:

(i) Conduct tracer studies in the environment involving direct release of radioactive material;

(ii) Receive, acquire, own, possess, use or transfer devices containing 3700 terabecquerels (100,000 curies) or more of radioactive material in sealed sources used for irradiation of materials;

(iii) Conduct activities for which a specific license issued by the department under chapter 246-240 WAC, WAC 246-235-086 or 246-235-091 through 246-235-105 is required; or

(iv) Add or cause the addition of radioactive material to any food, beverage, cosmetic, drug or other product designed for ingestion or inhalation by, or application to, a human being.

(b) For each Type A specific license of broad scope radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety committee.

(c) For each Type B specific license of broad scope radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals approved by the licensee's radiation safety officer.

(d) For each Type C specific license of broad scope radioactive material possessed under the license may only be used by, or under the direct supervision of, individuals who satisfy the requirements of subsection (4) of this section.

[Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-235-090, filed 2/23/15, effective 3/26/15; WSR 13-24-025, § 246-235-090, filed 11/22/13, effective 12/23/13; WSR 06-05-019, § 246-235-090, filed 2/6/06, effective 3/9/06; WSR 00-08-013, § 246-235-090, filed 3/24/00, effective 4/24/00; WSR 98-13-037, § 246-235-090, filed 6/8/98, effective 7/9/98. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 91-15-112 (Order 184), § 246-235-090, filed 7/24/91, effective 8/24/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-235-090, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.080. WSR 79-12-073 (Order 1459), § 402-22-090, filed 11/30/79, effective 1/1/80. Formerly WAC 402-20-073.]

AMENDATORY SECTION (Amending WSR 15-06-015, filed 2/23/15, effective 3/26/15)

**WAC 246-235-091 Manufacture and distribution of industrial products containing depleted uranium under general license.** (1) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to WAC 246-233-010(4) or equivalent regulations of the NRC or an agreement state will be approved if:

(a) The applicant satisfies the general requirements specified in WAC 246-235-020;

(b) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses and potential hazards of the industrial product or device to provide reasonable assurance that possession, use or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in one year a radiation dose in excess of (~~ten~~) 10 percent of the limits specified in WAC 246-221-010(1); and

(c) The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) In the case of an industrial product or device whose unique benefits are questionable, the department will approve an application for a specific license under this section only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The department may deny any application for a specific license under this section if the end use(s) of the industrial product or device cannot be reasonably foreseen.

(4) Each person licensed pursuant to subsection (1) of this section shall:

(a) Maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

(b) Label or mark each unit to:

(i) Identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and

(ii) State that the receipt, possession, use and transfer of the product or device are subject to a general license or the equivalent and the regulations of the NRC or of an agreement state;

(c) Assure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: "Depleted uranium";

(d) Furnish to each person to whom depleted uranium in a product or device is transferred for use pursuant to the general license contained in WAC 246-233-010(4) or its equivalent:

(i) A copy of the general license contained in WAC 246-233-010(4) and a copy of department Form RHF-20; or

(ii) A copy of the general license contained in the NRC's or agreement state's regulation equivalent to WAC 246-233-010(4) and a

copy of the NRC's or agreement state's certificate, or alternatively, furnish a copy of the general license contained in WAC 246-233-010(4) and a copy of department Form RHF-20 with a note explaining that use of the product or device is regulated by the NRC or an agreement state under requirements substantially the same as those in WAC 246-233-010(4).

(e) Report to the department all transfers of industrial products or devices to persons for use under the general license in WAC 246-233-010(4). Such report must identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the department and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report must be submitted within (~~thirty~~) 30 days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under chapter 246-233 WAC during the reporting period, the report must so indicate;

(f) Provide certain other reports as follows:

(i) Report to the NRC all transfers of industrial products or devices to persons for use under the NRC general license in Section 40.25 of 10 C.F.R. Part 40;

(ii) Report to the responsible department all transfers of devices manufactured and distributed pursuant to this section for use under a general license in that state's regulations equivalent to WAC 246-233-010(4);

(iii) Such report must identify each general licensee by name and address, an individual by name or position who may constitute a point of contact between the department and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report must be submitted within (~~thirty~~) 30 days after the end of each calendar quarter in which such product or device is transferred to the generally licensed person;

(iv) If no transfers have been made to NRC licensees during the reporting period, this information must be reported to the NRC;

(v) If no transfers have been made to general licensees within a particular agreement state during the reporting period, this information must be reported to the responsible department; and

(g) Keep records showing the name, address and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in WAC 246-233-010(4) or equivalent regulations of the NRC or of an agreement state. The records must be maintained for a period of two years and must show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the report requirements of this section.

[Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-235-091, filed 2/23/15, effective 3/26/15; WSR 13-24-025, § 246-235-091, filed 11/22/13, effective 12/23/13; WSR 98-13-037, § 246-235-091, filed 6/8/98, effective 7/9/98.]

AMENDATORY SECTION (Amending WSR 16-13-054, filed 6/10/16, effective 7/11/16)

**WAC 246-235-093 Manufacture, assembly or distribution of devices under general license.**

(1) An application for a specific license to manufacture or initially transfer or distribute devices containing radioactive material, excluding special nuclear material, to persons generally licensed under WAC 246-233-020 or equivalent regulations of the NRC or an agreement state will be approved if:

(a) The applicant satisfies the general requirements of WAC 246-235-020;

(b) The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide reasonable assurance that:

(i) The device can be safely operated by persons not having training in radiological protection;

(ii) Under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and it is unlikely that any person will receive in one year a dose in excess of ~~((ten))~~ 10 percent of the limits specified in the table in WAC 246-221-010(1); and

(iii) Under accident conditions (such as fire and explosion) associated with handling, storage and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the following organ doses:

Whole body; head and trunk; active blood-forming organs; gonads; or lens of eye . . . .	15 centigray (15 rem)
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than one square centimeter . . . . .	200 centigray (200 rem)
Other organs . . . . .	50 centigray (50 rem)

(c) Each device bears a durable, legible, clearly visible label or labels approved by the department, which contain in a clearly identified and separate statement:

(i) Instructions and precautions necessary to assure safe installation, operation and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

(ii) The requirement, or lack of requirement, for leak testing, or for testing any on-off mechanism and indicator, including the maximum time interval for such testing, and the identification of radioactive material by nuclide, quantity of radioactivity, and date of determination of the quantity; and

(iii) The information called for in one of the following statements, as appropriate, in the same or substantially similar form:

(A) The receipt, possession, use and transfer of this device, Model . . . . ., Serial No. . . . . ~~((Note\*))~~ Name of manufacturer or distributor, are subject to a general license or the equivalent, and the regulations of the NRC or a state with which the NRC has entered into an agreement for the exercise of regulatory authority. This label must be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION - RADIOACTIVE MATERIAL

.....  
((f))Name of manufacturer or distributor((\*)

(B) The receipt, possession, use and transfer of this device, Model . . . . . , Serial No. . . . . ((Note\*) Name of manufacturer or distributor, are subject to a general license or the equivalent, and the rules of an agreement state. This label must be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION - RADIOACTIVE MATERIAL

.....  
((f))Name of manufacturer or distributor((\*)

((\*Note: The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.))

(C) The model, serial number, and name of the manufacturer or distributor may be omitted from this label provided the information is elsewhere specified in labeling affixed to the device.

(d) Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the nuclide and quantity, the words, "CAUTION - RADIOACTIVE MATERIAL," the radiation symbol described in WAC 246-221-120, and the name of the manufacturer or initial distributor;

(e) Each device meeting the criteria of WAC 246-233-020 (3)(k), bears a permanent (e.g., embossed, etched, stamped, or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "CAUTION - RADIOACTIVE MATERIAL," and, if practicable, the radiation symbol described in WAC 246-221-120;

(f) The device has been registered in the sealed source and device registry.

(2) In the event the applicant desires that the device be required to be tested at intervals longer than six months, either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material or for both, the applicant shall include in the application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices and by design features which have a significant bearing on the probability or consequences of leakage of radioactive material from the device or failure of the on-off mechanism and indicator. In determining the acceptable interval for the test for leakage of radioactive material, the department will consider information which includes, but is not limited to:

- (a) Primary containment (source capsule);
- (b) Protection of primary containment;
- (c) Method of sealing containment;
- (d) Containment construction materials;
- (e) Form of contained radioactive material;
- (f) Maximum temperature withstood during prototype tests;
- (g) Maximum pressure withstood during prototype tests;
- (h) Maximum quantity of contained radioactive material;
- (i) Radiotoxicity of contained radioactive material; and
- (j) Operating experience with identical devices or similarly designed and constructed devices.

(3) In the event the applicant desires that the general licensee under WAC 246-233-020, or under equivalent regulations of the NRC or an agreement state be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device from installation, the applicant must include in the application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities, and bases for such estimates. The submitted information must demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage, and use of devices under the general license, is unlikely to cause that individual to receive in one year a radiation dose in excess of ~~((ten))~~ 10 percent of the limits specified in the table in WAC 246-221-010(1).

(4) Each person licensed under subsection (1) of this section to distribute or initially transfer devices to generally licensed persons must provide the information specified in this section to each person to whom a device is to be transferred. This information must be provided before the device may be transferred. If transfer is through an intermediate person, the information must also be provided to the intended user before initial transfer to the intermediate person.

(a) If a device containing radioactive material is to be transferred for use under the general license contained in WAC 246-233-020, the required information must include:

(i) A copy of the general license contained in WAC 246-233-020. If WAC 246-233-020 (3)(b), (c), and (d) or (k) do not apply, those subsections may be omitted;

(ii) A copy of WAC 246-232-050, 246-221-230, 246-221-240, and 246-221-250;

(iii) A list of the services that can only be performed by a specific licensee; and

(iv) Information on acceptable disposal options including estimated costs of disposal; and

(v) An indication that the NRC's policy is to issue high civil penalties for improper disposal.

(b) If a device containing radioactive material is to be transferred for use in another jurisdiction under a general license equivalent to WAC 246-233-020, the required information must include:

(i) A copy of the appropriate NRC or an agreement state's regulations, equivalent to WAC 246-233-020, 246-232-050, 246-221-230, 246-221-240, and 246-221-250. If a copy of WAC 246-233-020, 246-232-050, 246-221-230, 246-221-240, and 246-221-250 is provided to a prospective general licensee in lieu of the NRC's or the agreement state's regulations, it must be accompanied by a note explaining that the use of the device is regulated by the NRC or the agreement state. If certain subsections do not apply to the particular device, those subsections may be omitted;

(ii) A list of the services that can only be performed by a specific licensee;

(iii) Information on acceptable disposal options including estimated cost of disposal;

(iv) The name or title, address, and phone number of the contact at the appropriate NRC or an agreement state regulatory agency from which additional information may be obtained; and

(v) An indication that NRC policy is to issue high civil penalties for improper disposal;



(c) Each person licensed under subsection (1) of this section to distribute or initially transfer devices to persons generally licensed under WAC 246-233-020 must report to the department all transfers of devices to persons for use under the general license in WAC 246-233-020 and all receipts of devices from persons licensed under WAC 246-233-020.

(i) Each report must be clear and legible and contain all of the data required. The required information for transfers to general licensees includes:

(A) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee must be included with information on the actual location of use;

(B) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(C) The date of transfer;

(D) The manufacturer or initial transferor, the type, model number and serial number of the device transferred; and

(E) The source serial(s), nuclide(s), activity, and date(s) of original activity of radioactive material contained in the device.

(ii) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, clearly identify and designate each intermediate person by name, address, contact, and relationship to the intended user.

(iii) For devices received from a general licensee under WAC 246-233-020, the report must include:

(A) The identity of the general licensee by name and address;

(B) The type, model number, and serial number of the device received; and the source serial(s), nuclide(s), activity, and date(s) of original activity of radioactive material contained in the device;

(C) The date of receipt; and

(D) In the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(iv) If the licensee makes changes to a device possessed by a person generally licensed under WAC 246-233-020, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(v) If no transfers have been made to or from persons generally licensed under WAC 246-233-020 during the reporting period, the report must so indicate.

(vi) The report must cover each calendar quarter, must clearly indicate the period covered by the report, and must be filed within (~~thirty~~) 30 days of the end of the calendar quarter.

(vii) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(d) Reports to NRC or an agreement state regulatory agency.

(i) Each person licensed under subsection (1) of this section to distribute or initially transfer devices to persons generally licensed under the NRC's regulations equivalent to WAC 246-233-020 must report to the NRC all transfers of devices to persons for use under a general

license equivalent to WAC 246-233-020 and all receipts of devices from persons licensed under regulations equivalent to WAC 246-233-020.

(ii) Each person licensed under subsection (1) of this section to distribute or initially transfer devices to persons generally licensed under an agreement state's regulations equivalent to WAC 246-233-020 must report to the agreement state's regulatory authority all transfers of devices to persons for use under a general license equivalent to WAC 246-233-020 and all receipts of devices from persons licensed under regulations equivalent to WAC 243-233-020.

(iii) Such report must be clear and legible and contain all of the data required. The required information for transfers to general licenses must include:

(A) The identity of each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternative address for the general licensee must be submitted along with information on the actual location of use;

(B) The name, title, and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(C) The date of transfer;

(D) The type, model number and serial number of the device transferred; and

(E) The quantity and type of radioactive material contained in the device.

(iv) If one or more intermediate persons will temporarily possess the device at the intended place of use before its possession by the user, the report must include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

(v) For devices received from persons generally licensed under NRC's or an agreement state's regulations equivalent to WAC 246-233-020, the report must include:

(A) The identity of the general licensee by name and address;

(B) The type, model number, and serial number of the device received;

(C) The date of receipt; and

(D) In the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

(vi) If the licensee makes changes to a device possessed by a person generally licensed under NRC's or an agreement state's regulations equivalent to WAC 246-233-020, such that the label must be changed to update required information, the report must identify the general licensee, the device, and the changes to information on the device label.

(vii) The report must cover each calendar quarter, must be filed within (~~thirty~~) 30 days of the end of the calendar quarter, and must clearly indicate the period covered by the report.

(viii) The report must clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

(ix) If no transfers have been made to or from NRC licensees during the reporting period, this information must be reported to the NRC.

(x) If no transfers have been made to or from general licensees within an agreement state during the reporting period, this informa-

tion must be reported to the responsible agreement state agency upon request of the agency.

(e) The person shall maintain all information and keep records concerning transfers and receipts of devices that support the reports required by this section. Records required by this section must be maintained for a period of three years following the date of the recorded event.

(f) If a notification of bankruptcy has been made under WAC 246-233-050 or the license is to be terminated, each person licensed under this section shall provide, upon request, to the department, the NRC or an agreement state, records of final disposition required under (e) of this subsection.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 16-13-054, § 246-235-093, filed 6/10/16, effective 7/11/16. Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-235-093, filed 2/23/15, effective 3/26/15; WSR 13-24-025, § 246-235-093, filed 11/22/13, effective 12/23/13; WSR 04-04-055, § 246-235-093, filed 1/30/04, effective 3/1/04; WSR 98-13-037, § 246-235-093, filed 6/8/98, effective 7/9/98.]

AMENDATORY SECTION (Amending WSR 15-06-015, filed 2/23/15, effective 3/26/15)

**WAC 246-235-100 Manufacture, (~~(production,)~~) preparation, or transfer for commercial distribution of (~~(radiopharmaceuticals)~~) radioactive drugs containing radioactive material for medical use under chapter 246-240 WAC.** (1) An application for a specific license to manufacture, (~~(produce,)~~) prepare, or transfer for commercial distribution (~~(radiopharmaceuticals)~~) radioactive drugs containing radioactive material for use by persons (~~(licensed under)~~) authorized pursuant to chapter 246-240 WAC (~~(for medical use in humans)~~) will be approved if:

(a) The applicant satisfies the general requirements specified in WAC 246-235-020;

(b) The applicant submits evidence (~~(that the applicant is)~~) of at least one of the following:

(i) Is registered (~~(or licensed)~~) with the United States Food and Drug Administration (~~(FDA)~~ as a drug manufacturer, preparer, propagator, compounder or processor) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under (~~(21 C.F.R. 207.20(a); or~~

~~(ii) Licensed as a nuclear pharmacy by the Pharmacy Quality Assurance Commission;~~

~~(iii) Registered or licensed as a radiopharmaceutical production facility or nuclear pharmacy with the NRC or a state agency)) 21 C.F.R. Part 207, Subpart B;~~

(ii) Is registered or licensed with the pharmacy quality assurance commission as a drug manufacturer;

(iii) Is licensed as a pharmacy by the pharmacy quality assurance commission;

(iv) Is operating as a nuclear pharmacy within a federal medical institution; or

(v) Is a positron emission tomography drug production facility registered with (~~(a state agency)~~) the Washington state pharmacy quality assurance commission.

(c) The applicant submits information on the radionuclide ~~((τ))~~; the chemical and physical form ~~((τ))~~; the maximum activity per vial, syringe, generator, or other container of the ~~((radiopharmaceutical))~~ radioactive drug; and the shielding provided by the packaging ~~((of the radioactive material which))~~ to show it is appropriate for the safe handling and storage of ~~((radiopharmaceuticals))~~ the radioactive drugs by medical use licensees; and

(d) The applicant ~~((satisfies))~~ commits to the following labeling requirements:

(i) ~~((Those specified by the Pharmacy Quality Assurance Commission in WAC 246-903-020 for both commercial and noncommercial distribution))~~;

~~((ii))~~) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol, the words "caution-radioactive material" or "danger-radioactive material," the name of the radioactive drug or its abbreviation, and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half-life greater than ~~((one hundred))~~ 100 days, the time may be omitted ~~((τ))~~.

~~((iii))~~) (ii) A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol, the words "caution-radioactive material" or "danger-radioactive material" and an identifier that ~~((allows))~~ ensures that the syringe, vial, or other container ~~((τ))~~ can be correlated with the information on the transport radiation shield label ~~((τ and))~~.

~~((iv))~~ For a drug manufacturer, the labels required by this subsection are in addition to the labeling required by the Food and Drug Administration (FDA) and may be separate from or, with the approval of FDA, may be combined with the labeling required by FDA.

~~(2)~~ A medical facility or an educational institution, may produce positron emission tomography or other approved accelerator-produced radioactive drugs, for noncommercial transfer to licensees within their consortium, as defined in WAC 246-220-010 and 246-235-010, if they have a valid Washington radioactive materials license and are authorized for medical use under chapter 246-240 WAC or an equivalent agreement state or NRC license; and

~~(a)~~ Request authorization to produce accelerator-produced radionuclides at a radionuclide production facility within their consortium to prepare approved radioactive drugs for use only by licensees within that consortium. The applicant must have a current state radioactive materials license or evidence of an existing license issued by an agreement state.

~~(b)~~ The applicant must be qualified to produce radioactive drugs for medical use by meeting the criteria in subsections (1) and (3) of this section.

~~(c)~~ Identification of individual(s) authorized to prepare radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in subsection (3) of this section.

~~(d)~~ Labeling information identified in subsection (1)(d) of this section is applied to any radiopharmaceuticals or radioactive materials to be noncommercially transferred to members of its consortium.

~~(3)~~ A nuclear pharmacy) (2) A licensee who is licensed as a pharmacy by the Washington state pharmacy quality assurance commis-

sion, or who is operating as a nuclear pharmacy within a federal medical institution:

(a) ~~May prepare ((radiopharmaceuticals))~~ radioactive drugs for medical use, as defined in WAC 246-240-010, provided that the ((radio-pharmaceutical)) radioactive drug is prepared by ((or under the supervision of)) either an authorized nuclear pharmacist, as specified in (b) and (d) of this subsection, or an individual under the supervision of an authorized nuclear pharmacist as specified in WAC 246-240-057.

(b) May allow a pharmacist to work as an authorized nuclear pharmacist if:

(i) This individual qualifies as an authorized nuclear pharmacist as defined in WAC 246-240-010;

(ii) This individual meets ~~((the Pharmacy Quality Assurance Commission requirements in WAC 246-903-030, Nuclear pharmacists, and))~~ the requirements of WAC 246-240-081 and 246-240-075(2); and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

(iii) This individual is designated as an authorized nuclear pharmacist in accordance with (d) of this subsection.

(c) The actions authorized in (a) and (b) of this subsection are permitted in spite of more restrictive language in license conditions.

(d) May designate a pharmacist, as defined in WAC 246-240-010, as an authorized nuclear pharmacist if:

(i) ~~((The individual was identified as of December 2, 1994, as an "authorized user" on a nuclear pharmacy license issued by the department, the NRC, or an agreement state; or~~

~~(ii))~~ The individual was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material((r)); and

(ii) The individual practiced at a pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007, or at any other pharmacies ((as of December 1, 2008)) before August 8, 2009.

(e) ~~((Shall provide to the department a copy of each individual's letter of notification from the Pharmacy Quality Assurance Commission recognizing the individual as a nuclear pharmacist, within thirty days of the date the licensee allows the individual to work as an authorized nuclear pharmacist under (b), (c) or (d) of this subsection.~~

~~(4) A manufacturer or nuclear pharmacy))~~ Must provide to the department:

(i) A copy of each individual's certification by a specialty board whose certification process has been recognized by the NRC or an agreement state as specified in WAC 246-240-075(1); or

(ii) The NRC or agreement state license; or

(iii) The NRC master materials licensee permit; or

(iv) The permit issued by a licensee or NRC master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or

(v) Documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007, or at all other locations of use before August 8, 2009; and

(vi) A copy of the Washington state pharmacy license or registration, no later than 30 days after the date that the licensee allows the individual to work as an authorized nuclear pharmacist under (b)(i) or (iii) of this subsection.

(3) A licensee ((shall)) must possess and use instrumentation to measure the radioactivity of ((radiopharmaceuticals)) radioactive drugs. The licensee ((shall)) must have procedures for use of the instrumentation. The licensee ((shall)) must measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of ((alpha-, beta-)) alpha-emitting, beta-emitting, or photon-emitting ((radiopharmaceuticals)) radioactive drugs, prior to transfer for commercial distribution. In addition, the licensee ((shall)) must:

(a) Perform tests on each instrument before initial use, periodically, and following repair, for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

(b) Check each instrument for constancy and proper operation at the beginning of each day of use.

~~((5) A licensee preparing radiopharmaceuticals from generators; (e.g., molybdenum-99/technetium-99m or rubidium-82 from strontium-82/rubidium-82) shall test generator eluates for breakthrough or contamination of the parent nuclide, in accordance with WAC 246-240-160. The licensee shall record the results of each test and retain each record for three years after the record is made.~~

~~(6-))~~ (4) A licensee must satisfy the labeling requirements in subsection (1)(d) of this section.

(5) Nothing in this section relieves the licensee from complying with applicable ((FDA,)) United States Food and Drug Administration requirements, other federal requirements, and state requirements governing ((radiopharmaceuticals)) radioactive drugs.

[Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-235-100, filed 2/23/15, effective 3/26/15; WSR 13-24-025, § 246-235-100, filed 11/22/13, effective 12/23/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-235-100, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 07-14-131, § 246-235-100, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-235-100, filed 2/6/06, effective 3/9/06; WSR 98-13-037, § 246-235-100, filed 6/8/98, effective 7/9/98. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 91-15-112 (Order 184), § 246-235-100, filed 7/24/91, effective 8/24/91. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-235-100, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.98.050. WSR 81-01-011 (Order 1570), § 402-22-110, filed 12/8/80. Statutory Authority: RCW 70.98.080. WSR 79-12-073 (Order 1459), § 402-22-110, filed 11/30/79, effective 1/1/80. Formerly WAC 402-20-076.]

AMENDATORY SECTION (Amending WSR 15-06-015, filed 2/23/15, effective 3/26/15)

**WAC 246-235-103 Prototype tests for manufacture of calibration or reference sources containing americium-241 or radium-226.** An applicant for a license under this chapter shall, for any type of source which is designed to contain more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226, conduct prototype tests, in the order listed, on each of no less than five prototypes of the source, which contains more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226, as follows:

(1) *Initial measurement.* The quantity of radioactive material deposited on the source must be measured by direct counting of the source.

(2) *Dry wipe test.* The entire radioactive surface of the source must be wiped with filter paper with the application of moderate finger pressure. Removal of radioactive material from the source must be determined by measuring the radioactivity on the filter paper or by direct measurement of the radioactivity on the source following the dry wipe.

(3) *Wet wipe test.* The entire radioactive surface of the source must be wiped with filter paper, moistened with water, with the application of moderate finger pressure. Removal of radioactive material from the source must be determined by measuring the radioactivity on the filter paper after it has dried or by direct measurement of the radioactivity remaining on the source following the wet wipe.

(4) *Water soak test.* The source must be immersed in water at room temperature for a period of (~~twenty-four~~) 24 consecutive hours. The source must then be removed from the water. Removal of radioactive material from the source must be determined by direct measurement of the radioactivity on the source after it has dried or by measuring the radioactivity in the residue obtained by evaporation of the water in which the source was immersed.

(5) *Dry wipe test.* On completion of the preceding test in this section, the dry wipe test described in subsection (2) of this section must be repeated.

(6) *Observations.* Removal of more than 0.005 microcurie (185 becquerels) of radioactivity in any test prescribed by this section must be cause for rejection of the source design. Results of prototype tests submitted to the department or the NRC must be given in terms of radioactivity in microcuries (or becquerels) and percent of removal from the total amount of radioactive material deposited on the source.

[Statutory Authority: RCW 70.98.050. WSR 15-06-015, § 246-235-103, filed 2/23/15, effective 3/26/15; WSR 13-24-025, § 246-235-103, filed 11/22/13, effective 12/23/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-235-103, filed 2/18/09, effective 3/21/09.]

AMENDATORY SECTION (Amending WSR 17-01-034, filed 12/12/16, effective 1/12/17)

**WAC 246-235-108 Sealed source and device registration and inactivation.** (1) Any manufacturer or initial distributor of a sealed source or device containing a sealed source may submit a request to the department for evaluation of radiation safety information about its product and for its registration.

(2) Request for review must be sent to the department by an appropriate method, such as hard copy, properly signed electronic document, or fax.

(3) The request for review of a sealed source or a device must include sufficient information about the design, manufacture, prototype testing, quality control program, labeling, proposed uses and leak testing and, for a device, the request must also include sufficient information about installation, service and maintenance, operating and safety instructions, and its potential hazards, to provide

reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property.

(4) The department normally evaluates a sealed source or a device using radiation safety criteria in accepted industry standards. If these standards and criteria do not readily apply to a particular case, the department formulates reasonable standards and criteria with the help of the manufacturer or distributor. The department shall use criteria and standards sufficient to ensure that the radiation safety properties of the device or sealed source are adequate to protect health and minimize danger to life and property. 10 C.F.R. 32 Subpart A includes specific criteria that apply to certain exempt products, Subpart B includes specific criteria applicable to certain generally licensed devices, and Subpart C includes specific provisions that apply to certain specifically licensed items.

(5) After completion of the evaluation, the department issues a certificate of registration to the person making the request. The certificate of registration acknowledges the availability of the submitted information for inclusion in an application for a specific license proposing use of the product, or concerning use under an exemption from licensing or general license as applicable for the category of certificate.

(6) The person submitting the request for evaluation and registration of safety information about the product shall manufacture and distribute the product in accordance with:

(a) The statements and representations, including quality control program, contained in the request; and

(b) The provisions of the registration certificate.

(7) Authority to manufacture or initially distribute a sealed source or device to specific licensees may be provided in the license without the issuance of a certificate of registration in the following cases:

(a) Calibration and reference sources containing no more than:

(i) ((37)) Thirty-seven megabecquerels (one millicurie) for beta or gamma emitting radionuclides; or

(ii) 0.37 megabecquerels (ten microcuries), for alpha emitting radionuclides; or

(b) The intended recipients are qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in any form in the case of unregistered sources or, for registered sealed sources contained in unregistered devices, are qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in unshielded form, as specified in their licenses and:

(i) The intended recipients are licensed under WAC 246-235-090 of this chapter, 10 C.F.R. 33, or comparable provisions of an agreement state;

(ii) The recipients are authorized for research and development; or

(iii) The sources and devices are to be built to the unique specifications of the particular recipient and contain no more than 740 gigabecquerels (20 curies) of tritium (H-3) or 7.4 gigabecquerels (200 millicuries) of any other radionuclide.

(8) After the certificate is issued, the department may conduct an additional review as it determines is necessary to ensure compliance with current regulatory standards. In conducting its review, the



department will complete its evaluation in accordance with criteria specified in this section. The department may request such additional information as it considers necessary to conduct its review and the certificate holder shall provide the information as requested.

(9) (a) A certificate holder who no longer manufactures or initially transfers any of the sealed sources or devices covered by a particular certificate issued by the department shall request inactivation of the registration certificate from the department. Such a request must be made to the department by an appropriate method and must normally be made no later than two years after initial distribution of all of the sources or devices covered by the certificate has ceased. However if the certificate holder determines that an initial transfer was in fact the last initial transfer more than two years after that transfer, the certificate holder shall request inactivation of the certificate within (~~ninety~~) 90 days of this determination and briefly describe the circumstances of the delay.

(b) If a distribution license is to be terminated in accordance with chapters 246-232, 246-233, and 246-235 WAC, the licensee shall request inactivation of its registration certificates associated with that distribution license before the department will terminate the license. Such a request for inactivation of certificates must indicate that the license is being terminated and include the associated specific license number.

(c) A specific license to manufacture or initially transfer a source or device covered only by an inactivated certificate no longer authorizes the licensee to initially transfer such sources or devices for use. Servicing of devices must be in accordance with any conditions in the certificate, including in the case of an inactive certificate.

[Statutory Authority: RCW 70.98.050 and 70.98.110. WSR 17-01-034, § 246-235-108, filed 12/12/16, effective 1/12/17; WSR 16-13-054, § 246-235-108, filed 6/10/16, effective 7/11/16.]

**OTS-3881.2**

## GENERAL PROVISIONS

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-010 Definitions, abbreviations, and acronyms.** The definitions, abbreviations, and acronyms in this section and in WAC 246-220-010 apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, prepared, used, or stored.

(2) "Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, preparing, using, or storing radioactive material.

(3) "Associate radiation safety officer" means an individual who:

(a) Meets the requirements in WAC 246-240-069 and 246-240-081;

and

(b) Is currently identified as an associate radiation safety officer for the types of use of radioactive material for which the individual has been assigned duties and tasks by the radiation safety officer on:

(i) A specific medical use license issued by the department, NRC, or an agreement state; or

(ii) A medical use permit issued by an NRC master material licensee.

(4) "Attestation" means written certification under oath.

~~((4))~~ (5) "Authorized medical physicist" means an individual who:

(a) Meets the requirements in WAC 246-240-072 and 246-240-081; or

(b) Is identified as an authorized medical physicist or teletherapy physicist on:

(i) A specific medical use license issued by the department, NRC, or an agreement state;

(ii) A medical use permit issued by ~~((a))~~ an NRC master material licensee;

(iii) A permit issued by ~~((a))~~ an NRC or agreement state broad scope medical use licensee; or

(iv) A permit issued by ~~((a))~~ an NRC master material license broad scope medical use permittee.

~~((5))~~ (6) "Authorized nuclear pharmacist" means a pharmacist who:

(a) Meets the requirements in WAC 246-240-075 and 246-240-081; or

(b) Is identified as an authorized nuclear pharmacist on:

(i) A specific license issued by the department, NRC, or an agreement state, that authorizes medical use or the practice of nuclear pharmacy;

(ii) A permit issued by ~~((a))~~ an NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

(iii) A permit issued by ~~((a))~~ an NRC or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

(iv) A permit issued by ~~((a))~~ an NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

(c) Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

(d) Is designated as an authorized nuclear pharmacist in accordance with WAC 246-235-100(2).

~~((6))~~ (7) "Authorized user" means a physician, dentist, or podiatrist who:

(a) Meets the requirements in WAC 246-240-081 and 246-240-154, 246-240-163, 246-240-210, 246-240-213, 246-240-216, 246-240-278, 246-240-301, or 246-240-399; or

(b) Is identified as an authorized user on:

(i) A department, NRC, or agreement state license that authorizes the medical use of radioactive material; or

(ii) A permit issued by ((a)) an NRC master material licensee that is authorized to permit the medical use of radioactive material; or

(iii) A permit issued by a department, NRC, or agreement state specific licensee of broad scope that is authorized to permit the medical use of radioactive material; or

(iv) A permit issued by ((a)) an NRC master material license broad scope permittee that is authorized to permit the medical use of radioactive material.

((7)) (8) "Brachytherapy" means a method of radiation therapy in which sources are used to deliver a radiation dose at a distance of up to a few centimeters by surface, intracavitary, intraluminal, or interstitial application.

((8)) (9) "Brachytherapy source" means a radioactive source or a manufacturer-assembled source train or a combination of these sources that is designed to deliver a therapeutic dose within a distance of a few centimeters.

((9)) (10) "Client's address" means the area of use or a temporary job site for the purpose of providing mobile medical service in accordance with WAC 246-240-125.

((10)) (11) "Cyclotron" means a particle accelerator in which the charged particles travel in an outward spiral or circular path. A cyclotron accelerates charged particles at energies usually in excess of 10 mega-electron volts and is commonly used for production of short half-life radionuclides for medical use.

((11)) (12) "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years.

((12)) (13) "Dentist" means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice dentistry.

((13)) (14) "FDA" means the U.S. Food and Drug Administration.

((14)) (15) "High dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate in excess of 12 gray (1200 rads) per hour at the point or surface where the dose is prescribed.

((15)) (16) "Low dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate of less than or equal to ((2)) two gray (200 rads) per hour at the point or surface where the dose is prescribed.

((16)) (17) "Management" means the chief executive officer or other individual having the authority to manage, direct, or administer the licensee's activities, or that person's delegate or delegates.

((17)) (18) "Manual brachytherapy" means a type of brachytherapy in which the brachytherapy sources (e.g., seeds, ribbons) are manually placed topically on or inserted either into the body cavities that are in close proximity to a treatment site or directly into the tissue volume.

((18)) (19) "Medical event" means an event that meets the criteria in WAC 246-240-651.

((19)) (20) "Medical institution" means an organization in which more than one medical discipline is practiced.

((20)) (21) "Medical use" means the intentional internal or external administration of radioactive material or the radiation from

radioactive material to patients or human research subjects under the supervision of an authorized user.

~~((21))~~ (22) "Medium dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate of greater than ~~((2))~~ two gray (200 rads), but less than or equal to 12 grays (1200 rads) per hour at the point or surface where the dose is prescribed.

~~((22))~~ (23) "Mobile medical service" means the transportation of radioactive material to and its medical use at the client's address.

~~((23))~~ (24) "Ophthalmic physicist" means an individual who:

(a) Meets the requirements in WAC 246-240-272 (1)(b) and 246-240-081; and

(b) Is identified as an ophthalmic physicist on a:

(i) Specific medical use license issued by the NRC or an agreement state;

(ii) Permit issued by an NRC or agreement state broad scope medical use licensee;

(iii) Medical use permit issued by an NRC master material licensee; or

(iv) Permit issued by an NRC master material licensee broad scope medical use permittee.

(25) "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a brachytherapy source or a teletherapy, remote afterloader, or gamma stereotactic radiosurgery unit for a specified set of exposure conditions.

~~((24))~~ (26) "Patient intervention" means actions by the patient or human research subject, whether intentional or unintentional, such as dislodging or removing treatment devices or prematurely terminating the administration.

~~((25))~~ (27) "Podiatrist" means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice podiatry.

~~((26))~~ (28) "Positron emission tomography (PET) radionuclide production facility" means a facility operating an accelerator for the purpose of producing positron emission tomography radionuclides.

~~((27))~~ (29) "Preceptor" means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, ~~((or))~~ an authorized radiation safety officer, or an associate radiation safety officer.

~~((28))~~ (30) "Prescribed dosage" means the specified activity or range of activity of unsealed radioactive material as documented:

(a) In a written directive; or

(b) In accordance with the directions of the authorized user for procedures performed under WAC 246-240-151 and 246-240-157.

~~((29))~~ (31) "Prescribed dose" means:

(a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) For teletherapy, the total dose and dose per fraction as documented in the written directive;

(c) For manual brachytherapy, either the total source strength and exposure time or the total dose, as documented in the written directive; or

(d) For remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

~~((30))~~ (32) "Pulsed dose-rate remote afterloader" means a special type of remote afterloading brachytherapy device that uses a sin-

gle source capable of delivering dose rates in the "high dose-rate" range, but:

(a) Is approximately one-tenth of the activity of typical high dose-rate remote afterloader sources; and

(b) Is used to simulate the radiobiology of a low dose-rate treatment by inserting the source for a given fraction of each hour.

~~((31))~~ (33) "Sealed source and device registry" means the national registry that contains all the registration certificates, generated by NRC and the agreement states, that summarize the radiation safety information for the sealed sources and devices and describe the licensing and use conditions approved for the product.

~~((32))~~ (34) "Stereotactic radiosurgery" means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a therapeutic dose to a tissue volume.

~~((33))~~ (35) "Structured educational program" means an educational program designed to impart particular knowledge and practical education through interrelated studies and supervised training.

~~((34))~~ (36) "Teletherapy" means a method of radiation therapy in which collimated gamma rays are delivered at a distance from the patient or human research subject.

~~((35))~~ (37) "Temporary job site" means a location where mobile medical services are conducted at other than those fixed ~~(location(s))~~ locations of use authorized by the license.

~~((36))~~ (38) "Therapeutic dosage" means a dosage of unsealed radioactive material that is intended to deliver a radiation dose to a patient or human research subject for palliative or curative treatment.

~~((37))~~ (39) "Therapeutic dose" means a radiation dose delivered from a source containing radioactive material to a patient or human research subject for palliative or curative treatment.

~~((38))~~ (40) "Treatment site" means the anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

~~((39))~~ (41) "Type of use" means use of radioactive material under WAC 246-240-151, 246-240-157, 246-240-201, 246-240-251, 246-240-301, 246-240-351, or 246-240-501.

~~((40))~~ (42) "Unit dosage" means a dosage prepared for medical use for administration as a single dosage to a patient or human research subject without any further manipulation of the dosage after it is initially prepared.

~~((41))~~ (43) "Written directive" means an authorized user's written order for the administration of radioactive material or radiation from radioactive material to a specific patient or human research subject, as specified in WAC 246-240-060.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-010, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-010, filed 1/18/11, effective 2/18/11. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-240-010, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 07-14-131, § 246-240-010, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-010, filed 2/6/06, effective 3/9/06; WSR 98-13-037, § 246-240-010, filed 6/8/98, effective 7/9/98. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 92-06-008 (Order 245), § 246-240-010, filed 2/21/92, effective 3/23/92.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-016 License required.** (1) A person may manufacture, produce, acquire, receive, possess, prepare, use, or transfer radioactive material for medical use only in accordance with a specific license issued by the department, NRC, or an agreement state, or as allowed in subsection (2)(a) or (b) of this section.

(2) A specific license is not needed for an individual who:

(a) Receives, possesses, uses, or transfers radioactive material in accordance with these rules under the supervision of an authorized user under WAC 246-240-057, unless prohibited by license condition; or

(b) Prepares unsealed radioactive material for medical use in accordance with these rules under the supervision of an authorized nuclear pharmacist or authorized user under WAC 246-240-057, unless prohibited by license condition.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-016, filed 5/7/13, effective 6/7/13; WSR 06-05-019, § 246-240-016, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-019 Application for license, amendment, or renewal.**

(1) An application must be signed by the applicant's or licensee's management.

(2) An application for a license for medical use of radioactive material as described in WAC 246-240-151, 246-240-157, 246-240-201, 246-240-251, 246-240-301, 246-240-351, and 246-240-501 must be made by:

(a) Filing the original "Application for Radioactive Material License Medical," with the department that includes the facility diagram, equipment, and training and experience qualifications of the radiation safety officer, associate radiation safety officers, authorized ~~((user(s)))~~ users, authorized medical ~~((physicist(s)))~~ physicists, ophthalmic physicists, and authorized nuclear ~~((pharmacist(s)))~~ pharmacists; and

(b) Submitting applicable procedures required by WAC 246-240-360, 246-240-378, 246-240-381, and 246-240-384.

(3) A request for a license amendment or renewal must be made by:

(a) Submitting an original of either to the department:

(i) "Application for Radioactive Material License Medical"; or

(ii) A letter requesting the amendment or renewal with all information required by license application; and

(b) Submitting applicable procedures required by WAC 246-240-360, 246-240-378, 246-240-381, and 246-240-384.

(4) In addition to the requirements in subsections (2) and (3) of this section, an application for a license or amendment for medical use of radioactive material as described in WAC 246-240-501 must also include information regarding any radiation safety aspects of the medical use of the material that is not addressed in this chapter.

(a) The applicant shall also provide specific information on:

(i) Radiation safety precautions and instructions;

(ii) Methodology for measurement of dosages or doses to be administered to patients or human research subjects; and

(iii) Calibration, maintenance, and repair of instruments and equipment necessary for radiation safety.

(b) The applicant or licensee shall also provide any other information requested by the department in its review of the application.

(c) The applicant shall provide identification of and commitment to follow the applicable radiation safety program requirements in WAC 246-240-151 through 246-240-399 of this chapter that are appropriate for the specific medical use under WAC 246-240-501.

(5) An applicant that satisfies the requirements specified in WAC 246-235-090(2) may apply for a Type A specific license of broad scope.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-019, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-022 License amendments.** A licensee shall apply for and must receive a license amendment before the licensee:

(1) Receives, prepares, or uses radioactive material for a type of use that is permitted under this chapter, but that is not authorized on the licensee's current license issued under this chapter;

(2) Permits anyone to work as an authorized user, ophthalmic physicist, authorized nuclear pharmacist, or authorized medical physicist under the license, except:

(a) For an authorized user, an individual who meets the requirements in WAC 246-240-154, 246-240-163, 246-240-210, 246-240-213, 246-240-216, 246-240-278, or 246-240-399;

(b) For an authorized nuclear pharmacist, an individual who meets the requirements in WAC 246-240-075 and 246-240-081;

(c) For an authorized medical physicist, an individual who meets the requirements in WAC 246-240-072 and 246-240-081; or

(d) An individual who is identified as an authorized user, an authorized nuclear pharmacist, ~~((or))~~ authorized medical physicist, or ophthalmic physicist:

(i) On an agreement state or NRC license or other equivalent license recognized by the department that authorizes the use of radioactive material in medical use or in the practice of nuclear pharmacy; or

(ii) On a permit issued by NRC or an agreement state specific license of broad scope which is licensed to authorize the use of radioactive material in medical use or in the practice of nuclear pharmacy;

(iii) On a permit issued by NRC master material licensee that is licensed to authorize the use of radioactive material in medical use or in the practice of nuclear pharmacy; or

(iv) By a commercial nuclear pharmacy that has been licensed to authorize nuclear pharmacists.

(3) Changes radiation safety officers, except as provided in WAC 246-240-051;

(4) Permits anyone to work as an associate radiation safety officer, or before the radiation safety officer assigns duties and tasks to an associate radiation safety officer that differ from those for which this individual is authorized on the license;

(5) Receives radioactive material in excess of the amount or in a different form, or receives a different radionuclide than is authorized on the license;

~~((5))~~ (6) Adds to or changes the areas of use identified in the application or on the license, ~~((except for))~~ including areas used in accordance with either WAC 246-240-151 or 246-240-157 if the change includes the addition or relocation of either an area where PET radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide or PET radioactive drug production area. Other areas of use where radioactive material is used only in accordance with either WAC 246-240-151 or 246-240-157 are exempt;

~~((6))~~ (7) Changes the address(es) of use identified in the application or on the license; ~~((and~~

~~(7))~~ (8) Revises procedures required by WAC 246-240-360, 246-240-378, 246-240-381, and 246-240-384, as applicable, where the revision reduces radiation safety; and

(9) Receives a sealed source from a different manufacturer or of a different model number than authorized by its license unless the sealed source is used for manual brachytherapy, is listed in the sealed source and device registry, and is in a quantity and for an isotope authorized by the license.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-022, filed 5/7/13, effective 6/7/13; WSR 06-05-019, § 246-240-022, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 07-14-131, filed 7/3/07, effective 8/3/07)

**WAC 246-240-025 Notifications.** (1) A licensee shall notify the department no later than ~~((thirty))~~ 30 days after:

(a) An authorized user, an authorized nuclear pharmacist, a radiation safety officer, an associate radiation safety officer, ophthalmic physicist, or an authorized medical physicist permanently discontinues performance of duties under the license or has a name change;

(b) The licensee's mailing address changes;

(c) The licensee's name changes, but the name change does not constitute a transfer of control of the license as described in WAC 246-232-050(2);

(d) The licensee has added to or changed the areas of use identified in the application or on the license where radioactive material is used under either WAC 246-240-151 or 246-240-157 if the change does not include the addition or relocation of either an area where PET radionuclides are produced or a PET radioactive drug delivery line from the PET radionuclide or PET radioactive drug production area; ~~((or))~~

(e) The licensee obtains a sealed source for use in manual brachytherapy from a different manufacturer or with a different model number than authorized by its license for which it did not require a license amendment as provided in WAC 246-240-022(9). The notification must include the manufacturer and model number of the sealed source, the isotope, and the quantity per sealed source; or

(f) The licensee permits an authorized user or an individual qualified to be a radiation safety officer, under WAC 246-240-069 and 246-240-081, to function as a temporary radiation safety officer and



to perform the functions of a radiation safety officer in accordance with WAC 246-240-051(3).

(2) The licensee shall send the documents required in this section to the department at P.O. Box 47827, Olympia WA 98504-7827.

[Statutory Authority: RCW 70.98.050. WSR 07-14-131, § 246-240-025, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-025, filed 2/6/06, effective 3/9/06; WSR 98-13-037, § 246-240-025, filed 6/8/98, effective 7/9/98.]

AMENDATORY SECTION (Amending WSR 14-01-077, filed 12/16/13, effective 1/16/14)

**WAC 246-240-028 Exemptions regarding Type A specific licenses of broad scope.** A licensee possessing a Type A specific license of broad scope for medical use, issued under WAC 246-235-090, is exempt from the provisions of:

(1) WAC 246-240-019 regarding the need to file an amendment to the license for medical use of radioactive material, as described in WAC 246-240-501;

(2) WAC 246-240-022(2);

(3) WAC 246-240-022(~~(+5)~~) (6) regarding additions to or changes in the areas of use at the addresses identified in the application or on the license;

(4) WAC 246-240-025 (1)(a) for an authorized user, an authorized nuclear pharmacist, or an authorized medical physicist, or an ophthalmic physicist;

(5) WAC 246-240-025 (1)(d) regarding additions to or changes in the areas of use identified in the application or on the license where radioactive material is used in accordance with either WAC 246-240-151 or 246-240-157;

(6) WAC 246-240-066.

[Statutory Authority: RCW 70.98.050. WSR 14-01-077, § 246-240-028, filed 12/16/13, effective 1/16/14; WSR 06-05-019, § 246-240-028, filed 2/6/06, effective 3/9/06.]

#### GENERAL ADMINISTRATIVE REQUIREMENTS

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-051 Authority and responsibilities for the radiation protection program.** (1) In addition to the radiation protection program requirements of WAC 246-221-005, a licensee's management shall approve in writing:

(a) Requests for a license application, renewal, or amendment before submittal to the department;

(b) Any individual before allowing that individual to work as an authorized user, authorized nuclear pharmacist, or authorized medical physicist; and

(c) Radiation protection program changes that do not require a license amendment and are permitted under WAC 246-240-054;

(2) A licensee's management shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the radiation safety officer, shall ensure that radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements. A licensee's management may appoint, in writing, one or more associate radiation safety officers to support the radiation safety officer. The radiation safety officer, with the written agreement of the licensee's management, must assign the specific duties and tasks to each associate radiation safety officer. These duties and tasks are restricted to the types of use for which the associate radiation safety officer is listed on a license. The radiation safety officer may delegate duties and tasks to the associate radiation safety officer but shall not delegate the authority or responsibilities for implementing the radiation protection program.

(3) For up to (~~sixty~~) 60 days each year, a licensee may permit an authorized user or an individual qualified to be a radiation safety officer, under WAC 246-240-069 and 246-240-081, to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer, under subsection (7) of this section, if the licensee takes the actions required in subsections (2), (5), (7), and (8) of this section and notifies the department in accordance with WAC 246-240-025(1).

(4) A licensee may simultaneously appoint more than one temporary radiation safety officer under subsection (3) of this section, if needed to ensure that the licensee has a temporary radiation safety officer that satisfies the requirements to be a radiation safety officer for each of the different types of uses of radioactive material permitted by the license.

(5) A licensee shall establish the authority, duties, and responsibilities of the radiation safety officer in writing.

(6) Licensees that are authorized for two or more different types of use of radioactive material under WAC 246-240-201, 246-240-251, or 246-240-351, shall establish a radiation safety committee to oversee all uses of radioactive material permitted by the license. The committee must include an authorized user of each type of use permitted by the license, the radiation safety officer, a representative of the nursing service, and a representative of management who is neither an authorized user nor a radiation safety officer. The committee may include other members the licensee considers appropriate.

(7) A licensee shall provide the radiation safety officer sufficient authority, organizational freedom, time, resources, and management prerogative, to:

- (a) Identify radiation safety problems;
- (b) Initiate, recommend, or provide corrective actions;
- (c) Stop unsafe operations; and
- (d) Verify implementation of corrective actions.

(8) A licensee shall retain a record of actions taken under subsections (1), (2), and (5) of this section in accordance with WAC 246-240-551.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-051, filed 5/7/13, effective 6/7/13; WSR 06-05-019, § 246-240-051, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

**WAC 246-240-060 Written directives.** (1) A written directive must be dated and signed by an authorized user before the administration of I-131 sodium iodide greater than 1.11 megabecquerels (30 microcuries), any therapeutic dosage of unsealed radioactive material or any therapeutic dose of radiation from radioactive material.

If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive is acceptable. The information contained in the oral directive must be documented as soon as possible in writing in the patient's record. A written directive must be prepared within (~~forty-eight~~) 48 hours of the oral directive.

(2) The written directive must contain the patient or human research subject's name and the following information:

(a) For any administration of quantities greater than 1.11 megabecquerels (30 microcuries) of sodium iodide I-131: The dosage;

(b) For an administration of a therapeutic dosage of unsealed radioactive material other than sodium iodide I-131: The radioactive drug, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: The total dose, treatment site, and values for the target coordinate settings per treatment for each anatomically distinct treatment site;

(d) For teletherapy: The total dose, dose per fraction, number of fractions, and treatment site;

(e) For high dose-rate remote afterloading brachytherapy: The radionuclide, treatment site, dose per fraction, number of fractions, and total dose; (~~or~~)

(f) For permanent implant brachytherapy:

(i) Before implantation: The treatment site, the radionuclide, and the total source strength; and

(ii) After implantation but before the patient leaves the post-treatment recovery area: The treatment site, the number of sources implanted, the total source strength implanted, and the date; or

(g) For all other brachytherapy, including low, medium, and pulsed dose rate remote afterloaders:

(i) Before implantation: The treatment site, the radionuclide, and dose; and

(ii) After implantation but before completion of the procedure: The radionuclide, treatment site, number of sources, and total source strength and exposure time (or the total dose), and date.

(3) (a) A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed radioactive material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(b) If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing writ-

ten directive is acceptable. The oral revision must be documented as soon as possible in the patient's record. A revised written directive must be signed by the authorized user within (~~forty-eight~~) 48 hours of the oral revision.

(4) The licensee shall retain a copy of the written directive in accordance with WAC 246-240-557.

[Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-240-060, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-060, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-063 Procedures for administrations requiring a written directive.** (1) For any administration requiring a written directive, the licensee shall develop, implement, and maintain written procedures to provide high confidence that:

(a) The patient's or human research subject's identity is verified before each administration; and

(b) Each administration is in accordance with the written directive.

(2) At a minimum, the procedures required by subsection (1) of this section must address the following items that are applicable to the licensee's use of radioactive material:

(a) Verifying the identity of the patient or human research subject;

(b) Verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

(c) Checking both manual and computer-generated dose calculations; (~~and~~)

(d) Verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by WAC 246-240-351 or 246-240-501;

(e) Determining if a medical event, as defined in WAC 246-240-651, has occurred; and

(f) Determining, for permanent implant brachytherapy, within 60 calendar days from the date the implant was performed, the total source strength administered outside of the treatment site compared to the total source strength documented in the post-implantation portion of the written directive, unless a written justification of patient unavailability is documented.

(3) A licensee shall retain a copy of the procedures required under subsection (1) of this section in accordance with WAC 246-240-560.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-063, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-069 Training for radiation safety officer and associate radiation safety officer.** Except as provided in WAC 246-240-078, the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer or an individual assigned duties and tasks as an associate radiation safety officer under WAC 246-240-051 to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the department, NRC, or an agreement state, and who meets the requirements of subsection ~~((s))~~ (4) ~~((and (5)))~~ of this section. ~~((Specialty boards whose certification process has been recognized by the department, NRC, or an agreement state will be posted on NRC's web page, at <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.) To be))~~ The names of board certifications that have been recognized by the department, NRC, or an agreement state are posted on the NRC's medical uses licensee toolkit web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) (i) Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of ~~((twenty))~~ 20 college credits in physical science;

~~((b))~~ (ii) Have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and

~~((e))~~ (iii) Pass an examination administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

(b)(i) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(ii) Have two years of full-time practical training or supervised experience in medical physics:

(A) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by NRC or an agreement state; or

(B) In clinical nuclear medicine facilities providing diagnostic or therapeutic services under the direction of physicians who meet the requirements for authorized users in WAC 246-240-078, 246-240-163 or 246-240-210; and

(iii) Pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

~~((d) Obtain written attestation signed by a preceptor radiation safety officer that the individual has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; or))~~

(2) (a) Has completed a structured educational program consisting of both:

(i) Two hundred hours of classroom and laboratory training in the following areas:

- (A) Radiation physics and instrumentation;
- (B) Radiation protection;
- (C) Mathematics pertaining to the use and measurement of radioactivity;
- (D) Radiation biology; and
- (E) Radiation dosimetry; and

(ii) One year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on a department, NRC, or an agreement state license or ((license)) permit issued by an NRC master material licensee that authorizes similar ((type(s) of use(s))) types of uses of radioactive material ((involving the following)). An associate radiation safety officer may provide supervision for those areas for which the associate radiation safety officer is authorized on a department, NRC, or an agreement state license or permit issued by an NRC master material licensee. The full-time radiation safety experience must involve the following:

- (A) Shipping, receiving, and performing related radiation surveys;
- (B) Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;
- (C) Securing and controlling radioactive material;
- (D) Using administrative controls to avoid mistakes in the administration of radioactive material;
- (E) Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;
- (F) Using emergency procedures to control radioactive material;

and

- (G) Disposing of radioactive material; ~~((or))~~ and

(b) This individual must obtain a written attestation, signed by a preceptor radiation safety officer or associate radiation safety officer who has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual is seeking approval as a radiation safety officer or an associate radiation safety officer. The written attestation must state that the individual has satisfactorily completed the requirements in (a) of this subsection and subsection (4) of this section, and is able to independently fulfill the radiation safety-related duties as a radiation safety officer or as an associate radiation safety officer for a medical use license; or

(3) (a) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the department, NRC, or an agreement state under WAC 246-240-072 and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as radiation safety officer or associate radiation safety officer, and who meets the requirements in subsection((s)) (4) ((and (5))) of this section; or

~~((3))~~ (b) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on ((the licensee's license or a medical physicist who has been certified by a specialty board whose certification process has been recognized by the department, NRC or an agreement state under WAC 246-240-072 and)) a department, NRC, or an agreement state license, a permit issued by an NRC master material licensee, a permit issued by the department, NRC, or an agreement state licensee of broad scope, or an NRC master material license broad scope permittee, has experience with the radiation safe-

ty aspects of similar types of use of radioactive material for which the licensee seeks the approval of the individual ((has)) as the radiation safety officer ((responsibilities; and

~~(4) Has obtained written attestation, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements in subsection (5) of this section, and in subsection (1)(a) and (b), or (c)(i) and (ii) of this section, or subsection (2)(a) or (b) of this section, or subsection (3) of this section and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and~~

~~(5)) or associate radiation safety officer and meets the requirements in subsection (4) of this section; or~~

(c) Has experience with the radiation safety aspects of the types of use of radioactive material for which the individual is seeking simultaneous approval both as the radiation safety officer and the authorized user on the same new medical use license or new medical use permit issued by an NRC master material licensee. The individual must also meet the requirements in subsection (4) of this section.

(4) Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by an authorized medical physicist, authorized user, authorized nuclear pharmacist, ((or)) radiation safety officer, or an associate radiation safety officer, as appropriate, who is authorized for the ((type(s))) types of use for which the licensee is seeking approval.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-069, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-069, filed 1/18/11, effective 2/18/11; WSR 07-14-131, § 246-240-069, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-069, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-072 Training for an authorized medical physicist.**

Except as provided in WAC 246-240-078, the licensee shall require the authorized medical physicist to be an individual who:

(1) Is certified by a specialty board whose certification process has been recognized by the department, NRC, or an agreement state and who meets the requirements in subsection ~~((s (2)(b) and))~~ (3) of this section. ~~((Specialty boards whose certification process has been recognized by NRC or an agreement state will be posted on NRC's web page at <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.) To be))~~ The names of board certifications that have been recognized by the department, NRC, or an agreement state are posted on the NRC's medical uses licensee toolkit web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(b) Have two years of full-time practical training (~~(or)~~) and/or supervised experience in medical physics:

(i) Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the department, NRC, or an agreement state; or

(ii) In clinical radiation facilities providing high energy, external beam therapy (photons and electrons with energies greater than or equal to one million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in WAC 246-240-078, 246-240-278 or 246-240-399;

(c) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(2) (a) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the ~~((type(s)))~~ types of use ~~((modalities))~~ for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high energy, external beam therapy (photons and electrons with energies greater than or equal to 1,000,000 electron volts) and brachytherapy services and must include:

(i) Performing sealed source leak tests and inventories;

(ii) Performing decay corrections;

(iii) Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(iv) Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(b) Has obtained written attestation that the individual has satisfactorily completed the requirements in ~~((subsections (1)(a) and (b) and (3), or (2)))~~ (a) of this subsection and subsection (3) of this section, and ~~((has achieved a level of competency sufficient to function independently))~~ is able to independently fulfill the radiation safety-related duties as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in WAC 246-240-072, 246-240-078, or equivalent NRC or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status ~~((; and))~~.

(3) Has training for the ~~((type(s)))~~ types of use ~~((in the modalities))~~ for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the ~~((type(s)))~~ types of use for which the individual is seeking authorization.



[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-072, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-072, filed 1/18/11, effective 2/18/11; WSR 07-14-131, § 246-240-072, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-072, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-075 Training for an authorized nuclear pharmacist.**

Except as provided in WAC 246-240-078, the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) Is certified by a specialty board whose certification process has been recognized by the department, NRC, or an agreement state ((and who meets the requirements in subsection (2)(b) of this section. ~~(Specialty boards whose certification process has been recognized by NRC or an agreement state will be posted on NRC's web page at <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.)~~ To be)). The names of board certifications that have been recognized by the department, NRC, or an agreement state are posted on the NRC's medical uses licensee toolkit web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(b) Hold a current, active license to practice pharmacy;

(c) Provide evidence of having acquired at least ~~((four thousand))~~ 4,000 hours of training/experience in nuclear pharmacy practice. Academic training may be substituted for no more than ~~((two thousand))~~ 2,000 hours of the required training and experience; and

(d) Pass an examination in nuclear pharmacy administered by diplomates of the specialty board, which assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(2) (a) Has completed ~~((two hundred))~~ 700 hours in a structured educational program consisting of both:

(i) ~~((Didactic))~~ Two hundred hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of radioactive material for medical use; and

(E) Radiation biology; and

(ii) Supervised practical experience in a nuclear pharmacy involving:

(A) Shipping, receiving, and performing related radiation surveys;

(B) Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and,

if appropriate, instruments used to measure alpha-or beta-emitting radionuclides;

(C) Calculating, assaying, and safely preparing dosages for patients or human research subjects;

(D) Using administrative controls to avoid medical events in the administration of radioactive material; and

(E) Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

(b) Has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in ~~((subsections (1)(a), (b), and (c) or (2-))~~ (a) of this ~~((section))~~ subsection and ~~((has achieved a level of competency sufficient to function))~~ is able to independently fulfill the radiation safety-related duties as an authorized nuclear pharmacist.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-075, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-075, filed 1/18/11, effective 2/18/11; WSR 06-05-019, § 246-240-075, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-078 Training for experienced radiation safety officer, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist.** (1) (a) An individual identified on a department, NRC, or an agreement state license; or a permit issued by a department, NRC, or an agreement state broad scope licensee or master material license permit; or by a master material license permittee of broad scope as a radiation safety officer, a teletherapy or medical physicist, ((or)) an authorized medical physicist, a nuclear pharmacist or authorized nuclear pharmacist on ((a department, NRC, or agreement state license, or a permit issued by an agreement state or NRC broad scope licensee or master material license permit, or by a master material license permittee of broad scope)) or before ((October 24, 2006)) January 14, 2019, need not comply with the training requirements of WAC 246-240-069, 246-240-072, or 246-240-075, respectively except the radiation safety officers and authorized medical physicists identified in this subsection must meet the training requirements in WAC 246-240-069(4) or 246-240-072(3), as appropriate, for any material or uses for which they were not authorized prior to this date.

(b) Any individual certified by the American Board of Health Physics in Comprehensive Health Physics; American Board of Radiology; American Board of Nuclear Medicine; American Board of Science in Nuclear Medicine; Board of Pharmaceutical Specialties in Nuclear Pharmacy; American Board of Medical Physics in radiation oncology physics; Royal College of Physicians and Surgeons of Canada in nuclear medicine; American Osteopathic Board of Radiology; or American Osteopathic Board of Nuclear Medicine on or before October 24, 2005, need not comply with the training requirements of WAC 246-240-069 to be identified as a radiation safety officer or as an associate radiation safety officer on a department, NRC, or an agreement state license or NRC mas-

ter material license permit for those materials and uses that these individuals performed on or before October 24, 2005.

(c) Any individual certified by the American Board of Radiology in therapeutic radiological physics, Roentgen ray and gamma ray physics, X-ray and radium physics, or radiological physics, or certified by the American Board of Medical Physics in radiation oncology physics, on or before October 24, 2005, need not comply with the training requirements for an authorized medical physicist described in WAC 246-240-072, for those materials and uses that these individuals performed on or before October 24, 2005.

(d) A radiation safety officer, a medical physicist, or a nuclear pharmacist, who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses or in the practice of nuclear pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of WAC 246-240-069, 246-240-072 or 246-240-075, respectively, when performing the same uses. A nuclear pharmacist, who prepared only radioactive drugs containing accelerator-produced radioactive materials, or a medical physicist, who used only accelerator-produced radioactive materials, at the locations and during the time period identified in this subsection, qualifies as an authorized nuclear pharmacist or an authorized medical physicist, respectively, for those materials and uses performed before these dates, for the purposes of this chapter.

(2) (a) Physicians, dentists, or podiatrists identified as authorized users for the medical use of radioactive material on a license issued by the department, NRC, or an agreement state, (~~or NRC broad scope license, or license~~) a permit issued by an NRC master material license, a permit issued by a department, NRC, or an agreement state broad scope licensee, or permit issued by an NRC master material license broad scope permittee on or before (~~October 24, 2006~~) January 14, 2019, who perform only those medical uses for which they were authorized on or before that date need not comply with the training requirements of WAC 246-240-151 (~~and~~) through 246-240-399.

(b) Physicians, dentists, or podiatrists not identified as authorized users for the medical use of radioactive material on a license issued by the department, NRC, or an agreement state, a permit issued by an NRC master material licensee, a permit issued by the department, NRC, or an agreement state broad scope licensee, or a permit issued in accordance with an NRC master material broad scope license on or before October 24, 2005, need not comply with the training requirements of WAC 246-240-151 through 246-240-399 for those materials and uses that these individuals performed on or before October 24, 2005, as follows:

(i) For uses authorized under WAC 246-240-151 or 246-240-157, or oral administration of sodium iodide I-131 requiring a written directive for imaging and localization purposes, a physician who was certified on or before October 24, 2005, in nuclear medicine by the American Board of Nuclear Medicine; diagnostic radiology by the American Board of Radiology; diagnostic radiology or radiology by the American Osteopathic Board of Radiology; nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or American Osteopathic Board of Nuclear Medicine in nuclear medicine;

(ii) For uses authorized under WAC 246-240-201, a physician who was certified on or before October 24, 2005, by the American Board of Nuclear Medicine; the American Board of Radiology in radiology, thera-

peutic radiology, or radiation oncology; nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or the American Osteopathic Board of Radiology after 1984;

(iii) For uses authorized under WAC 246-240-251 or 246-240-351, a physician who was certified on or before October 24, 2005, in radiology, therapeutic radiology or radiation oncology by the American Board of Radiology; radiation oncology by the American Osteopathic Board of Radiology; radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; and

(iv) For uses authorized under WAC 246-240-301, a physician who was certified on or before October 24, 2005, in radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; nuclear medicine by the American Board of Nuclear Medicine; diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or nuclear medicine by the Royal College of Physicians and Surgeons of Canada.

(c) Physicians, dentists, or podiatrists who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses performed at a government agency or federally recognized Indian tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of WAC 246-240-151 through 246-240-399 of this chapter when performing the same medical uses. A physician, dentist, or podiatrist, who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses at the locations and time period identified in this subsection, qualifies as an authorized user for those materials and uses performed before these dates, for the purposes of this chapter.

(3) Individuals who need not comply with training requirements as described in this section may serve as preceptors for, and supervisors of, applicants seeking authorization on state of Washington radioactive materials licenses for the same uses for which these individuals are authorized.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-078, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-078, filed 1/18/11, effective 2/18/11; WSR 06-05-019, § 246-240-078, filed 2/6/06, effective 3/9/06.]

## GENERAL TECHNICAL REQUIREMENTS

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-104 Calibration of survey instruments.** (1) A licensee shall calibrate the survey instruments used to show compliance

with this section and WAC 246-240-587 before first use, annually, and following a repair that affects the calibration. A licensee shall:

- (a) Calibrate all scales with readings up to 10 mSv (1000 mrem) per hour with a radiation source;
  - (b) Calibrate two separated readings on each scale or decade that will be used to show compliance; and
  - (c) Conspicuously note on the instrument the date of calibration.
- (2) A licensee may not use survey instruments if the difference between the indicated exposure rate and the calculated exposure rate is more than (~~twenty~~) 20 percent.
- (3) A licensee shall retain a record of each survey instrument calibration in accordance with WAC 246-240-566.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-104, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-107 Determination of dosages of unsealed radioactive material for medical use.** (1) A licensee shall determine and record the activity of each dosage before medical use.

- (2) For a unit dosage, this determination must be made by:
  - (a) Direct measurement of radioactivity; or
  - (b) A decay correction, based on the activity or activity concentration determined by:
    - (i) A manufacturer, producer, or preparer licensed under WAC 246-235-100 or equivalent NRC or agreement state requirements; or
    - (ii) An agreement state or NRC licensee for use in research in accordance with a radioactive drug research committee-approved protocol or an investigational new drug protocol accepted by FDA.
- (3) For other than unit dosages, this determination must be made by:
  - (a) Direct measurement of radioactivity;
  - (b) Combination of measurement of radioactivity and mathematical calculations; or
  - (c) Combination of volumetric measurements and mathematical calculations, based on the measurement made by a manufacturer, producer, or preparer licensed under WAC 246-235-100 or equivalent agreement state requirements.
- (4) Unless otherwise directed by the authorized user, a licensee may not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than (~~twenty~~) 20 percent.
- (5) A licensee shall retain a record of the dosage determination required by this section in accordance with WAC 246-240-569.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-107, filed 5/7/13, effective 6/7/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-240-107, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-107, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-110 Authorization for calibration, transmission, and reference sources.** (1) Any person authorized by WAC 246-240-016 for medical use of radioactive material may receive, possess, and use any of the following radioactive material for check, calibration, transmission, and reference use:

~~((1))~~ (a) Sealed sources, not exceeding 1.11 gigabecquerels (30 millicuries) each, manufactured and distributed by a person licensed under WAC 246-235-102 or equivalent agreement state or NRC regulations ~~((-))~~;

~~((2))~~ (b) Sealed sources, not exceeding 1.11 gigabecquerels (30 millicuries) each, redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed under WAC 246-235-102, or equivalent agreement state or NRC regulations ~~((f))~~, provided the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions ~~((-))~~;

~~((3))~~ (c) Any radioactive material with a half-life not longer than ~~((one hundred twenty))~~ 120 days in individual amounts not to exceed 0.56 gigabecquerels (15 millicuries) ~~((-))~~;

~~((4))~~ (d) Any radioactive material with a half-life longer than ~~((one hundred twenty))~~ 120 days in individual amounts not to exceed the smaller of 7.4 megabecquerels (200 microcuries) or ~~((1000))~~ 1,000 times the quantities in Schedule B of WAC 246-232-120 ~~((-))~~; or

~~((5))~~ (e) Technetium-99m in amounts as needed.

(2) Radioactive material in sealed sources authorized by this provision shall not be:

(a) Used for medical use as defined in WAC 246-240-010, except in accordance with the requirements in WAC 246-240-301; or

(b) Combined, such as bundled or aggregated, to create an activity greater than the maximum activity of any single sealed source authorized under this section.

(3) A licensee using calibration, transmission, and reference sources in accordance with the requirements in subsection (1) or (2) of this section need not list these sources on a specific medical use license.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-110, filed 5/7/13, effective 6/7/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-240-110, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 07-14-131, § 246-240-110, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-110, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-113 Requirements for possession of sealed sources and brachytherapy sources.** (1) A licensee in possession of any sealed source or brachytherapy source shall follow the radiation safety and handling instructions supplied by the manufacturer.

(2) A licensee in possession of a sealed source shall:

(a) Test the source for leakage before its first use unless the licensee has a certificate from the supplier indicating that the source was tested within six months before transfer to the licensee; and

(b) Test the source for leakage at intervals not to exceed six months or at other intervals approved by the department, NRC, or an agreement state in the sealed source and device registry.

(3) To satisfy the leak test requirements of this section, the licensee shall ensure the sample is analyzed by such method that the leak test can detect the presence of 185 becquerels (0.005 microcuries) of radioactive material in the sample.

(4) A licensee shall retain leak test records in accordance with WAC 246-240-572(1).

(5) If the leak test reveals the presence of 185 becquerels (0.005 microcurie) or more of removable contamination, the licensee shall:

(a) Immediately withdraw the sealed source from use and store, dispose, or cause it to be repaired in accordance with the requirements in chapters 246-221 and 246-232 WAC; and

(b) File a report within five days of the leak test in accordance with WAC 246-240-657.

(6) A licensee need not perform a leak test on the following sources:

(a) Sources containing only radioactive material with a half-life of less than (~~thirty~~) 30 days;

(b) Sources containing only radioactive material as a gas;

(c) Sources containing 3.7 megabecquerels (100 microcuries) or less of beta- or gamma-emitting material or 0.37 megabecquerel (10 microcuries) or less of alpha-emitting material;

(d) Seeds of iridium-192 encased in nylon ribbon; and

(e) Sources stored and not being used. However, the licensee shall test each source for leakage before any use or transfer unless it has been leak tested within six months before the date of use or transfer.

(7) A licensee in possession of sealed sources or brachytherapy sources, except for gamma stereotactic radiosurgery sources, shall conduct a physical inventory of all the sources in its possession at intervals not to exceed six months. The licensee shall retain each inventory record in accordance with WAC 246-240-572.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-113, filed 5/7/13, effective 6/7/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-240-113, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-113, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-119 Surveys of ambient radiation exposure rate.** (1)

In addition to the surveys required by chapter 246-221 WAC, a licensee shall survey with a radiation detection survey instrument at the end of each day of use. A licensee shall survey all areas where unsealed radioactive material requiring a written directive was prepared for use or administered.

(2) A licensee does not need to perform the surveys required by subsection (1) of this section in ~~((an area(s)))~~ areas where patients or human research subjects are confined when they cannot be released under WAC 246-240-122.

(3) A licensee shall retain a record of each survey in accordance with WAC 246-240-575.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-119, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-122 Release of individuals containing unsealed radioactive material or implants containing radioactive material.** (1) A licensee may authorize the release from its control of any individual who has been administered unsealed radioactive material or implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed ~~((5))~~ five mSv (0.5 rem).

(2) A licensee shall provide the released individual, or the individual's parent or guardian, with instructions, including written instructions, on actions recommended to maintain doses to other individuals as low as is reasonably achievable if the total effective dose equivalent to any other individual is likely to exceed ~~((1))~~ one mSv (0.1 rem). If the total effective dose equivalent to a nursing infant or child could exceed ~~((1))~~ one mSv (0.1 rem) assuming there were no interruption of breast-feeding, the instructions must also include:

(a) Guidance on the interruption or discontinuation of breast-feeding; and

(b) Information on the potential consequences, if any, of failure to follow the guidance.

(3) A licensee shall maintain a record of the basis for authorizing the release of an individual in accordance with WAC 246-240-578(1).

(4) The licensee shall maintain a record of instructions provided to a breast-feeding female in accordance with WAC 246-240-578(2). NUREG-1556, Vol. 9, "*Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Licenses*," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding ~~((5))~~ five mSv (0.5 rem).

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-122, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-128 Decay-in-storage.** (1) A licensee may hold radioactive material with a physical half-life of less than ~~((one hundred twenty))~~ 120 days for decay-in-storage before disposal without regard to its radioactivity if it:



(a) Monitors radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and

(b) Removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be managed as biomedical waste after they have been released from the licensee.

(2) A licensee shall retain a record of each disposal permitted under subsection (1) of this section in accordance with WAC 246-240-584.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-128, filed 2/6/06, effective 3/9/06.]

#### UNSEALED RADIOACTIVE MATERIAL - WRITTEN DIRECTIVE NOT REQUIRED

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-154 Training for uptake, dilution, and excretion studies.** Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-151 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, NRC, or an agreement state (~~and who meets the requirements of subsection (3)(b) of this section. (Specialty boards whose certification process has been recognized by the department, the NRC or an agreement state will be posted on NRC's web page at <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.) To be~~). The names of board certifications that have been recognized by the department, NRC, or an agreement state are posted on the NRC's medical uses licensee toolkit web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) (~~Meet the requirements in subsection (3)(a)~~) Complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies as described in subsection (3)(a)(i) through (ii)(F) of this section; and

(b) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user under WAC 246-240-163 or 246-240-210 or equivalent agreement state or NRC requirements (~~(; or subsection (3)(a) of this section)~~); or

(3) (a) Has completed (~~sixty~~) 60 hours of training and experience, including a minimum of eight hours of classroom and laboratory

training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience must include:

(i) Classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of radioactive material for medical use; and

(E) Radiation biology; and

(ii) Work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-154, 246-240-163, or 246-240-210 or equivalent NRC or agreement state requirements, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(E) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(F) Administering dosages of radioactive drugs to patients or human research subjects; and

(b) Has obtained written attestation (~~(, signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-154, 246-240-163, or 246-240-210, or equivalent agreement state or NRC requirements,)~~) that the individual has satisfactorily completed the requirements in (a) of this subsection and (~~(has achieved a level of competency sufficient to function)~~) is able to independently fulfill the radiation safety-related duties as an authorized user for the medical uses authorized under WAC 246-240-151. The attestation must be obtained from either:

(i) A preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-154, 246-240-163, or 246-240-210, or equivalent NRC or agreement state requirements; or

(ii) A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in WAC 246-240-078, 246-240-154, 246-240-163, or 246-240-210, or equivalent NRC or agreement state requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in (a) of this subsection.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-154, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-154, filed 1/18/11, effective 2/18/11; WSR 07-14-131, § 246-240-154, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-154, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 09-06-003, filed 2/18/09, effective 3/21/09)

**WAC 246-240-160 Permissible molybdenum-99, strontium-82, and strontium-85 concentrations.** (1) A licensee may not administer to humans a radiopharmaceutical that contains more than:

(a) ~~((5.55))~~ 0.15 kilobecquerel of molybdenum-99 per ~~((37))~~ megabecquerel of technetium-99m (0.15 microcurie of molybdenum-99 per millicurie of technetium-99m); or

(b) 0.02 kilobecquerel of strontium-82 per megabecquerel of rubidium-82 chloride injection, (0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride); or

(c) 0.2 kilobecquerel of strontium-85 per megabecquerel of rubidium-82 chloride injection (0.2 microcurie of strontium-85 per millicurie of rubidium-82).

(2) A licensee that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration ~~((of the first eluate after receipt of))~~ in each elute from a generator to demonstrate compliance with subsection (1) of this section.

(3) A licensee that uses a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical shall, before the first patient use of the day, measure the concentration of strontium-82 and strontium-85 to demonstrate compliance with subsection (1) ~~((a))~~ of this section.

(4) If a licensee is required to measure the molybdenum-99 concentration, or strontium-82 and strontium-85 concentrations the licensee shall retain a record of each measurement in accordance with WAC 246-240-587.

(5) The licensee shall report any measurement that exceeds the limits in subsection (1) of this section at the time of generator elution, in accordance with WAC 246-240-660.

[Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-240-160, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-160, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-163 Training for imaging and localization studies.**

Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-157 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, NRC, or an agreement state ~~((and who meets the requirements in subsection (3)(b) of this section. (Specialty boards whose certification process has been recognized by NRC or an agreement state will be posted on NRC's web page at <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.) To be))~~. The names of board certifications that have been recognized by the department, NRC, or an agreement state are posted on the NRC's medical uses licensee toolkit web page. To have its certifi-

ation process recognized, a specialty board shall require all candidates for certification to:

(a) ~~((Satisfy the requirements in subsection (3)(a))~~ Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies as described in subsection (3)(a)(i) through (ii)(G) of this section; and

(b) Pass an examination, administered by diplomates of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) Is an authorized user under WAC 246-240-210 and meets the requirements in ~~((WAC 246-240-163))~~ subsection (3)(a)(ii)(G) ((and 246-240-210)) of this section, or equivalent agreement state or NRC requirements; or

(3)(a) Has completed ~~((seven hundred))~~ 700 hours of training and experience, including a minimum of ~~((eighty))~~ 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience must include, at a minimum:

(i) Classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Chemistry of radioactive material for medical use;

(E) Radiation biology; and

(ii) Work experience, under the supervision of an authorized user, who meets the requirements in WAC 246-240-078, 246-240-163, or 246-240-210 and ~~((246-240-163(3))~~ (a)(ii)(G) of this subsection, or equivalent agreement state or NRC requirements ~~((, involving))~~. An authorized nuclear pharmacist who meets the requirements in WAC 246-240-075 or 246-240-078 may provide the supervised work experience for (a)(ii)(G) of this subsection. Work experience must involve:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(C) Calculating, measuring, and safely preparing patient or human research subject dosages;

(D) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(E) Using procedures to safely contain spilled radioactive material and using proper decontamination procedures;

(F) Administering dosages of radioactive drugs to patients or human research subjects; and

(G) Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(b) Has obtained written attestation ~~((, signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-163, or 246-240-210 and 246-240-163 (3)(a)(ii)(G) or equivalent agreement state or NRC requirements,))~~ that the individual has satisfactorily completed the requirements in (a) of this subsection and ~~((has achieved a level of competency sufficient to function))~~ is

able to independently fulfill the radiation safety-related duties as an authorized user for the medical uses authorized under WAC 246-240-151 and 246-240-157. The attestation must be obtained from either:

(i) A preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-163, or 246-240-210 and (a)(ii)(G) of this subsection, or equivalent NRC or agreement state requirements; or

(ii) A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in WAC 246-240-078, 246-240-163, or 246-240-210 and (a)(ii)(G) of this subsection or equivalent NRC or agreement state requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in (a) of this subsection.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-163, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-163, filed 1/18/11, effective 2/18/11; WSR 07-14-131, § 246-240-163, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-163, filed 2/6/06, effective 3/9/06.]

#### **UNSEALED RADIOACTIVE MATERIAL - WRITTEN DIRECTIVE REQUIRED**

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-201 Use of unsealed radioactive material for which a written directive is required.** A licensee may use any unsealed radioactive material identified in WAC 246-240-210 (2)(a)(ii)(G) prepared for medical use and for which a written directive is required that is:

(1) Obtained from a manufacturer, producer, or preparer licensed under WAC 246-235-100(1) or equivalent agreement state or NRC requirements; or

(2) Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in WAC 246-240-163 or 246-240-210, or an individual under the supervision of either as specified in WAC 246-240-057; or

(3) Obtained from and prepared by an agreement state or NRC licensee for use in research in accordance with an investigational new drug protocol accepted by FDA; or

(4) Prepared by the licensee for use in research in accordance with an investigational new drug protocol accepted by FDA.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-201, filed 5/7/13, effective 6/7/13. Statutory Authority: RCW 70.98.050 and 70.98.080. WSR 09-06-003, § 246-240-201, filed 2/18/09, effective 3/21/09. Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-201, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 14-09-017, filed 4/7/14, effective 5/8/14)

**WAC 246-240-210 Training for use of unsealed radioactive material for which a written directive is required.** Except as provided in WAC 246-240-078, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized under WAC 246-240-201 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, NRC, or an agreement state and who meets the requirements in subsection (2)(a)(ii)(G) of this section. (~~((Specialty boards whose certification process has been recognized by NRC or an agreement state will be posted on NRC's web page at <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.) To be))~~ The names of board certifications that have been recognized by the department, NRC, or an agreement state are posted on the NRC's medical uses licensee toolkit web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty that includes (~~(seven hundred))~~ 700 hours of training and experience as described in subsection (2)(a)(i) through (ii)(E) of this section. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postgraduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed (~~(by product))~~ radioactive material for which a written directive is required; or

(2) (a) Has completed (~~(seven hundred))~~ 700 hours of training and experience, including a minimum of (~~(two hundred))~~ 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience must include:

(~~((a))~~) (i) Classroom and laboratory training in the following areas:

(~~((i))~~) (A) Radiation physics and instrumentation;

(~~((ii))~~) (B) Radiation protection;

(~~((iii))~~) (C) Mathematics pertaining to the use and measurement of radioactivity;

(~~((iv))~~) (D) Chemistry of radioactive material for medical use; and

(~~((v))~~) (E) Radiation biology; and

~~((b))~~ (ii) Work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, or ~~((subsection (1) or (2) of))~~ this section, or equivalent NRC or agreement state requirements. A supervising authorized user, who meets the requirements in this subsection, must also have experience in administering dosages in the same dosage category or categories ~~((i.e., this section))~~ as in (a)(ii)(G) of this subsection) as the individual requesting authorized user status. The work experience must involve:

~~((i))~~ (A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

~~((ii))~~ (B) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

~~((iii))~~ (C) Calculating, measuring, and safely preparing patient or human research subject dosages;

~~((iv))~~ (D) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

~~((v))~~ (E) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; ~~((and))~~

(F) (Reserved);

~~((vi))~~ (G) Administering dosages of radioactive drugs to patients or human research subjects ~~((involving))~~ from the three categories in this subsection. Radioactive drugs containing radionuclides in categories not included in this subsection are regulated under WAC 246-240-501. This work experience must involve a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

~~((A))~~ (I) Oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131 for which a written directive is required;

~~((B))~~ (II) Oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131. Experience with at least three cases in this also satisfies the requirement in ~~((b)(vi)(A))~~ (a)(ii)(G)(I) of this subsection;

~~((C))~~ (III) Parenteral administration of any ~~((beta emitter, or a photon-emitting radionuclide with a))~~ radioactive drug that contains a radionuclide that is primarily used for its electron emission, beta radiation characteristics, alpha radiation characteristics, or photon energy less than 150 keV for which a written directive is required;  
~~((or~~

~~(D) Parenteral administration of any other radionuclide for which a written directive is required;))~~ and

~~((E))~~ (b) Has obtained written attestation that the individual has satisfactorily completed the requirements in (a) of this subsection ~~((1)(a) and (2)(b)(vi) of this section)),~~ and ~~((has achieved a level of competency sufficient to function))~~ is able to independently fulfill at radiation safety-related duties as an authorized user for the medical uses authorized under WAC 246-240-201 for which the individual is requesting authorized user status. The written attestation must be ~~((signed by))~~ obtained from either:

(i) A preceptor authorized user who meets the requirements in this section, WAC 246-240-078, 246-240-210, or equivalent NRC or agreement state requirements ~~((The preceptor authorized user, who meets the requirements in this subsection, must also have)),~~ and has experience in administering dosages in the same dosage category or categories ~~((i.e., this section))~~ (as in (a)(ii)(G) of this subsection) as the individual requesting authorized user status; or

(ii) A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in WAC 246-240-078, 246-240-210, or equivalent NRC or agreement state requirements, has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in (a) of this subsection.

[Statutory Authority: RCW 70.98.050. WSR 14-09-017, § 246-240-210, filed 4/7/14, effective 5/8/14; WSR 13-11-021, § 246-240-210, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-210, filed 1/18/11, effective 2/18/11; WSR 07-14-131, § 246-240-210, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-210, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-213 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries).** Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 1.22 gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3) (a) and (b) of this section and whose certification has been recognized by the department, NRC, or an agreement state. ~~((Specialty boards whose certification process has been recognized by NRC or an agreement state will be posted on NRC's web page at <http://www.nrc.gov/materials/miau/med-use/toolkit/spec-board-cert.html>.)~~) The names of board certifications that have been recognized by the department, NRC, or an agreement state are posted on the NRC's medical uses licensee toolkit web page; or

(2) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2) ~~((b) (vii) (A) and (B))~~ (a) (ii) (G) (I) or (II), 246-240-216, or equivalent agreement state or NRC requirements; or

(3) (a) Has successfully completed ~~((eighty))~~ 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

- (i) Radiation physics and instrumentation;
- (ii) Radiation protection;
- (iii) Mathematics pertaining to the use and measurement of radioactivity;
- (iv) Chemistry of radioactive material for medical use; and
- (v) Radiation biology; and



(b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-213, 246-240-216, or equivalent agreement state or NRC requirements. A supervising authorized user who meets the requirements in WAC 246-240-210(2), must also have experience in administering dosages as specified in WAC 246-240-210 (2) (~~(b)(vii)(A) or (B)~~)

(a)(ii)(G)(I) or (II). The work experience must involve:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) Calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) Using administrative controls to prevent a medical event involving the use of radioactive material;

(v) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in (a) and (b) of this subsection and (~~has achieved a level of competency sufficient to function~~) is able to independently fulfill the radiation safety-related duties as an authorized user for oral administration of less than or equal to 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131 for medical uses authorized under WAC 246-240-201. The written attestation must be (~~signed by~~) obtained from either:

(i) A preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-213, 246-240-216, or equivalent agreement state or NRC requirements (~~(. A preceptor authorized user, who meets the requirement in WAC 246-240-210(2), must also have~~), and has experience in administering dosages as specified in WAC 246-240-210 (2) (~~(b)(vii)(A) or (B)~~) (a)(ii)(G)(I) or (II); or

(ii) A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-213, 246-240-216, or equivalent NRC or agreement state requirements, has experience in administering dosages as specified in WAC 246-240-210 (2) (a)(ii)(G)(I) or (II), and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in (a) and (b) of this subsection.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-213, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-213, filed 1/18/11, effective 2/18/11; WSR 07-14-131, § 246-240-213, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-213, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-216 Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries).** Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 1.22 gigabecquerels (33 millicuries), to be a physician who:

(1) Is certified by a medical specialty board whose certification process includes all of the requirements in subsection (3) (a) and (b) of this section and whose certification has been recognized by the department, NRC, or an agreement state. ~~((Specialty boards whose certification process has been recognized by NRC or an agreement state will be posted on NRC's web page at <http://www.nrc.gov/materials/miau/med-use/toolkit/spec-board-cert.html>.)~~) The names of board certifications that have been recognized by the department, NRC, or an agreement state are posted on the NRC's medical uses licensee toolkit web page; or

(2) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2) ~~((b)(vii)(B))~~ (a)(ii)(G)(II), or equivalent agreement state or NRC requirements; or

(3) (a) Has successfully completed ~~((eighty))~~ 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;

(iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-216, or equivalent agreement state or NRC requirements. A supervising authorized user, who meets the requirements in WAC 246-240-210(2), must also have experience in administering dosages as specified in WAC 246-240-210 (2) ~~((b)(vii)(B))~~ (a)(ii)(G)(II).

The work experience must involve:

(i) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) Calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) Using administrative controls to prevent a medical event involving the use of radioactive material;

(v) Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) Administering dosages to patients or human research subjects, that includes at least three cases involving the oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in (a) and (b) of this subsection.

tion and ~~((has achieved a level of competency sufficient to function))~~ is able to independently fulfill the radiation safety-related duties as an authorized user for oral administration of greater than 1.22 gigabecquerels (33 millicuries) of sodium iodide I-131 for medical uses authorized under WAC 246-240-201. The written attestation must be ~~((signed by))~~ obtained from either:

(i) A preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-216, or equivalent agreement state or NRC requirements ~~((A preceptor authorized user, who meets the requirements in WAC 246-240-210(2), must have)), and has experience in administering dosages as specified in WAC 246-240-210 (2)~~

~~((b)(vii)(B))~~ (a)(ii)(G)(II); or

(ii) A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-216, or equivalent NRC or agreement state requirements, has experience in administering dosages as specified in WAC 246-240-210 (2)(a)(ii)(G)(II), and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in (a) and (b) of this subsection.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-216, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-216, filed 1/18/11, effective 2/18/11; WSR 07-14-131, § 246-240-216, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-216, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-219 Training for the parenteral administration of unsealed radioactive material requiring a written directive.** (1) Except as provided in WAC 246-240-078, the licensee shall require an authorized user for the parenteral administration requiring a written directive, to be a physician who:

~~((1))~~ (a) Is an authorized user under WAC 246-240-210 for uses listed in WAC 246-240-210 (2) ~~((b)(vii)(C) or (D))~~ (a)(ii)(G)(III), or equivalent agreement state or NRC requirements; or

~~((2))~~ (b) Is an authorized user under WAC 246-240-278 or 246-240-399, or equivalent agreement state or NRC requirements and who meets the requirements in subsection ~~((4))~~ (2) of this section; or

~~((3))~~ (c) Is certified by a medical specialty board whose certification process has been recognized by the NRC or an agreement state under WAC 246-240-278 or 246-240-399, and who meets the requirements in subsection ~~((4))~~ (2) of this section.

~~((4))~~ (2) The physician:

(a) Has successfully completed ~~((eighty))~~ 80 hours of classroom and laboratory training, applicable to parenteral administrations ~~((, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV,~~

~~or parenteral administration of any other radionuclide for which a written directive is required)~~ listed in WAC 246-240-210

~~(2) (a) (ii) (G) (III).~~ The training must include:

(i) Radiation physics and instrumentation;  
 (ii) Radiation protection;  
 (iii) Mathematics pertaining to the use and measurement of radioactivity;

(iv) Chemistry of radioactive material for medical use; and

(v) Radiation biology; and

(b) Has work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-219, or equivalent agreement state or NRC requirements, in the ~~parenteral administrations~~ ~~(, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, or parenteral administration of any other radionuclide for which a written directive is required)~~ listed in WAC 246-240-210 (2) (a) (ii) (G) (III). A supervising authorized user who meets the requirements in WAC 246-240-210, 246-240-219, or equivalent agreement state or NRC requirements, must have experience in administering dosages ~~((as specified in WAC 246-240-210 (2) (b) (vii) (C) or (D)))~~ in the same category or categories as the individual requesting authorized user status. The work experience must involve:

(i) Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;

(ii) Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;

(iii) Calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) Using procedures to contain spilled radioactive material safely, and using proper decontamination procedures; and

(vi) Administering dosages to patients or human research subjects, that include at least three cases involving the parenteral administrations ~~(, for which a written directive is required, of any beta emitter, or any photon-emitting radionuclide with a photon energy less than 150 keV or at least three cases involving the parenteral administration of any other radionuclide, for which a written directive is required)~~ as specified in WAC 246-240-210 (2) (a) (ii) (G) (III); and

~~((5))~~ (c) Has obtained written attestation that the individual has satisfactorily completed the requirements in ~~((subsection (2) or (3)))~~ (a) and (b) of this (section) subsection, and ~~((has achieved a level of competency sufficient to function))~~ is able to independently fulfill the radiation safety-related duties as an authorized user for the parenteral administration of unsealed radioactive material requiring a written directive. The written attestation must be ~~((signed by))~~ obtained from either:

(i) A preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-219, or equivalent agreement state or NRC requirements. A preceptor authorized user, who meets the requirements in WAC 246-240-210, 246-240-219, or equivalent agreement state or NRC requirements, must have experience in administering dosages ((as specified in WAC 246-240-210 (2) (b) (vii) (C) or (D))) in the same category or categories as the individual requesting authorized user status; or

(ii) A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in WAC 246-240-078, 246-240-210, 246-240-219, or equivalent NRC or agreement state requirements, has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Post-doctoral Training of the American Osteopathic Association and must include training and experience specified in (a) and (b) of this subsection.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-219, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-219, filed 1/18/11, effective 2/18/11; WSR 07-14-131, § 246-240-219, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-219, filed 2/6/06, effective 3/9/06.]

## MANUAL BRACHYTHERAPY

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-251 Use of sources for manual brachytherapy.** A licensee shall use only brachytherapy sources for therapeutic medical uses:

(1) As approved in the sealed source and device registry for manual brachytherapy medical use. The manual brachytherapy sources may be used for manual brachytherapy uses that are not explicitly listed in the sealed source and device registry, but must be used in accordance with the radiation safety conditions and limitations described in the sealed source and device registry; or

(2) In research to deliver therapeutic doses for medical use in accordance with an active investigational device exemption (IDE) application accepted by the FDA provided the requirements of WAC 246-240-066(1) are met.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-251, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-272 ((Decay of)) Strontium-90 sources for ophthalmic treatments.** (1) ~~((Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay must be based on the activity determined under WAC 246-240-269.~~

~~(2))~~ Licensees who use strontium-90 for ophthalmic treatments must ensure that certain activities as specified in subsection (2) of this section are performed by either:

(a) An authorized medical physicist; or

(b) An individual who:

(i) Is identified as an ophthalmic physicist on a specific medical use license issued by a department, NRC, or an agreement state; permit issued by a department, NRC, or an agreement state broad scope medical use licensee; medical use permit issued by an NRC master material licensee; or permit issued by an NRC master material licensee broad scope medical use permittee; and

(ii) Holds a master's or doctor's degree in physics, medical physics, other physical sciences, engineering, or applied mathematics from an accredited college or university; and

(iii) Has successfully completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of a medical physicist; and

(iv) Has documented training in:

(A) The creation, modification, and completion of written directives;

(B) Procedures for administrations requiring a written directive; and

(C) Performing the calibration measurements of brachytherapy sources as detailed in WAC 246-240-269.

(2) The individuals who are identified in subsection (1) of this section must:

(a) Calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay must be based on the activity determined under WAC 246-240-269; and

(b) Assist the licensee in developing, implementing, and maintaining written procedures to provide high confidence that the administration is in accordance with the written directive. These procedures must include the frequencies that the individual meeting the requirements in subsection (1) of this section will observe treatments, review the treatment methodology, calculate treatment time for the prescribed dose, and review records to verify that the administrations were in accordance with the written directives.

(3) A licensee shall retain a record of the activity of each strontium-90 source in accordance with WAC 246-240-602.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-272, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-278 Training for use of manual brachytherapy sources.** Except as provided in WAC 246-240-078, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized under WAC 246-240-251 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, NRC, or an agreement state. (~~((Specialty boards whose certification process has been recognized by NRC or an agreement state will be posted on NRC's web page at <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.) To be))~~ The names of board certifications that have been recognized by the department, NRC, or an agreement state are posted on the NRC's medical uses licensee toolkit web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the Committee on Postgraduate Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of (~~(high and low dose-rate)~~) manual brachytherapy(~~(; and~~

~~(c) Obtain written attestation, signed by a preceptor authorized user who meets the requirements in WAC 246-240-278 or equivalent NRC or agreement state requirements, that the individual has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized in WAC 246-240-251)); or~~

(2) (a) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

(i) Two hundred hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology; and

(ii) Five hundred hours of work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-278 or equivalent agreement state or NRC requirements at a medical institution authorized to use radioactive materials under WAC 246-240-251, involving:

(A) Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(B) Checking survey meters for proper operation;

(C) Preparing, implanting, and removing brachytherapy sources;

(D) Maintaining running inventories of material on hand;

(E) Using administrative controls to prevent a medical event involving the use of radioactive material;

(F) Using emergency procedures to control radioactive material;

and

(b) Has completed three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in WAC 246-240-078, 246-240-278, or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by (a) (ii) of this subsection; and

(c) Has obtained written attestation (~~(, signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-278 or equivalent agreement state or NRC requirements,)~~) that the individual has satisfactorily completed the requirements in ~~((sub-section (1) (a) of this section, or))~~ (a) and (b) of this subsection ~~((and has achieved a level of competency sufficient to function))~~ and is able to independently fulfill the radiation safety-related duties as an authorized user of manual brachytherapy sources for the medical uses authorized under WAC 246-240-251. The attestation must be obtained from either:

(i) A preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-278, or equivalent agreement state or NRC requirements; or

(ii) A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in WAC 246-240-078, 246-240-278, or equivalent NRC or agreement state requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in (a) and (b) of this subsection.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-278, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-278, filed 1/18/11, effective 2/18/11; WSR 07-14-131, § 246-240-278, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-278, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-281 Training for ophthalmic use of strontium-90.**

Except as provided in WAC 246-240-078, the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

(1) Is an authorized user under WAC 246-240-278 or equivalent agreement state or NRC requirements; or

(2) (a) Has completed (~~(twenty-four)~~) 24 hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training must include:

(i) Radiation physics and instrumentation;

(ii) Radiation protection;



(iii) Mathematics pertaining to the use and measurement of radio-activity; and  
 (iv) Radiation biology; and  
 (b) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals.

This supervised clinical training must involve:

(i) Examination of each individual to be treated;  
 (ii) Calculation of the dose to be administered;  
 (iii) Administration of the dose; and  
 (iv) Follow up and review of each individual's case history; and  
 (c) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-278, 246-240-281, or equivalent agreement state or NRC requirements, that the individual has satisfactorily completed the requirements in ~~((subsections (1) and (2)))~~ (a) and (b) of this ((section)) subsection and ~~((has achieved a level of competency sufficient to function))~~ is able to independently fulfill the radiation safety-related duties as an authorized user of strontium-90 for ophthalmic use.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-281, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-281, filed 1/18/11, effective 2/18/11; WSR 06-05-019, § 246-240-281, filed 2/6/06, effective 3/9/06.]

### SEALED SOURCES FOR DIAGNOSIS

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-301 Use of sealed sources and medical devices for diagnosis.** (1) A licensee shall use only sealed sources that are not in medical devices for diagnostic medical uses ((as)) if the sealed sources are approved in the sealed source and device registry for diagnostic medicine. The sealed sources may be used for diagnostic medical uses that are not explicitly listed in the sealed source and device registry but must be used in accordance with the radiation safety conditions and limitations described in the sealed source and device registry.

(2) A licensee must only use medical devices containing sealed sources for diagnostic medical uses if both the sealed sources and medical devices are approved in the sealed source and device registry for diagnostic medical uses. The diagnostic medical devices may be used for diagnostic medical uses that are not explicitly listed in the sealed source and device registry but must be used in accordance with the radiation safety conditions and limitations described in the sealed source and device registry.

(3) Sealed sources and devices for diagnostic medical uses may be used in research in accordance with an active IDE application accepted by the FDA provided the requirements of WAC 246-240-066(1) are met.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-301, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-304 Training for use of sealed sources and medical devices for diagnosis.** Except as provided in WAC 246-240-078, the licensee shall require the authorized user of a diagnostic sealed source (~~(for use in)~~) a device authorized under WAC 246-240-301 to be a physician, dentist, or podiatrist who:

(1) Is certified by a specialty board whose certification process includes all of the requirements in subsections ~~((2) and)~~ (3) and (4) of this section and whose certification has been recognized by the department, NRC, or an agreement state. ~~((Specialty boards whose certification process has been recognized by NRC or an agreement state will be posted on NRC's web page at <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.)~~) The names of board certifications that have been recognized by the department, NRC, or an agreement state are posted on the NRC's medical uses licensee toolkit web page; or

(2) Is an authorized user for uses listed in WAC 246-240-157 or equivalent NRC or agreement state requirements; or

(3) Has completed eight hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include:

(a) Radiation physics and instrumentation;

(b) Radiation protection;

(c) Mathematics pertaining to the use and measurement of radioactivity;

(d) Radiation biology; and

~~((3))~~ (4) Has completed training in the use of the device for the uses requested.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-304, filed 5/7/13, effective 6/7/13; WSR 06-05-019, § 246-240-304, filed 2/6/06, effective 3/9/06.]

**PHOTON EMITTING REMOTE AFTERLOADER UNITS, TELETHERAPY UNITS, AND GAMMA STEREOTACTIC RADIOSURGERY UNITS**

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-351 Use of a sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit.** (1) A licensee shall use sealed sources:

(a) Approved and as provided for in the sealed source and device registry in photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units ((~~for~~)) to deliver therapeutic doses for medical uses ((~~+~~

~~(1-As))~~; or

(b) In research involving photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units in accordance with an active IDE application accepted by the FDA provided the requirements of WAC 246-240-066(1) are met.

(2) A licensee shall use photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units:

(a) Approved in the sealed source and device registry to deliver a therapeutic dose for medical use. These devices may be used for therapeutic medical treatments that are not explicitly provided for in the sealed source and device registry, but must be used in accordance with radiation safety conditions and limitations described in the sealed source and device registry; or

~~((2))~~ (b) In research in accordance with an active ((investigational device exemption (IDE))) IDE application accepted by the FDA provided the requirements of WAC 246-240-066(1) are met.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-351, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-354 Surveys of patients and human research subjects treated with a remote afterloader unit.** (1) Before releasing a patient or a human research subject from licensee control, a licensee shall survey the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that the ~~((source(s)))~~ sources has been removed from the patient or human research subject and returned to the safe shielded position.

(2) A licensee shall retain a record of these surveys in accordance with WAC 246-240-593.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-354, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-357 Installation, maintenance, adjustment, and repair.** (1) Only a person specifically licensed by the department, NRC, or an agreement state shall install, maintain, adjust, or repair a re-

remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the ~~((source(s)))~~ sources shielding, the ~~((source(s)))~~ sources driving unit, or other electronic or mechanical component that could expose the ~~((source(s)))~~ sources, reduce the shielding around the ~~((source(s)))~~ sources, or compromise the radiation safety of the unit or the ~~((source(s)))~~ sources.

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the department, NRC, or an agreement state shall install, replace, relocate, or remove a sealed source or source contained in other remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the department, NRC, or an agreement state or an authorized medical physicist shall install, replace, relocate, or remove a sealed ~~((source(s)))~~ sources contained in the unit.

(4) A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units in accordance with WAC 246-240-605.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-357, filed 5/7/13, effective 6/7/13; WSR 06-05-019, § 246-240-357, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-360 Safety procedures and instructions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.** (1) A licensee shall:

(a) Secure the unit, the console, the console keys, and the treatment room when not in use or unattended;

(b) Permit only individuals approved by the authorized user, radiation safety officer, or authorized medical physicist to be present in the treatment room during treatment with the ~~((source(s)))~~ sources;

(c) Prevent dual operation of more than one radiation producing device in a treatment room if applicable; and

(d) Develop, implement, and maintain written procedures for responding to an abnormal situation when the operator is unable to place the ~~((source(s)))~~ sources in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. These procedures must include:

(i) Instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

(ii) The process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

(iii) The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(2) A copy of the procedures required by subsection (1)(d) of this section must be physically located at the unit console.

(3) A licensee shall post instructions at the unit console to inform the operator of:

(a) The location of the procedures required by subsection (1)(d) of this section; and

(b) The names and telephone numbers of the authorized users, the authorized medical physicist, and the radiation safety officer to be contacted if the unit or console operates abnormally.

(4)(a) Prior to the first use for patient treatment of a new unit or an existing unit with a manufacturer upgrade that affects the operation and safety of the unit, a licensee shall ensure that vendor operational and safety training is provided to all individuals who will operate the unit. The vendor operational and safety training must be provided by the device manufacturer or by an individual certified by the device manufacturer to provide the operational and safety training.

(b) A licensee shall provide operational safety instructions, initially and at least annually, to all individuals who operate the unit at the facility, as appropriate to the individual's assigned duties. ~~(r)~~ The instructions shall include instruction in:

~~((a))~~ (i) The procedures identified in subsection (1)(d) of this section; and

~~((b))~~ (ii) The operating procedures for the unit.

(5) A licensee shall ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually.

(6) A licensee shall retain a record of individuals receiving instruction required by subsection (4) of this section, in accordance with WAC 246-240-590.

(7) A licensee shall retain a copy of the procedures required by subsections (1)(d) and (4)(b) (ii) of this section in accordance with WAC 246-240-608.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-360, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-363 Safety precautions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.** (1) A licensee shall control access to the treatment room by a door at each entrance.

(2) A licensee shall equip each entrance to the treatment room with an electrical interlock system that will:

(a) Prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;

(b) Cause the ~~((source(s)))~~ sources to be shielded when an entrance door is opened; and

(c) Prevent the ~~((source(s)))~~ sources from being exposed following an interlock interruption until all treatment room entrance doors are closed and the ~~((source(s)))~~ sources on-off control is reset at the console.

(3) A licensee shall require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels.

(4) Except for low-dose remote afterloader units, a licensee shall construct or equip each treatment room with viewing and intercom

systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation.

(5) For licensed activities where sources are placed within the patient's or human research subject's body, a licensee shall only conduct treatments which allow for expeditious removal of a decoupled or jammed source.

(6) In addition to the requirements specified in subsections (1) through (5) of this section, a licensee shall:

(a) For *medium dose-rate and pulsed dose-rate remote afterloader units*, require:

(i) An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit to be physically present during the initiation of all patient treatments involving the unit; and

(ii) An authorized medical physicist and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove the source (~~applicator(s)~~) applicators in the event of an emergency involving the unit, to be immediately available during continuation of all patient treatments involving the unit.

(b) For *high dose-rate remote afterloader units*, require:

(i) An authorized user and an authorized medical physicist to be physically present during the initiation of all patient treatments involving the unit; and

(ii) An authorized medical physicist and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, to be physically present during continuation of all patient treatments involving the unit.

(c) For *gamma stereotactic radiosurgery units*, require an authorized user and an authorized medical physicist to be physically present throughout all patient treatments involving the unit.

(d) Notify the radiation safety officer, or their designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

(7) A licensee shall have applicable emergency response equipment available near each treatment room to respond to a source:

(a) Remaining in the unshielded position; or

(b) Lodged within the patient following completion of the treatment.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-363, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-366 Dosimetry equipment.** (1) Except for low dose-rate remote afterloader sources where the source output or activity is determined by the manufacturer, a licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions must be met:

(a) The system must have been calibrated using a system or source traceable to the National Institute of Science and Technology (NIST)

and published protocols accepted by nationally recognized bodies; or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration must have been performed within the previous two years and after any servicing that may have affected system calibration; or

(b) The system must have been calibrated within the previous four years. Eighteen to (~~thirty~~) 30 months after that calibration, the system must have been intercompared with another dosimetry system that was calibrated within the past (~~twenty-four~~) 24 months by NIST or by a calibration laboratory accredited by the AAPM. The results of the intercomparison must indicate that the calibration factor of the licensee's system had not changed by more than two percent. The licensee may not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic units, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sources of the same radionuclide as the source used at the licensee's facility.

(2) The licensee shall have a dosimetry system available for use for spot-check output measurements, if applicable. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with subsection (1) of this section. This comparison must have been performed within the previous year and after each servicing that may have affected system calibration. The spot-check system may be the same system used to meet the requirement in subsection (1) of this section.

(3) The licensee shall retain a record of each calibration, intercomparison, and comparison in accordance with WAC 246-240-611.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-366, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-369 Full calibration measurements on teletherapy units.** (1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit:

- (a) Before the first medical use of the unit; and
  - (b) Before medical use under the following conditions:
    - (i) Whenever spot-check measurements indicate that the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;
    - (ii) Following replacement of the source or following reinstallation of the teletherapy unit in a new location;
    - (iii) Following any repair of the teletherapy unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and
  - (c) At intervals not exceeding one year.
- (2) To satisfy the requirement of subsection (1) of this section, full calibration measurements must include determination of:
- (a) The output within  $\pm$ (~~3~~) three percent for the range of field sizes and for the distance or range of distances used for medical use;

(b) The coincidence of the radiation field and the field indicated by the light beam localizing device;

(c) The uniformity of the radiation field and its dependence on the orientation of the useful beam;

(d) Timer accuracy and linearity over the range of use;

(e) On-off error; and

(f) The accuracy of all distance measuring and localization devices in medical use.

(3) A licensee shall use the dosimetry system described in WAC 246-240-366(1) to measure the output for one set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally recognized bodies.

(5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay for intervals not exceeding one month for cobalt-60, six months for cesium-137, or at intervals consistent with one percent decay for all other nuclides.

(6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section must be performed by the authorized medical physicist.

(7) A licensee shall retain a record of each calibration in accordance with WAC 246-240-614.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-369, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-372 Full calibration measurements on remote afterloader units.** (1) A licensee authorized to use a remote afterloader unit for medical use shall perform full calibration measurements on each unit:

(a) Before the first medical use of the unit;

(b) Before medical use under the following conditions:

(i) Following replacement of the source or following reinstallation of the unit in a new location outside the facility; and

(ii) Following any repair of the unit that includes removal of the source or major repair of the components associated with the source exposure assembly; and

(c) At intervals not exceeding one calendar quarter for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sources whose half-life exceeds (~~seventy-five~~) 75 days; and

(d) At intervals not exceeding one year for low dose-rate remote afterloader units.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements must include, as applicable, determination of:

(a) The output within  $\pm$ (~~5~~) five percent;

(b) Source positioning accuracy to within  $\pm$ (~~1~~) one millimeter;



(c) Source retraction with backup battery upon power failure;  
 (d) Length of the source transfer tubes;  
 (e) Timer accuracy and linearity over the typical range of use;  
 (f) Length of the applicators; and  
 (g) Function of the source transfer tubes, applicators, and transfer tube-applicator interfaces.

(3) A licensee shall use the dosimetry system described in WAC 246-240-366(1) to measure the output.

(4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally recognized bodies.

(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in subsection (2) of this section, a licensee shall perform an autoradiograph of the ~~((source(s)))~~ sources to verify inventory and ~~((source(s)))~~ sources arrangement at intervals not exceeding one calendar quarter.

(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the source manufacturer that are made in accordance with subsections (1) through (5) of this section.

(7) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section for physical decay at intervals consistent with one percent physical decay.

(8) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (7) of this section must be performed by the authorized medical physicist.

(9) A licensee shall retain a record of each calibration in accordance with WAC 246-240-614.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-372, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-375 Full calibration measurements on gamma stereotactic radiosurgery units.** (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each unit:

(a) Before the first medical use of the unit;

(b) Before medical use under the following conditions:

(i) Whenever spot-check measurements indicate that the output differs by more than five percent from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) Following replacement of the sources or following reinstallation of the gamma stereotactic radiosurgery unit in a new location; and

(iii) Following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sources or major repair of the components associated with the source assembly; and

(c) At intervals not exceeding one year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.

(2) To satisfy the requirement of subsection (1) of this section, full calibration measurements must include determination of:

(a) The output within  $\pm((3))$  three percent;

- (b) Relative helmet factors;
  - (c) Isocenter coincidence;
  - (d) Timer accuracy and linearity over the range of use;
  - (e) On-off error;
  - (f) Trunnion centricity;
  - (g) Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;
  - (h) Helmet microswitches;
  - (i) Emergency timing circuits; and
  - (j) Stereotactic frames and localizing devices (trunnions).
- (3) A licensee shall use the dosimetry system described in WAC 246-240-366(1) to measure the output for one set of exposure conditions. The remaining radiation measurements required in subsection (2)(a) of this section may be made using a dosimetry system that indicates relative dose rates.
- (4) A licensee shall make full calibration measurements required by subsection (1) of this section in accordance with published protocols accepted by nationally recognized bodies.
- (5) A licensee shall mathematically correct the outputs determined in subsection (2)(a) of this section at intervals not exceeding one month for cobalt-60 and at intervals consistent with one percent physical decay for all other radionuclides.
- (6) Full calibration measurements required by subsection (1) of this section and physical decay corrections required by subsection (5) of this section must be performed by the authorized medical physicist.
- (7) A licensee shall retain a record of each calibration in accordance with WAC 246-240-614.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-375, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-378 Periodic spot-checks for teletherapy units.** (1)

- A licensee authorized to use teletherapy units for medical use shall perform output spot-checks on each teletherapy unit once in each calendar month that include determination of:
- (a) Timer accuracy, and timer linearity over the range of use;
  - (b) On-off error;
  - (c) The coincidence of the radiation field and the field indicated by the light beam localizing device;
  - (d) The accuracy of all distance measuring and localization devices used for medical use;
  - (e) The output for one typical set of operating conditions measured with the dosimetry system described in WAC 246-240-366(2); and
  - (f) The difference between the measurement made in (e) of this subsection and the anticipated output, expressed as a percentage of the anticipated output ((i.e.,) such as the value obtained at last full calibration corrected mathematically for physical decay).
- (2) A licensee shall perform measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual need not actually perform the spot-check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within (~~fifteen~~) 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) A licensee authorized to use a teletherapy unit for medical use shall perform safety spot-checks of each teletherapy facility once in each calendar month and after each source installation to assure proper operation of:

- (a) Electrical interlocks at each teletherapy room entrance;
- (b) Electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of source housing angulation or elevation, carriage or stand travel and operation of the beam on-off mechanism);
- (c) Source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;
- (d) Viewing and intercom systems;
- (e) Treatment room doors from inside and outside the treatment room; and
- (f) Electrically assisted treatment room doors with the teletherapy unit electrical power turned off.

(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each spot-check required by subsections (1) and (4) of this section, and a copy of the procedures required by subsection (2) of this section, in accordance with WAC 246-240-617.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-378, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-381 Periodic spot-checks for remote afterloader units.** (1) A licensee authorized to use a remote afterloader unit for medical use shall perform spot-checks of each remote afterloader facility and on each unit:

- (a) Before the first use of a high dose-rate, medium dose-rate, or pulsed dose-rate remote afterloader unit on a given day;
- (b) Before each patient treatment with a low dose-rate remote afterloader unit; and
- (c) After each source installation.

(2) A licensee shall perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual need not actually perform the spot check measurements.

(3) A licensee shall have the authorized medical physicist review the results of each spot-check within (~~fifteen~~) 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(4) To satisfy the requirements of subsection (1) of this section, spot-checks must, at a minimum, assure proper operation of:

- (a) Electrical interlocks at each remote afterloader unit room entrance;
- (b) Source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;
- (c) Viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;
- (d) Emergency response equipment;
- (e) Radiation monitors used to indicate the source position;
- (f) Timer accuracy;
- (g) Clock (date and time) in the unit's computer; and
- (h) Decayed (~~source(s)~~) sources activity in the unit's computer.

(5) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) A licensee shall retain a record of each check required by subsection (4) of this section and a copy of the procedures required by subsection (2) of this section in accordance with WAC 246-240-620.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-381, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-384 Periodic spot-checks for gamma stereotactic radiosurgery units.** (1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot-checks of each gamma stereotactic radiosurgery facility and on each unit:

- (a) Monthly;
  - (b) Before the first use of the unit on a given day; and
  - (c) After each source installation.
- (2) A licensee shall:

(a) Perform the measurements required by subsection (1) of this section in accordance with written procedures established by the authorized medical physicist. That individual need not actually perform the spot check measurements.

(b) Have the authorized medical physicist review the results of each spot-check within (~~fifteen~~) 15 days. The authorized medical physicist shall notify the licensee as soon as possible in writing of the results of each spot-check.

(3) To satisfy the requirements of subsection (1)(a) of this section, spot-checks must, at a minimum:

- (a) Assure proper operation of:
  - (i) Treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit off;
  - (ii) Helmet microswitches;
  - (iii) Emergency timing circuits; and
  - (iv) Stereotactic frames and localizing devices (trunnions).
- (b) Determine:

(i) The output for one typical set of operating conditions measured with the dosimetry system described in WAC 246-240-366(2);

(ii) The difference between the measurement made in (b)(i) of this subsection and the anticipated output, expressed as a percentage of the anticipated output (~~((i.e.,))~~ such as the value obtained at last full calibration corrected mathematically for physical decay);

(iii) Source output against computer calculation;

(iv) Timer accuracy and linearity over the range of use;

(v) On-off error; and

(vi) Trunnion centricity.

(4) To satisfy the requirements of subsection (1)(b) and (c) of this section, spot-checks must assure proper operation of:

(a) Electrical interlocks at each gamma stereotactic radiosurgery room entrance;

(b) Source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;

(c) Viewing and intercom systems;

(d) Timer termination;

(e) Radiation monitors used to indicate room exposures; and

(f) Emergency off buttons.

(5) A licensee shall arrange for the repair of any system identified in subsection (3) of this section that is not operating properly as soon as possible.

(6) If the results of the checks required in subsection (4) of this section indicate the malfunction of any system, a licensee shall lock the control console in the off position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(7) A licensee shall retain a record of each check required by subsections (3) and (4) of this section and a copy of the procedures required by subsection (2) of this section in accordance with WAC 246-240-623.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-384, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-390 Radiation surveys.** (1) In addition to the survey requirement in WAC 246-221-110(1), a person licensed under this chapter shall make surveys to ensure that the maximum radiation levels and average radiation levels from the surface of the main source safe with the ~~((source(s)))~~ sources in the shielded position do not exceed the levels stated in the sealed source and device registry.

(2) The licensee shall make the survey required by subsection (1) of this section at installation of a new source and following repairs to the ~~((source(s)))~~ sources shielding, the ~~((source(s)))~~ sources driving unit, or other electronic or mechanical component that could expose the source, reduce the shielding around the ~~((source(s)))~~ sources, or compromise the radiation safety of the unit or the ~~((source(s)))~~ sources.

(3) A licensee shall retain a record of the radiation surveys required by subsection (1) of this section in accordance with WAC 246-240-629.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-390, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-393 ((Five-year inspection)) Full-inspection servicing for teletherapy and gamma stereotactic radiosurgery units.** (1) A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during each source replacement ~~((or at intervals not to exceed five years, whichever comes first,))~~ to assure proper functioning of the source exposure mechanism and other safety components. The interval between each full-inspection servicing shall not exceed five years for each teletherapy unit and shall not exceed seven years for each gamma stereotactic radiosurgery unit.

(2) This inspection and servicing may only be performed by persons specifically licensed to do so by the department, NRC, or an agreement state.

(3) A licensee shall keep a record of the inspection and servicing in accordance with WAC 246-240-632.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-393, filed 5/7/13, effective 6/7/13; WSR 06-05-019, § 246-240-393, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 13-11-021, filed 5/7/13, effective 6/7/13)

**WAC 246-240-399 Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.** Except as provided in WAC 246-240-078, the licensee shall require an authorized user of a sealed source for a use authorized under WAC 246-240-351 to be a physician who:

(1) Is certified by a medical specialty board whose certification process has been recognized by the department, NRC, or an agreement state and meets the requirements in subsection (3) of this section. ~~((Specialty boards whose certification process has been recognized by NRC or an agreement state will be posted on NRC's web page at <http://www.nrc.gov/materials/miau/med-use-toolkit/spec-board-cert.html>.) To be))~~ The names of board certifications that have been recognized by the department, NRC, or an agreement state are posted on the NRC's medical uses licensee toolkit web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(a) Successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the ~~((Committee on Postgraduate))~~ Council of Postdoctoral Training of the American Osteopathic Association; and

(b) Pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, high and low dose-rate brachytherapy, and external beam therapy; or

(2) (a) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

(i) Two hundred hours of classroom and laboratory training in the following areas:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology; and

(ii) Five hundred hours of work experience, under the supervision of an authorized user who meets the requirements in WAC 246-240-078, 246-240-399, or equivalent agreement state or NRC requirements, at a medical institution ~~((r))~~ that is authorized to use radioactive materials in WAC 246-240-351 involving:

(A) Reviewing full calibration measurements and periodic spot-checks;

(B) Preparing treatment plans and calculating treatment doses and times;

(C) Using administrative controls to prevent a medical event involving the use of radioactive material;

(D) Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;

(E) Checking and using survey meters; and

(F) Selecting the proper dose and how it is to be administered;

and

(b) Has completed three years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements in WAC 246-240-078, 246-240-399 or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or Royal College of Physicians and Surgeons of Canada or the ~~((Committee))~~ Council on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by (a) (ii) of this subsection; and

(c) Has obtained written attestation that the individual has satisfactorily completed the requirements in ~~((subsection (1)))~~ (a) and (b) of this subsection, and subsection (3) of this section ~~((, or (a) and (b), and (d) of this subsection and has achieved a level of competency sufficient to function))~~ and is able to independently fulfill the radiation safety-related duties as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be ~~((signed by))~~ obtained from either:

(i) A preceptor authorized user who meets the requirements in WAC 246-240-078, 246-240-399, or equivalent NRC or agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status ~~((r and~~

~~(d)))~~; or

(ii) A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in WAC 246-240-078, 246-240-399, or equivalent NRC or agreement state requirements, for the types of therapeutic medical unit for which the individual is requesting authorized user status, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in (a) and (b) of this subsection.

(3) Has received training in device operation, safety procedures, and clinical use for the ((type(s))) types of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the ((type(s))) types of use for which the individual is seeking authorization.

[Statutory Authority: RCW 70.98.050. WSR 13-11-021, § 246-240-399, filed 5/7/13, effective 6/7/13; WSR 11-03-068, § 246-240-399, filed 1/18/11, effective 2/18/11; WSR 07-14-131, § 246-240-399, filed 7/3/07, effective 8/3/07; WSR 06-05-019, § 246-240-399, filed 2/6/06, effective 3/9/06.]

#### **OTHER MEDICAL USES OF RADIOACTIVE MATERIAL OR RADIATION FROM RADIOACTIVE MATERIAL**

#### **RECORDS**

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-551 Records of authority and responsibilities for radiation protection programs.** (1) A licensee shall retain a record of actions taken by the licensee's management in accordance with WAC



246-240-051(1) for five years. The record must include a summary of the actions taken and a signature of licensee management.

(2) The licensee shall retain a copy of both authority, duties, and responsibilities of the radiation safety officer as required by WAC 246-240-051(5), and a signed copy of each radiation safety officer's agreement to be responsible for implementing the radiation safety program, as required by WAC 246-240-051(2), for the duration of the license. The records must include the signature of the radiation safety officer and licensee management.

(3) For each associate radiation safety officer appointed under WAC 246-240-051(2), the licensee shall retain, for five years after the associate radiation safety officer is removed from the license, a copy of the written document appointing the associate radiation safety officer signed by the licensee's management.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-551, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-578 Records of the release of individuals containing unsealed radioactive material or implants containing radioactive material.**

(1) A licensee shall retain a record of the basis for authorizing the release of an individual in accordance with WAC 246-240-122, if the total effective dose equivalent is calculated by:

(a) Using the retained activity rather than the activity administered;

(b) Using an occupancy factor less than 0.25 at ((±)) one meter;

(c) Using the biological or effective half-life; or

(d) Considering the shielding by tissue.

(2) A licensee shall retain a record that the instructions required by WAC 246-240-122(2) were provided to a breast-feeding female if the radiation dose to the infant or child from continued breast-feeding could result in a total effective dose equivalent exceeding ((5)) five mSv (0.5 rem).

(3) The records required by subsections (1) and (2) of this section must be retained for three years after the date of release of the individual.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-578, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-590 Records of safety instruction.** A licensee shall maintain a record of safety instructions required by WAC 246-240-204, 246-240-263, and the operational and safety instructions required by WAC 246-240-360 for three years. The record must include a list of the topics covered, the date of the instruction, the ((name(s-))) names of the ((attendee(s-))) attendees, and the ((name(s-))) names of the ((individual(s-))) individuals who provided the instruction.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-590, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-605 Records of installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.** A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units as required by WAC 246-240-357 for three years. For each installation, maintenance, adjustment and repair, the record must include the date, description of the service, and ~~((name(s)))~~ names of the ~~((individual(s)))~~ individuals who performed the work.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-605, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-614 Records of teletherapy, remote afterloader, and gamma stereotactic radiosurgery full calibrations.** (1) A licensee shall maintain a record of the teletherapy unit, remote afterloader unit, and gamma stereotactic radiosurgery unit full calibrations required by WAC 246-240-369, 246-240-372, and 246-240-375 for three years.

(2) The record must include:

(a) The date of the calibration;

(b) The manufacturer's name, model number, and serial number of the teletherapy, remote afterloader, and gamma stereotactic radiosurgery ~~((unit(s)))~~ units, the ~~((source(s)))~~ sources, and the instruments used to calibrate the ~~((unit(s)))~~ units;

(c) The results and an assessment of the full calibrations;

(d) The results of the autoradiograph required for low dose-rate remote afterloader units; and

(e) The signature of the authorized medical physicist who performed the full calibration.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-614, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-632 Records of ~~((five-year inspection))~~ full-inspection servicing for teletherapy and gamma stereotactic radiosurgery units.** (1) A licensee shall maintain a record of the ~~((five-year inspections))~~ full-inspection servicing for teletherapy and gamma ster-

eotactic radiosurgery units required by WAC 246-240-393 for the duration of use of the unit.

- (2) The record must contain:
- (a) The inspector's radioactive materials license number;
  - (b) The date of inspection;
  - (c) The manufacturer's name and model number and serial number of both the treatment unit and source;
  - (d) A list of components inspected and serviced, and the type of service; and
  - (e) The signature of the inspector.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-632, filed 2/6/06, effective 3/9/06.]

## REPORTS

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

### **WAC 246-240-651 Report and notification of a medical event.** (1)

A licensee shall report any event as a medical event, except for an event that results from patient intervention, in which:

(a) The administration of radioactive material or radiation from radioactive material, except permanent implant brachytherapy, results in:

~~((a))~~ (i) A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 0.05 Sv ~~((5))~~ five rem) effective dose equivalent, 0.5 Sv (50 rem) to an organ or tissue, or 0.5 Sv (50 rem) shallow dose equivalent to the skin; and

~~((i))~~ (A) The total dose delivered differs from the prescribed dose by ~~((twenty))~~ 20 percent or more;

~~((ii))~~ (B) The total dosage delivered differs from the prescribed dosage by ~~((twenty))~~ 20 percent or more or falls outside the prescribed dosage range; or

~~((iii))~~ (C) The fractionated dose delivered differs from the prescribed dose, for a single fraction, by ~~((fifty))~~ 50 percent or more.

~~((b))~~ (ii) A dose that exceeds 0.05 Sv ~~((5))~~ five rem) effective dose equivalent, 0.5 Sv (50 rem) to an organ or tissue, or 0.5 Sv (50 rem) shallow dose equivalent to the skin from any of the following:

~~((i))~~ (A) An administration of a wrong radioactive drug containing radioactive material or the wrong radionuclide for a brachytherapy procedure;

~~((ii))~~ (B) An administration of a radioactive drug containing radioactive material by the wrong route of administration;

~~((iii))~~ (C) An administration of a dose or dosage to the wrong individual or human research subject;

~~((iv))~~ (D) An administration of a dose or dosage delivered by the wrong mode of treatment; or

~~((v))~~ (E) A leaking sealed source.

~~((e))~~ (iii) A dose to the skin or an organ or tissue other than the treatment site that exceeds by:

(A) 0.5 Sv (50 rem) ~~((to an organ or tissue and fifty percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site)))~~ or more the expected dose to that site from the procedure if the administration had been given in accordance with the written directive prepared or revised before administration; and

(B) Fifty percent or more the expected dose to that site from the procedure if the administration had been given in accordance with the written directive prepared or revised before administration.

(b) For permanent implant brachytherapy, the administration of radioactive material or radiation from radioactive material (excluding sources that were implanted in the correct site but migrated outside the treatment site) that results in:

(i) The total source strength administered differing by 20 percent or more from the total source strength documented in the post-implantation portion of the written directive;

(ii) The total source strength administered outside of the treatment site exceeding 20 percent of the total source strength documented in the post-implantation portion of the written directive; or

(iii) An administration that includes any of the following:

(A) The wrong radionuclide;

(B) The wrong individual or human research subject;

(C) Sealed sources implanted directly into a location discontinuous from the treatment site, as documented in the post-implantation portion of the written directive; or

(D) A leaking sealed source resulting in a dose that exceeds 0.5 Sv (50 rem) to an organ or tissue.

(2) A licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material or radiation from radioactive material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee shall notify by telephone (360-236-3300) the department no later than the next calendar day after discovery of the medical event.

(4) By an appropriate method listed in WAC 246-221-250, the licensee shall submit a written report to the department at P.O. Box 47827, Olympia WA 98504-7827 within ~~((fifteen))~~ 15 days after discovery of the medical event.

(a) The written report must include:

(i) The licensee's name;

(ii) The name of the prescribing physician;

(iii) A brief description of the event;

(iv) Why the event occurred;

(v) The effect, if any, on the ~~((individual(s)))~~ individuals who received the administration;

(vi) What actions, if any, have been taken or are planned to prevent recurrence; and

(vii) Certification that the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.

(b) The report may not contain the individual's name or any other information that could lead to identification of the individual.

(5) The licensee shall provide notification of the event to the referring physician and also notify the individual who is the subject of the medical event no later than (~~(twenty-four)~~) 24 hours after its discovery, unless the referring physician personally informs the licensee either that they will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within (~~(twenty-four)~~) 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee may not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the medical event, because of any delay in notification. To meet the requirements of this (~~(section)~~) subsection, the notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian. If a verbal notification is made, the licensee shall inform the individual, or appropriate responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide a written description if requested.

(6) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.

(7) A licensee shall:

(a) Annotate a copy of the report provided to the department with the:

(i) Name of the individual who is the subject of the event; and

(ii) Social Security number or other identification number, if one has been assigned, of the individual who is the subject of the event; and

(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than (~~(fifteen)~~) 15 days after the discovery of the event.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-651, filed 2/6/06, effective 3/9/06.]

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

**WAC 246-240-654 Report and notification of a dose to an embryo/fetus or a nursing child.** (1) A licensee shall report to the department at P.O. Box 47827, Olympia WA 98504-7827, (phone 360-236-3300), any dose to an embryo/fetus that is greater than 50 mSv (~~(5)~~) five rem) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.

(2) A licensee shall report any dose to a nursing child that is a result of an administration of radioactive material to a breast-feeding individual that:

(a) Is greater than 50 mSv (~~((5))~~ five rem) total effective dose equivalent; or

(b) Has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.

(3) The licensee shall notify by telephone the department no later than the next calendar day after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsection (1) or (2) of this section.

(4) By an appropriate method listed in WAC 246-221-250, the licensee shall submit a written report to the department within (~~(fifteen))~~ 15 days after discovery of a dose to the embryo/fetus or nursing child that requires a report in subsection (1) or (2) of this section.

(a) The written report must include:

(i) The licensee's name;

(ii) The name of the prescribing physician;

(iii) A brief description of the event;

(iv) Why the event occurred;

(v) The effect, if any, on the embryo/fetus or the nursing child;

(vi) What actions, if any, have been taken or are planned to prevent recurrence; and

(vii) Certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.

(b) The report must not contain the individual's or child's name or any other information that could lead to identification of the individual or child.

(5) The licensee shall provide notification of the event to the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than (~~(twenty-four))~~ 24 hours after discovery of an event that would require reporting under subsection (1) or (2) of this section, unless the referring physician personally informs the licensee either that they will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee is not required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within (~~(twenty-four))~~ 24 hours, the licensee shall make the appropriate notifications as soon as possible thereafter. The licensee may not delay any appropriate medical care for the embryo/fetus or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification. To meet the requirements of this subsection, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide a written description if requested.

(6) A licensee shall:

(a) Annotate a copy of the report provided to the department with the:

(i) Name of the pregnant individual or the nursing child who is the subject of the event; and

(ii) Social Security number or other identification number, if one has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and

(b) Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than ((fifteen)) 15 days after the discovery of the event.

[Statutory Authority: RCW 70.98.050. WSR 06-05-019, § 246-240-654, filed 2/6/06, effective 3/9/06.]

NEW SECTION

**WAC 246-240-660 Report and notification for an eluate exceeding permissible molybdenum-99, strontium-82, and strontium-85 concentrations.** (1) The licensee shall notify by telephone the department and the distributor of the generator within seven calendar days after discovery that an eluate exceeded the permissible concentration listed in WAC 246-240-160(1) at the time of generator elution. The telephone report to the department must include the manufacturer, model number, and serial number (or lot number) of the generator; the results of the measurement; the date of the measurement; whether dosages were administered to patients or human research subjects, when the distributor was notified, and the action taken.

(2) By an appropriate method listed in WAC 246-221-250, the licensee shall submit a written report to the department at P.O. Box 47827, Olympia WA 98504-7827 within 30 days after discovery of an eluate exceeding the permissible concentration at the time of generator elution. The written report must include the action taken by the licensee; the patient dose assessment; the methodology used to make this dose assessment if the eluate was administered to patients or human research subjects; and the probable cause and an assessment of failure in the licensee's equipment, procedures or training that contributed to the excessive readings if an error occurred in the licensee's breakthrough determination; and the information in the telephone report as required by subsection (1) of this section.

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## WSR 22-15-039

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Washington Medical Commission)

[Filed July 14, 2022, 10:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-024.

Title of Rule and Other Identifying Information: New WAC 246-919-345 Limited physician and surgeon clinical experience license. The Washington medical commission is proposing to add a new section to chapter 246-919 WAC to implement SB 6551 (chapter 325, Laws of 2020) concerning licensure of international medical graduates.

Hearing Location(s): On August 26, 2022, at 8:30 a.m. In response to the ongoing coronavirus disease 2019 (COVID-19) public health emergency, the Washington medical commission (commission) is providing a virtual option for this hearing to promote social distancing and the safety of the citizens of Washington state. Please register for rules hearing: SB 6551 - International medical graduates, on August 26, 2022, at 8:30 a.m. PDT, at <https://attendee.gotowebinar.com/register/5214159437353806348>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: August 26, 2022.

Submit Written Comments to: Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview>, by August 18, 2022.

Assistance for Persons with Disabilities: Contact Amelia Boyd, phone 800-525-0127, TTY 711, email [medical.rules@wmc.wa.gov](mailto:medical.rules@wmc.wa.gov), by August 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commission is proposing adding a new section of rule to meet the requirements of SB 6551 (chapter 325, Laws of 2020). SB 6551 requires the commission to establish requirements in rule for issuing a clinical experience license to an international medical graduate. In the 2021 session, SHB 1129 (chapter 204, Laws of 2021), was passed which established the requirements for issuing a clinical experience license, which has been codified as RCW 18.71.095(6).

The commission [is] proposing that prior to applying for the clinical experience limited license, applicants must meet the same requirements established in RCW 18.71.095(6). The commission is also defining "appropriate medical practice." Finally, the commission is clarifying that a clinical experience limited license applicant must file a practice agreement with the commission prior to commencing practice.

Reasons Supporting Proposal: SB 6551 requires the commission to establish in rule requirements for issuing a clinical experience license to an international medical graduate. While SHB 1129 later established the requirements, proposed rules are also necessary to clearly define "appropriate medical practice" as used in RCW 18.71.095. Currently, the commission has an interpretive statement: Establishing Approval Criteria for Defining Appropriate Medical Practices for IMG Nomination, INS2022-02. This interpretive statement will no longer be necessary when the rule clearly defines "appropriate medical practice." The proposed rule also clarifies that a practice agreement must be filed with the commission prior to commencing practice. The commission must review the practice agreement to determine



whether the supervision requirements are met in order to determine whether the nominating entity meets the requirements to supervise an international medical graduate, the practice agreement must be filed with the commission before the international medical graduate begins practicing under the limited license.

Statutory Authority for Adoption: RCW 18.71.017 and 18.130.050.

Statute Being Implemented: RCW 18.71.095(5).

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

Name of Proponent: Washington medical commission, governmental.

Name of Agency Personnel Responsible for Drafting: Amelia Boyd, 111 Israel Road S.E., Tumwater, WA 98501, 360-918-6336; Implementation and Enforcement: Melanie de Leon, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2755.

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 Amelia Boyd, Program Manager, P.O. Box 47866, phone 360-918-6336, TTY 711, email amelia.boyd@wmc.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).

Explanation of exemptions: The proposed rules do not impact businesses, the proposed rules only impact provider licensing requirements.

July 14, 2022  
Melanie de Leon  
Executive Director

### OTS-3589.3

#### NEW SECTION

**WAC 246-919-345 Limited physician and surgeon clinical experience license.** (1) The commission may issue a limited physician and surgeon clinical experience license to an applicant who does not qualify for licensure under RCW 18.71.050 or chapter 18.71B RCW and who meets the requirements established in RCW 18.71.095(6) for the purpose of gaining clinical experience at an approved facility or program.

(2) An appropriate medical practice, as referenced in RCW 18.71.095 (6)(a); is a practice that meets the following criteria:

(a) The practice is physically located, in the state of Washington, providing clinical care to Washington patients.

(b) The practice falls within one of the following categories:

(i) Is a practice setting within a federal system such as military, Indian health services, tribal health setting, or community health center; or

(ii) Is a practice setting that:

(A) Has three or more physicians for the purposes of delivering direct patient care; and

(B) Has a quality review, improvement, and assurance program for practitioners.

(3) Prior to commencing practice, a clinical experience limited license holder must file a practice agreement with the commission.

(4) To apply for a limited physician and surgeon clinical experience license, an applicant shall submit to the commission:

(a) An application provided by the commission; and

(b) Applicable fees as established in WAC 246-919-990.

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## WSR 22-15-051

## PROPOSED RULES

## DEPARTMENT OF CORRECTIONS

[Filed July 15, 2022, 1:35 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-12-060.

Title of Rule and Other Identifying Information: Chapters 137-65 and 137-69 WAC.

Hearing Location(s): On August 23, 2022, at 2:00 to 2:30 p.m., Microsoft Teams meeting. Please contact rules coordinator at [vvchebotar@doc1.wa.gov](mailto:vvchebotar@doc1.wa.gov) to register. In response to the COVID-19 public health emergency, a physical location for this hearing will not be provided in order to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Date of Intended Adoption: August 26, 2022.

Submit Written Comments to: Vadim V. Chebotar, Senior Contracts Attorney, Department of Corrections (DOC), Contracts and Legal Affairs, P.O. Box 41114, Tumwater, WA 98504-1114, email [vvchebotar@doc1.wa.gov](mailto:vvchebotar@doc1.wa.gov), by August 18, 2022.

Assistance for Persons with Disabilities: Contact Vadim V. Chebotar, senior contracts attorney, email [vvchebotar@doc1.wa.gov](mailto:vvchebotar@doc1.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revision of chapter 137-69 WAC and the full repeal of chapter 137-65 WAC are required to align with the statutory revisions made following the passing of the 2SHB 1818. The statutory revisions will no longer allow DOC to assess or collect cost of supervision fees. Furthermore, the statutory revisions will no longer allow an assessment and collection of the interstate transfer application fee for individuals seeking to transfer the supervision of their Washington sentence out of Washington state.

Reasons Supporting Proposal: WAC should accurately comply with statutory revision.

Statutory Authority for Adoption: RCW 72.01.090.

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

Name of Proponent: DOC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Dell-Autumn W. Witten, DOC headquarters, 360-725-8831.

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.

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

June 27, 2022  
Cheryl Strange  
Secretary

**OTS-3836.1**

AMENDATORY SECTION (Amending WSR 11-16-058, filed 7/29/11, effective 8/29/11)

**WAC 137-69-030 Manner and degree of supervision.** (~~((1))~~) Offenders transferred to Washington state under the interstate compact shall be supervised in a manner determined by Washington state and consistent with the supervision of other similar offenders sentenced in Washington state.

~~((2) Washington state shall impose a supervision fee on an offender whom the state accepts for supervision under the interstate compact.)~~

[Statutory Authority: RCW 72.01.090 and chapter 9.94A RCW. WSR 11-16-058, § 137-69-030, filed 7/29/11, effective 8/29/11.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 137-69-020 Interstate transfer application fee.

**OTS-3835.1**

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 137-65-010	Purpose.
WAC 137-65-020	Scope.
WAC 137-65-030	Fee.
WAC 137-65-050	Instructions.

## WSR 22-15-053

## PROPOSED RULES

## DEPARTMENT OF AGRICULTURE

[Filed July 15, 2022, 1:46 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: Washington alfalfa seed commission, chapter 16-529 WAC. Specifically, WAC 16-529-030 Board membership, 16-529-060 Nomination of elected or director-appointed board members, 16-529-070 Election or advisory vote of board members, and 16-529-140 Assessments.

Hearing Location(s): On September 27, 2022, at 9:00 a.m., at Benton PUD, 2721 West 10th Avenue, Kennewick, WA 99336.

Date of Intended Adoption: December 10, 2022.

Submit Written Comments to: Megan Finkenbinder, P.O. Box 42560, Olympia, WA 98504, email mfinkenbinder@agr.wa.gov, fax 360-902-2092, by September 27, 2022.

Assistance for Persons with Disabilities: Contact WSDA receptionist, phone 360-902-1976, fax 360-902-2092, TTY 800-833-6388, by September 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to remove districts within the alfalfa seed marketing order due to the decreasing numbers of alfalfa seed growers and handlers in the state and, to increase the assessment rate from 50 cents per hundredweight of cleaned seed to 75 cents per hundredweight of cleaned seed.

Reasons Supporting Proposal: These amendments will implement the petition received from the alfalfa seed commission in accordance with RCW 15.65.050. The board is proposing to remove districts to allow for a statewide representation for all positions on the commission. This is due in part to the reduction in alfalfa seed growers and handlers and the continued challenges to find representation within a specific district. The petition also included the proposal from the board to increase the assessment from 50 cents per hundredweight of cleaned seed to 75 cents per hundredweight of cleaned seed. The commission has had the same assessment rate since the commission began in 1979. In order to continue to fund research projects and operate as a commission, the commissioners saw the need to increase the assessment rate.

Statutory Authority for Adoption: RCW 15.65.047 and [15.65].050; chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.65 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rules will not be adopted unless they are approved by referendum of affected producers pursuant to chapter 15.65 RCW.

Name of Proponent: Washington alfalfa seed commission, governmental.

Name of Agency Personnel Responsible for Drafting: Megan Finkenbinder, P.O. Box 42560, Olympia, WA 98504, 360-972-4216; Implementation and Enforcement: Shane Johnson, 6601 West Deschutes Avenue, Suite C-2, Kennewick, WA 99336, 509-585-5460.

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

A cost-benefit analysis is not required under RCW 34.05.328. The department of agriculture and the Washington alfalfa seed commission are not named agencies 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 the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

July 15, 2022  
Derek I. Sandison  
Director

## OTS-3926.1

AMENDATORY SECTION (Amending WSR 08-16-014, filed 7/25/08, effective 8/25/08)

**WAC 16-529-030 Board membership.** (~~((1))~~) The board shall consist of eight members. Six members shall be affected producers appointed or elected as provided in WAC 16-529-020 through 16-529-120. One member shall be an affected handler appointed as provided in WAC 16-529-020 through 16-529-120. The director shall appoint one member of the board who is neither an affected producer nor an affected handler to represent the director. The position representing the director shall be a voting member.

~~((a))~~ (1) Director-appointed positions on the board shall be designated as position 2, position 4, position 6, and position 7. The affected handler member of the board shall be position 7.

~~((b))~~ (2) Elected affected producer positions on the board shall be designated as position 1, position 3, and position 5.

~~((c))~~ (3) The position representing the director who is neither an affected producer nor an affected handler shall be designated as position 8.

~~((2) For the purpose of nomination, appointment, and election of affected producer members of the board, the affected area of the state of Washington shall be divided into three representative districts as follows:~~

~~(a) District I shall have two board members, being Positions 1 and 2, and shall include the counties of Adams, Chelan, Douglas, Ferry, Franklin, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens.~~

~~(b) District II shall have one board member, being Position 3, and shall include the counties of Benton, Kittitas, Klickitat, and Yakima.~~

~~(c) District III shall have three board members, being Positions 4, 5, and 6, and shall include the counties of Asotin, Columbia, Garfield, Walla Walla, and Whitman.~~

~~(d) If no nominations are received or there are fewer than three affected producers within a district, the position(s) shall be deemed "at large" and shall be filled by a producer from any district in the state. Nominations may be made by producers from any district in the state pursuant to the provisions of WAC 16-529-060.)~~

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 08-16-014, § 16-529-030, filed 7/25/08, effective 8/25/08. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-08-010, § 16-529-030, filed 3/25/05, effective 4/25/05. Statutory Authority: Chapter 15.65 RCW. WSR 85-10-015 (Order 1850), § 16-529-030, filed 4/22/85, effective 6/1/85; Order 1, Article II, § B, filed 3/13/75, effective 7/1/75.]

AMENDATORY SECTION (Amending WSR 08-16-014, filed 7/25/08, effective 8/25/08)

**WAC 16-529-060 Nomination of elected or director-appointed board members.** (1) For the purpose of nominating candidates for appointment or election to board membership, the director shall call a separate nomination meeting of affected producers and affected handlers.

(2) Each year the director shall call a nomination meeting for both elected and director-appointed affected producer and affected handler board members (~~(in those districts)~~) whose board members' terms are about to expire. The meeting(s) shall be held at least (~~(thirty)~~) 30 days in advance of the date set by the director for the election or advisory vote of board members.

(a) (~~(Notice of a nomination meeting shall be published in newspapers of general circulation within the affected district not less than ten days in advance of the date of such meeting and, in addition,~~) Written notice of every such meeting shall be given to all affected producers (~~(within such affected district)~~), and to all handlers, according to the list maintained by the board pursuant to RCW 15.65.295.

(b) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(c) Any qualified affected producer or affected handler may be nominated orally for membership on the board at a nomination meeting. Nominations may also be made within five days after the nomination meeting by written petition filed with the director, signed by not less than three affected producers or affected handlers.

(d) When only one nominee is nominated by the affected producers for any position, RCW 15.65.250 shall apply.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 08-16-014, § 16-529-060, filed 7/25/08, effective 8/25/08. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-08-010, § 16-529-060, filed 3/25/05, effective 4/25/05; Order 1, Article II, § E, filed 3/13/75, effective 7/1/75.]

AMENDATORY SECTION (Amending WSR 08-16-014, filed 7/25/08, effective 8/25/08)

**WAC 16-529-070 Election or advisory vote of board members.** (1) An election or advisory vote shall be conducted by secret ballot under the supervision of the director. Each affected producer and affected handler shall be entitled to one vote.

(2) Elected affected producer members of the board shall be elected by a majority of the votes cast by the affected producers (~~(within~~

~~the affected district or, in the case of an election for an "at large" position, by a majority of the votes cast by affected producers from any district)) statewide.~~

If a nominee does not receive a majority of the votes on the first ballot, a runoff election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(3) An advisory vote shall be conducted for affected producer or affected handler board members appointed by the director under the provisions of RCW 15.65.243. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

~~(4) ((Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected district not less than ten days in advance of the date of the election or advisory vote.))~~ Not less than ~~((ten))~~ 10 days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer and affected handler entitled to vote whose name appears upon the list of such affected producers and affected handlers as maintained by the board pursuant to RCW 15.65.295. Any other affected producer or affected handler entitled to vote may obtain a ballot by application to the director upon establishing his/her qualifications.

(5) Nonreceipt of a ballot by an affected producer or affected handler shall not invalidate the election or advisory vote of any board member.

[Statutory Authority: Chapters 15.65 and 34.05 RCW. WSR 08-16-014, § 16-529-070, filed 7/25/08, effective 8/25/08. Statutory Authority: RCW 15.65.047 and chapter 34.05 RCW. WSR 05-08-010, § 16-529-070, filed 3/25/05, effective 4/25/05; Order 1, Article II, § F, filed 3/13/75, effective 7/1/75.]

AMENDATORY SECTION (Amending WSR 79-07-061, filed 6/27/79, effective 8/1/79)

**WAC 16-529-140 Assessments.** (1) The fixed annual assessment on all varieties of alfalfa seed subject to this marketing order shall be ~~((fifty))~~ 75 cents per hundredweight of cleaned seed, which shall be paid by the producer thereof upon each and every unit sold, marketed, or delivered for sale by him.

(2) First handlers or purchasers shall collect assessments at time of payment for seed from producers whose production they handle and remit the same to the board in accordance with procedures adopted by the board.

Producers and producer-handlers who ship their alfalfa seed direct to handlers outside of the state of Washington shall remit assessments to the board at time of shipment.

[Statutory Authority: Chapter 15.65 RCW. WSR 79-07-061 (Order 1639), § 16-529-140, filed 6/27/79, effective 8/1/79; Order 1, Article IV, § A, filed 3/13/75, effective 7/1/75.]



**WSR 22-15-057**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
(Division of Child Support)  
[Filed July 15, 2022, 3:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-20-049.

Title of Rule and Other Identifying Information: The department is proposing to change WAC 388-14A-4300 What can I do if I think I'm paying more than the custodial parent is spending for day care or other special expenses for my child?, 388-14A-4302 Who participates in a hearing on petition for reimbursement?, 388-14A-4303 What happens at a hearing on petition for reimbursement?, and 388-14A-4304 What happens if the judge determines that I have paid too much for day care and special expenses?

Hearing Location(s): On August 23, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than August 24, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by 5:00 p.m. on August 23, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov) [[tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov)], by 5:00 p.m. on August 9, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will clarify applicable lookback periods and statutes of limitations for daycare expenses under *In re: the Marriage of Blackburn*, 12 Wn.App.2d 798, 460 P.3d 202 (2020). Division of child support (DCS) is also updating circumstances in which a daycare overpayment hearing is applicable, various hearing procedures, and how notices are sent by DCS and the office of administrative hearings. Rules are necessary to ensure compliance with recent case law regarding the lookback periods and statutes of limitations that apply to claims for daycare expenses that were previously paid. Rules are also necessary to improve efficiencies and clarify daycare-related hearing and notice policies and procedures.

Reasons Supporting Proposal: This rule making is necessary to bring child support daycare rules in line with recent case law under *In re: [the] Marriage of Blackburn*, 12 Wn.App.2d 798, 460 P.3d 202 (2020) regarding the statute of limitations as it applies to daycare reimbursement requests. It also updates our procedures around daycare overpayment hearings and notice requirements.

Statutory Authority for Adoption: RCW 26.23.035, 26.23.110, and 34.05.220.

Statute Being Implemented: RCW 26.19.080, 26.23.035, and 26.23.110.

Rule is necessary because of state court decision, *In re: the Marriage of Blackburn*, 12 Wn.App.2d 798, 460 P.3d 202 (2020).

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: DSHS, Economic services administration, DCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brady Horenstein, Rules Coordinator, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5291.

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 under RCW 34.05.328 (5)(b)(vii) 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 relate only to internal governmental operations that are not subject to violation by a nongovernment party.

Is exempt under RCW 19.85.025(4) because the proposed amendments do not impact small business and impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

Explanation of exemptions: These rules are exempt under RCW 34.05.328 (5)(b)(vii) 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.

July 12, 2022  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4936.2

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-4300 What can I do if I think I'm paying more than the custodial parent is spending for day care or other special expenses for my child?** (1) When a court or administrative child support order requires a ((A)) noncustodial parent (NCP) to pay a fixed monthly amount for day care or special child rearing expenses, an NCP who has paid child support under a court or administrative order and believes that day care or special child rearing expenses were not actually incurred in the amount of the order may file ((an application for)) a petition for reimbursement. This petition requests the division of child support (DCS) set an administrative hearing to determine if an overpayment of at least ((twenty)) 20 ((per cent)) percent has occurred and how the overpayment should be reimbursed.

((a)) (2) A petition for reimbursement ((may)) must cover a ((twelve)) 12-month period((; and)).

((b)) (a) The ((twelve)) 12-month period may be:

- (i) A calendar year; or
  - (ii) The ~~((twelve))~~ 12-month period following the anniversary date of the support order; or
  - (iii) The ~~((twelve))~~ 12-month period following an adjudication under this section.
- ~~((e))~~ (b) ~~((Twelve))~~ 12-month periods under this section may not overlap.
- ~~((2))~~ (3) The ~~((application))~~ petition must be in writing and at a minimum state:
- (a) The ~~((twelve))~~ 12-month time period to be considered;
  - (b) The date of the order requiring the payment of day care or special child rearing expenses;
  - (c) The amounts required by the court or administrative order for day care or special child rearing expenses for that time period;
  - (d) The amounts actually paid by the NCP for that time period;
  - (e) The total amount of day care or special child rearing expenses which the NCP claims the custodial parent (CP) actually incurred for that time period;
  - (f) The NCP's proportionate share of the expenses actually incurred; and
  - (g) The amount of reimbursement for overpayment to which the NCP claims to be entitled for that time period.
- (4) An NCP must file a petition for reimbursement within two years of the alleged overpayment in order to be entitled to reimbursement under WAC 388-14A-4300 through 388-14A-4304 and RCW 4.16.130. The effective date of the petition is the date DCS receives the written request.
- ~~((3) The effective date of a hearing request is the date DCS receives the written request.))~~
- ~~((4) WAC 388-14A-4300 through 388-14A-4304 apply only to amounts paid during the twelve-month period ending May 31, 1996 or later.))~~
- (5) When a court or administrative child support order requires an NCP to pay variable day care or special child rearing expenses and the fixed monthly amount of day care or special child rearing expenses was calculated in a notice of support owed, an NCP who believes they overpaid such expenses:
- (a) May request an annual review of the notice of support owed under WAC 388-14A-3330; and
  - (b) Is not entitled to a hearing on a petition for reimbursement under WAC 388-14A-4300 through 388-14A-4304.

[Statutory Authority: RCW 74.08.090, 34.05.220, 26.23.035, 74.20A.310. WSR 01-03-089, § 388-14A-4300, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-376.]

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-4302 Who participates in a hearing on petition for reimbursement?** (1) The ~~((division of child support (DCS)))~~ office of administrative hearings (OAH) sends notice of a hearing under this subsection to the noncustodial (NCP) and to the custodial parent (CP). (2) The NCP and the CP participate in the hearing as independent parties with the same procedural rights.

[Statutory Authority: RCW 74.08.090, 34.05.220, 26.23.035, 74.20A.310. WSR 01-03-089, § 388-14A-4302, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-376.]

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-4303 What happens at a hearing on petition for reimbursement?** (1) The noncustodial parent (NCP) has the burden of proving the amounts actually paid by the NCP under the order.

(2) The custodial parent (CP) has the burden of proving the amounts actually incurred for day care and special child rearing expenses.

(3) The CP is not required to provide the address of the day care provider unless the administrative law judge (ALJ) finds that the information may be disclosed under the standards set forth in WAC 388-14A-2105 for the disclosure of the address of the CP.

(4) The division of child support (DCS) and the parties may enter a consent order or agreed settlement instead of proceeding to hearing any time a parent has requested a hearing on a petition for reimbursement. See WAC 388-14A-3600 for the rules regarding consent orders and agreed settlements.

~~((4))~~ (5) If the NCP fails to appear for the hearing, upon proof of service of the notice of hearing the ALJ issues an order of default against the NCP and dismisses the petition for reimbursement.

~~((5))~~ (6) If the CP fails to appear for the hearing, upon proof of service of the notice of hearing the ALJ issues an order of default against the CP and may either hold~~((s))~~ a hearing on the merits of the petition for reimbursement or issue a consent order.

~~((6))~~ (7) A hearing under this subsection is for the limited purpose of determining whether the amount paid by the NCP exceeds the NCP's proportionate share of the amount actually incurred for day care and special child rearing expenses.

(a) If the ALJ determines that the overpayment amounts to ~~((twenty))~~ 20 percent or more of the NCP's share of annual day care and special child rearing expenses, the ALJ enters an order stating:

(i) The ~~((twelve))~~ 12-month time period in question;

(ii) The amount of the overpayment; and

(iii) The method ~~((by which the overpayment shall be reimbursed by the CP))~~ of reimbursement as set forth at WAC 388-14A-4304.

(b) If the ALJ determines that the overpayment amounts to less than ~~((twenty))~~ 20 percent of the NCP's share of annual day care and child rearing expenses, the ALJ enters an order stating:

(i) Whether the NCP has overpaid or underpaid the day care and special child rearing expenses;

(ii) If an overpayment has occurred, by what percentage of the annual proportionate share; and

(iii) That reimbursement under this section is denied for that ~~((twelve))~~ 12-month period.

[Statutory Authority: RCW 74.08.090, 34.05.220, 26.23.035, 74.20A.310. WSR 01-03-089, § 388-14A-4303, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-376.]

AMENDATORY SECTION (Amending WSR 05-07-087, filed 3/16/05, effective 4/16/05)

**WAC 388-14A-4304 What happens if the judge determines that I have paid too much for day care and special expenses?** (1) If at a hearing under WAC 388-14A-4303, the administrative law judge (ALJ) decides that the custodial parent (CP) has not incurred costs in the amount paid by the noncustodial parent (NCP), any ordered overpayment reimbursement may be applied (~~(an-as)~~) as an offset to any nonassistance child support arrears owed by the NCP on that case only. If there is no nonassistance debt owed on the case, the reimbursement must be in the form of a credit against the NCP's future child support obligation:

(a) Spread equally over (~~(a-twelve)~~) one 12-month period starting the month after the administrative order becomes final; or

(b) When the future support obligation will end under the terms of the order in less than (~~(twelve)~~) 12 months, spread equally over the life of the order; or

(c) With the consent of the CP, in the form of a direct reimbursement by the CP to the NCP.

(2) The NCP may not pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments unless:

(a) Specifically agreed to by the CP; and

(b) Specifically agreed to in writing by DCS for periods when the CP or the dependent child receives public assistance.

[Statutory Authority: RCW 26.19.080, 34.05.220, 74.08.090, 74.20A.310. WSR 05-07-087, § 388-14A-4304, filed 3/16/05, effective 4/16/05. Statutory Authority: RCW 74.08.090, 34.05.220, 26.23.035, 74.20A.310. WSR 01-03-089, § 388-14A-4304, filed 1/17/01, effective 2/17/01. Formerly WAC 388-14-376.]

## WSR 22-15-059

## PROPOSED RULES

## DEPARTMENT OF REVENUE

[Filed July 15, 2022, 3:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-18-094.

Title of Rule and Other Identifying Information: WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington.

Hearing Location(s): On August 24, 2022, at 10:00 a.m. This meeting will be conducted over the internet/telephone. Please contact Sierra Crumbaker at SierraC@dor.wa.gov for login/dial-in information.

Date of Intended Adoption: September 7, 2022.

Submit Written Comments to: Nikki Bizzarri, P.O. Box 47453, Olympia, WA 98504-7453, email nikkib@dor.wa.gov, fax 360-534-1606, 360-534-1582.

Assistance for Persons with Disabilities: Contact Julie King, phone 360-704-5733, TTY 800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is updating this rule to ensure consistency with the statutory definition of "selling price" in RCW 82.08.010. The department is also updating this rule to accurately reflect current practices of drydocking, vessel haul-out, and vessel repair.

Reasons Supporting Proposal: Businesses engaged in drydocking, vessel haul-out, and vessel repair will find that the updates to the rule clarify statutory language that will assist taxpayers with reporting requirements for business and occupation tax, retail sales tax, use tax, and public utility tax.

Statutory Authority for Adoption: RCW 82.01.060(2), 84.32.300.

Statute Being Implemented: RCW 82.04.050, 82.04.060, 82.04.070, 82.04.080, 82.04.190, 82.04.250, 82.04.270, 82.04.280, 82.04.290, 82.08.010, 82.08.020, 82.08.0293, 82.16.020.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Nikki Bizzarri, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1582; Implementation and Enforcement: John Ryser, 6400 Linderson Way S.W., Tumwater, WA, 360-534-1605.

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 not a significant legislative rule as defined by RCW 34.05.328.

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 does not impose more-than-minor costs on businesses, as it does not propose any new requirements not already provided for in statute. The proposed rule does not impose fees, filing requirements, or recordkeeping guidelines that are not already established in statute.

July 15, 2022

Atif Aziz

Rules Coordinator

OTS-3967.1

AMENDATORY SECTION (Amending WSR 83-07-033, filed 3/15/83)

**WAC 458-20-181 Vessels, including log patrols, tugs and barges, operating upon waters in the state of Washington.**

~~((Business and Occupation Tax~~

~~**Retailing.** Persons engaged in the business of operating such vessels and tugs are taxable under the retailing classification upon the gross sales of meals (including meals to employees) and other tangible personal property taxable under the retail sales tax.~~

~~**Service and other business activities.** The business of operating lighters is a service business taxable under the service and other business activities classification upon the gross income from such service. Also taxable under this classification is gross income from operation of vessels to provide scenic cruises.~~

~~**Retail Sales Tax**~~

~~Sales of meals and other tangible personal property by persons operating such vessels and tugs are sales at retail and the retail sales tax must be collected thereon. For applicability of retail sales tax where meals are furnished to members of the crew or to other employees as a part of their compensation for services rendered, see WAC 458-20-119.~~

~~Sales of foodstuff and other articles to such operators for resale aboard ship are not subject to retail sales tax.~~

~~Sales to all such operators of fuel, lubricants, machinery, equipment and supplies which are not resold are sales at retail and the retail sales tax must be paid thereon, unless exempt by law.~~

~~Charges made by others for the repair of any boat or barge are also sales at retail and the retail sales tax must be paid upon the total charge made for both labor and materials.~~

~~Charges made for drydocking are not subject to the retail sales tax provided such charges are shown as an item separate from charges made for repairing.~~

~~**Use Tax**~~

~~The use tax applies upon the use within this state of all articles of tangible personal property purchased at retail and upon which the retail sales tax has not been paid, unless exempt by law.~~

~~**Public Utility Tax**~~

~~The business of operating upon waters wholly within the state of Washington vessels which are common carriers regulated by the utilities and transportation commission is taxable under the public utility tax as follows:~~

~~(1) Vessels under sixty-five feet in length, taxable under the classification vessels under sixty-five feet upon gross income.~~

~~(2) Vessels sixty-five feet or more in length, taxable under the classification other public service business upon gross income.~~

~~The other public service classification of the public utility tax applies to the business of operating tugs, barges, and log patrols.))~~

~~(1) Introduction. This rule explains the business and occupation (B&O) tax, sales tax, use tax, and public utility tax responsibilities of those operating vessels upon waters in Washington.~~

(2) **Other rules that may apply.** Readers may want to refer to other rules for additional information, including the following:

(a) WAC 458-20-119 Sales by caterers and food service contractors;

(b) WAC 458-20-135 Extracting natural products;

(c) WAC 458-20-145 Sourcing retail sales for business and occupation tax and state and local retail sales tax—Sourcing of use tax for purchasers;

(d) WAC 458-20-175 Persons engaged in the business of operating as a private or common carrier by air, rail or water in interstate or foreign commerce;

(e) WAC 458-20-176 Commercial deep sea fishing—Commercial passenger fishing—Diesel fuel;

(f) WAC 458-20-178 Use tax and the use of tangible personal property;

(g) WAC 458-20-179 Public utility tax;

(h) WAC 458-20-183 Recreational services and activities;

(i) WAC 458-20-193 Interstate sales of tangible personal property;

(j) WAC 458-20-238 Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents;

(k) WAC 458-20-244 Food and food ingredients.

(3) **Terms.** The following terms apply to this rule.

(a) **Lighter.** A lighter is a large boat or barge used in loading and unloading vessels to transfer goods and passengers to and from moored vessels that cannot reach the place of shipment or delivery.

(b) **Dry-docking.** The act of placing a vessel on a dock that can be kept dry for use during the construction or repairing of the vessel, or the act of bringing a vessel to dry land so that the submerged portions of the hull can be cleaned or inspected.

(c) **Vessel haul-out.** The act of removing a vessel from the water. Vessel haul-out is generally accomplished with a large mobile hoist or crane.

(d) **Dry stack storage.** Land-based vessel storage in the form of stacking berths.

(4) **Business and occupation tax.** Retailing B&O tax applies to retail sales and is measured by the gross proceeds of sale unless the sale is for resale, in which case the wholesaling B&O tax applies. RCW 82.04.050, 82.04.060, 82.04.070, 82.04.250 and 82.04.270. Warehousing B&O tax applies to persons engaging in warehousing activities. RCW 82.04.080 and 82.04.280. The gross income of the business from activities that fall into no other B&O tax classification are subject to the service and other activities B&O tax. RCW 82.04.080 and 82.04.290. Subsection (4) of this rule illustrates how the B&O tax applies in a number of common situations.

(a) **Retailing.**

(i) Tangible personal property. Persons engaged in the business of operating vessels and tugs are taxable under the retailing B&O tax classification upon the gross sales to consumers of tangible personal property that are retail sales, including meals (including meals to employees).

(ii) Services. Charges to consumers made by others for the repair of any boat or barge are retail sales and subject to retailing B&O tax. Also, sales of sightseeing or scenic cruises lasting fewer than 24 hours are retail sales and subject to retailing B&O tax, including



sales of sightseeing cruises that are combined with other goods and services when sold for one nonitemized price.

(iii) Dry-docking and haul-out. Sales of dry-docking and vessel haul-out services are retail sales if the services are performed with respect to the sale of retail services, such as repair or maintenance of the vessel for consumers. The gross income from sales of dry-docking and haul-out services in these instances is taxable under the retailing B&O tax classification. The tax treatment described in this subsection applies regardless of whether the charges are separately itemized.

(b) **Service and other business activities.**

(i) Operation of lighters. The business of operating lighters is a service taxable under the service and other business activities B&O tax classification upon the gross income from such service.

(ii) Dry-docking and haul-out. Charges for dry-docking and vessel haul-out services are taxable under the service and other activities B&O tax classification if sold alone or performed only in conjunction with other services taxable under the service and other activities B&O tax classification. RCW 82.04.290.

(c) **Warehousing.**

(i) Dry stack storage. Gross income from operating a dry stack storage warehouse is taxable under the warehousing B&O tax classification.

(ii) Haul-out. Vessel haul-out services are taxable under the warehousing B&O tax classification if performed with respect to the sale of dry stack or warehouse storage of the vessel. RCW 82.04.080 and 82.04.280.

(5) **Retail sales tax.** Retail sales tax is imposed on retail sales unless an exemption applies. RCW 82.04.050 and 82.08.020. The retail sales tax is imposed on the selling price of the product sold in the retail sale. RCW 82.08.010. While not exhaustive, (a) through (c) of this subsection list a number of common situations where retail sales tax will or will not apply.

(a) Tangible personal property. Sales of tangible personal property to consumers, including prepared food, soft drinks, bottled water, or dietary supplements by persons operating vessels and tugs are sales at retail and retail sales tax must be collected. RCW 82.04.050, 82.08.020, and 82.08.0293.

For applicability of retail sales tax where prepared food, including meals, are furnished to members of the crew or to other employees as a part of their compensation for services rendered, see WAC 458-20-119.

Sales of tangible personal property, including food products, to operators for resale aboard ship are not subject to retail sales tax. RCW 82.04.050, 82.04.190, 82.08.0293. Operators claiming a resale exemption should obtain a reseller permit. For more information on reseller permits see WAC 458-20-102.

Sales to all such operators of fuel, lubricants, machinery, equipment, and supplies, which are not resold, are sales at retail and retail sales tax must be paid.

(b) Services. Charges to consumers made by others for the repair of any boat or barge are sales at retail and retail sales tax must be paid upon the total charge made for both labor and materials.

Also, sales of sightseeing or scenic cruises lasting fewer than 24 hours are subject to retail sales tax, including sales of sightseeing cruises that are combined with other goods and services when sold for one nonitemized price.

(c) Dry-docking and haul-out. Sales of dry-docking and vessel haul-out services are retail sales, and subject to retail sales tax, if the services are performed with respect to the sale of retail services, such as repair or maintenance of the vessel for consumers.

(6) Use tax. The use tax applies for the privilege of using within this state as a consumer, among other things, any articles of tangible personal property or services defined as a retail sale in RCW 82.04.050 and identified in RCW 82.12.020, upon which the retail sales tax has not been paid, unless an exemption applies.

(7) Public utility tax. Persons operating vessels upon waters wholly within the state of Washington as common carriers regulated by the utilities and transportation commission are taxable under the public utility tax as follows:

(a) Persons operating vessels under 65 feet in length, other than tugboats, are subject to the public utility tax under the rate applicable to vessels under 65 feet in length on gross income.

(b) Persons operating vessels 65 feet or more in length, are taxable under the "other public service business" classification on gross income.

(c) The "other public service business" classification of the public utility tax applies to the business of operating tugs, barges, and log patrols.

(d) Vessel haul-out services are subject to public utility tax under the motor transportation or urban transportation classification if they are performed in conjunction with hauling or transporting the vessel on public roads.

[Statutory Authority: RCW 82.32.300. WSR 83-07-033 (Order ET 83-16), § 458-20-181, filed 3/15/83; Order ET 70-3, § 458-20-181 (Rule 181), filed 5/29/70, effective 7/1/70.]

**WSR 22-15-063**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed July 18, 2022, 8:48 a.m.]

The department of fish and wildlife has withdrawn CR-102 proposed rule, listed in WSR 22-05-092, filed on February 16, 2022. Additional information about this rule is at <https://wdfw.wa.gov/about/regulations/development/wolf-livestock-conflict-deterrence>.

For more information, contact the agency rules coordinator Annie Szvetecz, [rules.coordinator@dfw.wa.gov](mailto:rules.coordinator@dfw.wa.gov).

Annie Szvetecz  
Rules Coordinator

## WSR 22-15-077

## PROPOSED RULES

## DEPARTMENT OF ECOLOGY

[Filed July 18, 2022, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-095.

Title of Rule and Other Identifying Information: To implement the Transportation fuel—Clean fuels program (chapter 70A.535 RCW), ecology is proposing rule making to:

- Add a new chapter 173-424 WAC, Clean fuels program rule; and
- Amend chapter 173-455 WAC, Air quality fee rule.

For more information on this rule making, visit <https://ecology.wa.gov/Regulations-Permits/Laws-rules-rulemaking/Rulemaking/WAC-173-424-455>.

Hearing Location(s): On August 23, 2022, at 10:00 a.m., webinar. Presentation, question and answer session followed by the hearing. We are holding this hearing via webinar. This is an online meeting that you can attend from any computer using internet access. Join online and see instructions [https://waecy-wa-gov.zoom.us/meeting/register/tZUtduqupj0uHNcah5ZbCqZn8wL\\_UzQrPL20](https://waecy-wa-gov.zoom.us/meeting/register/tZUtduqupj0uHNcah5ZbCqZn8wL_UzQrPL20). To join by phone, find your local number <https://waecy-wa-gov.zoom.us/j/81013686463>, Meeting ID 810 1368 6463.

Date of Intended Adoption: November 28, 2022.

Submit Written Comments to: Rachel Assink, send US mail to Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600; or send parcel delivery services to Department of Ecology, Air Quality Program, 300 Desmond Drive S.E., Lacey, WA 98503. Submit comments by mail, online, or at the hearing, online <https://aq.ecology.commentinput.com/?id=KTPeV>, by August 31, 2022.

Assistance for Persons with Disabilities: Contact ecology ADA coordinator, phone 360-407-6831, for 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/accessibility> for more information, by August 17, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To implement chapter 70A.535 RCW, the proposed rule:

- Establishes carbon intensity standards for transportation fuels used in Washington.
- Assigns compliance obligations to fuels with carbon intensities that exceed the standard.
- Establishes compliance methods including assigning credits to fuels that have carbon intensities below the standard.

This rule making also amends chapter 173-455 WAC to establish the process for setting fees to recover the costs of developing and implementing the program.

Reasons Supporting Proposal: Transportation is the largest source of greenhouse gas (GHG) emissions in Washington, contributing about 45 percent of total GHG emissions statewide. In 2021, the legislature passed the Transportation fuel—Clean fuels program (chapter 70A.535 RCW) to reduce emissions of GHGs and conventional air pollutants from transportation and to spur economic development through deployment of clean fuel technology. Washington now joins California, Oregon, and

British Columbia, which already have similar clean (low carbon) fuel programs.

The law directs ecology to adopt rules establishing the clean fuels program by January 1, 2023. The program must reduce the carbon intensity of transportation fuels used in Washington by 20 percent below 2017 levels by 2038. Carbon intensity accounts for GHG emissions throughout the full life cycle of the fuel (i.e., GHG emissions from feedstock production and transport, fuel production and transport, and use of the fuel) per unit energy of the fuel.

The law also allows ecology to charge fees to recover the direct and indirect costs of developing and implementing the program, including the associated fuel supply forecasting work of the Washington department of commerce.

Statutory Authority for Adoption: Chapter 70A.535 RCW, Transportation fuel—Clean fuels program.

Statute Being Implemented: Chapter 70A.535 RCW, Transportation fuel—Clean fuels program.

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: Not applicable.

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Debebe Dererie, Lacey, Washington, 360-688-8103; Implementation and Enforcement: Joel Creswell, Lacey, Washington, 360-972-5035.

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 Rachel Assink, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 425-531-3444, for Washington relay service or TTY call 711 or 877-833-6341, email rachel.assink@ecy.wa.gov.

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The analyses required under the Regulatory Fairness Act (RFA), and their inclusion in a small business economic impact statement (SBEIS), are based on whether the proposed rule would impose compliance costs on small businesses. A rule is otherwise exempt from these analyses under RCW 19.85.025(4).

Based on available information, we did not identify any small businesses that would have credit deficits under the proposed rule. These known transportation fuel suppliers and electric utilities include only:

- Large businesses themselves, or part of larger businesses, averaging 8,857 employees.
- Publicly owned.

However, we do not have full information concerning all potential entities incurring any kind of direct compliance cost under the proposed rule. Specifically, we do not have comprehensive information about all potential credit generators that could opt into the program.

While we may be able to make some assumptions about opt-in entities, we cannot be certain of all their attributes, and about whether any are small businesses. Due to uncertainty about the employment attributes of opt-in entities, we chose to complete the analyses re-

quired under RFA, to fully understand potential disproportion in the impacts of the proposed rule.

Opt-in entities would incur compliance costs related to registration and reporting. We note, however, that opt-in entities are not likely to opt in unless they expect a private net benefit, i.e., the costs they incur complying with the proposed rule's registration and reporting requirements are outweighed by the benefits of generating and selling credits.

As RFA requires analyses specifically related to employment impacts and price or output impacts (as they play into revenue and profits), we also determined this analysis would be the most appropriate space to discuss additional modeling performed to fully understand the potential impacts of the proposed rule.

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

### SBEIS

#### Relevant Information for State Register Publication Proposed Chapter 173-424 WAC, Clean Fuels Program Rule

This SBEIS presents the:

- Compliance requirements of the proposed rule.
- Results of the analysis of relative compliance cost burden.
- Consideration of lost sales or revenue.
- Cost-mitigating action taken by ecology, if required.
- Small business and local government consultation.
- Industries likely impacted by the proposed rule.
- Expected net impact on jobs statewide.

A small business is defined by RFA (chapter 19.85 RCW) as having 50 or fewer employees. Estimated costs are determined as compared to the existing regulatory environment—the regulations in the absence of the rule. The SBEIS only considers costs to "businesses in an industry" in Washington state. This means that impacts, for this document, are not evaluated for government agencies.

The existing regulatory environment is called the "baseline" in this document. It includes only existing laws and rules at federal and state levels.

*This information is excerpted from ecology's complete set of regulatory analyses of the proposed rule. For complete discussion of the likely costs, benefits, minimum compliance burden, and relative burden on small businesses, see the regulatory analyses (Ecology publication no. 22-02-029, July 2022).*

**CHOICE TO COMPLETE AN SBEIS:** The analyses required under RFA, and their inclusion in an SBEIS, are based on whether the proposed rule would impose compliance costs on small businesses. A rule is otherwise exempt from these analyses under RCW 19.85.025(4).

Based on available information, we did not identify any small businesses that would have credit deficits under the proposed rule. These known transportation fuel suppliers and electric utilities include only:

- Large businesses themselves, or part of larger businesses, averaging 8,857 employees.
- Publicly owned.

However, we do not have full information concerning all potential entities incurring any kind of direct compliance cost under the proposed rule. Specifically, we do not have comprehensive information about all potential credit generators that could opt into the program.

While we may be able to make some assumptions about opt-in entities, we cannot be certain of all their attributes, and about whether any are small businesses. Due to uncertainty about the employment attributes of opt-in entities, we chose to complete the analyses required under RFA, to fully understand potential disproportion in the impacts of the proposed rule.

Opt-in entities would incur compliance costs related to registration and reporting. We note, however, that opt-in entities are not likely to opt in unless they expect a private net benefit, i.e., the costs they incur complying with the proposed rule's registration and reporting requirements are outweighed by the benefits of generating and selling credits.

As RFA requires analyses specifically related to employment impacts and price or output impacts (as they play into revenue and profits), we also determined this analysis would be the most appropriate space to discuss additional modeling performed to fully understand the potential impacts of the proposed rule.

**COMPLIANCE REQUIREMENTS OF THE PROPOSED RULE, INCLUDING PROFESSIONAL SERVICES: Baseline:**

The baseline for our analyses generally consists of existing rules and laws, and their requirements. This is what allows us to make a consistent comparison between the state of the world with and without the proposed rule.

For this analysis, the baseline includes:

- Chapter 70A.535 RCW, Transportation fuel—Clean fuels program.
- Chapter 70A.30 RCW, Motor vehicle emission standards.
- Chapter 70A.45 RCW, Limiting greenhouse gas emissions.
- Chapter 173-455 WAC, Air quality fee rule.

**Proposed:** The proposed rule would establish:

- Definitions specific to the clean fuels program.
- Applicability and exemptions for fuels.
- General requirements for regulated parties, opt-in entities, and credit aggregators.
- Identification of first fuel reporting entities, subsequent reporting entities, and credit or deficit generators, for:
  - Liquid fuels.
  - Gaseous fuels.
  - Electricity.
  - The backstop aggregator.
- Registration requirements.
- Recordkeeping requirements.
- Reporting requirements.
- Credit and deficit generation procedures.
- Credit transaction procedures.
- Required calculation methods for credits and deficits.
- How compliance must be demonstrated.
- A credit clearance market.
- Advance credit procedures.
- Credit generation methods for zero-emission vehicle infrastructure.
- Carbon intensity calculations and procedures.

- Authority to suspend, revoke, or modify accounts, carbon intensities, or credits.
- Public disclosure requirements.
- Emergency deferral procedures in the event of a fuels shortage.
- Forecast deferral procedures.
- Validation and verification requirements.

Proposed amendments to the fee rule would:

- Set the procedure for determining clean fuels program fees based on workload.

**COSTS OF COMPLIANCE: EQUIPMENT:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of equipment beyond those underlying costs of reducing carbon intensity of transportation fuels in the state (see Costs of compliance: Other, below).

**COSTS OF COMPLIANCE: SUPPLIES:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of supplies beyond those underlying costs of reducing carbon intensity of transportation fuels in the state (see Costs of compliance: Other, below).

**COSTS OF COMPLIANCE: LABOR:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of labor beyond those underlying costs of reducing carbon intensity of transportation fuels in the state (see Costs of compliance: Other, below).

**COSTS OF COMPLIANCE: PROFESSIONAL SERVICES:** Compliance with the proposed rule, compared to the baseline, is not likely to impose additional costs of professional services beyond those underlying costs of reducing carbon intensity of transportation fuels in the state (see Costs of compliance: Other, below).

**COSTS OF COMPLIANCE: ADMINISTRATIVE COSTS:** Where applicable, ecology estimates administrative costs (overhead) as part of the cost of labor and professional services, above.

**COSTS OF COMPLIANCE: OTHER:** We estimated costs associated with the clean fuels program based on an analysis performed by Berkeley Research Group (BRG; BRG Energy & Climate, 2022. Washington Department of Ecology Clean Fuel Standard Cost Benefit Analysis Report, May 12, 2022, <https://ecology.wa.gov/DOE/files/22/22790fe6-fc3a-414d-b3ba-036af0975258.pdf>) in compliance with the authorizing statute (chapter 70A.535 RCW). BRG analysis estimated the costs and benefits of the clean fuels program. The baseline for the BRG analysis is the same as for this preliminary regulatory analysis. The report presented costs per gallon of gas and diesel, and we converted these to overall costs using supporting modeling data provided by BRG.

The BRG analysis focused on two scenarios:

- Least cost: A least-cost approach to achieving the required 20 percent reduction by 2038, for entities required to comply. This scenario does not correspond to the proposed rule.
- Accelerated reduction: A least cost approach to achieving the required 20 percent reduction by 2034, reducing average carbon intensity by a full 10 percent in 2034. The accelerated reduction scenario aligns with the requirements of the proposed rule.

Under the Accelerated Reduction scenario, BRG found the following costs per gallon equivalent of transportation fuels.

**Impacts of accelerated reduction scenario on consumer fuel prices, 2020\$/GGE:**



<i>Year</i>	Consumer Gasoline	Consumer Diesel
2023	0.007	(0.016)
2024	0.017	(0.006)
2025	0.036	0.014
2026	0.056	0.034
2027	0.076	0.054
2028	0.105	0.083
2029	0.134	0.113
2030	0.164	0.142
2031	0.193	0.171
2032	0.193	0.171
2033	0.193	0.170
2034	0.389	0.368
2035	0.389	0.367
2036	0.389	0.366
2037	0.005	0.005
2038	0.005	0.005

(Source: BRG)

**Impacts of accelerated reduction scenario on nonconsumer fuel prices, 2020\$/GGE:**

<i>Year</i>	Unblended Gasoline	Ethanol	Renewable Naphtha	Electricity	Fossil Diesel	Biodiesel	Renewable Diesel	Hydrogen	CNG	RNG	Propane	Renewable Propane
2023	0.045	(0.430)	(0.658)	(1.833)	0.031	(0.869)	(0.951)	0.504	(0.368)	(0.634)	(0.459)	(0.686)
2024	0.055	(0.420)	(0.648)	(1.840)	0.041	(0.859)	(0.941)	(0.728)	(0.359)	(0.624)	(0.449)	(0.676)
2025	0.075	(0.401)	(0.629)	(1.837)	0.061	(0.839)	(0.921)	(0.708)	(0.339)	(0.604)	(0.429)	(0.657)
2026	0.094	(0.381)	(0.609)	(1.835)	0.081	(0.819)	(0.901)	(0.688)	(0.319)	(0.584)	(0.410)	(0.637)
2027	0.114	(0.361)	(0.589)	(1.832)	0.101	(0.799)	(0.881)	(0.668)	(0.299)	(0.564)	(0.390)	(0.617)
2028	0.143	(0.332)	(0.560)	(1.819)	0.131	(0.770)	(0.851)	(1.879)	(0.269)	(0.534)	(0.360)	(0.587)
2029	0.173	(0.303)	(0.531)	(1.806)	0.160	(0.740)	(0.821)	(1.850)	(0.239)	(0.504)	(0.330)	(0.557)
2030	0.202	(0.273)	(0.501)	(1.794)	0.190	(0.710)	(0.791)	(1.820)	(0.209)	(0.474)	(0.300)	(0.527)
2031	0.231	(0.244)	(0.472)	(1.764)	0.220	(0.680)	(0.762)	(1.790)	(0.180)	(0.445)	(0.270)	(0.497)
2032	0.231	(0.244)	(0.472)	(1.764)	0.220	(0.680)	(0.762)	(1.790)	(0.180)	(0.445)	(0.270)	(0.497)
2033	0.231	(0.244)	(0.472)	(1.764)	0.220	(0.680)	(0.762)	(1.790)	(0.180)	(0.445)	(0.270)	(0.497)
2034	0.427	(0.048)	(0.276)	(1.568)	0.419	(0.481)	(0.563)	(1.591)	0.019	(0.246)	(0.072)	(0.299)
2035	0.427	(0.048)	(0.276)	(1.568)	0.419	(0.481)	(0.563)	(1.591)	0.019	(0.246)	(0.072)	(0.299)
2036	0.427	(0.048)	(0.276)	(1.568)	0.419	(0.481)	(0.563)	(1.591)	0.019	(0.246)	(0.072)	(0.299)
2037	0.005	(0.001)	(0.004)	(0.020)	0.005	(0.006)	(0.007)	(0.020)	0.000	(0.003)	(0.001)	(0.004)
2038	0.005	(0.001)	(0.004)	(0.020)	0.005	(0.006)	(0.007)	(0.020)	0.000	(0.003)	(0.001)	(0.004)

(Source: BRG)

**Calculations:** We multiplied these values by the fuel volumes modeled by BRG, and estimated the following total costs, cost savings, and net costs in each year of the program. A negative net cost reflects a net benefit.

**Total costs by year, billions, 2020\$.**

<i>Year</i>	Costs	Cost Savings	Net Costs
2023	\$0.15	\$0.33	(\$0.18)
2024	\$0.18	\$0.33	(\$0.15)
2025	\$0.25	\$0.34	(\$0.09)
2026	\$0.32	\$0.34	(\$0.03)
2027	\$0.38	\$0.35	\$0.03

Year	Costs	Cost Savings	Net Costs
2028	\$0.47	\$0.36	\$0.11
2029	\$0.56	\$0.38	\$0.18
2030	\$0.64	\$0.21	\$0.42
2031	\$0.71	\$0.20	\$0.51
2032	\$0.68	\$0.20	\$0.49
2033	\$0.65	\$0.19	\$0.46
2034	\$1.15	\$0.12	\$1.03
2035	\$1.06	\$0.12	\$0.94
2036	\$1.01	\$0.08	\$0.93
2037	\$0.01	\$0.00	\$0.01
2038	\$0.01	\$0.00	\$0.01

Ecology's regulatory analyses reflect streams of costs and benefits in present values. A present value reflects future values in current value, reflecting the opportunity cost of having funds later versus now. The table below summarizes the total present value costs, cost-savings, and net costs likely generated by the proposed rule.

**Total present value costs and cost-savings, billions, 2020\$.**

Total Present Value Costs	Total Present Value Cost-Savings	Total Present Value Net Costs
\$6.52	\$3.07	\$3.45

**Reporting costs:** We estimated reporting costs using CARB's estimated recordkeeping and reporting costs for the California low carbon fuel standard. CARB estimated annual costs of \$216,658 per reporting entity (converted to 2020-dollars). We identified 26 transportation fuel suppliers potentially required to comply with the proposed rule. If all 26 of these suppliers incur reporting costs, they would pay a total of \$5.6 million per year. We also identified up to 60 electric utilities in Washington, which would collectively incur a total of \$13.0 million per year in reporting costs.

Ecology's regulatory analyses reflect streams of costs and benefits in present values. A present value reflects future values in current value, reflecting the opportunity cost of having funds later versus now. The table below summarizes the total present value reporting costs estimated for the proposed rule.

**Total present value costs of reporting, billions, 2020\$.**

Fuel Supplier Costs	Electric Utility Costs	Total Present Value Costs
\$0.01	\$0.01	\$0.02

**COMPARISON OF COMPLIANCE COST FOR SMALL VERSUS LARGE BUSINESSES:** The average affected business likely to have a credit deficit under the proposed rule employs approximately 8,857 people, and there are not likely small businesses in this group.

For potential opt-in entities, we do not have comprehensive knowledge of their attributes or the internal business decisions. We assume, however, that opt-in entities would only choose to participate based on a positive expected private net benefit (accounting for compliance costs and the benefits of selling credits).

Therefore, overall, we conclude that no small businesses would incur net compliance costs under the proposed rule. Therefore ecology is not required, under RFA, to include all legal and feasible elements in the proposed rule to mitigate disproportionate costs on small businesses. Note, however, that we have voluntarily completed the additional analyses and considerations required under RFA.

**CONSIDERATION OF LOST SALES OR REVENUE:** Businesses that would incur compliance costs under the proposed rule could experience reduced sales or revenues if the proposed rule significantly affects the prices of the goods they sell. The degree to which this could happen is strongly related to each business's production and pricing model (whether additional lump-sum costs would significantly affect marginal costs), as well as the specific attributes of the markets in which they sell goods, including the degree of influence each firm has on market prices, as well as the relative responsiveness of market demand to price changes.

BRG estimated the following impacts to consumer prices, based on an assumed full pass-through of producer, wholesaler, or retailer costs to consumers.

**Policy impacts of Accelerated Reduction scenario on consumer fuel prices, 2020\$/GGE.**

<i>Year</i>	Consumer Gasoline	Consumer Diesel
2023	0.007	(0.016)
2024	0.017	(0.006)
2025	0.036	0.014
2026	0.056	0.034
2027	0.076	0.054
2028	0.105	0.083
2029	0.134	0.113
2030	0.164	0.142
2031	0.193	0.171
2032	0.193	0.171
2033	0.193	0.170
2034	0.389	0.368
2035	0.389	0.367
2036	0.389	0.366
2037	0.005	0.005
2038	0.005	0.005

(Source: BRG)

Based on supporting data provided by BRG, we identified that consumption of gasoline would consistently decrease over the course of the clean fuels program, while consumption of fossil diesel would decrease through 2032, increasing through 2035, and decreasing again through 2038.

Considering only these impacts to fossil-based gasoline and diesel, decreases in output could outweigh increases in prices in some years, resulting in reduced revenues. Thanks to the flexibility of transportation fuel suppliers over time, however, this may not be the case. Suppliers could choose to change the types of fuel they supply and how fuels are blended, to mitigate or avoid negative impacts to fossil fuel revenues. Moreover, expanded electrification and alternative fuel production would support additional revenues to new entrants to the Washington transportation fuels sector, including utilities or businesses specializing in electric vehicle charging.

**MITIGATION OF DISPROPORTIONATE IMPACT:** RFA (RCW 19.85.030(2)) states that: "Based upon the extent of disproportionate impact on small business identified in the statement prepared under RCW 19.85.040, the agency shall, where legal and feasible in meeting the stated objectives of the statutes upon which the rule is based, reduce the costs imposed by

the rule on small businesses. The agency must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements;
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements;
- (c) Reducing the frequency of inspections;
- (d) Delaying compliance timetables;
- (e) Reducing or modifying fine schedules for noncompliance; or
- (f) Any other mitigation techniques including those suggested by small businesses or small business advocates."

Based on the absence of small businesses among likely entities with deficits under the proposed rule, and the absence of opt-in entities that would see compliance costs (rather than a benefit), ecology is not required to consider the above options or mitigate the likely nonexistent disproportionate costs. Nonetheless, we note that during development of the proposed rule, ecology considered alternative rule contents, and did not include the following elements in the rule because they would have imposed additional burden on covered parties:

- Compliance years: Making 2023 a full compliance year.
- GREET model: Using the most recent version of the Argonne GREET model.
- Verification: Including third-party verification at the start of the program.

**SMALL BUSINESS AND LOCAL GOVERNMENT CONSULTATION:** We involved small businesses and local governments in its development of the proposed rule, using:

- Stakeholder meetings held 10/6/21, 11/16/21, 1/27/22, 3/15/22, 4/13/22.
- Stakeholder meeting notices and meeting materials, project updates, and rule announcement notice.

Attendance at stakeholder meetings included representation from the following, which includes representation of small businesses and local governments:

- Clean Fuels Alliance America.
- Renewable Fuels Association.
- Renewable Natural Gas Coalition.
- Airlines for America.
- Superior Court Judges Association.
- Renewable Hydrogen Alliance.
- Pacific Merchant Shipping Association.
- NW Energy Coalition.
- City of Tacoma.
- Port of Seattle.
- City of Seattle.
- King County.
- Port of Kalama.

**NAICS CODES OF INDUSTRIES IMPACTED BY THE PROPOSED RULE:** 2211, Electric Power Generation, Transmission and Distribution

3241, Petroleum and Coal Products Manufacturing

3251, Basic Chemical Manufacturing

4247, Petroleum and Petroleum Products Merchant Wholesalers

4251, Wholesale Trade Agents and Brokers

4451, Grocery and Convenience Retailers

4471, Gasoline Stations  
 4921, Couriers and Express Delivery Services

The proposed rule may also impose compliance costs on businesses in the following industries that ecology assumes are likely to opt-in to the clean fuels program because they expect a net benefit from participation:

- Aviation fuels manufacturing (NAICS 324110)
- Electric vehicle charging companies (no current NAICS available)
- Electric vehicle manufacturers (NAICS 336110)
- Electric or hydrogen vehicle fleet owners (various possible NAICS)

**IMPACT ON JOBS:** BRG estimated the following impacts to jobs resulting from the proposed rule, as reflected in their corresponding Accelerated Reduction scenario.

**Overall employment impacts.**

Year	Indirect	Induced	Direct	Total Net
2023	15	7	-5	17
2024	17	8	-5	20
2025	18	8	-4	22
2026	20	9	-4	25
2027	23	10	-3	30
2028	25	11	-2	34
2029	27	12	-2	37
2030	31	14	-1	44
2031	36	16	1	53
2032	44	20	3	67
2033	56	25	7	88
2034	54	24	6	84
2035	71	31	11	113
2036	92	41	21	154
2037	1	1	0	2
2038	2	1	1	4

(Source: BRG)

A copy of the statement may be obtained by contacting Rachel Assink, Department of Ecology, Air Quality Program, P.O. Box 47600, Olympia, WA 98504-7600, phone 425-531-3444, for Washington relay service or TTY call 711 or 877-833-6341, email rachel.assink@ecy.wa.gov.

July 18, 2022  
 Heather R. Bartlett  
 Deputy Director

OTS-3854.4

**Chapter 173-424 WAC  
 CLEAN FUELS PROGRAM RULE**

**PART 1 - OVERVIEW**NEW SECTION

**WAC 173-424-100 Purpose.** This rule establishes requirements for suppliers and consumers of certain transportation fuels in Washington in order to reduce the lifecycle greenhouse gas emissions per unit energy (carbon intensity) of transportation fuels used in the state.

[]

NEW SECTION

**WAC 173-424-110 Definitions.** Except as provided elsewhere in this chapter, the definitions in this section apply throughout the chapter:

(1) "Above the rack" means sales of transportation fuel at pipeline origin points, pipeline batches in transit, barge loads in transit, and at terminal tanks before the transportation fuel has been loaded into trucks.

(2) "Advance credits" refers to credits advanced under WAC 173-424-550 for actions that will result in reductions of the carbon intensity of Washington's transportation fuels.

(3) "Aggregation indicator" means an identifier for reported transactions that are a result of an aggregation or summing of more than one transaction in Washington fuels reporting system (WFRS). An entry of "true" indicates that multiple transactions have been aggregated and are reported with a single transaction number. An entry of "false" indicates that the transaction record represent a single fuel transaction.

(4) "Aggregator" or "credit aggregator" means a person who registers to participate in the clean fuels program, described in WAC 173-424-140(3), on behalf of one or more credit generators to facilitate credit generation and to trade credits.

(5) "Aggregator designation form" means an ecology-approved document that specifies that a credit generator has designated an aggregator to act on its behalf.

(6) "Alternative fuel" means any transportation fuel that is not gasoline or a diesel fuel, including those fuels specified in WAC 173-424-120(2).

(7) "Alternative fuel portal" or "AFP" means the portion of the WFRS where fuel producers can register their production facilities and submit fuel pathway code applications and physical pathway demonstrations.

(8) "Alternative jet fuel" means a fuel made from petroleum or nonpetroleum sources that can be blended and used with conventional petroleum jet fuels without the need to modify aircraft engines and existing fuel distribution infrastructure. To generate credits under this CFP, such fuel must have a lower carbon intensity than the appli-

cable annual carbon intensity standard in Table 2 of WAC 173-424-900. Alternative jet fuel includes those jet fuels derived from co-processed feedstocks at a conventional petroleum refinery.

(9) "Animal fat" means the inedible fat that originates from a rendering facility as a product of rendering the by-products from meat processing facilities including animal parts, fat, and bone. "Yellow grease" must be reported under an applicable animal fat pathway if evidence is not provided to the verifier or ecology to confirm the quantity that is animal fat and the quantity that is used cooking oil.

(10) "Application" means the type of vehicle where the fuel is consumed in terms of LDV/MDV for light-duty vehicle/medium-duty vehicle or HDV for heavy-duty vehicle.

(11) "Backstop aggregator" means a qualified entity approved by ecology under WAC 173-424-140(3) to aggregate credits for electricity used as a transportation fuel, when those credits would not otherwise be generated.

(12) "Base credits" refers to electricity credits that are generated by the carbon reduction between the gasoline or diesel standard and the carbon intensity of utility electricity.

(13) "Battery electric vehicle" or "BEV" means any vehicle that operates solely by use of a battery or battery pack, or that is powered primarily through the use of an electric battery or battery pack but uses a flywheel or capacitor that stores energy produced by the electric motor or through regenerative braking to assist in vehicle operation.

(14) "Below the rack" means sales of clear or blended gasoline or diesel fuel where the fuel is being sold as a finished fuel for use in a motor vehicle.

(15) "Bill of lading" means a document issued that lists goods being shipped and specifies the terms of their transport.

(16) "Bio-CNG" means biomethane which has been compressed to CNG. Bio-CNG has equivalent performance characteristics when compared to fossil CNG.

(17) "Biodiesel" means a motor vehicle fuel consisting of mono alkyl esters of long chain fatty acids derived from vegetable oils, animal fats, or other nonpetroleum resources, not including palm oil, designated as B100 and complying with ASTM D6751.

(18) "Biodiesel blend" means a fuel comprised of a blend of biodiesel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend.

(19) "Bio-L-CNG" means biomethane which has been compressed, liquefied, regasified, and recompressed into L-CNG, and has performance characteristics at least equivalent to fossil L-CNG.

(20) "Bio-LNG" means biomethane which has been compressed and liquefied into LNG. Bio-LNG has equivalent performance characteristics when compared to fossil LNG.

(21) "Biogas" means gas comprised primarily of methane and carbon dioxide, produced by the anaerobic decomposition of organic matter in a landfill, lagoon, or constructed reactor (digester). Biogas often contains a number of other impurities, such as hydrogen sulfide, and it cannot be directly injected into natural gas pipelines or combusted in most natural-gas-fueled vehicles unless first upgraded to biomethane. It can be used as a fuel in boilers and engines to produce electrical power.

(22) "Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, or microorganisms, including:

Products, by-products, residues and waste from agriculture, forestry, and related industries; the nonfossilized and biodegradable organic fractions of industrial and municipal wastes; and gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

(23) "Biomass-based diesel" means a biodiesel or a renewable diesel.

(24) "Biomethane" means methane derived from biogas, or synthetic natural gas derived from renewable resources, including the organic portion of municipal solid waste, which has been upgraded to meet standards for injection to a natural gas common carrier pipeline, or for use in natural gas vehicles, natural gas equipment, or production of renewable hydrogen. Biomethane contains all of the environmental attributes associated with biogas and can also be referred to as renewable natural gas.

(25) "Blendstock" means a fuel component that is either used alone or is blended with one or more other components to produce a finished fuel used in a motor vehicle. Each blendstock corresponds to a fuel pathway in the Washington Greenhouse Gases, Regulated Emissions, and Energy use in Transportation version 3.0 (WA-GREET 3.0) model, (November 28, 2022), which is incorporated herein by reference. A blendstock that is used directly as a transportation fuel in a vehicle is considered a finished fuel.

(26) "Bulk system" means a fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Fuel storage and blending facilities that are not fed by pipeline or vessel are considered outside the bulk transfer system.

(27) "Business partner" refers to the second party that participates in a specific transaction involving the regulated party. This can either be the buyer or seller of fuel, whichever applies to the specific transaction.

(28) "Buy/sell board" means a section of the WFRS where registered parties can post that they are interested in buying or selling credits.

(29) "Carbon intensity" or "CI" means the amount of lifecycle greenhouse gas emissions per unit of energy of fuel expressed in grams of carbon dioxide equivalent per megajoule (gCO<sub>2</sub>e/MJ).

(30) "Cargo handling equipment" or "CHE" means any off-road, self-propelled vehicle or equipment, other than yard trucks, used at a port or intermodal rail yard to lift or move container, bulk, or liquid cargo carried by ship, train, or another vehicle, or used to perform maintenance and repair activities that are routinely scheduled or that are due to predictable process upsets. Equipment includes, but is not limited to, rubber-tired gantry cranes, top handlers, side handlers, reach stackers, loaders, aerial lifts, excavators, tractors, and dozers.

(31) "Carryback credit" means a credit that was generated during or before the prior compliance period that a regulated party acquires between January 1st and April 30th of the current compliance period to meet its compliance obligation for the prior compliance period.

(32) "Clean fuel standard" or "low carbon fuel standard" means the annual average carbon intensity a regulated party must comply with, as listed in Table 1 under WAC 173-424-900 for gasoline and gasoline substitutes and in Table 2 under WAC 173-424-900 for diesel fuel and diesel substitutes.



(33) "Clear diesel" means a light middle or middle distillate grade diesel fuel derived from crude oil that has not been blended with a renewable fuel.

(34) "Clear gasoline" means gasoline derived from crude oil that has not been blended with a renewable fuel.

(35) "Compliance period" means each calendar year(s) during which regulated parties must demonstrate compliance under WAC 173-424-140.

(36) "Compressed natural gas" or "CNG" means natural gas stored inside a pressure vessel at a pressure greater than the ambient atmospheric pressure.

(37) "Conventional jet fuel" means aviation turbine fuel including commercial and military jet fuel. Commercial jet fuel includes products known as Jet A, Jet A-1, and Jet B. Military jet fuel includes products known as JP-5 and JP-8.

(38) "Co-processing" means the processing and refining of renewable or alternative low-carbon feedstocks intermingled with crude oil and its derivatives at petroleum refineries.

(39) "Credit facilitator" means a person in the WFRS that a regulated party designates to initiate and complete credit transfers on behalf of the regulated party.

(40) "Credit generator" means a person eligible to generate credits by providing clean fuels for use in Washington and who voluntarily registers to participate in the clean fuels program.

(41) "Credits" and "deficits" mean the units of measure used for determining a regulated entity's compliance with the average carbon intensity requirements in WAC 173-424-900. Credits and deficits are denominated in units of metric tons of carbon dioxide equivalent (CO<sub>2</sub>e), and are calculated pursuant to WAC 173-424-540 and 173-424-560.

(42) "Crude oil" means any naturally occurring flammable mixture of hydrocarbons found in geologic formations.

(43) "Day" means a calendar day unless otherwise specified as a business day.

(44) "Deferral" means a delay or change in the applicability of a scheduled applicable clean fuel standard for a period of time, accomplished pursuant to an order issued under WAC 173-424-720 or 173-424-730 as directed under RCW 70A.535.110 and 70A.535.120.

(45) "Deficit generator" means a fuel reporting entity who generates deficits in the CFP program.

(46) "Denatured fuel ethanol" or "ethanol" means nominally anhydrous ethyl alcohol meeting ASTM D4806 standards. It is intended to be blended with gasoline for use as a fuel in a spark-ignition internal combustion engine. Before it is blended with gasoline, the denatured fuel ethanol is first made unfit for drinking by the addition of substances approved by the Alcohol and Tobacco Tax and Trade Bureau.

(47) "Diesel fuel" or "diesel" means either:

(a) A light middle distillate or middle distillate fuel suitable for compression ignition engines blended with not more than five volume percent biodiesel and conforming to the specifications of ASTM D975; or

(b) A light middle distillate or middle distillate fuel blended with at least five and not more than 20 volume percent biodiesel suitable for compression ignition engines conforming to the specifications of ASTM D7467.

(48) "Direct current fast charging" means charging an electric vehicle at 50 kW and higher using direct current.

(49) "Disproportionately impacted communities" means communities that are identified by the department of health pursuant to chapters 70A.02 and 19.405 RCW.

(50) "Distiller's corn oil" has the same meaning as "technical corn oil."

(51) "Distiller's sorghum oil" has the same meaning as "technical sorghum oil."

(52) "Duty-cycle testing" means a test procedure used for emissions and vehicle efficiency testing.

(53) "E10" means gasoline containing 10 volume percent fuel ethanol.

(54) "E100" also known as "denatured fuel ethanol," means nominally anhydrous ethyl alcohol.

(55) "Ecology" means the Washington state department of ecology.

(56) "Electric cargo handling equipment (eCHE)" means cargo handling equipment using electricity as the fuel.

(57) "Electric ground support equipment (eGSE)" means self-propelled vehicles used off-road at airports to support general aviation activities that use electric batteries for propulsion and functional energy and only has electric motors. For the purpose of this rule that includes, but is not limited to, pushbacks, belt loaders, and baggage tractors.

(58) "Electric power for ocean-going vessel (eOGV)" means shore power provided to an ocean going vessel at-berth.

(59) "Electric transport refrigeration units (eTRU)" means refrigeration systems powered by electricity designed to refrigerate or heat perishable products that are transported in various containers, including semi-trailers, truck vans, shipping containers, and rail cars.

(60) "Electric vehicle (EV)," for purposes of this regulation, refers to battery electric vehicles (BEVs) and plug-in hybrid electric vehicles (PHEVs).

(61) "Emergency period" is the period of time in which an emergency action under WAC 173-424-720 is in effect.

(62) "Energy economy ratio (EER)" means the dimensionless value that represents the efficiency of a fuel as used in a powertrain as compared to a reference fuel used in the same powertrain.

(a) EERs are often a comparison of miles per gasoline gallon equivalent (mpge) between two fuels.

(b) EERs for fixed guideway systems are based on MJ/number of passenger-miles.

(63) "Environmental attribute" means greenhouse gas emission reduction recognition in any form, including verified emission reductions, voluntary emission reductions, offsets, allowances, credits, avoided compliance costs, emission rights and authorizations under any law or regulation, or any emission reduction registry, trading system, or reporting or reduction program for greenhouse gas emissions that is established, certified, maintained, or recognized by any international, governmental, or nongovernmental agency.

(64) "Export" means transportation fuel reported in the WFRS that is delivered to locations outside of Washington state by any means of transport, other than in the fuel tank of a motor vehicle for the purpose of propelling the motor vehicle.

(65) "Feedstock transfer document" means a document, or combination of documents, that demonstrates the delivery of specified source feedstocks from the point of origin to the fuel production facility as required under WAC 173-424-600(6).

(66) "Finished fuel" means a transportation fuel that is used directly in a vehicle for transportation purposes without requiring additional chemical or physical processing.

(67) "First fuel reporting entity" means the first entity responsible for reporting in the WFRS for a given amount of fuel. This entity initially holds the status as the fuel reporting entity and the credit or deficit generator for this fuel amount, but may transfer either status pursuant to WAC 173-424-200 or 173-424-210.

(68) "Fixed guideway" means a public transportation facility using and occupying a separate right of way for the exclusive use of public transportation using rail, a fixed catenary system, an aerial tramway, or for a bus rapid transit system.

(69) "Fossil" means any naturally occurring flammable mixture of hydrocarbons found in geologic formations such as rock or strata. When used as an adjective preceding a type of fuel (e.g., "fossil gasoline," or "fossil LNG"), it means the subset of that type of fuel that is derived from a fossil source.

(70) "Fuel pathway" means a detailed description of all stages of fuel production and use for any particular transportation fuel, including feedstock generation or extraction, production, distribution, and combustion of the fuel by the consumer. The fuel pathway is used to calculate the carbon intensity of each transportation fuel through a complete well-to-wheel analysis of that fuel's life cycle greenhouse gas emissions.

(71) "Fuel pathway applicant" refers to an entity that has registered in the alternative fuel portal pursuant to WAC 173-424-300 and has submitted an application including all required documents and attestations in support of the application requesting a certified fuel pathway.

(72) "Fuel pathway code" or "FPC" means the identifier used in the WFRS that applies to a specific fuel pathway as approved or issued under WAC 173-424-600 through 173-424-630.

(73) "Fuel pathway holder" means a fuel pathway applicant that has received a certified fuel pathway carbon intensity based on site-specific data, including a provisional fuel pathway from ecology, or who has a certified fuel pathway code from the California air resources board or Oregon department of environmental quality that has been approved for use in Washington by ecology.

(74) "Fuel production facility" means the facility at which a regulated or opt-in fuel is produced. With respect to biomethane, a fuel production facility means the facility at which the fuel is upgraded, purified, or processed to meet the standards for injection to a natural gas common carrier pipeline or for use in natural gas vehicles.

(75) "Fuel reporting entity" means an entity that is required to report fuel transactions in the WFRS pursuant to WAC 173-424-200 through 173-424-220. Fuel reporting entity refers to the first fuel reporting entity and to any entity to whom the reporting entity status is passed for a given quantity of fuel.

(76) "Fuel supply equipment" refers to equipment registered in the WFRS that dispenses alternative fuel into vehicles including, but not limited to, electric vehicle chargers, hydrogen fueling stations, and natural gas fueling equipment.

(77) "Gasoline" means a fuel suitable for spark ignition engines and conforming to the specifications of ASTM D4814.

(78) "Heavy-duty vehicle" or "HDV" means a vehicle that is rated at or greater than 14,001 pounds gross vehicle weight rating (GVWR).

(79) "Home fueling" means the dispensing of fuel by use of a fueling appliance that is located on or within a residential property with access limited to a single household.

(80) "Hybrid electric vehicle (HEV)" means any vehicle that can draw propulsion energy from both of the following on-vehicle sources of stored energy:

(a) A consumable fuel; and

(b) An energy storage device, such as a battery, capacitor, or flywheel.

(81) "Hydrogen station capacity evaluator" or "HySCapE" means a tool developed by the National Renewable Energy Laboratory to determine the dispensing capacity of a hydrogen station, HySCapE Version 1.0 (August 13, 2018).

(82) "Illegitimate credits" means credits that were not generated in compliance with (either say "the CFS" or cite to the WAC provision on credit generation. I believe "division" is specific to the Oregon program).

(83) "Import" means to have ownership title to transportation fuel at the time it is brought from outside Washington into Washington by any means of transport other than in the fuel tank of a motor vehicle for the purpose of propelling that motor vehicle.

(84) "Importer" means:

(a) With respect to any liquid fuel, the person who imports the fuel; or

(b) With respect to any biomethane, the person who owns the biomethane when it is either physically transported into Washington or injected into a pipeline located outside of Washington and delivered for use in Washington.

(85) "Incremental credit" means a credit that is generated by an action to further lower the carbon intensity of electricity. Incremental credits are calculated from the difference between the carbon intensity of statewide grid or utility-specific electricity and the carbon intensity of renewable electricity.

(86) "Indirect land use change" means the average lifecycle greenhouse gas emissions caused by an increase in land area used to grow crops that is caused by increased use of crop-based transportation fuels, and expressed as grams of carbon dioxide equivalent per megajoule of energy provided (gCO<sub>2</sub>e/MJ). Indirect land use change values for biofuels are listed in Table 5 under WAC 173-424-900. Indirect land use change for fuel made from sugarcane, corn, sorghum, soybean, canola, and palm feedstocks is calculated using the protocol developed by the California air resources board.

(87) "Ineligible specified source feedstock" means a feedstock specified in WAC 173-424-600 (6) (a) through (c) that does not meet the chain-of-custody documentation requirements specified in WAC 173-424-600 (6) (d).

(88) "Invoice" means the receipt or other record of a sale transaction, specifying the price and terms of sale, that describes an itemized list of goods shipped.

(89) "Lifecycle greenhouse gas emissions" are:

(a) The aggregated quantity of greenhouse gas emissions, including direct emissions and significant indirect emissions, such as significant emissions from changes in land use associated with the fuels, as approved by ecology;

(b) Measured over the full fuel lifecycle, including all stages of fuel production, from feedstock generation or extraction, production, distribution, and combustion of the fuel by the consumer; and

(c) Stated in terms of mass values for all greenhouse gases as adjusted to CO<sub>2e</sub> to account for the relative global warming potential of each gas.

(90) "Light-duty vehicle" and "medium-duty vehicle" mean a vehicle category that includes both light-duty (LDV) and medium-duty vehicles (MDV).

(a) "LDV" means a vehicle that is rated at 8,500 pounds or less GVWR.

(b) "MDV" means a vehicle that is rated between 8,501 and 14,000 pounds GVWR.

(91) "Liquefied compressed natural gas" or "L-CNG" means natural gas that has been liquefied and transported to a dispensing station where it was then regasified and compressed to a pressure greater than ambient pressure.

(92) "Liquefied natural gas" or "LNG" means natural gas that has been liquefied.

(93) "Liquefied petroleum gas" or "propane" or "LPG" means a petroleum product composed predominantly of any of the hydrocarbons, or mixture thereof; propane, propylene, butanes, and butylenes maintained in the liquid state.

(94) "Low-carbon intensity (Low-CI) electricity" means any electricity that is determined to have a carbon intensity that is less than the average grid or utility specific, as applicable including, but not limited to, a renewable resource as defined in RCW 19.405.020(34).

(95) "Motor vehicle" means any vehicle, vessel, watercraft, engine, machine, or mechanical contrivance that is self-propelled.

(96) "M-RETS renewable thermal" means the electronic tracking and trading system for North American biomethane and other renewable thermal attributes run by the M-RETS organization. For the purposes of this division, only the biomethane or renewable natural gas certificates generated by this system are recognized.

(97) "Multifamily housing" means a structure or facility established primarily to provide housing that provides four or more living units in which each unit shares a floor or ceiling on at least one side.

(98) "Multifuel vehicle" means a vehicle that uses two or more distinct fuels for its operation. A multifuel vehicle (also called a vehicle operating in blended-mode) includes a bi-fuel vehicle and can have two or more fueling ports onboard the vehicle. A fueling port can be an electrical plug or a receptacle for liquid or gaseous fuel. For example, most plug-in hybrid electric vehicles use both electricity and gasoline as the fuel source and can be "refueled" using two separately distinct fueling ports.

(99) "Natural gas" means a mixture of gaseous hydrocarbons and other compounds with at least 80 percent methane by volume.

(100) "Ocean-going vessel" means a commercial, government, or military vessel meeting any one of the following criteria:

(a) A vessel greater than or equal to 400 feet in length overall;

(b) A vessel greater than or equal to 10,000 gross tons pursuant to the convention measurement (international system);

(c) A vessel propelled by a marine compression ignition engine with a per-cylinder displacement of greater than or equal to 30 liters.

(101) "OPGEE" or "OPGEE model" means the oil production greenhouse gas emissions estimator version 2.0 (June 20, 2018) posted at <http://www.arb.ca.gov/fuels/lcfs/lcfs.htm>, which is incorporated herein by reference.

(102) "Opt-in fuel reporting entity" means an entity that meets the requirements of WAC 173-424-120 and voluntarily opts in to be a fuel reporting entity and is therefore subject to the requirements set forth in this chapter.

(103) "Petroleum intermediate" means a petroleum product that can be further processed to produce gasoline, diesel, or other petroleum blendstocks.

(104) "Petroleum product" means all refined and semi-refined products that are produced at a refinery by processing crude oil and other petroleum-based feedstocks, including petroleum products derived from co-processing biomass and petroleum feedstock together. "Petroleum product" does not include plastics or plastic products.

(105) "Physical transport mode" means the applicable combination of actual fuel delivery methods, such as truck routes, rail lines, pipelines and any other fuel distribution methods through which the regulated party reasonably expects the fuel to be transported under contract from the entity that generated or produced the fuel, to any intermediate entities and ending in Washington. The fuel pathway holder and any entity reporting the fuel must demonstrate that the actual feedstock transport mode and distance conforms to the stated mode and distance in the certified pathway.

(106) "Plug-in hybrid electric vehicle" or "PHEV" means a hybrid electric vehicle with the capability to charge a battery from an off-vehicle electric energy source that cannot be connected or coupled to the vehicle in any manner while the vehicle is being driven.

(107) "Position holder" means any person that has an ownership interest in a specific amount of fuel in the inventory of a terminal operator. This does not include inventory held outside of a terminal, retail establishments, or other fuel suppliers not holding inventory at a fuel terminal.

(108) "Power purchase agreement" means a written agreement between an electricity service supplier and a customer that specifies the source or sources of electricity that will supply the customer.

(109) "Private access fueling facility" means a fueling facility with access restricted to privately-distributed electronic cards (cardlock) or is located in a secure area not accessible to the public.

(110) "Producer" means:

(a) With respect to any liquid fuel and renewable propane, the person who makes the fuel; or

(b) With respect to any biomethane, the person who refines, treats, or otherwise processes biogas into biomethane.

(111) "Product transfer document" or "PTD" means a document that authenticates the transfer of ownership of fuel from a fuel reporting entity to the recipient of the fuel. A PTD is created by a fuel reporting entity to contain information collectively supplied by other fuel transaction documents, including bills of lading, invoices, contracts, meter tickets, rail inventory sheets, renewable fuels standard (RFS) product transfer documents, etc.

(112) "Public access fueling facility" means a fueling facility that is not a private-access fueling dispenser.

(113) "Public transit agency" means an entity that operates a public transportation system.

(114) "Public transportation" means regular, continuing shared passenger-transport services along set routes which are available for use by the general public.

(115) "Rack" means a mechanism for delivering motor vehicle fuel or diesel from a refinery or terminal into a truck, trailer, railroad car, or other means of nonbulk transfer.

(116) "Registered party" means a regulated party, credit generator, aggregator, or an out-of-state fuel producer that has an ecology-approved registration under WAC 173-424-300 to participate in the clean fuels program.

(117) "Regulated fuel" means a transportation fuel identified under WAC 173-424-120(2).

(118) "Regulated party" means a person responsible for compliance with requirements listed under WAC 173-424-140(1).

(119) "Renewable fuel standard" means the program administered by the United States Environmental Protection Agency, under 40 C.F.R. Part 80: Regulation of fuels and fuel additives, Subparts K and M.

(120) "Renewable gasoline" means a spark ignition engine fuel that substitutes for fossil gasoline and that is produced from renewable resources.

(121) "Renewable hydrocarbon diesel" or "renewable diesel" means a diesel fuel that is produced from nonpetroleum renewable resources but is not a monoalkylester and which is registered as a motor vehicle fuel or fuel additive under 40 C.F.R. Part 79. This includes the renewable portion of a diesel fuel derived from co-processing biomass with a petroleum feedstock.

(122) "Renewable hydrocarbon diesel blend" or "renewable diesel blend" means a fuel comprised of a blend of renewable hydrocarbon diesel with petroleum-based diesel fuel, designated RXX. In the abbreviation RXX, the XX represents the volume percentage of renewable hydrocarbon diesel fuel in the blend.

(123) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for the hydrogen and the source for the energy input into the production process, as defined in RCW 19.405.020(32). It includes hydrogen derived from:

(a) Electrolysis of water or aqueous solutions using renewable electricity;

(b) Catalytic cracking or steam methane reforming of biomethane; or

(c) Thermochemical conversion of biomass, including the organic portion of municipal solid waste (MSW).

Renewable electricity, for the purpose of renewable hydrogen production by electrolysis, means electricity derived from sources that qualify as renewable energy resources as defined in RCW 19.405.020(34).

(124) "Renewable naphtha" means naphtha that is produced from nonpetroleum renewable resources.

(125) "Renewable propane" means liquefied petroleum gas (LPG or propane) that is produced from nonpetroleum renewable resources.

(126) "Shore power" means electrical power being provided either by the local utility or by distributed generation to ocean-going vessels at-berth.

(127) "Single-family residence" means a building designed to house a family in a single residential unit. A single-family residence is either detached or attached including duplex or townhouse units.

(128) "Site-specific data" and "site-specific input" means an input value used in determination of fuel pathway carbon intensity value, or the raw operational data used to calculate an input value, which is required to be unique to the facility, pathway, and feedstock. All site-specific inputs must be measured, metered or otherwise documented, and verifiable, e.g., consumption of natural gas or grid electricity at a fuel production facility must be documented by invoices from the utility.

(129) "Small importer of finished fuels" means any person who imports into Washington 500,000 gallons or less of finished fuels in a given calendar year. Any fuel imported by persons that are related, or share common ownership or control, shall be aggregated together to determine whether a person meets this definition.

(130) "Specified source feedstocks" are feedstocks for fuel pathways that require chain of custody evidence to be eligible for a reduced CI associated with the use of a waste, residue, by-product, or similar material under the pathway certification process under WAC 173-424-600.

(131) "Station operational status system (SOSS)" means a software database tool developed and maintained by California fuel cell partnership to publicly monitor the operational status of hydrogen stations.

(132) "Substitute fuel pathway code" means a fuel pathway code that is used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use when the seller of a fuel does not pass along the credits or deficits to the buyer and the buyer does not have accurate information on the carbon intensity of the fuel or its blendstocks.

(133) "Technical corn oil" means inedible oil recovered from thin stillage or the distiller's grains and solubles produced by a dry mill corn ethanol plant, termed distiller's corn oil (DCO), or other non-food grade corn oil from food processing operations.

(134) "Technical sorghum oil" means inedible oil recovered from thin stillage or the distiller's grains and solubles produced by a dry mill sorghum ethanol plant, termed distiller's sorghum oil (DSO), or other nonfood grade sorghum oil from food processing operations.

(135) "Tier 1 calculator," "simplified calculator," or "WA-GREET 3.0 Tier 1 calculator" means the tools used to calculate lifecycle emissions for commonly produced fuels, including the instruction manuals on how to use the calculators. Ecology will make available copies of these simplified calculators on its website (<https://www.ecology.wa.gov>). The simplified calculators used in the program are:

- (a) Tier 1 simplified calculator for starch and corn fiber ethanol;
- (b) Tier 1 simplified CI calculator for sugarcane-derived ethanol;
- (c) Tier 1 simplified CI calculator for biodiesel and renewable diesel;
- (d) Tier 1 simplified CI calculator for LNG and L-CNG from North American Natural Gas;
- (e) Tier 1 simplified CI calculator for biomethane from North American landfills;



(f) Tier 1 simplified CI calculator for biomethane from anaerobic digestion of wastewater sludge;

(g) Tier 1 simplified CI calculator for biomethane from food, green, and other organic wastes; and

(h) Tier 1 simplified CI calculator for biomethane from AD of dairy and swine manure.

(136) "Tier 2 calculator" or "WA-GREET 3.0 model" means the tool used to calculate lifecycle emissions for next generation fuels, including the instruction manual on how to use the calculator. Next generation fuels include, but are not limited to, cellulosic alcohols, hydrogen, drop-in fuels, or first generation fuels produced using innovative production processes. Ecology will make available a copy of the Tier 2 calculator on its website (<https://www.ecology.wa.gov>).

(137) "Total amount (TA)" means the total quantity of fuel reported by a fuel reporting entity irrespective of whether the entity retained status as the credit or deficit generator for that specific fuel volume. TA is calculated as the difference between the fuel reported using transaction types that increase the net fuel quantity reported in the WFRS and fuel reported using transaction type that decrease the net fuel quantity reported in the WFRS. Transaction types that increase the TA include: Production in Washington, production for import, import, purchased with obligation, purchased without obligation, gain of inventory. Transaction types that decrease the TA include: Sold with obligation, sold without obligation, loss of inventory, export, not used for transportation.

(138) "Transaction date" means the title transfer date as shown on the product transfer document.

(139) "Transaction quantity" means the amount of fuel reported in a transaction. A transaction quantity must be reported in units, provided in Table 3 in WAC 173-424-900 and in the WFRS.

(140) "Transaction type" means the nature of the fuel transaction as defined below:

(a) "Produced in Washington" means the transportation fuel was produced at a facility in Washington;

(b) "Import within the bulk system" means the transportation fuel was produced outside of Washington and later imported into Washington and placed into the bulk system;

(c) "Import outside the bulk system" means the transportation fuel was imported into Washington and delivered outside the bulk system;

(d) "Purchased with obligation" means the transportation fuel was purchased with the compliance obligation passing to the purchaser;

(e) "Purchased without obligation" means the transportation fuel was purchased with the compliance obligation retained by the seller;

(f) "Sold with obligation" means the transportation fuel was sold with the compliance obligation passing to the purchaser;

(g) "Sold without obligation" means the transportation fuel was sold with the compliance obligation retained by the seller;

(h) "Position holder sale" means the transportation fuel was sold below the rack without a transfer of the compliance obligation;

(i) "Position holder sale for export" means the transportation fuel was sold below the rack to an entity who exported the fuel;

(j) "Purchase below the rack for export" means the transportation fuel was purchased below the rack and exported;

(k) "Export" means a transportation fuel that was reported under the clean fuels program but was later moved from a location inside of

Washington to a location outside of Washington, and is not used for transportation in Washington;

(l) "Loss of inventory" means the fuel exited the Washington fuel pool due to volume loss, such as through evaporation or due to different temperatures or pressurization;

(m) "Gain of inventory" means the fuel entered the Washington fuel pool due to a volume gain, such as through different temperatures or pressurization;

(n) "Not used for transportation" means a transportation fuel was reported with compliance obligation under the CFP but was later used in an application unrelated to the movement of goods or people in Washington, such as process heat at an industrial facility, home or commercial building heating, or electric power generation;

(o) "EV charging" means providing electricity to recharge EVs including BEVs and PHEVs;

(p) "LPGV fueling" means the dispensing of liquefied petroleum gas at a fueling station designed for fueling liquefied petroleum gas vehicles;

(q) "NGV fueling" means the dispensing of natural gas at a fueling station designed for fueling natural gas vehicles;

(r) "Exempt fuel use - aircraft," "exempt fuel use - racing activity vehicles," "exempt fuel use - military tactical and support vehicle and equipment," "exempt fuel use - locomotives," "exempt fuel use - watercraft," "exempt fuel use - farm vehicles, tractors, implements of husbandry," "exempt fuel use - motor trucks primary used to transport logs," "exempt fuel use - off-highway construction vehicles, all of which must meet WAC 173-424-130" means that the fuel was delivered or sold into the category of vehicles or fuel users that are exempt under WAC 173-424-130; or

(s) "Production for import into Washington" means the transportation fuel was produced outside of Washington and imported into Washington for use in transportation.

(141) "Transportation fuel" means gasoline, diesel, any other flammable or combustible gas or liquid and electricity that can be used as a fuel for the operation of a motor vehicle. Transportation fuel does not mean unrefined petroleum products.

(142) "Unbundled renewable energy credit" means a renewable energy credit that is sold, delivered, or purchased separately from electricity.

(143) "Unit of fuel" means fuel quantities expressed to the largest whole unit of measure, with any remainder expressed in decimal fractions of the largest whole unit.

(144) "Unit of measure" means either:

(a) The International System of Units defined in NIST Special Publication 811 (2008) commonly called the metric system;

(b) U.S. customer units defined in terms of their metric conversion factors in NIST Special Publications 811 (2008); or

(c) Commodity specific units defined in either:

(i) The NIST Handbook 130 (2015), *Method of Sale Regulation*; or

(ii) Chapter 16-662 WAC.

(145) "Unspecified source of electricity" or "unspecified source" means a source of electricity that is not a specified source at the time of entry into the transaction to procure the electricity. The generation of such electricity will be assigned an emissions factor of 0.437 metric tons per megawatt-hour of electricity as measured by the utility at the first point of receipt in Washington, unless ecology assigns another number as directed by RCW 19.405.070(2). This includes

the GHG emission factor 0.428 metric tons per megawatt-hour for electricity generation, and the two percent GHG emissions due to transmission losses between the point of generation and the first point of receipt in Washington.

(146) "Used cooking oil" or "UCO" means fats and oils originating from commercial or industrial food processing operations, including restaurants that have been used for cooking or frying. Feedstock characterized as UCO must contain only fats, oils, or greases that were previously used for cooking or frying operations. UCO must be characterized as "processed UCO" if it is known that processing has occurred prior to receipt by the fuel production facility or if evidence is not provided to the verifier or ecology to confirm that it is "unprocessed UCO."

(147) "Utility renewable electricity product" means a product where a utility customer has elected to purchase renewable electricity through a product that retires RECs or represents a bundled purchase of renewable electricity and its RECs.

(148) "Validation" means verification of a fuel pathway application.

(149) "Verification" means a systematic, independent, and documented process for evaluation of reported data against the requirements specified in this chapter.

(150) "Washington fuels reporting system" or "WFRS" means the interactive, secured, web-based, electronic data tracking, reporting, and compliance system that ecology develops, manages, and operates to support the clean fuels program.

(151) "WFRS reporting deadlines" means the quarterly and annual reporting dates in WAC 173-424-410 and 173-424-430.

(152) "WA-GREET" means the greenhouse gases, regulated emissions, and energy in transportation (GREET) model developed by Argonne National Laboratory that ecology modifies and maintains for use in the Washington clean fuels program. The most current version is WA-GREET 3.0. Ecology will make available a copy of WA-GREET 3.0 on its website ([www.ecology.wa.gov](http://www.ecology.wa.gov)). As used in this rule, WA-GREET refers to both the full model and the fuel-specific simplified calculators that the program has adopted.

(153) "Yellow grease" means a commodity produced from a mixture of:

(a) Used cooking oil; and

(b) Rendered animal fats that were not used for cooking.

This mixture often is combined from multiple points of origin. Yellow grease must be characterized as "animal fat" if evidence is not provided to the verifier or ecology to confirm the quantity that is animal fat and the quantity that is used cooking oil.

**Abbreviations.** For the purposes of this chapter, the following acronyms apply.

"AEZ-EF" means agro-ecological zone emissions factor model.

"AFP" means alternative fuel portal.

"AJF" means alternative jet fuel.

"ASTM" means ASTM International (formerly American Society for Testing and Materials).

"BEV" means battery electric vehicles.

"WA-GREET" means Washington-modified greenhouse gases, regulated emissions, and energy use in transportation model.

"CARB" means California air resources board.

"CA-GREET" means the California air resources board adopted version of GREET model.

"CCM" means credit clearance market.

"CEC" means California energy commission.

"CFP" means clean fuels program established under this chapter to implement chapter 70A.535 RCW.

"CFR" means Code of Federal Regulations.

"CFS" means clean fuel standard or carbon intensity standard.

"CHAdemo" means charge de move, a DC fast charging protocol.

"CI" means carbon intensity.

"CNG" means compressed natural gas.

"DC" means direct current.

"DCO" means distiller's corn oil or technical corn oil.

"DSO" means distiller's sorghum oil or technical sorghum oil.

"eCHE" means electric cargo handling equipment.

"EDU" means electrical distribution utility.

"EER" means energy economy ratio.

"eTRU" means electric transport refrigeration unit.

"eOGV" means electric power for ocean-going vessel.

"EV" means electric vehicle.

"FCV" means fuel cell vehicle.

"FCI" means direct current fast charging infrastructure.

"FEIN" means federal employer identification number.

"FPC" means fuel pathway code.

"FSE" means fueling supply equipment.

"(gCO<sub>2</sub>e/MJ)" means grams of carbon dioxide equivalent per megajoule.

"GTAP" means the global trade analysis project model.

"GVWR" means gross vehicle weight rating.

"HySCapE" means hydrogen station capacity evaluator.

"H<sub>2</sub>" means hydrogen.

"HDV" means heavy-duty vehicles.

"HDV-CIE" means a heavy-duty vehicle compression-ignition engine.

"HDV-SIE" means a heavy-duty vehicle spark-ignition engine.

"HEV" means hybrid electric vehicle.

"HRI" means hydrogen refueling infrastructure.

"ICEV" means internal combustion engine vehicle.

"LUC" means land use change.

"LCA" means life cycle analysis.

"L-CNG" means liquefied compressed natural gas.

"LDV" means light-duty vehicles.

"LNG" means liquefied natural gas.

"LPG" means liquefied petroleum gas.

"LPGV" means liquefied petroleum gas vehicle.

"MCON" means marketable crude oil name.

"MDV" means medium-duty vehicles.

"MMBtu" means million British thermal units.

"MT" means metric tons (of carbon dioxide equivalent).

"NG" means natural gas.

"NGV" means a natural gas vehicle.

"OPGEE" means oil production greenhouse gas emissions estimator model.

"OR-DEQ" means Oregon department of environmental quality.

"PHEV" means plug-in hybrid vehicles.

"PTD" means product transfer document.

"RFS" means the renewable fuel standard.

"REC" means renewable energy certificate.

"RTC" means renewable thermal certificate.

"RNG" means renewable natural gas or biomethane.

"RFS" means the renewable fuel standard implemented by the U.S. Environmental Protection Agency.

"SAE CCS" means Society of Automotive Engineers combined charging system, a DC fast charging protocol.

"SMR" means steam methane reformation.

"SOSS" means station operational status system.

"UCO" means used cooking oil.

"U.S. EPA" means the United States Environmental Protection Agency.

"WFRS" means Washington fuels reporting system, the electronic reporting, trading, and compliance platform for the clean fuels program.

"WREGIS" means the western renewable energy generation information system run by the western electricity coordinating council.

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#### NEW SECTION

**WAC 173-424-120 Applicability.** (1) Except as exempted in WAC 173-424-130, this rule applies to:

(a) Any transportation fuel, as defined in WAC 173-424-110, that is sold, supplied, or offered for sale in Washington; and

(b) Any fuel reporting entity, as defined in WAC 173-424-110 and specified in WAC 173-424-200 through 173-424-220 is responsible for reporting a transportation fuel in a calendar year.

(2) Regulated fuels. This rule applies to the following types of transportation fuels including, but not limited to:

(a) Gasoline;

(b) Diesel or diesel fuel;

(c) Fossil compressed natural gas (fossil CNG), fossil liquefied natural gas (fossil LNG), or fossil liquefied compressed natural gas (fossil L-CNG);

(d) Compressed or liquefied hydrogen (hydrogen);

(e) A fuel blend containing greater than 10 percent ethanol by volume;

(f) A fuel blend containing biomass-based diesel;

(g) Denatured fuel ethanol (E100);

(h) Neat biomass-based diesel (B100 or R100);

(i) Fossil LPG/propane; and

(j) Other liquid or nonliquid transportation fuels as determined by ecology.

(3) **Opt-in fuel.**

(a) Each fuel in (b) of this subsection is presumed to meet the carbon intensity standards (benchmarks) in WAC 173-424-900 Table 1 and 2 through December 31, 2038.

(b) A fuel provider for the following alternative fuels may generate CFP credits for such fuels by electing to opt into the CFP as an opt-in fuel reporting entity under WAC 173-424-140(2) and meeting all applicable requirements of the CFP:

(i) Electricity;

(ii) Bio-CNG;

- (iii) Bio-LNG;
- (iv) Bio-L-CNG;
- (v) Alternative jet fuel; and
- (vi) Renewable propane or renewable LPG.

**(4) Annual carbon intensity benchmarks for an alternative fuel intended for use in a single-fuel vehicle.**

(a) Gasoline and gasoline substitutes. A regulated party or credit generator must comply with the benchmarks for gasoline and gasoline substitutes in WAC 173-424-900 Table 1 for alternative fuel intended to be used in a single-fuel light-duty or medium-duty vehicle.

(b) Diesel and diesel substitute. A regulated party or credit generator must comply with the benchmarks for diesel fuel and diesel fuel substitutes in WAC 173-424-900 Table 2 for alternative fuel intended to be used in a single-fuel application other than a single-fuel light-duty or medium-duty vehicle.

(c) Carbon intensity benchmarks for transportation fuels intended for use in multifuel vehicles. Credit and deficit calculations for alternative fuel provided for use in a multifueled vehicle shall be established via:

- (i) The benchmarks for gasoline set forth in WAC 173-424-900 Table 1 if one of the fuels used in the multifuel vehicle is gasoline; or
- (ii) The benchmarks for diesel fuel set forth in WAC 173-424-900 Table 2 if one of the fuels used in the multifuel vehicle is diesel fuel.

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NEW SECTION

**WAC 173-424-130 Exemptions.** (1) **Exempt fuels.** The CFP rule does not apply to transportation fuel supplied in Washington at an aggregated quantity of less than 360,000 gallons per year as measured by all providers of such fuel.

(2) **Exempt fuel uses.**

(a) Transportation fuels supplied for use in any of the following motor vehicles are exempt from regulated fuels definition:

- (i) Aircrafts. This includes conventional jet fuel or aviation gasoline, and alternative jet fuel;
- (ii) Marine vessels;
- (iii) Railroad locomotive applications; and
- (iv) Military tactical vehicles and tactical support equipment.

(b) The following transportation fuels are exempt from carbon intensity reduction requirements until January 1, 2028:

(i) Special fuel used in off-road vehicles used primarily to transport logs;

(ii) Dyed special fuel used in vehicles that are not designed primarily to transport persons or property, that are not designed to be primarily operated on highways, and that are used primarily for construction work including, but not limited to, mining and timber harvest operations; and

(iii) Dyed special fuel used for agricultural purposes exempt from chapter 82.38 RCW.

(c) Fuels listed under (a) and (b) of this subsection are eligible to generate credits.

(3) To be exempt under subsection (2) of this section, the regulated party must document that the fuel was supplied for use in motor vehicles listed in subsection (2) of this section. The method of documentation is subject to approval by ecology and must, at a minimum:

(a) Establish that the fuel was sold through a dedicated source or single supplier to use in one of the specified motor vehicles listed in subsection (2) of this section; or

(b) For each fuel transaction if the fuel is not sold through a dedicated source.

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#### NEW SECTION

##### **WAC 173-424-140 General requirements. (1) Regulated party.**

(a) Regulated fuels producers in Washington, or importers into Washington, must comply with the requirements of this rule.

(b) The regulated parties for regulated fuels are designated under WAC 173-424-200.

(c) The regulated parties for regulated fuels must comply with:

(i) Register under WAC 173-424-300;

(ii) Keep records under WAC 173-424-400;

(iii) Report quarterly under WAC 173-424-410 and annually under WAC 173-424-430; and

(iv) Comply with the clean fuel standard for:

(A) Gasoline and gasoline substitutes in WAC 173-424-900 Table 1;

or

(B) Diesel fuel and diesel fuel substitutes in WAC 173-424-900 Table 2.

##### **(2) Opt-in fuel reporting entity.**

(a) An out-of-state producer of ethanol, biodiesel, renewable diesel, alternative jet fuel, renewable natural gas, or renewable propane that is not an importer is not required to participate in the program. Any out-of-state producer that is not an importer who chooses voluntarily to participate in the program may retain the ability to generate credits or deficits for the specific volumes of their fuel that is imported into Washington, only if it opts in as a first fuel reporting entity and meets the requirements of WAC 173-424-200 and 173-424-210.

(b) Opting in procedure: Opting into the CFP becomes effective when the opt-in entity establishes an account in the WFRS, pursuant to the voluntary participation under subsection (4) of this section. The opt-in entity may not report and generate credits and deficits based on transactions that precede the quarter in which the entity opted in.

(c) A fuel supplier choosing to opt-in to the CFP under WAC 173-424-120 must:

(i) Register as required by WAC 173-424-300;

(ii) Keep records as required under WAC 173-424-400;

(iii) Report quarterly and annually under WAC 173-424-410 and 173-424-430.

(d) Opting out procedure. In order to opt-out of the CFP, an opt-in entity must complete the following:

(i) Provide ecology a 90-day notice of intent to opt-out and a proposed effective opt-out date;

(ii) Submit in the WFRS any outstanding quarterly fuel transactions up to the quarter in which the effective opt-out date falls and a final annual compliance report that covers the year through the opt-out date; and

(iii) Identify in the 90-day notice any actions to be taken to eliminate any remaining deficits by the effective opt-out date.

(3) **Credit aggregator requirements.**

(a) Aggregators must:

(i) Register according to WAC 173-424-300;

(ii) Keep records as required under WAC 173-424-400;

(iii) Report quarterly as required under WAC 173-424-410; and

(iv) Report annually as required under WAC 173-424-430.

(b) Designation of aggregator.

(i) Aggregators may facilitate credit generation and trade credits only if a regulated party or an eligible credit generator has authorized an aggregator to act on its behalf by submitting an aggregator designation form to ecology.

(ii) Aggregator designations may only take effect at the start of the next full calendar quarter after ecology receives such notice.

(iii) A regulated party or credit generator already registered with the program may also serve as an aggregator for others;

(iv) An aggregator must notify ecology when a credit generator or regulated party has withdrawn designation of the aggregator. Aggregator withdrawals may only take effect at the end of the current full calendar quarter when ecology receives such notice.

(4) **Voluntary participation.** Voluntary participation in the CFP shall conclusively establish consent to be subject to the jurisdiction of the state of Washington, its courts, and the administrative authority of ecology to implement the CFP. Failure to consent to such jurisdiction excludes participation in the CFP.

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## PART 2 - DESIGNATION OF REGULATED PARTIES AND CREDIT GENERATORS

### NEW SECTION

**WAC 173-424-200 Designation of fuel reporting entities for liquid fuels.** (1) **Applicability.** The purpose of this section is to identify the first fuel reporting entities, any subsequent fuel reporting entities, and the credit or deficit generator for liquid fuels. The first reporting entity is responsible for initiating reporting for a given amount of fuel within the online reporting system according to WAC 173-424-400 and, by default, holds the status as the initial credit or deficit generator. This section so prescribes the transfer of fuel reporting, and credit and deficit generating status.

(2) **Designation of first fuel reporting entities for liquid fuels.** Liquid fuels refer to fossil fuels (including gasoline, diesel, and conventional jet fuels), liquid alternative fuels (including etha-



nol, biomass-based fuels, and alternative jet fuels), and blend of liquid fossil and alternative fuels.

(a) Designation of first fuel reporting entities for liquid fuels.

(i) The first fuel reporting entity for liquid fossil fuels is the producer or importer of the liquid fossil fuel.

(ii) For liquid fuels that are a blend of liquid alternative fuel components and a fossil fuel component, the first fuel reporting entity is the following:

(A) The producer or importer of alternative fuels for the alternative fuel component; and

(B) The producer or importer of liquid fossil fuels for the fossil fuel component.

(iii) Conventional jet fuel is not subject to the CFP and need not be reported.

(b) Designation of fuel reporting entities for in case of transfer of liquid fuel ownership. An entity transferring ownership of fuel is the "transferor," and an entity acquiring ownership of fuel is the "recipient."

(i) Transferring status as credit or deficit generator.

(A) An entity can voluntarily transfer its status as a credit or deficit generator for a given amount of liquid fuel simultaneously with the ownership of such fuel if the following conditions are met:

(I) The two entities agree by written contract that specifies the recipient accepts all the responsibilities of a fuel reporting entity and credit and/or deficit generator;

(II) In case of a deficit generating fuel, the two entities agree by written contract that specifies which party is responsible for accounting for the base deficit and incremental deficit in the annual credits and deficits balance calculation;

(III) The transferor provides the recipient a product transfer document that specifies the recipient is the credit or deficit generator; and

(IV) Transfer of credit or deficit generator status is not the result of a downstream entity acquiring ownership of liquid fuel below the rack.

(B) Upon transfer, the recipient also becomes the fuel reporting entity for the fuel while the transferor remains still subject to reporting requirements.

(ii) Retaining status as credit or deficit generator.

(A) An entity can retain its status as a credit or deficit generator for a given amount of liquid fuel, while transferring ownership of that fuel, if the following conditions are met:

(I) The two entities agree by written contract that specifies the recipient accepts all the responsibilities of a fuel reporting entity, and credit or deficit generator;

(II) In case of a deficit generating fuel, the two entities agree by written contract that specifies which party is responsible for accounting for the base deficit and incremental deficit in the annual credits and deficits balance calculation; and

(III) The transferor must provide the recipient a product transfer document that specifies the recipient is the credit or deficit generator according to WAC 173-424-400.

(B) An entity can voluntarily transfer its status as a credit or deficit generator for a given amount of liquid fuel, while transferring ownership of that fuel, if the following conditions are met:

(I) The two entities agree by written contract that specifies the recipient accepts all the responsibilities of a fuel reporting entity and the transferor retains the responsibilities as a reporting entity, and credit or deficit generator;

(II) In case of a deficit generating fuel, the two entities agree by written contract that specifies which party is responsible for accounting for the base deficit and incremental deficit in the annual credits and deficits balance calculation; and

(III) The transferor must provide the recipient a product transfer document that specifies the recipient is the credit or deficit generator according to WAC 173-424-400.

(iii) Transfer period.

(A) For all liquid fuels, the maximum period in which credit or deficit generator status can be transferred to another entity, for a given amount of fuel, is limited to three calendar quarters starting from and including the quarter in which the entity received the title. After this period is over, the credit and deficit generator status for that amount of fuel cannot be transferred.

(B) After this period is over, the credit and deficit generator status for that amount of fuel cannot be transferred.

(iv) Designation of fuel exporter. Entities responsible for reporting exports of fuel that has been previously reported in the WFRS are identified below:

(A) When the fuel is sold or delivered above the rack for export, the entity holding the ownership title to the fuel as it crosses the Washington border on its way toward the first point of sale/delivery out-of-state is responsible for reporting the export.

(B) When the fuel is sold across the rack for export, the entity holding title to the fuel as the fuel crosses the rack is responsible for reporting.

(C) When the fuel is diverted out-of-state below the rack, the entity holding title to the fuel, as it crosses the Washington border, is responsible for reporting the export.

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#### NEW SECTION

**WAC 173-424-210 Fuel reporting entities for gaseous fuels.** (1) **Applicability.** This section applies to providers of both fossil and bio-based compressed natural gas, liquefied natural gas, liquefied compressed natural gas, and liquefied petroleum gas (or propane), and hydrogen used as transportation fuels in Washington.

(2) **Designation of first fuel reporting entities for gaseous fuels.** The first fuel reporting entity for different gaseous fuels is identified below:

(a) Bio-CNG. For bio-CNG, including the bio-CNG portion of a blend with fossil CNG, the first fuel reporting entity is the producer or importer of the biomethane.

(b) Bio-LNG and bio-L-CNG. For bio-LNG and bio-L-CNG, including the biomethane portion of any blend with fossil LNG and L-CNG, the first fuel reporting entity is the producer or importer of the biomethane.

(c) Renewable propane. For renewable propane, including the renewable propane portion of a blend with fossil propane, the first fuel reporting entity is the producer or importer of the renewable propane.

(d) Fossil CNG, LNG, L-CNG and propane.

(i) For fossil CNG, LNG, L-CNG, and propane, including the fossil portion of any blend with a renewable fuel component, the first fuel reporting entity is the entity that owns the fueling equipment through which the fossil fuel is dispensed to motor vehicles for transportation use.

(ii) Forklift: The first fuel reporting entity for fossil propane used in forklifts is the forklift fleet owner.

(e) Hydrogen.

(i) Motor vehicles. The first fuel reporting entity for hydrogen is the entity that owns the fueling supply equipment through which hydrogen fuel is dispensed to motor vehicles for transportation use.

(ii) Forklift. The first fuel reporting entity for hydrogen used in fuel cell forklifts is the forklift fleet owner.

(3) **Designating another entity as fuel reporting entity.** An entity may elect not to be the first fuel reporting entity for a given gaseous fuel, provided that another entity has contractually agreed to be the fuel reporting entity for the fuel on its behalf. In such cases, the two entities must agree by written contract that:

(a) The original first fuel reporting entity will not generate credits or deficits in the CFP under subsection (2)(a) through (e) of this section. Instead, the original first reporting entity will provide the amount of fuel dispensed, and other required information, to the contractually designated entity for the purpose of CFP reporting, and credit or deficit generation.

(b) The contractually designated entity accepts all CFP responsibilities as the first fuel reporting entity, and as a credit or deficit generator, as applicable.

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#### NEW SECTION

**WAC 173-424-220 Designation of fuel reporting entity for electricity.** (1) **Applicability.** This section prescribes how credits are generated for electricity when used as a transportation fuel.

(2) **Responsibilities to generate credits.** To receive credits for electricity supplied as a transportation fuel, an entity subject to this section must:

(a) Establish an account in the online system;

(b) Comply with registration, recordkeeping, and reporting requirements.

(3) **Nonresidential electric vehicle charging.** For electricity used to charge an electric vehicle at nonresidential locations, such as in public for a fleet, at a workplace, or at multifamily housing sites, the eligible entities that generate credits are:

(a) The owner of the electric-charging equipment may generate credits from each piece of equipment.

(b) If the owner or service provider of the electric-charging equipment does not generate the credits, then an electric utility or its designated aggregator may generate the credit, if the two entities agree by written contract that:

(i) The owner of the charging equipment will provide the electricity data to the designated aggregator.

(ii) The designated entity accepts all CFP responsibilities as the fueling reporting entity and credit generator.

(4) **Fixed guideway systems.** For electricity used to power to fixed guideway vehicles such as light rail systems, streetcars, aerial tram, or transit buses, the transit agency operating the system is eligible to generate the credits for the electricity used to propel the system.

(5) **Electric forklifts.**

(a) For electricity used as transportation fuel supplied to electric forklifts, the fleet owner is the fuel reporting entity and the credit generator. The forklift owner must annually notify in writing to the forklift operator that:

(i) The owner is generating credit for the amount of electricity the operator uses for the electric forklifts.

(ii) The estimated or actual annual credit revenue the owner gets for the use of electricity in the forklift.

(b) The electric forklift owner may elect to designate another entity to be the credit generator, if the two entities agree by a written contract that:

(i) The electric forklift fleet owner will not generate credits and will instead provide the electricity data to the designated entity.

(ii) The designated entity accepts all the CFP responsibilities as the fuel reporting entity and credit generator.

(6) **Electric transport refrigeration units (eTRU).**

(a) For electricity supplied to the eTRU, the owner of the eTRU fleet owner is the fuel reporting entity and the credit generator.

(b) The owner of the eTRU may elect to designate another entity to be the credit generator, if the two entities agree by a written contract that:

(i) The owner of the eTRU fleet owner will not generate credits and will instead provide the electricity data to the designated entity.

(ii) The designated entity accepts all the CFP responsibilities as the fuel reporting entity and credit generator.

(7) **Electric cargo handling equipment (eCHE).**

(a) For electricity supplied to eCHE, the electric handling equipment owner is the fuel reporting entity and the credit generator.

(b) The eCHE owner must annually notify in writing to the eCHE operator that:

(i) The owner is generating credit for the amount of electricity the operator uses for the cargo handling equipment owner.

(ii) The estimated or actual annual credit revenue the owner gets for the use of electricity in the cargo handling equipment owner.

(c) The electric cargo handling equipment owner may elect to designate another entity to be the credit generator, if the two entities agree by a written contract that:

(i) The eCHE owner will not generate credits and will instead provide the electricity data to the designated entity.

(ii) The designated entity accepts all the CFP responsibilities as the fuel reporting entity and credit generator.

(8) **Electric power for ocean-going vessel (eOGV).**

(a) For electricity supplied to the eOGV, the owner of the electric power supplying equipment is the fuel reporting entity and the credit generator.

(b) The owner of the electric supplying equipment may elect to designate another entity to be the credit generator, if the two entities agree by a written contract that:

(i) The owner of the electric charging equipment will not generate credits and will instead provide the electricity data to the designated entity.

(ii) The designated entity accepts all the CFP responsibilities as the fuel reporting entity and credit generator.

(9) **Electric ground support equipment.** The owner of the charging equipment for ground support equipment is eligible to generate credits.

(10) **Residential electric vehicle charging.**

(a) Base credit. For electricity used to charge an electric vehicle in a residence, the following entities are eligible to generate base credits:

(i) Electric utility. In order to generate residential vehicle charging credits for the following year, an electric utility must notify ecology by October 1st of the current year whether it will generate base credits or designate an aggregator to act on its behalf. The utility or its aggregator must have an active registration approved by ecology under WAC 173-424-300. Once a utility has made an aggregator designation under this section, that designation will remain in effect unless the utility requests a change in writing to ecology.

(ii) Backstop aggregator. If an electric utility does not register or designate an aggregator under (a)(i) of this subsection, then the backstop aggregator is eligible to claim any base credits that the utility could have generated for the following year, as provided in subsection (11) of this section.

(iii) Electric vehicle manufacturer. If a backstop aggregator does not register under (b) of this subsection, then the electric vehicle manufacturer is eligible to claim the base credits associated with the electric vehicles that the backstop aggregator could have generated for the following year.

(b) Incremental credits. Any entity, including an electric utility, is eligible to generate incremental credits for improvements in carbon intensity of electricity used for residential EV charging. An entity that generates incremental credits must meet the requirements set forth in WAC 173-424-420 (3)(b), as applicable.

(i) For metered residential EV charging, incremental credits for each FSE may be generated for the low-CI electricity.

(ii) For nonmetered residential EV charging, the electric utility is eligible to generate incremental credits for supplying low-CI electricity to the EVs in its service territory.

(iii) Multiple claims for incremental credits for metered residential EV charging associated with a single FSE ID will be resolved pursuant to the following order of preference:

(A) The utility supplying electricity to the EV associated with the FSE ID and metered data has first priority to claim credits;

(B) The manufacturer of the EV associated with the FSE ID has second priority; and

(C) Any other entity has third priority.

(11) **Backstop aggregator.** The backstop aggregator serves as the credit generator of electricity credits that have not been claimed by an electric utility, an aggregator designated by an electric utility, or an owner or service provider of electric charging equipment under subsections (3) and (10) of this section.

(a) To qualify to submit an application to be a backstop aggregator, an organization must:

(i) Be an organization exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code;

(ii) Complete annual independent financial audits.

(b) An entity that wishes to be the backstop aggregator must submit an application to ecology that includes:

(i) A description of the mission of the organization and how being a backstop aggregator fits into its mission;

(ii) A description of the experience and expertise of key individuals in the organization who would be assigned to work associated with being a backstop aggregator;

(iii) A plan describing:

(A) How the organization will promote transportation electrification statewide or in specific utility service territories, if applicable, prioritizing projects that directly benefit disproportionately impacted communities;

(B) Any entities that the organization might partner with to implement its plan;

(C) How the organization plans to use the revenue from the sale of credits, which may include, without limitation, programs that provide incentives to purchase electric vehicles or install electric vehicle chargers, opportunities to educate the public about electric vehicles, and anticipated costs to administer its plan; and

(D) The financial controls that are, or will be, put in place to segregate funds from the sale of credits from other moneys controlled by the organization.

(iv) Its last three years of independent financial audits and I.R.S. form 990s, and proof that the I.R.S. has certified the entity as qualifying as an exempt organization under 501(c)(3);

(c) Initial applications to be a backstop aggregator are due to ecology no later than March 15, 2023, to be eligible to be the backstop aggregator beginning in 2023. If the ecology does not designate a backstop aggregator out of the applicants under (e) of this subsection, then ecology may set a new deadline for another application if it decides to undertake a new selection process.

(d) Applications will be evaluated by ecology with the assistance of relevant experts ecology may select. Ecology will evaluate applications based on the likelihood that the applicant will maximize the benefits from the credits it receives to promote transportation electrification and reduce greenhouse gas emissions from the transportation sector in Washington while prioritizing projects that directly benefit disproportionately impacted communities.

(e) Ecology may designate the initial backstop aggregator out of the applying organizations by May 31, 2023. If ecology does not designate an organization to be the backstop aggregator, then ecology may undertake a new selection process at a later date under the same criteria in (b) and (d) of this subsection.

(f) Following ecology's designation of an organization to be the backstop aggregator, ecology and the organization may enter into a written agreement regarding its participation in the program. A written agreement must be in place prior to the backstop aggregator registering an account in the WFRS and receiving credits for the first time. The backstop aggregator must:

(i) By March 31st of each year, submit a report that summarizes the previous year's activity including:

(A) How much revenue was generated from the credits it received;

(B) A description of activities including the status of each activity, where each activity took place, and each activity's budget, including administrative costs, and an estimate of its outcomes including the extent to which it directly benefited disproportionately impacted communities; and

(C) The results of its most recent independent financial audit.

(ii) Maintain records and make them available upon request by ecology, including records required to be maintained under WAC 173-424-400 and, in addition, any records relating to its application, the programs it operates using the proceeds from the sale of credits under this program, and any of the organization's financial records.

(g) If ecology determines that a backstop aggregator is in violation of this chapter or the agreement that it enters into with ecology to be the backstop aggregator, ecology may rescind its designation and solicit applications to select a new backstop aggregator.

(h) If backstop aggregator wishes to terminate its agreement with ecology, then ecology may solicit applications to select a new backstop aggregator.

(i) After a backstop aggregator has been in place for three years, ecology may hold a new selection process to appoint a backstop aggregator for future years. Unless ecology has rescinded an organization as backstop aggregator under (g) of this subsection, the current backstop aggregator may apply to be redesignated as the backstop aggregator for future years.

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### PART 3 - REGISTRATION

#### NEW SECTION

**WAC 173-424-300 Registration.** (1) **Registration in Washington fuels reporting system.**

(a) **Eligibility.** The following entities must apply to register to participate in the Washington clean fuel program:

(i) Entities required to report under the CFP pursuant to WAC 173-424-200 through 173-424-220;

(ii) Entities opting into the CFP pursuant to WAC 173-424-140(2); and

(iii) Aggregators and credit aggregators.

(b) **Required information.** To register in WFRS, entities must supply a written registration application to ecology by uploading a complete application to the WFRS. The application must be on the applying entity's letterhead and be signed by the entity's owner, president, managing partner, or other authorized officer. At a minimum, the application must include:

(i) The identity of the entity submitting the application, including the entity's federal employer identification number (FEIN) and EPA RFS identification number (if available);

- (ii) Entity's physical and mailing addresses, including county;
  - (iii) The basis for qualifying for an account pursuant to (a) of this subsection;
  - (iv) The entity's primary account representative and alternative account representative, including their titles, relationship to the organization, phones, and email addresses;
  - (v) The category of each transportation fuel that the entity will be producing, importing, or dispensing for use in Washington;
  - (vi) Registered entities that are dispensing natural gas, propane, or hydrogen must:
    - (A) Provide a written contractual agreement demonstrating it acquired the designation of the first fuel reporting entity status;
    - (B) Provide the number of dispensing facilities located in Washington, their locations, the estimated annual fuel throughput per location, and the unique identifier associated with the fuel dispensing equipment in the organization's fuel or financial accounting or utility meter;
  - (vii) Registered entities that are charging electric vehicles must:
    - (A) Provide ecology with a copy of a written contractual agreement demonstrating the registered entity acquired the designation of the first fuel reporting entity status;
    - (B) For nonresidential EV charging for on-road application, must provide the number of chargers located in Washington, their locations, the estimated annual discharge of electricity per location, the owner of the charging equipment, and the serial number assigned to the charging equipment by the original equipment manufacturer (OEM) and the name of the OEM. If there are multiple FSEs at the same location, each unique piece of equipment must be registered separately;
    - (C) For residential metered EV charging, must provide the following information about the fuel-supplying equipment, which refers to a piece of equipment or on-vehicle telematics capable of measuring the electricity dispensed for EV charging:
      - (I) Fuel reporting entities using off-vehicle meters must provide the serial number assigned to the charging equipment by the OEM, the name of the equipment OEM, and the vehicle identification number (VIN) for the vehicle expected to be charged at the location.
      - (II) Fuel reporting entities using vehicle telematics must provide the VIN.
      - (III) EV charging equipment registration is optional when reporting metered electricity to generate base credits.
      - (IV) Location information and address is not required for residential charging;
  - (viii) For registered entities that are also electric utilities, whether they want to:
    - (A) Aggregate the residential electric charging credits in their service territory under WAC 173-424-220 (3) or (10); or
    - (B) Designate an aggregator to act on their behalf under WAC 173-424-220 (3) or (10); and
  - (ix) Any other information requested by ecology related to registration.
- (c) **Establishing an account in WFRS.**
- (i) Accounts in the WFRS are only established following ecology's approval of the registration application.
  - (ii) Ecology may deny account registration based on, among other reasons, an entity's provision of false, misleading, or incomplete information.



(d) **Account management roles and duties.**

(i) The account representative is responsible for making any changes to the entity profile within Washington FRS.

(ii) The account representative in Washington FRS may designate users within the entity who can access and manage the account.

(iii) The account representative in Washington FRS is responsible for meeting the reporting requirements as set forth in WAC 173-424-420.

(e) **Modifications to the registration in WFRS.**

(i) Registered entities must submit an amended registration to ecology within 30 days of any change occurring to information described in subsection (2) of this section.

(ii) Ecology may require a registered entity to submit an amended registration based on the new information ecology receives.

(iii) If a registered entity amends its registration under this section, the registered entity must also update its account in the WFRS, as appropriate.

(f) **Cancellation of the registration in WFRS.**

(i) An entity that was registered in Washington FRS must cancel its registration if:

(A) It no longer meets the applicability of the program under WAC 173-424-120(1); or

(B) It is a credit generator or aggregator who has voluntarily opted out of the CFP. The credit generator or aggregator must provide to ecology a 90-day notice of intent to opt out of the CFP and a proposed effective date for the completion of the opt-out process.

(ii) A registered entity that is canceling its registration from Washington FRS under this section must:

(A) Submit any outstanding quarterly reports and annual reports;

(B) Comply with any annual reporting requirements, as applicable; and

(C) Not have any outstanding deficits.

(iii) Any credits that remain in an account of a regulated entity, credit generator, or aggregator that is canceling its registrations under this section shall be forfeited and the account in the Washington FRS shall be closed.

(iv) Ecology will notify the registrant in writing the cancellation of its registration, once it determines the actions in (f)(ii)(A) through (C) of this subsection are complete.

(g) **Registration of fueling supply equipment (FSE).**

(i) After establishing an account in the WFRS, fuel reporting entities for natural gas, electricity, propane, and hydrogen must register all fueling supply equipment (FSE) in WFRS via the clean fuels program website. Upon FSE registration, the applicant will receive a unique WACFP FSE ID that must be used for reporting fuel transactions in WFRS pursuant to the CFP reporting requirements.

(ii) General requirements: All FSE registration must include:

(A) Federal employer identification number (FEIN) for the entity registering, name of the facility at which FSE is situated, street address, latitude, and longitude of the FSE location.

(B) Name and address of the entity that owns the FSE, if different from the entity registering the FSE.

(iii) Specific requirements by fuel type:

(A) For CNG, FSE refers to a fueling station associated with a utility meter. A CNG station with multiple dispensers is considered a single FSE. Fuel reporting entities for CNG must provide the natural

gas utility meter number at the FSE location, name of the utility company, and a copy of the most recent utility bill.

(B) For LNG and propane, FSE refers to a fueling station. An LNG or propane station with multiple dispensers is considered a single FSE. Fuel reporting entities for LNG and propane must provide a unique identifier associated with the FSE used for their own fuel accounting or financial accounting or other purposes and copy of invoice or bill of lading for the most recent fuel delivery.

(C) For nonresidential EV charging, FSE refers to each piece of equipment capable of measuring the electricity dispensed for EV charging. Fuel reporting entities for nonresidential EV charging for on-road applications must provide the serial number assigned to the FSE by the original equipment manufacturer (OEM) and the name of OEM. If there are multiple FSEs at the same location, each unique piece of equipment must be registered separately.

(D) For residential metered EV charging, FSE refers to a piece of equipment or on-vehicle telematics capable of measuring the electricity dispensed for EV charging.

(E) Fuel reporting entities for fixed guideway systems are exempt from the general requirements in (h)(ii) of this subsection. The WA-RFS will assign FSE IDs for reporting purposes based on the information provided in the WA-RFS account registration form.

(F) For electric forklifts, eCHE, or eOGV, FSE refers to the facility or location where electricity is dispensed for fueling. If there are multiple FSEs capable of measuring the electricity dispensed at the facility or location, then an entity may provide the serial number assigned to each individual FSE by the OEM, along with the name of the OEM.

(G) For eTRU, FSE refers to each eTRU. Fuel reporting entities for eTRU fueling must provide the serial number assigned to the unit by the OEM and the name of the OEM.

(H) For hydrogen, FSE refers to a fueling station. A hydrogen station with multiple dispensers is considered a single FSE.

(I) For transportation applications not covered in (g)(iii)(A) through (H) of this subsection, FSE refers to a fuel dispenser or a transportation equipment with the capability to measure the dispensed fuel in that equipment.

(2) **Registration in the Washington alternative fuel portal (AFP).** AFP handles the registration of fuel production facilities. It also supports fuel pathway applications, certifications, and verifications.

(a) **Eligibility.** A fuel producer who intends to be a fuel pathway applicant can apply to establish an account in the AFP in the WFRS.

(b) **Required information.** To establish an account in AFP, an entity must submit account administrator designation application that includes the following information:

(i) Organization identification, including federal employer identification number (FEIN), EPA RFS identification number (if available), physical and mailing addresses, state and county, names of organizational representatives.

(ii) The applicant for registration must state the basis for qualifying for an account pursuant to (a) of this subsection. The letter:

(A) Must be on the organization letterhead;

(B) Must be signed by the company owner, a president, a managing partner, or a corporate officer;

(C) Must designate the primary account representative and alternative account representative, including their titles, relationship to the organization, phones, and email addresses;

(D) Must be uploaded in the AFP to complete the registration application process;

(E) Must retain the original document for the duration of an account representative.

(c) **Account approval.** Ecology will review the registration application for completeness and validity.

(d) **Establishing an account in AFP.** Upon registration approval by ecology, the fuel producer must establish an account in the AFP portion of the WFRS and comply with the requirements of this chapter and any conditions placed upon the fuel pathway codes that it holds.

(e) **Account management roles and duties.**

(i) The account representative is responsible for making any changes to the company profile within AFP.

(ii) The account representative may designate users within the company who can access and manage the account.

(iii) If any information required in (b) of this subsection changes, the entity holding the account must update the account to reflect the changes within 30 calendar days.

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#### PART 4 - RECORDKEEPING AND REPORTING

##### NEW SECTION

**WAC 173-424-400 Recordkeeping.** (1) Fuel reporting entities, opt-in entities, and aggregators must retain the following records for at least 10 years:

(a) Product transfer documents as described in subsection (2) of this section;

(b) Copies of all data and reports submitted to ecology;

(c) Records related to each fuel transaction;

(d) Records used for each credit transaction;

(e) Records used for compliance credit and deficit calculations;

(f) Records related to obtaining a carbon intensity described in WAC 173-424-610;

(g) Records used to establish that feedstocks are specified source feedstocks;

(h) Records related to third-party verification, if required under WAC 173-424-800;

(i) Records related to fuel supplying equipment registration including, but not limited to, copies of monthly utility bills, bills of lading, and other documents used as a proof at the time of fuel supplying equipment registration pursuant to this chapter;

(j) Chain of custody evidence for produced fuel imported into Washington;

(k) Attestations regarding environmental attributes associated with book-and-claim accounting for renewable electricity or biomethane used as transportation fuel or for hydrogen production.

(i) A registered party reporting any fuel claimed in the CFP using a book and claim accounting method as a fuel in the CFP must retire renewable thermal certificates or renewable energy certificates that embody the full environmental attributes of that fuel in an electronic tracking system approved by ecology in order to claim that fuel. The environmental attributes embodied by that REC or RTC must not have been used or claimed in any other program or jurisdictions with the exception of the federal FRS. To be validly used in compliance with this division, any such claims under the federal RFS must be made for the same use and volume of biomethane or its derivatives as it is being claimed for in the CFP.

(ii) A fuel pathway holder using directly delivered renewable electricity, biogas, or biomethane as a process energy or feedstock, must obtain and keep attestations from each upstream party collectively demonstrating that they have exclusive right to use those environmental attributes.

(2) **Documenting fuel transfers reported in Washington fuel reporting system.** A fuel transfer document must include the following information:

- (a) Transferor company name, address, and contact information;
- (b) Recipient company name, address, and contact information;
- (c) Transaction date: Date of title transfer for fuel;
- (d) Fuel pathway code (FPC);
- (e) Carbon intensity (CI);
- (f) Fuel quantity and units;
- (g) A statement identifying whether the CFP obligation to act as a credit or deficit generator is passed to the recipient;
- (h) Fuel production company identification number and facility identification number as registered with RFS program. This does not apply to gasoline, diesel fuel, or fossil natural gas; and
- (i) Destination of the fuel. If the fuel destination is not known or the transfer is not changing the location of the fuel, the PTD shall reflect this.

(3) For transactions of clear and blended gasoline and diesel below the rack where the fuel is not destined for export, only the records described in subsection (2)(a), (b), (c), (f), and (g) of this section are required to be retained.

(4) **Documenting credit transactions.** Regulated parties, credit generators, and aggregators must retain the following records related to all credit transactions for at least 10 years:

- (a) The contract under which the credits were transferred;
- (b) Documentation on any other commodity trades or contracts between the two parties conducting the transfer that are related to the credit transfer in any way; and
- (c) Any other records relating to the credit transaction, including the records of all related financial transactions.

(5) **Review.** All data, records, and calculations used by a regulated party, a credit generator, or an aggregator to comply with this chapter are subject to inspection and verification by ecology. Regulated parties, credit generators, and aggregators must provide records retained under this rule within 15 business days after the date ecology requests a review of the records, unless a different schedule is agreed to by ecology.

(6) **Initial 2023 inventory.** All regulated fuels held in bulk storage in the state on January 1, 2023, are subject to the program and must be reported as the initial inventory of fuels by regulated parties.

(7) **Information exempt from disclosure.** Pursuant to the provisions of the Washington Public Records Act (chapter 42.56 RCW), all information submitted to ecology is subject to inspection upon request by any person unless such information is determined to be exempt from disclosure under the Washington public records law or other applicable Washington law.

(8) **Monitoring plan for entities required to validate or verify under WAC 173-424-800.**

(a) Each entity responsible for obtaining third-party verification of their data under the CFP must complete and retain a written monitoring plan for review by a verifier or ecology;

(b) If a fuel production facility is required to complete and maintain a monitoring plan by the California LCFS or Oregon CFP, the same monitoring plan may be used to meet the requirements of this rule unless there are substantive differences between the two programs' treatment of the fuel production process;

(c) A monitoring plan must include the following general items and associated references to more detailed information, as applicable:

(i) Information to allow ecology and the verification team to develop a general understanding of boundaries and operations relevant to the entity, facility, or project, including participation in other markets and other third-party audit programs;

(ii) Reference to management policies or practices applicable to reporting pursuant to this chapter, including recordkeeping;

(iii) Explanation of the processes and methods used to collect necessary data for reporting pursuant to this chapter;

(iv) Explanations and queries of source data to compile summary reports of intermediate and final data necessary for reporting pursuant to this chapter;

(v) Reference to one or more simplified block diagrams that provide a clear visual representation of the relative locations and positions of measurement devices and sampling locations, as applicable, required for calculating reported data (e.g., temperature, total pressure, LHV or HHV, fuel consumption); the diagram(s) must include storage tanks for raw material, intermediate products, and finished products, fuel sources, combustion units, and production processes, as applicable;

(vi) Clear identification of all measurement devices supplying data necessary for reporting pursuant to this chapter, including identification of low flow cutoffs as applicable, with descriptions of how data from measurement devices are incorporated into the submitted report;

(vii) Descriptions of measurement devices used to report CFP data and how acceptable accuracy is demonstrated, e.g., installation, maintenance, and calibration method and frequency for internal meters and financial transaction meters; this provision does not apply to data reported in the WFRS for generating credits for EV charging;

(viii) Description of the procedures and methods that are used for quality assurance, maintenance, and repair of all continuous monitoring systems, flow meters, and other instrumentation used to provide data for CFP reports;

(ix) Original equipment manufacturer (OEM) documentation or other documentation that identifies instrument accuracy and required maintenance.

nance and calibration requirements for all measurement devices used to collect necessary data for reporting pursuant to this chapter;

(x) The dates of measurement device calibration or inspection, and the dates of the next required calibration or inspection;

(xi) Requests for postponement of calibrations or inspections of internal meters and subsequent approvals by ecology. The entity must demonstrate that the accuracy of the measured data will be maintained pursuant to the measurement accuracy requirements of WAC 173-424-610;

(xii) A listing of the equation(s) used to calculate flows in mass, volume, or energy units of measurement, and equations from which any nonmeasured parameters are obtained, including meter software, and a description of the calculation of weighted average transport distance;

(xiii) Identification of job titles and training practices for key personnel involved in CFP data acquisition, monitoring, reporting, and report attestation, including reference to documented training procedures and training materials;

(xiv) Records of corrective and subsequent preventative actions taken to address verifier and ecology findings of past nonconformance and material misstatements;

(xv) Log of modifications to a fuel pathway report conducted after attestation in response to review by third-party verifier or ecology staff;

(xvi) Written description of an internal audit program that includes data report review and documents ongoing efforts to improve the entity's CFP reporting practices and procedures, if such an internal audit program exists; and

(xvii) Methodology used to allocate the produced fuel quantity to each certified fuel pathway code;

(d) The monitoring plan related to a fuel pathway carbon intensity or reporting quantities of fuels must also include the following elements specific to fuel pathway carbon intensity calculations and produced quantities of fuels per fuel pathway code:

(i) Explanation of the processes and methods used to collect necessary data for fuel pathway application and annual fuel pathway reports and all site-specific WA-GREET 3.0 inputs, as well as references to source data;

(ii) Description of steps taken and calculations made to aggregate data into reporting categories, for example aggregation of quarterly fuel transactions per fuel pathway code;

(iii) Methodology for assigning fuel volumes by fuel pathway code, if not using a method prescribed by ecology. If using ecology prescribed methodology, the methodology should be referenced;

(iv) Methodologies for testing conformance to specifications for feedstocks and produced fuels, particularly describing physical testing standards and processes;

(v) Description of procedure taken to ensure measurement devices are performing in accordance with the measurement accuracy requirements of WAC 173-424-610;

(vi) Methodology for monitoring and calculating weighted average feedstock transport distance and modes, including the specific documentation records that will be collected and retained on an ongoing basis;

(vii) Methodology for monitoring and calculating fuel transport distance and modes, including the specific documentation records that will be collected and retained on an ongoing basis;

(viii) References to contracts and accounting records that confirm fuel quantities were delivered into Washington for transportation use in carbon intensity determination, and confirm feedstock and finished fuel transportation distance; and

(ix) All documentation required pursuant to WAC 173-424-600(6) for fuel pathways utilizing a specified source feedstock to qualify for a reduced carbon intensity; and

(e) The monitoring plan must also include the following documentation that can be used to justify transaction types reported for fuel in the WFRS, including the production amount, sale/purchase agreements and final fuel dispensing records. Such documentation must be specific to quarterly fuel transactions reports for importers of blendstocks, importers of finished fuels, Washington producers, credit generators, aggregators, and out-of-state producers.

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#### NEW SECTION

**WAC 173-424-410 Quarterly reports.** (1) **Reporting frequency and deadlines.** Except for persons exempt from this requirement under WAC 173-424-130, regulated parties, credit generators, and aggregators must submit a quarterly report using the WFRS by:

- (a) June 30th — for January through March of each year;
- (b) September 30th — for April through June of each year;
- (c) December 31st — for July through September of each year; and
- (d) March 31st — for October through December of each previous year.

(2) **General reporting requirements for quarterly reports.**

(a) Reporters must upload the data for the quarterly reports in the WFRS within the first 45 days after the end of the quarter.

(b) During the second 45 days, reporters must work with each other to resolve any fuel transaction discrepancies between different reporters' reported transactions.

(c) In order to allow for carry-back credits to have been generated only in the applicable years, the Q1 report may not be submitted prior to May 1st.

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#### NEW SECTION

**WAC 173-424-420 Specific reporting requirements.** In addition to all the requirements in WAC 173-424-410 and 173-424-430.

(1) Quarterly reports must contain the information specified in Table 9 under WAC 173-424-900 for each transportation fuel subject to the CFP.

(2) **Specific (quarterly) reporting parameters for natural gas (including CNG, LNG, and L-CNG) used as transportation fuel.** Any registered party must report the following parameters for each fueling facility to which CNG, LNG, L-CNG, is supplied as a transportation fuel:

(a) The amount of fuel dispensed must be reported per fuel dispensing equipment, as required for registration in WFRS, with a certified fuel pathway code and with transaction type "NGV fueling."

(b) For CNG and L-CNG, the amount of fuel dispensed in therms at higher heating value per reporting period separately for all light/medium (LDV and MDV), heavy-duty vehicles with compression engines (HDV-CIE), and heavy-duty vehicles with spark ignition engines (HDV-SIE).

(c) For LNG, the amount of fuel dispensed in gallons per reporting period separately for all LDV/MDV, HDV-CIE, and HDV-SIE.

(d) For CNG, L-CNG, and LNG, the carbon intensity as listed in Table 6, Washington Carbon Intensity Lookup Fuel Pathway WAC 173-424-900.

(e) For biomethane-based CNG, LNG, and L-CNG, the carbon intensity as approved under WAC 173-424-610 and the EPA production company identification number and facility identification number. Additionally, if the biomethane-based volumes are being reported using a book-and-claim methodology, the registered party must submit records showing the retirement of renewable thermal certificates representing the biomethane environmental attributes from that facility in M-RETS renewable thermal system or another approved and recognized tracking system with the quarterly report. The retirement records must show enough renewable thermal certificates were retired to cover the volume of biomethane claimed as a fuel in the CFP and those certificates must be from the same biomethane production facility to which the fuel pathway code is assigned. If biogas or biomethane is being used that is directly delivered to a vehicle and not injected into a pipeline, the registered party must provide the following attestation when it files file 108 the quarterly report for the corresponding volume of biogas or biomethane claimed.

"I certify that to the extent that the gas used in the fuel pathway or supplied as transportation fuel is characterized as biomethane, \_\_\_\_\_ (registered party name) owns the exclusive rights to the corresponding environmental attributes.

\_\_\_\_\_ (registered party name) has not sold, transferred, or retired those environmental attributes in any program or jurisdiction other than the federal RFS.

Based on diligent inquiry and review of contracts and attestations from our business partners, I certify under penalty of perjury under the laws of the State of Washington that no other party has or will sell, transfer, or retire the environmental attributes corresponding to the biomethane for which \_\_\_\_\_ (registered party name) claims credit in the CFP program."

(f) The total quantity of fuel, summed across all fuel pathway codes, dispensed for transportation purpose through the fuel supplying equipment during the reporting period.

(g) When the vehicle application is unknown, for the purpose of reporting, a fueling event of less than 3,500 MJ (30 gasoline gallon equivalents) of fuel dispensed must be reported as NGV fueling of LDV/MDV. A fueling event of 3,500 MJ or more must be reported as NGV fueling of HDV.

**(3) Specific reporting parameters for electricity used as a transportation fuel.** For electricity, any registered party must report the following as applicable:

(a) To claim a carbon intensity other than a statewide or utility-specific mix (Table 10) for the purpose of claiming incremental



credits, or to claim credits directly connected renewable power under the lookup table (Table 6) in WAC 173-424-900, a registered party must:

(i) Submit documentation that qualifying RECs were retired in the WREGIS or a recognized renewable electricity tracking system for the unique purpose of covering that specific charging at the same time as the submittal of the quarterly report; or

(ii) Submit documentation at least annually that the electric vehicle chargers are covered by a utility renewable electricity product or a power purchase agreement that has been approved by ecology for a carbon intensity. The carbon intensity assigned to the product or agreement can only be used for reporting if the electric vehicle chargers are covered by that same product or agreement for the time period which is being reported;

(b) For nonmetered residential EV charging:

(i) Within the first 45 days after the end of the quarter, the electric utility must provide to ecology the daily average EV electricity use data for the calculation of credits for nonmetered charging from the prior quarter. Ecology shall use the method established in WAC 173-424-540 to calculate any credits generated for the quarter and place them into the electric utility's account in WFRS;

(ii) For claiming incremental credit for nonmetered residential charging, the electric utility must be able to provide, upon ecology's request: The VIN for each electric vehicle claimed and evidence of EV vehicle registration and low-carbon electricity supply at the same location;

(iii) A nonutility credit generator must use credit revenues to increase consumer EV resources to promote transportation electrification. The credit generator must include, in their annual compliance report, an itemized summary of efforts and costs associated with meeting these requirements;

(c) For metered residential EV charging:

(i) For generating base credits, the amount of electricity (in kWh) used for residential EV charging per FSE;

(ii) For generating incremental credits for low-CI electricity, the amount of electricity (in kWh) used for residential EV charging per FSE using a certified FPC, and the following requirement must be met:

(A) Upon ecology's request, records must be provided that demonstrate an EV is owned or leased by an individual dwelling at the claimed residence; and

(B) Only a single entity can generate incremental credits using a low-CI pathway for the same FSE. If two or more entities report for the same FSE to generate incremental credits, no incremental credits will be issued for that FSE;

(d) For nonresidential EV charging. For each public access charging facility, fleet charging facility, workplace private access charging facility, or multifamily dwelling, the amount of electricity dispensed in kilowatt hours to vehicles per FSE;

(e) For each public transit agency, the amount of electricity dispensed to or consumed by vehicles used for public transportation in kilowatt-hours per FSE. The report must be:

(i) Separated by use for light rail, streetcars, aerial trams, or electric transit buses; and

(ii) Separated by electricity used in portions of their fixed guideway system placed in service before and after January 1, 2023;

(f) For entities reporting forklift charging, the amount of electricity dispensed to or consumed by forklifts per FSE. The report must be separated by electricity used to charge forklifts built in or before model year 2022 and electricity used to charge forklifts built in model year 2023 and after. The reporting entity must provide the number of electric forklifts in the above model year groups (in and pre-2022 versus post-2023);

(g) For eTRU, eCHE, or eOGV, the amount of electricity dispensed to or consumed by the equipment per FSE;

(h) For other electric transportation applications, the amount of electricity dispensed to or consumed by the equipment per FSE with transaction type approved by ecology, as Tier-2 FPW.

**(4) Specific reporting parameters for hydrogen used as a transportation fuel.**

(a) The quantity (in kg) of hydrogen fuel dispensed per FSE, as required in WA-RFS, and by vehicle weight category: LDV & MDV and HDV.

(b) For hydrogen fuel cell forklifts, the amount of hydrogen fuel dispensed (in kg) per FSE.

**(5) Specific reporting parameters for propane.**

(a) The quantity (in gallon) of propane dispensed per FSE.

(b) For renewable propane, the production company ID and facility ID.

**(6) Specific reporting parameters for liquid fuels including gasoline, diesel, diesel fuel blends, alternative fuels, and alternative jet fuel.**

(a) The right transaction type for each fuel. The transaction type "production for import" is to be reported by out-of-state producers who choose to be the first fuel reporting entity for fuel imported into Washington. The transaction type "import" is to be reported by nonproducers who choose to be the first fuel reporting entity for out-of-state fuel imported into Washington. The following information are to be reported:

(i) Except as provided in (a)(ii) of this subsection, the volume (in gallons) of each blendstock per reporting period aggregated for each distinct carbon intensity value (e.g., X gallons of blendstock with A gCO<sub>2</sub>e/MJ, Y gallons of blendstock with B gCO<sub>2</sub>e/MJ).

(ii) A producer of gasoline or diesel fuel must report, for each of its refineries, the MCON or other crude oil name designation, volume (in gallons), and country (or state) of origin for each crude supplied to the refinery during the quarter.

(b) For renewable hydrocarbon diesel or gasoline co-processed at a petroleum refinery, any registered party must report the following information as applicable:

(i) If the registered party is also the producer, then ecology may require the registered party to report the ongoing information required under WAC 173-424-610.

(ii) If the registered party is not the producer, and the producer has not met its obligations under WAC 173-424-610, then ecology may require the registered party to report the volume of fuel under a temporary fuel pathway code or the fuel pathway code for clear gasoline or diesel, as applicable.

(c) Temperature correction. All liquid fuel volumes reported in the WFRS must be adjusted to the standard temperature conditions of 60 degrees Fahrenheit as follows:

(i) For ethanol, using the formula:

Standardized volume = Actual volume \* ((-0.0006301 \* T) + 1.0378), where standardized volume refers to the volume of ethanol in gallons at 60°F, actual volume refers to the measured volume in gallons, and T refers to the actual temperature of the batch in °F.

(ii) For biodiesel, one of the following two methodologies must be used:

(A) Standardized volume = Actual volume \* ((-0.00045767 \* T) + 1.02746025), where standardized volume refers to the volume in gallons at 60°F, actual volume refers to the measured volume in gallons, and T refers to the actual temperature of the batch in °F; or

(B) The standardized volume in gallons of biodiesel at 60°F, as calculated using the American Petroleum Institute Refined Products Table 6B, as referenced in ASTM 1250-08.

(iii) For other liquid fuels, the volume correction to standard conditions must be calculated by the methods described in the American Petroleum Institute Manual of Petroleum Measurement Standards Chapter 11 - Physical Properties Data (May 2004), the ASTM Standard Guide for the Use of Petroleum Measurement Tables (ASTM D1250-08) (Reapproved 2013), or the API Technical Data Book, Petroleum Refining Chapter 6 - Density (April 1997).

(iv) If a registered party believes the methods in (c)(i) through (iii) of this subsection are inappropriate, they may request to use a different method and ecology may approve that method if it finds that it is at least as accurate as the methods in (c)(i) through (iii) of this subsection.

(d) Reporting exempt gallons. When a registered party is reporting that it sold gallons of fuel to exempt fuel users as defined in WAC 173-424-110, the registered party must designate in the transaction description field of the WFRS the categories of exempt fuel users to which the registered party delivered fuel and the number of gallons delivered. For blended fuels, all components must be reported as exempt.

(e) Reporting "not for transportation" gallons. When reporting that fuel was sold as not for transportation in the WFRS, the registered party must report in the transaction description field of the WFRS which stationary source, or category of stationary fuel combustion, the fuel was sold to and the number of gallons sold. For blended fuels, all components must be reported as not being used for transportation.

(f) Reporting position holder transactions.

(i) Registered parties that are position holders must report fuel sold below the rack.

(ii) Registered parties that are position holders that sell fuel to entities not registered in the CFP may aggregate and report those sales in a single transaction using the "undefined" business partner descriptor.

(iii) Registered parties that are position holders that sell fuel below the rack for export must identify each recipient of such fuel that is registered in the CFP.

(g) Reporting below the rack exports. Purchasers of fuel from a position holder that is directly exported without modification must report such fuel using the "purchase below the rack for export" transaction category.

(7) **Annual reporting of electric utility credit revenue.** All electric utilities that receive credits must annually report the following items to ecology no later than April 30th. Failure to file such a report will result in aggregator receiving credits for that utility

until the utility files any past-due reports. Each utility must report the following information, for the prior calendar year:

- (a) Total revenue from the sale of base and incremental credits attributable to residential vehicle charging, if applicable in the prior year;
- (b) Description of spending of the credit revenue, including:
  - (i) A description of the programs or projects that were funded by CFP credit revenue;
  - (ii) The amount spent in each program or project in the prior year;
  - (iii) Description of the group of individuals or listing of organizations that benefited from the programs or projects;
  - (iv) Description of the areas that benefited from the programs or projects;
  - (v) Any other data elements that ecology may prescribe towards the implementation of RCW 70A.535.080.
- (8) The registered party must maintain a nonnegative value for each "fuel pathway code obligated amount" as summed across all quarterly data in the online system.
- (9) **Significant figures.** A regulated entity must report the following quantities as specific below:
  - (a) Carbon intensity, expressed to the same number of significant figures in Carbon Intensity of Lookup Table, Table 6 under WAC 173-424-900.
  - (b) Credits or deficits, expressed to the nearest whole metric ton CO<sub>2</sub> equivalent;
  - (c) Fuel amounts in units specified in quarterly and annual reports, expressed to the nearest whole unit applicable for that quantity; and
  - (d) Any other quantity must be expressed to the nearest whole unit applicable for that quantity.
- (10) **Correcting a previously submitted report.** Upon discovery of an error, a fuel reporting entity may request to have previously submitted quarterly reports for the current compliance periods reopened for corrective edits and resubmittal by submitting a correction request form online in the WFRS. The fuel reporting entity is required to provide justification for the report corrections and indicate the specific corrections to be made to the report. Pursuant to WAC 173-424-510 (5)(c), no credits may be claimed, and no deficits may be eliminated, retroactively for a quarter for which the quarterly reporting deadline has passed. Each submitted request is subject to ecology review and approval. Permission to correct a report does not preclude enforcement based on misreporting.

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#### NEW SECTION

**WAC 173-424-430 Annual compliance reports. (1) Annual compliance reporting deadline.**

- (a) Except as provided in (b) of this subsection, regulated parties, credit generators, and aggregators must use the WA-RFS to submit an annual compliance report to ecology not later than April 30th for the compliance period ending on December 31st of the previous year.

(b) Each regulated party must submit an annual compliance report for 2023 notwithstanding that the initial compliance period is for 2023 and 2024.

(c) Small importers of finished fuels may submit a supplemental annual report using the WFRS, not later than April 30th for the compliance period ending on December 31st of the previous year.

(2) **General reporting requirements for annual compliance reports.** Regulated parties, credit generators, and aggregators must submit annual compliance reports that meet, at minimum, the general and specific requirements for quarterly reports and include the following information:

(a) The total credits and deficits generated by the regulated party, credit generator, or aggregator in the current compliance period, calculated in the WFRS as provided in the equations in WAC 173-424-540;

(b) Any credits carried over from the previous compliance period;

(c) Any deficits carried over from the previous compliance period;

(d) The total credits acquired from other regulated parties, credit generators, and aggregators;

(e) The total credits sold or transferred; and

(f) The total credits retired within the WFRS to meet the compliance obligation per WAC 173-424-540.

(3) All pending credit transfers must be completed prior to submittal of the annual compliance report.

(4) **Correcting a previously submitted report.** A regulated party, credit generator, or aggregator may ask ecology to reopen a previously submitted quarterly or annual compliance report for corrective edits and resubmittal. The requestor must submit an "unlock report request form" within the WFRS. The requestor is required to provide justification for the report corrections and must indicate the specific corrections to be made to the report. Pursuant to WAC 173-424-510 (5)(c), no credits may be claimed, and no deficits may be eliminated, retroactively for a quarter for which the quarterly reporting deadline has passed. Each submitted request is subject to ecology review and approval. Ecology approval of a corrected report does not preclude enforcement based on misreporting.

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## PART 5 - DEMONSTRATING COMPLIANCE

### NEW SECTION

**WAC 173-424-500 Demonstrating compliance.** (1) **Compliance demonstration.** Each regulated party must meet its compliance obligation for the compliance period by demonstrating through submission of its annual compliance report that it possessed and has retired a number of

credits from its account that is equal to its compliance obligation calculated under subsection (2) of this section.

(2) **Calculation of compliance obligation.** Ecology calculates regulated party's compliance obligation as the sum of deficits generated in the compliance period plus deficits carried over from the prior compliance period, represented in the following equation:

$$\text{Compliance Obligation} = \text{Deficits Generated} + \text{Deficits Carried Over}$$

(3) **Calculation of credit balance.**

(a) Definitions. For the purpose of this section:

(i) Deficits generated are the total deficits generated by the regulated party in the current compliance period;

(ii) Deficits carried over are the total deficits carried over by the regulated party from the previous compliance period;

(iii) Credits generated are the total credits generated by the regulated party in the current compliance period;

(iv) Credits acquired are the total credits acquired by the regulated party in the current compliance period from other regulated parties, credit generators, and aggregators, including carryback credits;

(v) Credits carried over are the total credits carried over by the regulated party from the previous compliance period;

(vi) Credits retired are the total credits retired by the regulated party within the WFRS for the current compliance period;

(vii) Credits sold are the total credits sold by, or otherwise transferred from, the regulated party in the current compliance period to other regulated parties, credit generators, and aggregators; and

(viii) Credits on hold are the total credits placed on hold due to enforcement or an administrative action. While on hold, these credits cannot be used for meeting the regulated party's compliance obligation.

(b) A regulated party's credit balance is calculated using the following equation:

$$\text{Credit Balance} = (\text{Credits Gen} + \text{Credits Acquired} + \text{Credits Carried Over}) - (\text{Credits Retired} + \text{Credits Sold} + \text{Credits on Hold})$$

(4) **Small deficits.** At the end of a compliance period, a regulated party that has a net deficit balance may carry forward a small deficit to the next compliance period without penalty. A small deficit exists if the amount of credits the regulated party needs to meet its compliance obligation is five percent or less than the total amount of deficits the regulated party generated for the compliance period. This is not allowed for not more than two consecutive years.

(5) **Extended credit acquisition period.** A regulated party may acquire carryback credits between January 1st and April 30th to be used for meeting its compliance obligation for the prior compliance period. A regulated party must complete all carryback credit transfers in the WFRS prior to submitting their annual report, but no later than April 30th, in order for them to be valid for meeting the compliance obligation for that annual report's compliance period.

(6) **Nonsmall deficit.** Regulated parties who do not demonstrate compliance under subsection (1) of this section and whose deficit is not small as defined in subsection (4) of this section may demonstrate compliance through participation in the credit clearance market under WAC 173-424-570.

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NEW SECTION**WAC 173-424-510 Credit and deficit basics. (1) Carbon intensities.**

(a) Except as provided in (b), (c), or (d) of this subsection, regulated parties, credit generators, and aggregators must use a carbon intensity approved by ecology under WAC 173-424-610 for calculating credits and/or deficits.

(b) If a regulated party, credit generator, or aggregator has ecology approved provisional carbon intensity under WAC 173-424-610, the regulated party, credit generator, or aggregator must use the provisional carbon intensity in calculating credits and/or deficits.

(c) If a regulated party, credit generator, or aggregator has ecology approved temporary carbon intensity under WAC 173-424-610, the regulated party, credit generator, or aggregator must use the temporary carbon intensity in calculating credits and/or deficits for the period which it has been approved, unless ecology has subsequently approved a permanent carbon intensity for that fuel.

(d) If a registered party purchases a blended finished fuel and the seller does not provide carbon intensity information, then the registered party must:

(i) Use the applicable substitute fuel pathway code in Table 7 under WAC 173-424-900 or otherwise ecology approved and posted on its website under WAC 173-424-610(11) if the fuel is:

- (A) Exported;
- (B) Not used for transportation; or
- (C) Used in an exempt fuel use; and

(ii) Use the weighted average of the applicable substitute fuel pathway codes as described in (d)(i) of this subsection for the fossil fuel and biofuel or biofuels components, if the finished fuel blend is not listed.

(2) **Fuel quantities.** Regulated parties, credit generators, and aggregators must express fuel quantities in the unit of fuel for each fuel.

(3) **Compliance period.** The annual compliance period is January 1st through December 31st of each year, except the initial compliance period is January 1, 2023, through December 31, 2024; and

(4) **Metric tons of CO<sub>2</sub> equivalent.** Regulated parties, credit generators, and aggregators must express credits and deficits to the nearest whole metric ton of carbon dioxide equivalent.

(5) **Deficit and credit generation.**

(a) Credit generation. A clean fuel credit is generated when:

(i) The fuel is produced, imported, or dispensed for use in Washington, as applicable, and the carbon intensity of the fuel approved for use under WAC 173-424-600 through 173-424-630 is less than the clean fuel standard for:

(A) Gasoline and gasoline substitutes in Table 1 under WAC 173-424-900; or

(B) Diesel fuel and diesel substitutes in Table 2 under WAC 173-424-900.

(ii) A valid and accurate quarterly report is issued in the WFRS.

(b) Deficit generation. A clean fuel deficit is generated when:

(i) Fuel is produced, imported, or dispensed for use in Washington, as applicable, and the carbon intensity of the fuel approved for use under WAC 173-424-600 through 173-424-630 is more than the clean fuel standard for:

(A) Gasoline and gasoline substitutes in Table 1 under WAC 173-424-900; or

(B) Diesel fuel and diesel substitutes in Table 2 under WAC 173-424-900.

(ii) Deficits are generated when a valid and accurate quarterly report is issued in the WFRS.

(c) No credits may be generated or claimed for any transactions or activities occurring in a quarter for which the quarterly reporting deadline has passed, unless the credits are being generated for residential charging of electric vehicles.

(6) **Mandatory retirement of credits.** When filing the annual report at the end of a compliance period, a registered party that possesses credits must retire a sufficient number of credits such that:

(a) Enough credits are retired to completely meet the registered party's compliance obligation for that compliance period; or

(b) If the total number of the registered party's credits is less than the total number of the regulated party's deficits, the registered party must retire all of its credits.

(7) **Credit retirement hierarchy.** The WFRS will use the following default hierarchy to retire credits for the purposes of meeting a compliance obligation according to the following sequence:

(a) Credits acquired or generated in a previous compliance period prior to credits generated or acquired in the current compliance period;

(b) Credits generated in an earlier quarter before credits generated in a later quarter; and

(c) Credits with an earlier completed transfer "recorded date" before credits with a later completed transfer "recorded date."

[ ]

#### NEW SECTION

**WAC 173-424-520 Fuels to include in credit and deficit calculation.** (1) **Fuels included.** Credits and deficits must be calculated for all regulated fuels and clean fuels that are sold, supplied, or offered for sale in Washington.

(2) **Fuels exempted.** Except as provided in subsections (3), (4), and (5) of this section, credits and deficits may not be calculated for fuels exempted under WAC 173-424-130.

(3) **Voluntary inclusion.** A regulated party, credit generator, or aggregator may choose to include in its credits and deficits calculations fuel that is sold to an exempt fuel user in Washington under WAC 173-424-130 (2)(b), provided that the credit and deficit calculation includes all fuels listed on the same invoice.

(4) **When fuels are exported from Washington:**

(a) Any bulk quantity of fuel that is exported must be reported by the person who holds title to the fuel when it is exported;

(b) If the exporter purchased the fuel with the compliance obligation, the exported fuels will not generate deficits or credits;

(c) If credits or deficits were generated and separated from the fuel through a transfer without obligation, the exporter will incur credits or deficits, as appropriate, to balance out the deficits or credits detached from the fuel; and



(d) If the fuel was imported in one quarter and exported in another quarter, the exporter will incur credits or deficits, as appropriate, to balance out the deficits or credits, respectively, associated with the fuel when it was imported in the prior quarter.

(5) **Alternative jet fuel.** Alternative jet fuel may be reported by the producer or importer of the fuel and any registered parties that hold title to it, so long as the fuel is loaded into airplanes in Washington. If a gallon of alternative jet fuel that has been reported to the clean fuels program as imported or produced is later exported, lost, or otherwise not used for transportation it must be reported as such.

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#### NEW SECTION

##### **WAC 173-424-530 Transacting credits. (1) General.**

(a) Credits are a regulatory instrument and do not constitute personal property, instruments, securities, or any other form of property.

(b) Regulated parties, credit generators, and aggregators may:

(i) Retain credits without expiration within the CFP in compliance with this division; and

(ii) Acquire or transfer credits from or to other regulated parties, credit generators, and aggregators that are registered under WAC 173-424-300.

(c) Regulated parties, credit generators, and aggregators may not:

(i) Use credits that have not been generated in compliance with this chapter; or

(ii) Borrow or use anticipated credits from future projected or planned carbon intensity reductions, except as approved by ecology under WAC 173-424-550.

##### **(2) Credit transfers between registered parties.**

(a) "Credit seller," as used in this rule, means a registered party that wishes to sell or transfer credits.

(b) "Credit buyer," as used in this rule, means a registered party that wishes to acquire credits.

(c) A credit seller and a credit buyer may enter into an agreement to transfer credits.

(d) A credit seller may only transfer credits up to the number of credits in the credit seller's WFRS account on the date of the transfer.

(3) **Credit seller requirements.** When parties wish to transfer credits, the credit seller must initiate an online "credit transfer form" provided in the WFRS and must include the following:

(a) The date on which the credit buyer and credit seller reached their agreement;

(b) The names and FEINs of the credit seller and credit buyer;

(c) The first and last names and contact information of the persons who performed the transaction on behalf of the credit seller and credit buyer;

(d) The number of credits proposed to be transferred; and

(e) The price or equivalent value of the consideration (in U.S. dollars) to be paid per credit proposed for transfer, excluding any

fees. If no clear dollar value can be easily arrived at for the transfer, a price of zero must be entered and a qualitative description of the transaction's valuation must be entered in the seller's notes field.

(4) **Credit buyer requirements.** Within 10 days of receiving the "credit transfer form" from the credit seller in the WFRS, the credit buyer must confirm the accuracy of the information therein and may accept the credit transfer by signing and dating the form using the WFRS.

(5) **Voiding credits.** If the credit buyer and credit seller have not fulfilled the requirements of subsections (3) and (4) of this section within 20 days of the seller initiating the credit transfer, the transaction will be voided. If a transaction has been voided, the credit buyer and credit seller may initiate a new credit transfer.

(6) **Aggregator.** An aggregator may only act as a credit seller or credit buyer if that aggregator:

(a) Has an approved and active registration under WAC 173-424-300;

(b) Has an account in the WFRS; and

(c) Has an approved aggregator designation form from a regulated party or credit generator for whom the aggregator is acting in any given transaction.

(7) **Illegitimate credits.**

(a) A registered party must report accurately when it submits information into the WFRS. If inaccurate information is submitted that results in the generation of one or more credits when such an assertion is inconsistent with the requirements of WAC 173-424-510 through 173-424-540, or a party's submission otherwise causes credits to be generated in violation of the requirements of this chapter, those credits are illegitimate and invalid. If ecology determines that one or more credits that a party has generated are illegitimate credits, then:

(i) If the registered party that generated the illegitimate credits still holds them in its account, ecology will cancel those credits;

(ii) If the registered party that generated the illegitimate credits has retired those credits to meet its own compliance requirement or if it has transferred them to another party, the party that generated the illegitimate credits must retire an approved credit to replace each illegitimate credit; and

(iii) The party that generated the illegitimate credits is also subject to enforcement for the violation, as deemed appropriate in ecology's discretion.

(b) A registered party that has acquired one or more illegitimate credits, but was not the party that generated the illegitimate credits:

(i) When the initial generator of the illegitimate credits has not retired approved credits in place of the illegitimate credits and ecology determines that that initial generator is unlikely to be able to do so, then the party that has acquired such credits may have those credits canceled by ecology if the party still holds the credits in its account, or if the party has used such illegitimate credits to meet its own compliance requirement, then ecology may require the party to retire an approved credit to replace each such illegitimate credit that it retired to meet its compliance obligation;

(ii) May be subject to enforcement at ecology's discretion, unless ecology determines that the party from whom the credits were acquired engaged in false, fraudulent, or deceptive trading practices.

(8) **Prohibited credit transfers.** A credit transfer involving, related to, in service of, or associated with any of the following is prohibited:

(a) Fraud, or an attempt to defraud or deceive using any device, scheme, or artifice;

(b) Either party employed any unconscionable tactic in connection with the transfer;

(c) Any false report, record, or untrue statement of material fact or omission of a material fact related to the transfer or conditions that would relate to the price of the credits being transferred. A fact is material if it is reasonably likely to influence a decision by another party or by the agency;

(d) Where the intended effect of the activity is to lessen competition or tend to create a monopoly, or to injure, destroy, or prevent competition;

(e) A conspiracy in restraint of trade or commerce; or

(f) An attempt to monopolize, or combine or conspire with any other person or persons to monopolize.

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#### NEW SECTION

**WAC 173-424-540 Calculating credits and deficits.** (1) **General credit or deficit calculation method.** Except as provided in subsections (2) and (3) of this section, credit and deficit generation must be calculated for all fuels included in WAC 173-424-520:

(a) Using credit and deficit basics as directed in WAC 173-424-510;

(b) Calculating energy in mega joules by multiplying the amount of fuel by the energy density of the fuel in Table 3 under WAC 173-424-900;

(c) Calculating the adjusted energy in mega joules by multiplying the energy in mega joules from (b) of this subsection by the energy economy ratio of the fuel listed in Table 4 under WAC 173-424-900 or as approved by ecology under WAC 173-424-620, as applicable;

(d) Calculating the carbon intensity difference by subtracting the value in (d) (i) from (ii) of this subsection:

(i) The fuel's carbon intensity as approved under WAC 173-424-600 through 173-424-630, adjusted for the fuel application's energy economy ratio as listed in Table 4 under WAC 173-424-900 or as approved under WAC 173-424-620 as applicable;

(ii) The clean fuel standard for gasoline or gasoline substitutes listed in Table 1 under WAC 173-424-900 or diesel fuel and diesel substitutes listed in Table 2 under WAC 173-424-900, as applicable;

(e) Calculating the grams of carbon dioxide equivalent by multiplying the adjusted energy in mega joules in (c) of this subsection by the carbon intensity difference in (d) of this subsection;

(f) Calculating the metric tons of carbon dioxide equivalent by dividing the grams of carbon dioxide equivalent calculated in (e) of this subsection by 1,000,000; and

(g) Determining under WAC 173-424-510(5) whether credits or deficits are generated.

(2) **Calculation method for fixed guideway vehicles and electric forklifts.** For electricity used to power fixed guideway vehicles on track placed in service prior to 2023 and forklifts from model year 2023 and earlier, credit and deficit generation must be calculated by:

(a) Using credit and deficit basics as directed in WAC 173-424-510;

(b) Calculating energy in mega joules by multiplying the amount of fuel by the energy density of the fuel in Table 3 under WAC 173-424-900;

(c) Calculating the carbon intensity difference by subtracting (c)(i) from (ii) of this subsection:

(i) The fuel's carbon intensity as approved under WAC 173-424-600 through 173-424-630, adjusted for the fuel application's energy economy ratio listed in Table 4 under WAC 173-424-900 as applicable;

(ii) The clean fuel standard for gasoline or gasoline substitutes listed in Table 1 under WAC 173-424-900 or diesel fuel and diesel substitutes listed in Table 2 under WAC 173-424-900, as applicable;

(d) Calculating the grams of carbon dioxide equivalent by multiplying the adjusted energy in mega joules in (b) of this subsection by the carbon intensity difference in (c) of this subsection;

(e) Calculating the metric tons of carbon dioxide equivalent by dividing the grams of carbon dioxide equivalent calculated in (d) of this subsection by 1,000,000; and

(f) Determining under WAC 173-424-600(5) whether credits or deficits are generated.

(3) **Residential electric vehicle charging.** For electricity used in residential charging of electric vehicles, credit calculations must be based on the total electricity dispensed (in kilowatt hours) to vehicles, measured by:

(a) The use of direct metering (either submetering or separate metering) to measure the electricity directly dispensed to all vehicles at each residence; or

(b) For residences where direct metering has not been installed, ecology will calculate the total electricity dispensed as a transportation fuel based on analysis of the total number of BEVs and PHEVs in a utility's service territory based on Washington state department of licensing records. Ecology will perform this analysis at least twice a year and issue credits based on it. Ecology will select one of the following methods for estimating the amount of electricity charged based on its analysis of which is more accurate and feasible at the time it is performing the analysis:

(i) An average amount of electricity consumed by BEVs and PHEVs at residential chargers, based on regional or national data; or

(ii) An analysis of the average electric vehicles miles traveled by vehicle type or make and model, which compares the total amount of estimated charging for those electric vehicle miles traveled with the total reported charging in those territories in order to determine the amount of unreported charging that can be attributed to residential charging. The analysis may be done on a utility territory specific or statewide basis.

(c) If ecology determines after the issuance of residential electric vehicle credits that the estimate under (b) of this subsection contained a significant error that led to one or more credits being incorrectly generated, the error will be corrected by withholding an

equal number of credits to the erroneous amount from the next generation of residential electric vehicle credits.

(d) A credit generator or aggregator may propose an alternative method, subject to the approval of ecology upon its determination that the alternative method is more accurate than either of the methods described in (b) of this subsection.

(e) Credits generated under this subsection will be calculated by ecology under subsection (1) of this section using the estimated amount of electricity under (b) of this subsection and issues at least twice per year into the WFRS account of the utility, its designated aggregator, or the backstop aggregator within three months of the close of that year.

(4) **Incremental credits.** In calculating incremental credits for actions that lower the carbon intensity of electricity, the credit calculations must be performed based on subsection (1) of this section, except that the carbon intensity difference is calculated based on the carbon intensity of the renewable power and the carbon intensity used to calculate the base credits for that electric vehicle or charging equipment, and consistent with the following requirements, as applicable:

(a) Incremental credits for **nonresidential charging** are generated upon the retirement of RECs that qualify under WAC 173-424-630(5) by the credit generator, its aggregator, or the incremental aggregator, or by another entity on their behalf. For credit generators and their aggregators, RECs must be retired prior to or at the same time as the submittal as the quarterly report where the charging is being reported and REC retirement records must be submitted with the quarterly report as supplemental documentation. RECs may be retired by another entity on behalf of the credit generator or aggregator for their electric vehicle charging so long as it is clearly documented and that documentation is submitted with the quarterly report.

(b) For incremental credits generated using a utility renewable electricity product or power purchase agreement, evidence that the chargers were covered by such a product must be submitted at least annually along with a quarterly report. Upon request by ecology, any entity using a power purchase agreement or a utility renewable electricity product must produce evidence that the charging equipment was covered by that agreement or product for all time periods when the entity was claiming incremental credits.

(c) For the incremental aggregator, incremental credits are generated when it retires RECs on behalf of nonresidential electric vehicle charging.

(d) Incremental credits for residential charging are generated by a utility or its aggregator when RECs are retired on behalf of that charging, or when a utility demonstrates to ecology that EVs are being charged by customers enrolled in its utility renewable electricity products.

[ ]

#### NEW SECTION

**WAC 173-424-550 Advance crediting. (1) General provisions.**

(a) Advance credits are used to decarbonize the transportation sector pursuant to RCW 70A.535.050(3) through transportation electrification.

(b) All advance credits represent actual reductions of greenhouse gas emissions against the clean fuel standards.

(c) Vehicles must be registered in Washington to be eligible to earn advance credits.

(2) **Eligibility to generate advance credits.**

(a) Washington state department of transportation or other public entities that are implementing state transportation investment projects and programs to be funded through an omnibus transportation appropriations act may apply for advance credit, provided that:

(i) The projects and programs reduce greenhouse gas emissions and decarbonize the transportation sector.

(ii) The projects and programs that are eligible to generate credits may apply for advance credits.

(b) The entities identified in (a) of this subsection may apply to earn advance credits for the purchase and use of the following types of investments:

(i) Medium and heavy-duty vehicles; and

(ii) Light-duty vehicles if they are part of an organization's plan to fully electrify its light-duty fleet within a 15-year time period.

(iii) Electrification of the state ferry fleet; and

(iv) Other types of investments that ecology may identify to incentivize effective GHG emissions reduction activities that can normally generate credit through the clean fuels program.

(3) **Applications for advance credits.** All of the following requirements apply to applications for advance credits:

(a) Applications for advance crediting will be accepted by ecology at least once per year from entities eligible to apply under subsection (2) of this section. Ecology will notify stakeholders when applications will be accepted and will provide application materials and guidance about how it will process and consider applications.

(b) Applicants must supply the following information to ecology:

(i) A letter describing the activities or purchases that they want to receive advance crediting for, and the estimated time frames for when those projects and programs will be put into useful service;

(ii) A detailed estimate of the potential credit generation from the investment projects or programs that they want to receive advance crediting for;

(iii) A detailed monitoring mechanism to ensure the accuracy of the credit generation from the investment projects or programs until it has retired the payback period;

(iv) Information on the location of the investment projects and programs and all materials and energy inputs and emissions that is used to estimate the potential credit generation;

(v) A proposed number of credits to be advanced for each vehicle; and

(vi) An attestation that the applicant will remain the owner or lessee of the credit generating units through the implementation of the investment projects and programs until the vehicle has paid back the advance credits, or that, if the credit generating unit is sold prior to the end of the payback period, that the applicant will buy and retire credits against the remaining unearned amount.

(c) Ecology may request additional documentation from an applicant prior to making a decision on the application. Not submitting the

requested documentation can be reason to deny the application without prejudice.

(4) **Approval of advance credits.** If ecology determines that an application for advance credits meets the requirements of subsections (2) and (3) of this section, then ecology will negotiate an agreement with the applicant to issue advance credits consistent with this rule and based on all of the following considerations and requirements:

(a) A clear and objective milestone for issuing advance credits that represents when the credit generating unit implemented through the investment projects and programs covered by the application are placed into useful service to generate credits;

(b) The total number of credits being advanced;

(c) The length of the payback period, which must be one year longer than the number of years of credits that will be advanced;

(d) An attestation from the applicant that it understands that the advanced credits must represent real reductions and that if the activity covered by the agreement does not generate sufficient credits within the payback period that it is responsible for retiring a sufficient number of credits to make up the difference. The attestation must also include a statement that the applicant understands that it is responsible for making up the difference in credits if it sells or relocates covered credit generating units outside of Washington; and

(e) An attestation from the applicant that it will ensure that actual credits from the investment project or program are not generated from other credit generating units until the credits have been paid back.

(5) **Issuance of advance credits.** If ecology approves an application and has executed an agreement with the applicant under subsection (4) of this section, then:

(a) Ecology will issue advance credits to the applicant only after the vehicles or equipment are placed into useful service as agreed to under subsection (4) of this section;

(b) Credits will only be issued to the applicant named in the agreement; and

(c) Ecology may advance no more than six years of credits for any single investment project or program.

(6) **Payback period.** Advance credits issued under this rule are subject to the following requirements:

(a) The payback period for the investment project or program will be specified in the agreement between ecology and the applicant, except that the payback period may not exceed nine years. The payback period must be at least one year longer than the number of years of credits advanced to the applicant.

(b) In the event that the number of advance credits was not realized during the payback period, the recipient is responsible for acquiring and retiring sufficient credits to ensure the environmental integrity of the program.

(c) If the ownership of an investment project or program is transferred to another entity prior to the close of the payback period, the applicant is responsible for purchasing and retiring credits against the volume of advanced credits that has not yet been covered by actual credit generation.

(7) **Reporting requirements.** An applicant that has received advance credits under this rule:

(a) Must file quarterly reports to ecology showing the amount of credit generating activities into the investment project or program covered by the agreement; and

(b) May not generate additional credits until the advance credits are paid back. Ecology and the applicant will monitor the amount of credits that would have been generated to determine when an equal number of credits has been generated to the number of credits advanced.

(8) **Overall limitation on advance credits.** Ecology may not issue more advance credits in any one calendar year than an amount equal to five percent of the total number of deficits generated in the prior compliance year. In considering applications under this section, ecology will process applications based on the criteria ecology develops in consultation with the Washington state department of transportation towards meeting the goals of the clean fuels program.

[]

NEW SECTION

**WAC 173-424-560 Generating and calculating credits for ZEV fueling infrastructure pathways.** (1) **Hydrogen refueling infrastructure (HRI) pathways.**

(a) HRI pathway eligibility. A hydrogen station owner may submit an application to certify an HRI pathway subject to the following eligibility conditions:

(i) The proposed HRI must be located in Washington and open to the public.

(ii) The HRI pathway application must be received on or before December 31, 2030.

(iii) The following stations are not eligible for HRI crediting:

(A) Any station receiving or spending funds pursuant to any settlement related to any Washington or federal regulation enforcement; or

(B) Any station built as a required mitigation measure pursuant to the State Environmental Policy Act.

(b) HRI application requirements. For each hydrogen refueling station, the station owner must submit an application in the WFRS containing the following information:

(i) Name and address of the owner of the proposed station.

(ii) Contact person for the owner entity.

(A) Name;

(B) Title or position;

(C) Phone number;

(D) Mobile phone number;

(E) Email address.

(iii) Name, street address, latitude, longitude, and a location description for the proposed station.

(iv) Expected daily permitted hours of operation for the station. If the daily permitted hours are less than 24 hours, the applicant must provide documentation from a permitting authority demonstrating that daily permitted hours for the station are limited.

(v) The station nameplate refueling capacity for the permitted hours of operation calculated using the HySCapE 1.0 model or an equivalent model or capacity estimation methodology approved by ecology. The applicant must submit a completed model with the application.

(vi) The HRI refueling capacity for the station is the nameplate refueling capacity determined in (b) (v) of this subsection or the following, whichever is less:



(A) For light-duty vehicle stations: 500 kg/day, out of which 250 kg/day is eligible for capacity crediting; or

(B) For medium and heavy-duty vehicles station: 2300 kg/day, out of which 1150 kg/day is eligible for capacity crediting.

(vii) The number of dispensing units at the station.

(viii) Expected source(s) of hydrogen, CI value(s), and method(s) used for delivery.

(ix) Expected date that the station will be operational.

(x) Justification for the station location and how the proposed location contributes in developing a hydrogen refueling station network to support ZEV adoption. The justification must include:

(A) The role(s) the station location will play in the developing hydrogen station network;

(B) The means by which the station contributes to robust growth of the statewide hydrogen fueling network;

(C) Demonstration of potential for consistent and calculable hydrogen demand;

(D) Demonstration that the proposed station capacity is an appropriate capacity based on documented, verifiable, and reproducible projections of daily hydrogen demand at the proposed location;

(E) Calculation of the projected trajectory of annualized average station utilization (calculated as annual throughput divided by annual station capacity) at the proposed location; and

(F) Demonstration that the proposed station location has been discussed with local authorities having jurisdiction and no early roadblocks have been identified.

(xi) A signed attestation letter from the applicant attesting to the veracity of the information in the application packet. The attestation letter must be submitted as an electronic copy, be on company letterhead, be signed by an officer of the applicant with authority to attest to the veracity of the information in the application and to sign on behalf of the applicant, be from the applicant and not from an entity representing the applicant (such as a consultant or legal counsel), and include the following attestation:

I, an authorized representative of \_\_\_\_\_ (applicant entity), attest to the veracity of the information submitted as part of the Hydrogen Refueling Infrastructure (HRI) application, attest that the proposed FSE is not receiving funds pursuant to any enforcement settlement related to any Washington or Federal regulation, and declare that the information submitted accurately represents the anticipated and intended design and operation of the hydrogen refueling station. Further, I understand and agree to each of the statements in the attached application. I am a duly authorized officer with authority to attest to the veracity of the information in the application and to sign on behalf of the respective applicant.

I understand that the following information in the HRI application will be made available on the Washington CFP website: Name of the Applicant Entity, Station Name, Station Address, Number of Dispensing Units, HRI Refueling Capacity, and Effective Date Range for HRI Crediting.

By submitting this application, \_\_\_\_\_ (applicant entity) accepts responsibility for the information herein provided to Ecology. I certify under penalty of perjury under the laws of the Washington State that I have personally examined, and am familiar with, the statements and information submitted in this document. I

certify that the statements and information submitted to Ecology are true, accurate, and complete.

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Signature	Print Name & Title	Date
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(xii) CBI must be designated and a redacted version of any submitted documents designated to include CBI must be provided according to the ecology process consistent with the Washington state Public Records Act (chapter 42.56 RCW).

(xiii) An application and supporting documents must be submitted electronically via WFRS unless ecology has approved or requested in writing another format.

(c) Application approval process.

(i) The HRI application must be approved by ecology before the station owner may generate hydrogen refueling infrastructure credits. If estimated potential HRI credits from all approved stations exceed two and one-half percent of deficits in the most recent quarter, ecology will not approve additional HRI pathways and will not accept additional applications until estimated potential HRI credits are less than two and one-half percent of deficits. HRI applications will be evaluated for approval on a first-come first-served basis.

Estimated potential HRI credits will be calculated using the following equation:

$$Credits_{HRI}^{Potential} = Credits_{HRI}^{Prior\ Qtr} \times \frac{Cap_{HRI}^{Approved}}{Cap_{HRI}^{Operational}}$$

Where:

- $Credits_{HRI}^{Potential}$  means the estimated potential HRI credits from all approved HRI stations;
- $Credits_{HRI}^{Prior\ qtr}$  means the total HRI credits generated by operational stations in the prior quarter;
- $Cap_{HRI}^{Operational}$  means the total HRI capacity of stations that were operational in the prior quarter; and
- $Cap_{HRI}^{Approved}$  means the total HRI capacity of all approved stations, both operational and nonoperational.

(ii) After receipt of an application designated by the applicant as ready for formal evaluation, ecology will advise the applicant in writing either that:

(A) The application is complete; or

(B) The application is incomplete, in which case ecology will identify which requirements of (b) of this subsection have not been met.

(I) The applicant may submit additional information to correct deficiencies identified by ecology.

(II) If the applicant is unable to achieve a complete application within 180 days of ecology's receipt of the original application, the application will be denied on that basis, and the applicant will be informed in writing.

(C) At any point during the application evaluation process, ecology may request in writing additional information or clarification from the applicant.

(iii) Ecology will not approve an application if it determines, based upon the information submitted in the application and any other

available information, that the application does not meet requirements in (a) and (b) of this subsection. Ecology may reject an application if satisfactory justification is not provided for station location pursuant to (b)(x) of this subsection. If ecology does not approve the application, the applicant will be notified in writing and the basis for the disapproval shall be identified.

(iv) If ecology determines that the applicant and application have met all requirements for approval pursuant to (a) and (b) of this subsection, ecology will approve the application and provide an approval summary on ecology's CFP website including the station location and assigned identifier, number of dispensing units, HRI refueling capacity, and effective date range for HRI pathway crediting.

(v) Crediting period. HRI crediting is limited to 15 years starting with the quarter following ecology approval of the application.

(d) Requirements to generate HRI credits. To generate credits using HRI pathways the station must meet the following conditions. The station owner must maintain, and submit to ecology upon request, records demonstrating adherence to these conditions.

(i) The station owner must update the HRI refueling capacity if different from the design HRI refueling capacity provided in the application. Any station design or operational information that deviates from the original application must be declared to ecology, and a new attestation must be submitted pursuant to (b) of this subsection.

(ii) The station must be open to the public, meaning that no obstructions or obstacles exist to preclude vehicle operators from entering the station premises, no access cards or personal identification (PIN) codes are required for the station to dispense fuel, and no formal or registered station training shall be required for individuals to use the hydrogen refueling station.

(iii) The station uses a public point of sale terminal that accepts major credit and debit cards.

(iv) The station uses a system that verifies the availability of the station for refueling, similar to being connected with the station operational status system (SOSS), and:

(A) The station passed final inspection by the appropriate authority having jurisdiction and has a permit to operate.

(B) The station owner has fully commissioned the station, and has declared it fit to service retail FCV drivers. This includes the station owner's declaration that the station meets an appropriate SAE fueling protocol.

(C) At least three OEMs have confirmed that the station meets protocol expectations, and their customers can fuel at the station.

(D) All dispensers installed in the hydrogen refueling station have undergone a review for suitability of the type of station by the Washington state department of agriculture weights and measures program and have either a temporary use permit or a certificate of approval issued by the Washington state department of agriculture.

(v) The FSE registration must be completed pursuant to WAC 173-424-300 (1)(g) and the quantity of dispensed hydrogen must be reported as required in WAC 173-424-420.

(vi) Dispensed hydrogen meets the following CI and renewable content requirements on a company-wide, weighted average basis. Ecology will consider all the stations registered by an entity with a unique FEIN in the WFRS for calculating the company-wide weighted average CI and renewable content.

(A) CI of 120 gCO<sub>2</sub>e/MJ or less; and

(B) Renewable content of 50 percent or greater.

(vii) The station must be operational within 24 months of application approval. If the applicant fails to demonstrate the operability within 24 months of approval, then the application will be canceled. The applicant can reapply for the same station eligible only for eight years of crediting.

(viii) The estimated cumulative value of HRI credits generated for the FSE in the prior quarter must be less than the difference between the total capital expenditure reported pursuant to (f)(iii)(A) of this subsection and the total grant revenue or other funding reported pursuant to (f)(iii)(E) of this subsection in the prior quarter.

(A) The estimated value of FCI credits, for the purpose of this determination, shall be calculated using the number of FCI credits generated for the FSE in the quarter and the average CFP credit price for that quarter published on ecology's CFP website.

(B) The cumulative credit value generated for each FSE will be tracked as the sum of all quarterly credit values in constant-dollar for the year in which the FCI application was approved using an annual discount rate of 10 percent.

(C) The estimated value calculated under this provision will be made available only to the respective reporting entity in WFRS and will not be published on ecology's CFP website.

(D) This will not affect the reporting entity's ability to generate non-FCI CFP credits for the electricity dispensed at the FSE.

(e) Calculation of HRI credits. HRI credits will be calculated using the following equation:

$$Credits_{HRI}(MT) = (CI_{standard}^{XD} \times EER - CI_{HRI}) \times E_{H2} \times (Cap_{HRI} \times N \times UT - H2_{disp}) \times C$$

Where:

- $CI_{standard}^{XD}$  is the average carbon intensity standard of gasoline (XD = "gasoline") for a given year as provided in Table 1 of WAC 173-424-900;
- $EER$  is the dimensionless Energy Economy Ratio for H2/FCV relative to gasoline as listed in Table 4 of WAC 173-424-900;
- $CI_{HRI}$  is the carbon intensity used for HRI crediting. Company-wide weighted average CI for dispensed hydrogen during the quarter or 0 g/MJ, whichever is greater;
- $E_{H2}$  is the energy density for hydrogen in MJ/kg as listed in Table 4 of WAC 173-424-900;
- $Cap_{HRI}$  is the HRI refueling capacity for the station (kg/day);
- $UT$  is the uptime multiplier which is the percentage of time that the station is available to refuel a vehicle up to 90 percent of state of charge during the quarter, in a similar manner as reported in SOSS;
- $H2_{disp}$  is the quantity of hydrogen dispensed during the quarter (kg);
- $N$  is the number of days during the quarter;
- $C$  is a factor used to convert credits to units of metric tons from gCO<sub>2e</sub> and has the value of:

$$C = 1.0 \times 10^{-6} \frac{(MT)}{(gCO_2e)}$$

(f) Reporting and recordkeeping requirements. The following must be reported to ecology each quarter as set forth in WAC 173-424-420 before credits will be issued to the WFRS account associated with an approved HRI pathway.

(i) Station availability. This is the percentage of hours the station is available for fueling during the quarter relative to the permitted hours of operation for the station. Any period of time that a portion of the station capacity is not available will count as a prorated amount of station availability, proportional to the percentage of the station capacity that remains available for fueling for this period of time.

(ii) Company-wide, weighted average renewable content (percent) for dispensed hydrogen.

(iii) Cost and revenue data. Provide a quarterly account of the following costs borne and revenues received by the station owner up through the most recent reporting quarter per station.

(A) Total capital expenditures (\$)

(B) Total delivered cost (\$) of hydrogen and average delivered cost (\$/kg) for hydrogen

(C) Total maintenance costs (\$)

(D) Total land rental cost (\$)

(E) Total grant revenue or other external funding received towards capital expenditures (\$)

(F) Total grant revenue or other external funding received towards operational and maintenance expenditures (\$)

(G) Total revenue (\$) received from sale of hydrogen and average retail price (\$/kg) for hydrogen sold

(H) Other operational expenditures (\$)

(g) Applications for expanded HRI refueling capacity. Station owners who expand the capacity of a station and that is already generating HRI credits under the CFP must submit an application to ecology to generate additional credits based on the updated capacity. Applications for expanded station capacity must be received before December 31, 2030, and do not extend the effective date range for the HRI crediting specified upon initial project approval in (c)(iv) of this subsection. The application must include the following elements:

(i) In order to be eligible to generate HRI credits for expanded capacity, the station owner must demonstrate that station throughput in a reporting quarter is greater than or equal to 50 percent of the original approved HRI refueling capacity multiplied by the number of days in the quarter, assuming 100 percent uptime.

(ii) Updated nameplate refueling capacity and updated HRI refueling capacity.

(iii) If the sources of hydrogen and delivery methods stated in the original HRI application will change as a result of the added capacity, the station owner must disclose the new hydrogen sources and delivery methods.

(iv) The station owner must maintain records demonstrating that any new equipment added as a result of the expansion in capacity, including storage and fueling dispensers, meet the requirements in WAC 173-424-560(1).

**(2) DC fast charging infrastructure (FCI) pathways.**

(a) FCI pathway eligibility. An FSE owner may submit an application to receive an FCI pathway subject to the following eligibility conditions:

(i) The proposed FSE must be located in Washington and open to the public for charging.

(ii) Upon an individual applicant's estimated potential FCI credits, calculated pursuant to (d)(ii) of this subsection, exceeding 0.5 percent of the deficits in the prior quarter, each additional site applied for by the applicant must meet the following requirements:

(A) Charging equipment at the site must support at least two of the following three fast charging connectors: CHAdeMO, SAE CCS, and/or Tesla;

(B) The site must have at least one FSE with a CHAdeMO connector protocol and at least one FSE with an SAE CCS connector protocol; and

(C) No more than three-quarters of all FSE subject to this provision at the site can support only a single fast charging connector protocol.

(iii) The FCI pathway application must be received on or before December 31, 2029.

(iv) The following FSE are not eligible for FCI crediting:

(A) Any FSE that is permitted to operate prior to January 1, 2023; or

(B) Any FSE built as a required mitigation measure pursuant to the State Environmental Policy Act (SEPA).

(v) Each FSE must have a minimum nameplate power rating of 50 kW.

(vi) Each FSE must be networked and capable of monitoring and reporting its availability for charging.

(b) FCI application requirements. The applicant must submit an application in the WFRS containing the following information:

(i) Name and address of the owner of the proposed FSE.

(ii) Contact person for the owner entity.

(A) Name;

(B) Title or position;

(C) Phone number;

(D) Mobile phone number;

(E) Email address.

(iii) Name, street address, latitude, longitude, and a location description for each proposed FSE site.

(iv) The number of FSEs.

(v) The nameplate power rating (kW), connector type(s), and model for each FSE.

(A) The total nameplate power rating for all FSE at a single site claiming FCI credit under this provision cannot exceed 1,500 kW.

(B) Notwithstanding (b) (v) (A) of this subsection, upon request, ecology may approve an application with total nameplate power rating for all FSE at a single site up to 3,600 kW. The total number of FSE at sites with total nameplate power rating greater than 1,500 kW cannot exceed 10 percent of total FSE approved under FCI pathways. The applicant must provide justification for requesting a total power rating greater than 1,500 kW at the given site.

(vi) The effective simultaneous power rating (kW) for each FSE calculated using the equation below. The effective simultaneous power rating must be at least 50 percent of the nameplate power rating for each FSE.

$$P_{Sim}^i = P_{NP}^i \times \frac{P_{Sim}^{Tot}}{\sum_{i=1}^n P_{NP}^i}$$

Where:

$P_{Sim}^i$  is the simultaneous power rating (kW) for FSE i;

$P_{NP}^i$  is the nameplate power rating (kW) for FSE i;

$P_{Sim}^{Tot}$  is the maximum total power (kW) that can be delivered to all FSEs at a single site when they are operated simultaneously; and

$n$  is the number of FSEs at a single site.

(vii) The FCI charging capacity for each FSE calculated using the following equation:

$$Cap_{FCI}^i = 43 \times (P_{FCI}^i)^{0.45}$$

Where:

$Cap_{FCI}^i$  is the FCI charging capacity (kWh/day) for the FSE  $i$ ; and

$P_{FCI}^i$  is the nameplate power rating for the FSE or 350kW.

(viii) Expected date that the FSE will be operational.

(ix) Expected daily permitted hours of operation for the site. If the daily permitted hours are less than 24 hours, the applicant must provide documentation from a permitting authority demonstrating that daily permitted hours for the FSE are limited.

(x) A signed attestation letter from the applicant attesting to the veracity of the information in the application packet. The attestation letter must be submitted as an electronic copy, be on company letterhead, be signed by an officer of the applicant with authority to attest to the veracity of the information in the application and to sign on behalf of the applicant, be from the applicant and not from an entity representing the applicant (such as a consultant or legal counsel), and include the following attestation:

I, an authorized representative of \_\_\_\_\_ (proposed FSE owner entity), attest to the veracity of the information submitted as part of the DC Fast Charging Infrastructure (FCI) application, and declare that the information submitted accurately represents the anticipated and intended design and operation of the charging infrastructure. Further, I understand and agree to each of the statements in the attached application. I am a duly authorized officer with authority to attest to the veracity of the information in the application and to sign on behalf of the respective applicant.

I understand that the following information in the FCI application will be made available on the Washington CFP website: Name of the Applicant Entity, Site Name, Site Address, Number and Type of Charging Units, Nameplate and Effective Simultaneous Power Rating for Each Unit, and Effective Date Range for FCI Crediting

By submitting this application, \_\_\_\_\_ (applicant entity) accepts responsibility for the information herein provided to Ecology. I certify under penalty of perjury under the laws of the State of Washington that I have personally examined, and am familiar with, the statements and information submitted in this document. I certify that the statements and information submitted to Ecology are true, accurate, and complete.

(xi) CBI must be designated and a redacted version of any submitted documents designated to include CBI must be provided according to the ecology process consistent with the Washington state Public Records Act.

(xii) An application and supporting documents must be submitted electronically via the WFRS unless ecology has approved or requested in writing another format.

(c) Application approval process.

(i) The FCI application must be approved by ecology before the applicant may generate FCI credits. If estimated potential FCI credits from all approved FSEs exceed two and one-half percent of deficits in the most recent quarter, ecology will not approve additional FCI pathways and will not accept additional applications until FCI credits are less than two and one-half percent of deficits. FCI applications will be evaluated for approval on a first-come first-served basis.

Estimated potential FCI credits will be calculated using the following equation:

$$Credits_{FCI}^{Potential} = Credits_{FCI}^{Prior\ Qtr} \times \frac{Cap_{FCI}^{Approved}}{Cap_{FCI}^{Operational}}$$

Where:

- $Credits_{FCI}^{Potential}$  means the estimated potential FCI credits from all approved FSEs;
- $Credits_{FCI}^{Prior\ qtr}$  means the total FCI credits generated by operational FSEs in the prior quarter;
- $Cap_{FCI}^{Operational}$  means the total FCI charging capacity of FSEs that were operational in the prior quarter; and
- $Cap_{FCI}^{Approved}$  means the total FCI charging capacity of all approved FSEs, both operational and nonoperational.

(ii) The estimated potential FCI credits for an individual applicant will be calculated using the same equation as above, where:

Where:

- $Credits_{FCI}^{Potential}$  means the estimated potential FCI credits from applicant's approved FSEs;
- $Credits_{FCI}^{Prior\ qtr}$  means the total FCI credits generated by the applicant for operational FSEs in the prior quarter;
- $Cap_{FCI}^{Operational}$  means the total FCI charging capacity of the applicant's approved FSEs that were operational in the prior quarter; and
- $Cap_{FCI}^{Approved}$  means the total FCI charging capacity of all the applicant's approved FSEs, both operational and nonoperational.

(iii) After receipt of an application designated by the applicant as ready for formal evaluation, ecology shall advise the applicant in writing either that:

(A) The application is complete; or

(B) The application is incomplete, in which case ecology will identify which requirements of (b) of this subsection have not been met.

(I) The applicant may submit additional information to correct deficiencies identified by ecology.

(II) If the applicant is unable to achieve a complete application within 180 days of ecology's receipt of the original application, the application will be denied on that basis, and the applicant will be informed in writing.

(C) At any point during the application evaluation process, ecology may request in writing additional information or clarification from the applicant.

(iv) Ecology shall not approve an application if it determines that the application does not meet requirements in (a) and (b) of this



subsection, based upon the information submitted in the application and any other available information. If ecology does not approve the application, the applicant will be notified in writing and the basis for the disapproval shall be identified.

(v) If ecology determines the application has met all requirements for approval pursuant to (a) and (b) of this subsection, ecology will approve the application and provide an approval summary on ecology's CFP website including the site location and FSE ID, number and type of FSE, nameplate and effective simultaneous power rating for each FSE, and effective date range for FCI pathway crediting.

(vi) Crediting period. FCI crediting is limited to five years starting with the quarter following ecology approval of the application.

(d) Requirements to generate FCI credits. To generate credits using FCI pathways the following conditions must be met. The applicant must maintain, and submit to ecology upon request, records demonstrating adherence to these conditions.

(i) The applicant must update the nameplate and effective simultaneous power rating of FSE if different from the power rating provided in the application. Any FSE design or operational information that deviates from the original application must be declared to ecology, and a new attestation must be submitted using the language in (b) in this subsection.

(ii) The FSE must be open to the public, meaning that no obstructions or obstacles exist to preclude vehicle operators from entering the FSE premises, no access cards or personal identification (PIN) codes are required for the FSE to dispense fuel, and no formal or registered equipment training shall be required for individuals to use the FSE.

(iii) The FSE that charges a fee for service must be capable of supporting a public point-of-sale method that accepts all major credit or debit cards.

(iv) The FSE passed final inspection by the appropriate authority having jurisdiction and has a permit to operate.

(v) The FSE owner has fully commissioned the FSE, and has declared it fit to service retail EV drivers.

(vi) The FSE registration must be completed pursuant to WAC 173-424-300 (1)(g) and the quantity of dispensed electricity must be reported as required in WAC 173-424-420.

(vii) The FSE must be operational within 12 months of application approval. If the applicant fails to demonstrate the operability within 12 months of approval, then the application will be canceled. The applicant can reapply for the same FSE site eligible only for two years of crediting.

(viii) The estimated cumulative value of FCI credits generated for the FSE in the prior quarter must be less than the difference between the total capital expenditure reported pursuant to subsection (1)(f)(iii)(A) of this section and the total grant revenue or other funding reported pursuant to subsection (1)(f)(iii)(E) of this section in the prior quarter.

(A) The estimated value of FCI credits, for the purpose of this determination, shall be calculated using the number of FCI credits generated for the FSE in the quarter and the average CFP credit price for that quarter published on ecology's CFP website.

(B) The cumulative credit value generated for each FSE will be tracked as the sum of all quarterly credit values in constant-dollar

for the year in which the FCI application was approved using an annual discount rate of 10 percent.

(C) The estimated value calculated under this provision will be made available only to the respective reporting entity in WFRS and will not be published on ecology's CFP website.

(D) This will not affect the reporting entity's ability to generate non-FCI CFP credits for the electricity dispensed at the FSE.

(e) Calculation of FCI credits. FCI credits will be calculated using the following equation for each FSE approved under this provision:

$$Credits_{FCI}(MT) = (CI_{standard}^{XD} \times EER - CI_{FCI}) \times C_{Elec} \times (Cap_{FCI} \times N \times UT - Elec_{disp}) \times C$$

Where:

- $CI_{standard}^{XD}$  is the average carbon intensity standard of gasoline (XD = "gasoline") for a given year as provided in Table 1 of WAC 173-424-900;
- $EER$  is the dimensionless Energy Economy Ratio for Electricity/BEV or PHEV relative to gasoline as listed in Table 5 of WAC 173-424-900;
- $CI_{FCI}$  is the Washington annual utility-specific carbon intensity as listed in Table 10;
- $C_{Elec}$  is the conversion factor for electricity as listed in Table 3 of WAC 173-424-900;
- $Cap_{FCI}$  is the FC charging capacity (kWh/day) for the FSE;
- $N$  is the number of days during the quarter;
- $UT$  is the uptime multiplier which is the fraction of time that the FSE is available for charging a vehicle up to 90 percent of state of charge during the quarter;
- $Elec_{disp}$  is the quantity of electricity dispensed during the quarter (kWh);
- $C$  is a factor used to convert credits to units of metric tons from gCO<sub>2</sub>e and has the value of:

$$C = 1.0 \times 10^{-6} \frac{(MT)}{(gCO_2e)}$$

(f) Reporting and recordkeeping requirements. The following must be reported to ecology each quarter as set forth in WAC 173-424-420 before credits will be issued to the WFRS account associated with an approved FCI pathway.

(i) FSE availability. This is the percentage of hours the FSE is available for charging during the quarter relative to the permitted hours of operation for the site.

(ii) Cost and revenue data. Provide a quarterly account of the following costs borne and revenues received by the FSE owner up through the most recent reporting quarter per site.

- (A) Total capital expenditures (\$)
- (B) Total delivered cost (\$) of electricity, including demand charges, and average delivered cost (\$/kWh) for electricity
- (C) Total maintenance costs (\$)
- (D) Total land rental cost (\$)
- (E) Total grant revenue or other external funding received towards capital expenditures (\$)
- (F) Total grant revenue or other external funding received towards operational and maintenance expenditures (\$)
- (G) Total revenue (\$) received from sale of electricity and average retail price (\$/kWh) for electricity sold
- (H) Other operational expenditures (\$)

(g) Applications for expanded FCI capacity. Applicants who increase the power rating of an FSE or add an FSE to a site that is already generating FCI credits under the CFP must submit an application to ecology to generate additional credits based on the increased power or number of FSEs. Applications must be received before December 31, 2029, and do not extend the end date for the FCI crediting specified upon initial project approval in (c) of this subsection. The application must include the following elements.

(i) Updated number and type of FSE at the site.

(ii) Updated FCI charging capacity, nameplate power rating and effective simultaneous power rating for each FSE at the site.

(iii) The applicant must maintain records demonstrating that any new equipment added as a result of the expansion in capacity meet the requirements listed in this subsection.

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#### NEW SECTION

**WAC 173-424-570 Credit clearance market.** (1) **General.** If a regulated party owes more than the allowed small deficit under WAC 173-424-500(4), it must enter and purchase its pro-rata share of credits in the credit clearance market under subsection (5) of this section.

(a) The credit clearance market is separate from the normal year-round market opportunities for parties to engage in credit transactions.

(b) Ecology will consider a regulated party in compliance with WAC 173-424-500 if it acquires its pro-rata obligation in the credit clearance market and retires that number of credits within 30 days of the end of the credit clearance market.

(2) **Maximum price.** The maximum price for the credit clearance market must be:

(a) Two hundred U.S. dollars in 2018 per credit for the markets held upon the submission of the annual reports for compliance year 2023.

(b) For markets held upon submission of annual reports in 2023/2024 and thereafter ecology shall adjust the maximum price for the credit clearance market annually for inflation at the end of each January using the inflation rate as provided by the last 12 months of data from the U.S. Bureau of Labor Statistics West Region Consumer Price Index for All Urban Consumers for All Items. The formula for that adjustment is as follows:

$$\text{maximum price} = [\text{Last year's maximum price}] * (1 + [\text{CPI-U West}])$$

Ecology will publish the new maximum price on its web page each year.

(3) **Acquisition of credits in the credit clearance market.** The credit clearance market will operate from June 1st to July 31st.

(a) Regulated parties subject to subsection (1) of this section must acquire their pro-rata share of the credits in the credit clearance market calculated in subsection (5) of this section.

(b) A regulated party may only use credits acquired in the credit clearance market to retire them against its unmet compliance obligation from the prior year.

(c) To qualify for compliance through the credit clearance market, the regulated party in question must have:

- (i) Retired all credits in its possession; and
- (ii) Have an unmet compliance obligation for the prior year that has been reported to ecology through submission of its annual report in the WFRS.

**(4) Selling credits in the clearance market.**

(a) On the first Monday in April each year, ecology shall issue a call to all eligible registered parties in the WFRS to pledge credits into the credit clearance market, or will issue a notification that it will not hold a credit clearance market that year. Registered parties are eligible to sell credits in the clearance market if they will have excess credits upon the submission of their annual report. Parties wanting to pledge credits into the credit clearance market will notify ecology by April 30th. Ecology will announce if a clearance market will occur by May 15th.

(b) In order to participate in the credit clearance market, sellers must:

- (i) Agree that they will sell their credits for no higher than the maximum price as published by ecology for that year;
- (ii) Agree to withhold any pledged credits from sale in any transaction outside of the credit clearance market until the end of the credit clearance market on July 31st, or if no clearance market is held in a given year, then on the date which ecology announces it will not be held;
- (iii) Not reject an offer to purchase the credits at the maximum price for that year as published by ecology, unless the seller has already sold or agreed to sell those pledged credits to another regulated party participating in the credit clearance market; and
- (iv) Agree to replace any credits that the seller pledges into the clearance market if those credits are later found to be invalid by ecology due to fraud or noncompliance by the generator of the credit, unless the buyer of the credits was a party to that fraud or noncompliance.

**(5) Operation of the credit clearance market.** Prior to June 1st, ecology will inform each regulated party that failed to meet its annual compliance obligation under WAC 173-424-500 of its pro-rata share of the credits pledged into the credit clearance market.

(a) Calculation of pro-rata shares.

(i) Each regulated party's pro-rata share of the credits pledged into the credit clearance market will be calculated by the following formula:

Regulated Party A's pro-rata share =

$$\left[ \frac{A's\ deficit}{All\ Parties' total\ deficit} \right] x [lessor\ of\ (pledged\ credits)\ or\ (total\ deficits)]$$

(A) "Deficit" refers to the regulated party's total obligation for the prior compliance year that has not been met under WAC 173-424-500;

(B) "All parties' total deficit" refers to the sum of all of the unmet compliance obligations of all regulated parties in the credit clearance market; and

(C) "Pledged credits" refers to the sum of all credits pledged for sale into the credit clearance market.

(ii) If there is at least one large producer or importer of finished fuels participating in the credit clearance market, ecology will determine the pro-rata share of the available credits in two phases.

(A) The first phase will begin with all of the credits pledged into the credit clearance market and the deficits from large producers or importers of finished fuels in place of "all parties' total deficit" in (a)(i)(B) of this subsection.

(B) The second phase will begin with the remainder of the pledged credits into the credit clearance market in place of "pledged credits" in (a)(i)(C) of this subsection and the deficits from all other regulated parties in place of "all parties' total deficit" in (a)(i)(B) of this subsection.

(C) The calculation for each phase will be done as in (a)(i) of this subsection.

(b) On or before June 1st, ecology will post the name of each party that is participating in the credit clearance market as a buyer, and the name of each party that is participating as a seller in the market and the number of credits they have pledged into the market.

(c) Following the close of the credit clearance market, each regulated party that was required to purchase credits in the credit clearance market must submit an amended annual compliance report in the WFRS by August 31st which shows the acquisition and retirement of its pro-rata share of credits purchased in the credit clearance market, and any remaining unmet deficits.

(6) If a regulated party has unmet deficits upon the submission of the amended annual compliance report, ecology will increase the regulated party's number of unmet deficits by five percent and the total unmet deficits will be carried over into the next compliance period for that regulated party.

(7) If the same regulated party has been required to participate in two consecutive credit clearance markets and carries over deficits under subsection (6) of this section in both markets, ecology will conduct a root cause analysis into the inability of that regulated party to retire the remaining deficits.

(a) If multiple regulated parties are subject to this section in a single year, ecology may produce a single root cause analysis for those regulated parties if it determines the same general set of causes contributed to those parties' inability to retire those deficits. Ecology will also analyze whether there were specific circumstances for the individual parties.

(b) Based on the results of the root cause analysis, ecology may issue a deferral under WAC 173-424-720 or craft a remedy that addresses the root cause or causes. The remedy cannot:

(i) Require a regulated party to purchase credits for an amount that exceeds the maximum price for credits in the most recent credit clearance market; or

(ii) Compel a registered party to sell credits.

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**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.

**PART 6 - OBTAINING CARBON INTENSITY VALUES FOR FUEL PATHWAYS**NEW SECTION

**WAC 173-424-600 Carbon intensities.** (1) **WA-GREET.** Carbon intensities for fuels must be calculated using:

(a) WA-GREET 3.0 (November 28, 2022) or another model that ecology determines to be equivalent or superior to WA-GREET 3.0. WA-GREET 3.0 was derived from CA-GREET 3.0 model (August 13, 2018), and will be posted on ecology's website <https://www.ecology.wa.gov>. CA-GREET 3.0 includes contributions from the oil production greenhouse gas estimator (OPGEE2.0) model (for emissions from crude extraction) and global trade analysis project (GTAP-BIO) model together with the agro-ecological zone emissions factor (AEZ-EF) model for land use change (LUC).

(b) If a reporting entity wishes to use a modified or different life cycle carbon intensity model, it must be approved by ecology in advance of an application under WAC 173-424-610.

(2) **Ecology review of carbon intensities.** Every three years, or sooner if ecology determines that new information becomes available that warrants an earlier review, ecology will review the carbon intensities used in the CFP and must consider, at a minimum, changes to:

(a) The sources of crude and associated factors that affect emissions such as flaring rates, extraction technologies, capture of fugitive emissions, and energy sources;

(b) The sources of natural gas and associated factors that affect emissions such as extraction technologies, capture of fugitive emissions, and energy sources;

(c) Fuel economy standards and energy economy ratios;

(d) Methods to calculate lifecycle greenhouse gas emissions of transportation fuels including changes in:

(i) GREET, WA-GREET, CA-GREET; or

(ii) Methods to quantify indirect land use change including CCLUB; or

(iii) Methods to quantify other indirect effects.

(3) **Established carbon intensities.**

(a) Regulated parties, credit generators, and aggregators must use the statewide average carbon intensities listed in Table 6 under WAC 173-424-900 for the following fuels:

(i) Clear gasoline or the gasoline blendstock of a blended gasoline fuel;

(ii) Clear diesel or the diesel blendstock of a blended diesel fuel;

(iii) Fossil CNG;

(iv) Fossil LNG; and

(v) Fossil LPG.

(b) A hydrogen supplier may use the applicable CI value in Table 6 under WAC 173-424-900, or apply for a specific carbon intensity under WAC 173-424-610.

(c) For electricity suppliers:

(i) The utility-specific and statewide average electricity carbon intensity is calculated annually under WAC 173-424-630 and posted on ecology's website.

(ii) Credit generators or aggregators may use a carbon intensity different from the utility-specific average under (c)(i) of this subsection if the party generates lower carbon electricity at the same location as it is dispensed into a motor vehicle consistent with the conditions of the approved fuel pathway code under WAC 173-424-630(3).

(4) **Carbon intensities for established fuel pathways.** Except as provided in subsection (3) of this section, regulated parties, credit generators, and aggregators can use a carbon intensity that CARB or OR-DEQ certified for use in the California LCFS or Oregon CFP programs provided that:

(a) The carbon intensity value for the fuel pathway is adjusted for consistency with WA-GREET 3.0 including the adjustment for fuel transportation distances and indirect land use change, as applicable. The adjusted carbon intensity for the established fuel pathway can be used after ecology has reviewed and approved it for consistency with WA-GREET; or

(b) Matches the description of a fuel pathway listed in Table 6 under WAC 173-424-900. For hydrogen produced using biomethane or renewable power, the producer of the hydrogen must:

(i) Demonstrate to ecology that the carbon intensity value in Table 6 is appropriate for its production facility; and

(ii) Submit retirement records from an electronic tracking system recognized by ecology on an annual basis that the renewable electricity and biomethane attributes, as applicable, were not claimed in any other program except for the federal RFS. Any such claims under the federal RFS must be made for the same use and volume of biomethane or its derivatives as it is being claimed for in the CFP, or the claim under the CFP is invalid.

(5) **Primary alternative fuel pathway classifications.** If it is not possible to identify an applicable carbon intensity under either subsection (3) or (4) of this section, then the regulated party, credit generator, or aggregator has the option to develop its own fuel pathway and apply for it to be certified under WAC 173-424-610. Fuel pathway applications fall into one of two tiers:

(a) **Tier 1.** Conventionally-produced alternative fuels of a type that have been well-evaluated. Tier 1 fuels include:

(i) Starch-based and sugar-based ethanol;

(ii) Biodiesel produced from conventional feedstocks (plant oils, tallow, and related animal wastes and used cooking oil);

(iii) Renewable diesel produced from conventional feedstocks (plant oils, tallow, and related animal wastes and used cooking oil);

(iv) Natural gas; and

(v) Biomethane from landfills; anaerobic digestion of dairy and swine manure or wastewater sludge; and food, vegetative, or other organic waste.

(b) **Tier 2.** Except CARB or OR-DEQ certified fuel pathways as provided in subsection (3) of this section that, ecology will not start accepting Tier 2 applications until July 1, 2025. Tier 2 includes all fuels not included in Tier 1 including, but not limited to:

(i) Cellulosic alcohols;

(ii) Biomethane from other sources;

(iii) Hydrogen;

(iv) Renewable hydrocarbons other than renewable diesel produced from conventional feedstocks;

(v) Biogenic feedstocks co-processed at a petroleum refinery;  
(vi) Alternative jet fuel;  
(vii) Renewable propane; and  
(viii) Tier 1 fuels using innovative methods including, but not limited to, carbon capture and sequestration or a process that cannot be accurately modeled using the simplified calculators.

(6) **Specified source feedstocks.** Except as specified in subsection (4) of this section, fuels that are produced from a specified source feedstock may be eligible for a reduced carbon intensity value when applying under WAC 173-424-610 so long as they meet all of the following requirements:

(a) Specified source feedstocks are nonprimary products of commercial or industrial processes for food, fuel, or other consumer products and include, but are not limited to, used cooking oil, animal fats, fish oil, yellow grease, distiller's corn oil, distiller's sorghum oil, brown grease, and other fats, oils, and greases;

(b) The specified source feedstocks are used in pathways for biodiesel; renewable diesel; alternative jet fuel; co-processed refinery products; biomethane supplied using book and claim accounting and claimed as a feedstock for CNG, LNG, L-CNG; or steam-methane reformation produced hydrogen;

(c) Under WAC 173-424-610 (9)(d), any feedstock can be designated as a specified source feedstock if requested by a supplier using site-specific carbon intensity data or if it is specified in a pathway approval condition; and

(d) Chain-of-custody evidence must be used to demonstrate the proper characterization and accuracy of the quantity of the specified source feedstocks going into a fuel production facility or claimed as biomethane, subject to all of the following provisions:

(i) Chain-of-custody evidence must be provided to the verifier and to ecology upon request;

(ii) Joint applicants may assume responsibility for different portions of the chain-of-custody evidence;

(iii) Fuel pathway applicants using specified source feedstocks must maintain either:

(A) Delivery records that show shipments of feedstock type and quantity directly from the point of origin to the fuel production facility; or

(B) Information from material balance or energy balance systems that control and record the assignment of input characteristics to output quantities at relevant points along the feedstock supply chain between the point of origin and the fuel production facility;

(e) In order to maintain the pathway, the fuel production and any joint applicant must meet the following requirements:

(i) Maintain records of the type and quantity of feedstock obtained from each supplier, including feedstock transaction records, feedstock transfer documents pursuant to (f) of this subsection, weighbridge tickets, bills of lading or other documentation for all incoming and outgoing feedstocks;

(ii) Maintain records used for material balance and energy balance calculations; and

(iii) Ensure ecology staff and verifier access to audit feedstock suppliers to demonstrate proper accounting of attributes and conformance with certified CI data; and

(f) A feedstock transfer document for specified source feedstocks must prominently state the following information:

(i) Transferor company name, address, and contact information;



- (ii) Recipient company name, address, and contact information;
- (iii) Type and amount of feedstock, including units; and
- (iv) Transaction date.

(7) The carbon intensity value certified under WAC 173-424-610, including any margin of safety requested by the fuel producer, is the maximum carbon intensity value that a fuel can be reported in the CFP. The actual operational carbon intensity of a fuel will be calculated from the most recent production data covering 24 months of the fuel production facility's operation. Registered parties shall not report fuel sales under any CFP carbon intensity unless the actual operational carbon intensity is equal to or less than the certified CI.

(8) Fuel producers labeling fuel sold in Washington with a carbon intensity under the CFP and registered entities using those labeled carbon intensities to report in the WFRS, must ensure that the fuel so labeled and reported will be found to have an actual operational life-cycle carbon intensity equal to or below its certified carbon intensity.

[ ]

#### NEW SECTION

**WAC 173-424-610 Obtaining a carbon intensity.** (1) Fuel producers can apply to obtain a carbon intensity for their transportation fuels by following the process under this section.

(2) Applicants seeking approval to use a carbon intensity that is currently approved by CARB or OR-DEQ must provide:

(a) The application package submitted to CARB or OR-DEQ;

(b) The Tier 1 or Tier 2 CA-GREET or OR-GREET calculator approved by CARB or OR-DEQ, and the WA-GREET 3.0 equivalent with the fuel transportation and distribution cells modified for that fuel's pathway to Washington;

(c) The CARB or OR-DEQ review report for the approved fuel pathway;

(d) Any other supporting materials relating to the pathway, as requested by ecology; and

(e) If the applicant is seeking to use a provisional pathway approved by CARB or OR-DEQ, then the applicant must submit to ecology the ongoing documentation it provides to CARB or OR-DEQ, and as required in subsection (6) of this section. The applicant must provide to ecology within 14 days:

(i) Any additional documentation it has submitted to CARB or DEQ; and

(ii) A notification of any changes to the status of its provisional pathway approved by CARB or OR-DEQ.

(3) **General requirements.** Applicants seeking to obtain a carbon intensity using either the Tier 1 or Tier 2 calculator must submit the following information:

(a) Company name and full mailing address.

(b) Company contact person's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address, and website address.

(c) Facility name (or names if more than one facility is covered by the application).

(d) Facility address (or addresses if more than one facility is covered by the application).

(e) Facility ID for facilities covered by the RFS program.

(f) Facility geographical coordinates (for each facility covered by the application).

(g) Facility contact person's contact information including the name, title or position, phone number, mobile phone number, facsimile number, and email address.

(h) Facility nameplate production capacity in million gallons per year (for each facility covered by the application).

(i) If applicable, consultant's contact information including the name, title or position, phone number, mobile phone number, facsimile number, email address, and website URL.

(j) Declaration whether the applicant is applying for a carbon intensity for a Tier 1 or Tier 2 fuel.

(4) **Tier 1.** In addition to the items in subsection (3) of this section, applicants seeking to obtain a carbon intensity for a Tier 1 fuel using one of the simplified calculators must submit the following:

(a) The applicable simplified calculator with all necessary inputs completed, following the instructions in the applicable manual for that calculator;

(b) All documentation related to the approval and verification of the fuel pathway application from the jurisdiction and from the third-party verifier. This includes a positive verification statement from CARB or OR-DEQ approved verification body, stating that it has reviewed and validated all of the data used to form the inputs for the Tier 1 calculator submitted under (a) of this subsection, or the invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases, and all coproducts sold for the most recent 24 months of full commercial production, along with a summary of those invoices and receipts; and

(c) The most recent RFS third-party engineering report, if one has been conducted for the facility.

(5) **Tier 2.** In addition to the items in subsection (3) of this section, applicants seeking to obtain a carbon intensity for a Tier 2 fuel using the full WA-GREET 3.0 model must submit the following:

(a) A positive verification statement from CARB or OR-DEQ approved verification body, stating that it has reviewed and validated all of the data used to form the inputs for the Tier 2 calculator submitted under (c) of this subsection, or the invoices and receipts for all forms of energy consumed in the production process, all fuel sales, all feedstock purchases, and all coproducts sold for the most recent 24 months of full commercial production, and a summary of those invoices and receipts;

(b) The geographical coordinates of the fuel production facility;

(c) A completed Tier 2 model;

(d) Process flow diagrams that depict the complete fuel production process;

(e) Applicable air permits issued for the facility;

(f) A copy of the RFS third-party engineering report, if available;

(g) A copy of the RFS fuel producer coproducts report; and

(h) A life cycle analysis report that describes the fuel pathway and describes in detail the calculation of carbon intensity for the fuel. The report shall contain sufficient detail to allow staff to replicate the carbon intensity the applicant calculated. The applicant

must describe all inputs to, and outputs from, the fuel production process that are part of the fuel pathway.

(6) **Applicants seeking a provisional carbon intensity.** If a fuel production facility has been in full commercial production for at least 90 days but less than 24 months, it can apply for a provisional carbon intensity.

(a) The applicant shall submit operating records covering all periods of full commercial operation in accordance with subsections (2) through (5) of this section.

(b) Ecology may approve the provisional carbon intensity under subsection (9) of this section.

(c) At any time before the plant reaches a full 24 months of full commercial production, ecology may revise as appropriate the operational carbon intensity based on the required ongoing submittals or other information it learns.

(d) If, after a plant has been in full commercial production for more than 24 months, the facility's operational carbon intensity is higher than the provisionally-certified carbon intensity, ecology will replace the certified carbon intensity with the operational carbon intensity in the WFRS and adjust the credit balance accordingly.

(e) If the facility's operational carbon intensity appears to be lower than the certified carbon intensity, ecology will take no action. The applicant may; however, petition ecology for a new carbon intensity that reflects the operational data. In support of such a petition, the applicant must submit a revised application packet that fully documents the requested reduction.

(7) **Applicants employing co-processing at a petroleum refinery.**

(a) Applicants employing co-processing of biogenic feedstocks at a petroleum refinery must submit all information required under subsections (3) and (5) of this section.

(b) For the renewable diesel or other renewable refinery product of the fuel, the applicant must also submit:

(i) The planned proportions of biogenic feedstocks to be processed;

(ii) A detailed methodology for the allocation of biogenic feedstocks to the renewable products; and

(iii) The corresponding carbon intensities from each biogenic feedstock.

(c) The allocation methodology for associating amount of the biogenic feedstocks to the production a unit of fuel will be subject to ecology approval and may be modified at ecology's discretion based on ongoing quarterly reporting of production data at the refinery.

(d) Ecology may adjust the carbon intensities applied for under this section as it determines is appropriate.

(8) **Temporary fuel pathway codes for fuels with indeterminate carbon intensities.**

(a) A regulated party or credit generator that has purchased a fuel without a carbon intensity must submit a request to ecology for permission to use a temporary fuel pathway code:

(i) Already exist in Table 8 under WAC 173-424-900; or

(ii) Ecology newly approved and posted on its website under subsection (11) of this section.

(b) The request must:

(i) Be submitted within 45 days after the end of the calendar quarter for which the applicant is seeking to use a temporary fuel pathway code; and

(ii) Explain and document that the production facility is unknown or that the production facility is known but there is no approved fuel pathway code.

(c) Temporary fuel pathway codes may be used for up to two calendar quarters. If more time is needed to obtain a carbon intensity, the party that obtained the temporary fuel pathway must submit an additional request to ecology for an extension of the authorization to use a temporary fuel pathway code.

(d) If ecology grants a request to use a temporary fuel pathway code, credits and deficits may be generated subject to the quarterly reporting provisions in WAC 173-424-410.

**(9) Approval process to use carbon intensities for fuels other than electricity.**

(a) For applications proposing to use fuel pathways approved by CARB or OR-DEQ, including provisional pathways, ecology will:

(i) Confirm that the proposed fuel pathway is consistent with WA-GREET 3.0; and

(ii) Review the materials submitted under subsection (2) of this section.

(b) For applications proposing to use the Tier 1 or Tier 2 calculators, ecology may approve the application if it can:

(i) Verify the energy consumption and other inputs.

(ii) Replicate the calculator outputs; and

(c) If ecology has approved or denied the application for a carbon intensity, ecology will notify the applicant of its determination.

(d) Ecology may impose conditions in its approval of the carbon intensity. Conditions may include specific limitations, recordkeeping or reporting requirements, adherence to protocols to assure carbon reduction or sequestration claims, or operational conditions that ecology determines should apply to assure the ongoing accuracy of the approved carbon intensity. Failure to meet those conditions may result in the carbon intensity approval being revoked.

(e) For applicants seeking a provisional pathway, ecology will specify the conditions used to establish the pathway.

(i) In order to maintain an active provisional pathway eligible to generate credits, the applicant must file the annual fuel pathway report and seek third-party verification if required under WAC 173-424-800.

(ii) At any point during the 24 months following the certification of a provisional pathway, ecology may revise as appropriate the CI score for the provisional pathway, and adjust any credits in the fuel reporting entity based on new information or a better understanding of the pathway.

(iii) Ecology may remove the provisional status of the pathway after the applicant provides 24 months of operational data with a positive or qualified positive verification status.

(iv) For pathways that are not subject to verification, ecology may remove the provisional status upon review of 24 months of operational data demonstrating that the pathway data supports the provisional CI.

(f) For a fuel pathway approved by CARB or OR-DEQ that ecology has approved for use in Washington, if at any time the pathway's approval is revoked by CARB or OR-DEQ then:

(i) The fuel pathway holder must inform ecology within seven days of the revocation and provide ecology with the documentation related to that decision.

(ii) Upon ecology request, the fuel pathway holder must provide to ecology additional documentation.

(iii) Ecology may at its discretion revoke its approval of the pathway's use in Washington at any time.

(iv) If CARB or OR-DEQ modifies its approval of the pathway, then the fuel pathway holder must notify ecology of the modification not later than 14 days after CARB's or OR-DEQ modification and must provide to ecology any accompanying documentation the fuel pathway holder received from CARB or OR-DEQ.

(v) Based on the underlying facts that led to CARB's and OR-DEQ's modification of the pathway's status, within 30 days ecology may modify its approval, take no action, or revoke its approval and will provide the fuel pathway holder with written notice of its decision.

(g) In order to receive and maintain an active fuel pathway code, the producer of any fuel must:

(i) Maintain an active registration with the AFP;

(ii) Provide proof of delivery to Washington through a physical pathway demonstration in the quarter in which the fuel is first reported in the WFRS;

(iii) Each fuel pathway holder must submit an annual fuel pathway report into the AFP no later than March 31st of each calendar year.

The annual fuel pathway report must include:

(A) The certified version of the simplified WA-GREET or full WA-GREET calculator, as applicable, updated to include the most recent two calendar years of operational data;

(B) The annual fuel pathway report for renewable electricity and hydrogen lookup table pathways, in lieu of the CI calculator, must include invoices or metering records substantiating the quantity of renewable or low-CI inputs procured from a qualifying source;

(C) If the fuel or fuel production process involves biomethane or renewable electricity, the fuel producer must:

(I) Provide the attestation regarding environmental attributes or proof of nongeneration or retirement of any RECs as required by WAC 173-424-420 (2)(e) or WAC 173-424-630 (4)(d); and

(II) For biomethane injected into a natural gas common carrier pipeline, RTCs from a recognized renewable thermal tracking system are required to be retired and used instead of an attestation and the specific volume of biomethane claimed as being used in the fuel production process must have been injected into the pipeline in the current or prior quarter as the fuel is being produced. Biomethane can only be claimed in this manner in a fuel pathway application as the feedstock for CNG, LNG, L-CNG or hydrogen production, and cannot be claimed as an energy source for another fuel production process.

(D) Any fuel pathway holder, including a joint applicant, who is not subject to site visits by a third-party verifier, whose pathway involves the use of renewable or low-CI process energy, must submit invoices for that energy to the AFP. Additionally, for any on-site or directly connected renewable electricity that is used to reduce the carbon intensity of electricity used as a transportation fuel or hydrogen production via electrolysis, the pathway holder must upload records demonstrating that any renewable energy certificates generated were retired in WREGIS or another comparable, recognized REC tracking system for the purpose of lowering the certified CI, or for credit generation;

(E) Any temporally-variable information that was requested or required by ecology to be included in the initial application as supplemental information, or any required data or documentation listed in

the pathway's operating conditions. The information required to be submitted under this subsection must cover the same time period as the updated WA-GREET model required under (g)(iii)(A) of this subsection;

(F) If the verified operational CI as calculated from the operational data covering the prior two calendar years of production is found to be lower than the certified CI, and a positive verification statement is issued for this period, the fuel pathway holder may elect to keep the original certified CI, or may request to replace the certified CI with the verified operational CI. The pathway holder may elect to add a margin of safety to the new certified CI, and must submit an attestation that the new CI can be maintained through the next reporting period with the acknowledgment that exceeding the newly certified CI in subsequent annual reports or verifications is a violation of the requirements of this division; and

(G) If the operational CI is found to be greater than the certified CI, the fuel pathway holder is out of compliance with this chapter and may be subject to investigation and enforcement by ecology;

(iv) Comply with the requirements of this chapter. Failure to timely submit an annual fuel pathway report or a required verification statement for a facility's pathways will result in the deactivation of those pathways; and

(v) If a pathway employs carbon capture and sequestration, the fuel pathway holder or joint applicant must submit annual reports of greenhouse gas emissions reductions, project operations, and ongoing monitoring results. Reports must include measurements of relevant parameters sufficient to ensure that the quantification and documentation of CO<sub>2</sub> sequestered is replicable and verifiable. Ecology may specify a protocol for measuring and reporting such information in its approval of such an application.

(h) If ecology determines the proposal for the carbon intensity has not met the criteria in (b) of this subsection, ecology will notify the applicant that the proposal is denied and identify the basis for the denial.

(i) Ecology may modify an approved fuel pathway's CI or approval conditions upon receipt of a verification statement that shows that the verified operational CI is higher than the certified CI.

(j) Any applicant may include a margin of safety in its application which will increase its certified CI in order to account for potential process variability and to reduce the risk that it will violate this division by having its operational CI exceed its certified CI.

**(10) Completeness determination process.**

(a) Within one month after receiving a registration application using the Tier 1 or Tier 2 calculator, ecology will advise in writing whether:

(i) The proposal is complete; or

(ii) The application is incomplete, in which case ecology identifies the deficiencies.

(b) The applicant may submit supplemental information to correct the ecology identified deficiencies. Ecology has 30 calendar days to determine if the supplemental submittal is complete, or to notify the party and identify the continued deficiencies. If the applicant is unable to achieve a complete application within 180 days of ecology's receipt of the original application, the application will be denied on that basis, and the applicant will be informed in writing.

**(11) Issuing additional substitute and temporary fuel pathway codes.**

(a) For new fuels or new fuel blends being used in Washington state, registered parties may request ecology for an additional fuel pathway codes that can be used in the same manner as those in Table 7 or 8 (substitute or temporary pathway codes) under WAC 173-424-900.

(b) Ecology may approve such substitute or temporary pathway codes if it concludes they are technically sound and supported by appropriate evidence. If any are approved, ecology will post these additional pathway codes in the WFRS and on its public website for the clean fuels program.

(c) All of the following requirements apply to such requests:

(i) Requests must be made in writing to ecology.

(ii) If ecology concludes the proposed pathway may be technically sound and supported by appropriate evidence, then it will post the proposed new substitute or temporary pathway codes on its website and take comments for:

(A) Fourteen calendar days in the case of a substitute fuel pathway code; or

(B) Forty-five calendar days in the case of a temporary fuel pathway code.

(iii) Ecology will consider any comments received, make any modifications, if necessary, and make a final decision on the proposed pathway.

(iv) Ecology may approve the fuel pathway and publish it on its website, if ecology concludes the proposed pathway is technically sound and supported by appropriate evidence.

(d) Any newly approved substitute or temporary fuel pathway code will be effective for use in the quarter in which it is approved.

**(12) Measurement accuracy.**

(a) **Calibration requirement.** All measurement devices that log or record data for use in a fuel pathway application must comply with the manufacturer-recommended calibration frequency and precision requirements. If manufacturer recommendations are not provided, the measurement devices must be calibrated at least every six years.

(b) **Requests to postpone calibration.** For units and processes that operate continuously with infrequent outages, it may not be possible to meet manufacturer-recommended calibration deadlines for measurement devices. In such cases, the owner or operator may submit a written request to ecology to postpone calibration or inspection until the next scheduled maintenance outage. Such postponements are subject to the procedures of (b)(ii)(A) and (B) of this subsection and must be documented in the monitoring plan required under WAC 173-424-400.

(i) A written request for postponement must be submitted to ecology not less than 30 days before the required calibration, recalibration or inspection date. Ecology may request additional documentation to validate the operator's claim that the device meets the accuracy requirements of this section. The operator shall provide any additional documentation to ecology within 10 business days of a request for documentation.

(ii) The request must include:

(A) The date of the required calibration, recalibration, or inspection;

(B) The date of the last calibration or inspection;

(C) The date of the most recent field accuracy assessment, if applicable;

(D) The results of the most recent field accuracy assessment, if applicable, clearly indicating a pass/fail status;

(E) The proposed date for the next field accuracy assessment, if applicable;

(F) The proposed date for calibration, recalibration, or inspection which must be during the time period of the next scheduled shutdown. If the next shutdown will not occur within three years, this must be noted and a new request must be received every three years until the shutdown occurs and the calibration, recalibration or inspection is completed; and

(G) A description of the meter or other device including, at a minimum, the:

(I) Make and model;

(II) Installation date;

(III) Location;

(IV) Parameter measured by the meter or other device, including the rate of data capture;

(V) Description of how data from the meter or other device is used in a fuel pathway;

(VI) Calibration or inspection procedure;

(VII) Reason for delaying the calibration or inspection;

(VIII) Proposed method to ensure that the precision requirements listed by the manufacturer are upheld; and

(IX) The contact details for an individual at the fuel production facility who can answer questions about the meter or other device.

(iii) Ecology will approve or deny the request at its discretion based on whether or not it concludes that the device's calibration is reasonably reliable.

(13) **Missing data provisions.**

(a) **Meter record, accuracy, or calibration requirements not met.**

If a measurement device is not functional, not calibrated within the time period recommended by the manufacturer, or fails a field accuracy assessment, the fuel production facility operator must otherwise demonstrate to a verifier or ecology that the reported data are accurate within +/- five percent. The following requirements apply to such demonstration:

(i) If the operator can demonstrate to the verifier or ecology staff that reported data are accurate, the data are acceptable. The entity must then provide a detailed plan describing when the measurement device will be brought into calibration. This plan is subject to ecology approval; and

(ii) If the operator cannot demonstrate to the verifier or ecology that reported data are accurate, the data is not acceptable and the missing data provisions in (b) of this subsection apply.

(b) **Missing data provisions.** If missing data exists, the entity must submit for ecology approval an alternate method of reporting the missing data. Alternate methods shall be evaluated on a case-by-case basis for reasonableness and continuity with the rest of the dataset. Ecology may choose to require a more conservative approach to the missing data if it is concerned that the alternative method may understate actual life cycle emissions associated with the fuel or fuels produced by the facility.

(c) **Force majeure events.** In the event of a facility shutdown or disruption drastically affecting production attributable to a force majeure event, the fuel pathway applicant or holder must notify ecology.



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NEW SECTION

**WAC 173-424-620 Energy economy ratio-adjusted carbon intensity applications.** (1) **Energy economy ratio-adjusted CI applications.** Applications submitted under this section are modified Tier 2 pathway applications under WAC 173-424-610.

(2) **Eligibility.** The following persons are eligible to submit an application under this section:

(a) Vehicle owners or operators that would be eligible to generate credits for their vehicles;

(b) Manufacturers of vehicles that would be eligible to generate credits may make a joint application with an owner or operator of their vehicles based in Washington; and

(c) A single, joint application may be submitted on behalf of, and combining data from, any combination of multiple vehicle owners, operators, and manufacturers.

(3) Applications made under this rule must be for electric vehicles capable of full normal operation using energy from onboard batteries or fuel cells.

(4) **Application requirements for an energy economy ratio-adjusted CI.** In addition to the application requirements for a Tier 2 pathway application under WAC 173-424-610, the applicant or applicants must include:

(a) A letter of intent to request an energy economy ratio (EER) adjusted carbon intensity and why the EER values provided in Table 4 of WAC 173-424-900 are not applicable;

(b) Supplemental information including a detailed description of the methodology used in its calculations, all assumptions made, and provide all data and references used for the calculation of the proposed EER-adjusted CI value. The methodology used must compare the useful output from the alternative fuel-vehicle technology under consideration to comparable conventional fuel-vehicle technology;

(c) If the applicant or applicants plan to use a value in the lookup table in WAC 173-424-900 for the carbon intensity of the fuel, or an electricity fuel pathway code issued under WAC 173-424-630, to request an EER-adjusted carbon intensity then they do not need to provide the fuel facility information required under WAC 173-424-610 (3) (e) through (h) and (5).

(5) **Minimum data requirements to apply for an energy economy ratio-adjusted CI:**

(a) Any application made under this rule must include at least three months of operating data that represents typical usage for each individual vehicle included in the application, except that the application must cover at least 300 hours of operating data for each individual vehicle included in the application; and

(b) Notwithstanding (a) of this subsection, an application from a manufacturer may provide data from duty-cycle testing. A manufacturer seeking to apply using duty-cycle testing data must consult with ecology prior to submitting an application and receive written, advanced approval from the agency for the duration and test cycles it is including in the application in addition to or in lieu of operational data.

**(6) Application review process to apply for an energy economy ratio-adjusted CI:**

(a) Ecology will review an application for completeness, soundness of the assumptions and comparison to the conventional fuel technology, and accuracy of the data. Ecology may deny an application without prejudice if it is incomplete. Ecology may deny any application that it believes is adequately covered by an existing EER value in Table 4 in WAC 173-424-900 or that it believes does not fit the intent and purpose of the clean fuels program;

(b) Ecology may prioritize its review of applications under this provision to those that cover a greater number of entities or that the agency believes are critical to the state's transportation electrification goals;

(c) If ecology intends to approve an application, it first must present a review report with a proposed EER value and pathway conditions to the applicant or applicants. If the applicant or applicants accept the proposed review report and EER value, ecology will post the review report and application on its website for a 30-day public comment period. Ecology staff will work with the applicant to aggregate and summarize any submitted data in order to ameliorate concerns regarding trade secrets included in the application. The aggregated data must still allow external stakeholders to understand and replicate the EER value that ecology is proposing to approve; and

(d) Based on comments received during the public comment period, ecology may move forward with approving the application as provided in subsection (7) of this section, deny the application, request additional information from the applicant or applicants, or modify the review report. If ecology modifies the review report or receives additional information that has a material bearing on the proposed EER value, it will issue the modified review report and any affected supplemental materials for another round of public comment.

(7) Based on its review of the application materials and any comments submitted upon the application under subsection (6) of this section, ecology may issue an EER-adjusted fuel pathway or issue a value that it would post on its website that could be used similarly to the EER values contained in Table 4 of WAC 173-424-900. Values issued under this rule can only be used by the applicant or applicants for that value.

**(8) Adding joint applicants after a value is approved.** If ecology has issued a value under subsection (7) of this section as part of an application that includes the manufacturer of the vehicle(s), owners or operators who begin to operate the same vehicle(s) covered in that application in Washington may request to be added as a joint applicant. In order to do so they must provide the following:

(a) A letter from the manufacturer stating that the manufacturer supports the addition of the joint applicant;

(b) Any current operational data by the new joint applicant, or other data elements required to be reported under the value's pathway conditions; and

(c) A statement by the new joint applicant that they understand and accept any and all pathway conditions associated with the value.

**(9) Ongoing reporting requirements.**

(a) For any EER-adjusted fuel pathway approved by ecology under subsection (7) of this section, the applicant for such approval must annually submit vehicle usage and energy consumption data for each individual vehicle using the value approved by ecology to generate credits or deficits in the clean fuels program. Ecology may require addi-

tional data elements that must be reported annually as part of its pathway conditions for an application that is approved under this rule.

(b) For any EER-adjusted fuel pathway approved by ecology under subsection (7) of this section, ecology may require third-party verification of the annual fuel pathway report submitted by the applicant or joint applicants for such approval in CARB or OR-DEQ. If ecology determines that third-party verification is required, ecology will include that as a pathway condition presented to the applicant or applicants under this section as part of its approval of such fuel pathway.

(10) **Modifications to values issued under this rule.** Based on the ongoing reported data required under subsection (9) of this section or additional applications for vehicles that ecology determines to be in the same category, ecology may modify any value issued under this provision for reporting beginning with the next full calendar quarter following its notice that the agency is modifying the value. Ecology will provide notice to the applicant(s) for such fuel pathway prior to doing so, and may request comment from them and the public prior to modifying the value.

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#### NEW SECTION

#### **WAC 173-424-630 Determining the carbon intensity of electricity.**

(1) **Utility-specific electricity mix.** The carbon intensity of the electricity used in a utility service area is calculated based on the mix of resources the electricity used to generate the electricity used using the most recent year fuel-mix report published by the Washington department of commerce under RCW 19.29A.140. No later than December 31st of each year, except that ecology may revise the carbon intensity of electricity for 2023 no later than June 15, 2023, ecology will:

(a) Post the updated utility-specific electricity carbon intensity for the next year on the ecology web page;

(b) Post the updated utility-specific carbon intensities for the next year on the ecology web page; and

(c) Add the new fuel pathway codes to the WFRS effective for Q1 reporting for the next year.

(2) **Statewide electricity mix.** The carbon intensity for the statewide electricity mix will reflect the average carbon intensity of electricity served in Washington and be calculated by using the carbon-intensity of electricity from the most recent year as published by department of commerce under RCW 19.29A.140.

(3) **Unspecified electricity.** The emissions associated with electricity generated from unspecified electricity is considered as generated using natural gas.

(4) **On-site renewable electricity generation.** For on-site generation of electricity using renewable generation systems such as solar or wind, applicants must document that:

(a) The renewable generation system is on-site or directly connected to the electric vehicle chargers;

(b) The fuel pathway codes listed in Table 7 under WAC 173-424-900 for solar-generated or wind-generated electricity can only be used for the portion of the electricity dispensed from the charger that is generated by that dedicated renewable energy system;

(c) Any grid electricity dispensed from the charger must be reported separately under the statewide electricity mix or utility-specific fuel pathway codes; and

(d) RECs are not generated from the renewable generation system or, if they are, then an equal number of RECs generated from that facility to the number of MWh reported in the WFRS from that facility must be retired in the recognized REC tracking system.

(5) **Offsite renewable electricity.** In order to lower the carbon intensity of electricity claimed as a vehicle fuel in the clean fuels program, credit generators and aggregators may retire renewable electricity certificates that meet the following qualifications:

(a) Renewable energy certificates (RECs) retired in order to claim a carbon intensity other than the statewide mix or utility-specific mix must be certified by the WREGIS, or by a certification system approved by ecology as being substantially equivalent. Unbundled RECs being used to claim low-carbon electricity through book and claim accounting must be certified at the wholesale level, while RECs used in a power purchase agreement or utility renewable electricity product must be certified at the retail level;

(b) RECs must be generated by an electric generator that was placed into service after 2023;

(c) RECs must be generated from facilities located in the western electricity coordinating council; and

(d) RECs must be recorded and retired in a recognized REC tracking system. In addition to recognizing the western renewable energy generation information system, ecology may recognize additional REC tracking systems upon a request from a registered party. In reviewing those requests, ecology will consider whether the tracking system is comparable to WREGIS and if it has systems in place to ensure accurate issuance and tracking of RECs.

(6) **Carbon intensity of renewable electricity.** The carbon intensity of solar, wind, geothermal, hydropower, and ocean power renewable electricity is deemed to be zero. For renewable electricity generated from biomass, biogas, biodiesel, and hydrogen, the generator must file a Tier 1 or Tier 2 fuel pathway application to determine the carbon intensity of its electricity. Ecology may adopt an efficiency adjustment factor for biogas to electricity pathways that include emissions reduction credits in order to maintain the program's incentive for energy efficiency.

(7) **Utility renewable electricity products and power purchase agreements.** Electric utilities may apply via a Tier 2 fuel pathway application for ecology to assign a carbon intensity to one or more of their renewable electricity products or a specific power purchase agreement, which may then be used to generate credits from charging electric vehicles attributable to the use of such products or agreements. All of the following requirements apply to such applications:

(a) Notwithstanding WAC 173-424-610, Tier 2 applications made under this section must include:

(i) A letter describing the power purchase agreement or utility renewable electricity product, the existing or planned source, or sources, of electricity and environmental attributes, and the terms by which it is being offered to customers;

(ii) Samples or examples of bills, invoices, contracts, or other documentation that an entity claiming renewable energy under this product could provide to ecology to prove that their electric vehicle charging is covered by the product or agreement;

(iii) In the case of a utility renewable electricity product, any filings with, and orders by, the Washington utilities and transportation commission, governing boards of consumer-owned utilities, or any other local governing board that approves the product; and

(iv) An estimate of the amount of electric vehicle charging attributable to customers for the product or agreement.

(b) Ecology will review pathway applications under this section to determine if they result in a substantially similar environmental outcome to the sources of renewable energy required under subsection (5) of this section. In reviewing a utility product or agreement that contains multiple sources of power, ecology may use the estimate under (a)(iii) of this subsection to determine if sufficient renewable energy that is substantially similar to the requirements of subsection (5) of this section is included in the product to cover transportation-related charging that may be claimed under the CFP. Ecology may revisit this determination annually using the annual fuel pathway report.

(c) Annual fuel pathway report. The annual fuel pathway report for pathways covered by this section must include information to update the sources or sources of electricity or environmental attributes that were used in the prior year and are planned for use in the year in which the report is submitted. That documentation must include retirement records for any RECs used to lower the claimed carbon intensity of the electricity being used by customers of those products in the clean fuels program for the prior year. That documentation must also update the estimate of the amount of electric vehicle charging attributable to customers using the products or agreements. Fuel pathway reports required by this section are due by June 30th, notwithstanding WAC 173-424-610 (9) (g) (iii) (C).

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## PART 7 - OTHERS

### NEW SECTION

**WAC 173-424-700 Authority to suspend, revoke, or modify.** (1) If ecology determines that any basis for invalidation set forth in subsection (2) of this section has occurred, in addition to taking any other authorized enforcement action, ecology may take any of the actions described in (a) through (d) of this subsection. For the purposes of this section an approved carbon intensity refers both to carbon intensities approved by ecology under WAC 173-424-610 and under WAC 173-424-600 (FPW).

(a) Suspend, restrict, modify, or revoke an account in the WA-RFS, or take one combination of two or more such actions;

(b) Modify or delete an approved carbon intensity;

(c) Restrict, suspend, or invalidate credits; or

(d) Recalculate the deficits in a regulated party's WA-RFS account.

(2) Ecology may take any of the actions described in subsection (1) of this section based on any of the following:

- (a) Any of the information used to generate or support the approved carbon intensity was incorrect, including if material information was omitted or the process changed following the submission of the carbon intensity application;
- (b) Any material information submitted in connection with the approved carbon intensity or a credit transaction was incorrect;
- (c) Fuel reported under a given pathway was produced or transported in a manner that varies in any way from the methods set forth in any corresponding pathway application documents submitted under WAC 173-424-600 and 173-424-610 such that the variance would meet the threshold to be material information;
- (d) Fuel transaction data or other data reported into the WA-RFS and used to calculate credits and deficits was incorrect or omitted material information;
- (e) Credits or deficits were generated or transferred in violation of any provision of this chapter or in violation of other laws, statutes, or regulations;
- (f) A party obligated to provide records under this chapter refused to provide such records or failed to do so within the required time frame for documenting credit transactions under WAC 173-424-400;
- (g) Failure to submit a verification statement when it is required under WAC 173-424-800;
- (h) An adverse verification statement submitted under WAC 173-424-800; or
- (i) A party obligated to provide records associated with credit revenue spending under this chapter refused to provide such records or failed to do so within the required time frame.

(3) **Providing notice of an initial determination.**

- (a) Upon making an initial determination that a credit calculation, deficit calculation, or an approved carbon intensity may be subject to an action described in subsection (1) of this section, ecology will notify all potentially affected parties.
- (b) The notice shall state the reason for the initial determination and may also include a specific request from any party for information relevant to any of the bases described in subsection (2) of this section.
- (c) Within 20 days of the issuance of the notice, the affected parties shall make records and personnel available to ecology as it conducts its investigation.
- (d) Any party receiving the notice may submit any information it believes is relevant to the investigation and that it wants ecology to consider in its evaluation. Within 15 business days of any such request, unless a different schedule is agreed to by ecology, a regulated entity shall make records and personnel available to assist ecology in determining the validity of the credit, deficit calculation, or certified CI.

(4) **Interim account suspension.** Once a notice has been issued based on initial determination under subsection (3) of this section, ecology may immediately take one or both of the following actions:

- (a) Deactivate an approved carbon intensity in the AFP; or
- (b) Suspend an account in the WFRS. In cases where a discrete number of credits are being investigated, ecology may place an administrative hold on a specific number of credits rather than suspending an entire account.

(5) **Final determination.** Within 50 days after making an initial determination under subsections (2) and (3) of this section, ecology shall make a final determination based on the available information. The final determination should include:

(a) Whether any of the bases for invalidation in subsection (2) of this section exist;

(b) Identification of the affected parties; and

(c) What actions in subsection (1) of this section ecology will impose and how many credits, deficits, or approved carbon intensities are affected. If the final determination invalidates credits or deficit calculations, the corresponding credits and deficits will be added or subtracted from the appropriate accounts in the WFRS.

(6) **Responsibility for invalidated credits or miscalculated deficits.** Any party that generated, previously held, or holds invalidated credits or whose account reflects an invalid deficit calculation is responsible for returning its account to compliance without regard to its fault or role with respect to the invalidation of the credits or miscalculation of deficits. The deficit holder has 60 days from the date of the final determination to purchase sufficient credits to eliminate the entire deficit. A return to compliance does not preclude further enforcement actions.

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#### NEW SECTION

**WAC 173-424-710 Public disclosure.** (1) **List of ecology-approved registered parties.** Ecology will maintain a current list of ecology-approved registered parties and will make that list publicly available on its website. The list will include, at a minimum, the name of the registered party and whether the registered party is an importer of blendstocks, a large importer of finished fuels, a small importer of finished fuels, a producer, a credit generator, or an aggregator.

(2) All information submitted as application materials in the WA-RFS that are not identified as trade secrets or confidential business information are subject to public disclosure pursuant to Washington Public Records Act (chapter 42.56 RCW). If ecology approved the application, the carbon intensity value(s) and its associated fuel pathway code(s) will be posted publicly on the CFP website and incorporated into the WA-RFS for use by fuel reporting entities.

(3) **Monthly credit trading activity report.** Ecology must post on its web page, by no later than the last day of the month immediately following the month for which the calculation is completed, a credit trading activity report that:

(a) Summarizes the aggregate credit transfer information for the:

(i) Most recent month;

(ii) Previous three months;

(iii) Previous three quarters; and

(iv) Previous compliance periods;

(b) Includes, at a minimum:

(i) The total number of credits transferred;

(ii) The number of transfers;

(iii) The number of parties making transfers; and

(iv) The formula ecology used to calculate the volume-weighted average price of that month's transfers, exclusive of transactions

that fall two standard deviations outside of the mean credit price for the month or that are transferred without a price;

(c) Is based on the information submitted into the WFRS; and

(d) Presents aggregated information on all fuel transacted within the state and does not disclose individual parties' transactions.

(4) **Quarterly data summary.** Ecology must post on its web page at least quarterly:

(a) An aggregate data summary of credit and deficit generation for the most recent quarter and all prior quarters; and

(b) Information on the contribution of credit generation by different fuel types.

(5) **Clean fuels program annual report.** Ecology must post on its web page by April 15th of each year, the following information from the previous year:

(a) The average cost or cost-savings per gallon of gasoline, per gallon of diesel, or any other fuel types, and the formulas used to calculate such costs or cost-savings; and

(b) The total greenhouse gas emissions reductions.

(6) **Utility reports.** Ecology will post the utility reports it receives under WAC 173-424-420(7) to its website.

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#### NEW SECTION

**WAC 173-424-720 Emergency deferral.** (1) **Emergency deferral due to fuels shortage.** Ecology may issue an order declaring an emergency deferral of compliance with the carbon intensity standard during the effective compliance period:

(a) After ecology determines, in consultation with the governor's office and the Washington department of commerce:

(i) Extreme and unusual circumstances exist that prevent the **distribution of an adequate supply of renewable fuels** needed for regulated parties to comply with the clean fuels program taking into consideration all available methods of obtaining sufficient credits to comply with the standard;

(ii) The extreme and unusual circumstances are the result of a natural disaster, an act of God, a significant supply chain disruption or production facility equipment failure, or another event that could **not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuels** to the state; and

(iii) **It is in the public interest to grant the deferral** such as when a deferral is necessary to meet projected temporary shortfalls in the supply of the renewable fuel in the state and that other methods of obtaining compliance credits are unavailable to compensate for the shortage of renewable fuel supply.

(b) To determine the extent of the fuel shortage and the amount of the fuel needed for regulated parties to comply with that year's standard, ecology will consider the following:

(i) The volume and carbon intensity of the fuel determined to be not available under (a) of this subsection;

(ii) The estimated duration of the shortage; and

(iii) Whether there are any options that could mitigate the shortage including, but not limited to:



- (A) The same fuel from other sources;
  - (B) Substitutes for the affected fuel and the carbon intensities of those substitutes are available; or
  - (C) Banked clean fuel credits are available.
  - (c) In addition to the determination in (a) of this subsection, such a temporary and extremely unusual deferral is allowed only if:
    - (i) The deferral applies only for the shortest time necessary to address the extreme and unusual circumstances;
    - (ii) The deferral is effective for the shortest practicable time period ecology determines necessary to permit the correction of the extreme and unusual circumstances; and
    - (iii) Ecology has given public notice of a proposed deferral.
  - (d) No later than 15 calendar days after the date that ecology determines to issue emergency deferral according to (a) of this subsection.
- (2) **Content of an emergency deferral order.** An order declaring an emergency deferral under this section must set forth:
- (a) The duration of the emergency deferral;
  - (b) The types of fuel to which the emergency deferral applies;
  - (c) Which of the following methods the department has selected for deferring compliance with the clean fuels program during the emergency deferral:
    - (i) Temporarily adjusting the scheduled applicable carbon intensity standard to a standard identified in the order that better reflects the availability of credits during the emergency deferral and requiring regulated parties to comply with the temporary standard;
    - (ii) Allowing for the carryover of deficits accrued during the emergency deferral into the next compliance period without penalty; or
    - (iii) Suspending deficit accrual during the emergency deferral period.
- (3) **Termination of emergency deferral.** An emergency deferral may be terminated prior to the expiration date:
- (a) If new information becomes available indicating that the shortage that provided the basis for the emergency deferral has ended.
  - (b) After ecology consults with the department of commerce and the governor's office in making an early termination decision.
  - (c) Termination of an emergency deferral is effective 15 calendar days after the date that the order declaring the termination is adopted.
- (4) In addition to the emergency deferral specified in subsection (1) of this section, ecology may issue a full or partial deferral for one calendar quarter of a person's obligation to furnish credits for compliance under the following conditions.
- (a) If ecology finds that the person is unable to comply with the requirements of this chapter due to reasons beyond the person's reasonable control.
  - (b) Such deferral may be initiated by ecology at its own discretion or at the request of a person regulated under this chapter.
  - (c) In making decision to issue a deferral under this subsection, ecology may consider the results of the fuel supply forecast in WAC 173-424-730, but is not bound in its decision-making discretion by the results of the forecast.
  - (d) Ecology may renew issued deferrals under this section.
  - (e) If ecology issues a deferral pursuant to this subsection, it may require the person subject to the deferral to:

(i) File a progress report on achieving full compliance with the requirements of this chapter within an amount of time determined to be reasonable by the department; and

(ii) Take specific actions to achieve full compliance with the requirements of this chapter.

(f) The issuance of a deferral under this subsection does not permanently relieve the deferral recipient of the obligation to comply with the requirements of this chapter.

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#### NEW SECTION

**WAC 173-424-730 Forecast deferral.** (1) **Conditions and deadline for forecast deferral.** No later than December 1st, ecology shall issue an order declaring a forecast deferral for the following compliance period if:

(a) Ecology receives a fuel supply forecast for the following compliance period by October 2nd; and

(b) The forecast projects that the amount of credits that will be available during the forecast compliance period will be less than 100 percent of the credits projected to be necessary for regulated parties to comply with the carbon intensity standard.

(2) **Forecast deferral content:** The forecast deferral order that ecology issues must set forth:

(a) The duration of the forecast deferral, which may not be less than one calendar quarter or longer than one compliance period;

(b) The types of fuel to which the forecast deferral applies; and

(c) Methods for deferring compliance with the carbon intensity standard during the forecasted deferral out of the following:

(i) Temporarily adjusting the scheduled applicable clean fuel standard to a standard identified that better reflects the forecast availability of credits during the forecast compliance period and requiring regulated parties to comply with the temporary standard;

(ii) Requiring regulated parties to comply only with the clean fuel standard applicable during the compliance period prior to the forecast compliance period; or

(iii) Suspending deficit accrual for part or all of the forecast deferral period.

(3) **Other or additional method of deferring compliance with the carbon intensity standard:**

(a) Ecology may take an action for deferring compliance other than, or in addition to, the method listed in subsection (2)(c) of this section provided that ecology determines that none of the methods under subsection (2)(c) of this section will provide a sufficient mechanism for containing the costs of compliance with the carbon intensity standard during the forecast deferral.

(b) If ecology makes the determination specified in (a) of this subsection, ecology shall:

(i) Include in such order ecology's determination and the action to be taken; and

(ii) Provide written notification and justification of the determination and the action to:

(A) The governor;

(B) The president of the senate;

- (C) The speaker of the house of representatives;
  - (D) The majority and minority leaders of the senate; and
  - (E) The majority and minority leaders of the house of representatives.
- (4) **Terminating a forecast deferral.** Ecology may terminate, by order, a forecast deferral before the expiration date of the forecast deferral. Termination is effective on the first day of the next calendar quarter after the date that the order declaring the termination is adopted.

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## PART 8 - VALIDATION AND VERIFICATION

### NEW SECTION

**WAC 173-424-800 Validation and verification.** (1) For fuel pathways that have been certified by CARB or OR-DEQ and approved by ecology, the regulated party must submit the periodic third-party verification reports submitted to and approved by CARB or OR-DEQ.

(2) Ecology may require third-party verification, as necessary, to validate and verify the carbon intensity of fuel pathways, according to:

(a) The principles, requirements, guidelines, and procedures in ISO 14067; or

(b) The requirements California adopted in low carbon fuels standard program under 95500 through 95502.

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## PART 9 - TABLES

### NEW SECTION

**WAC 173-424-900 Tables.**

**Table 1. Washington Carbon Intensity Standards for Gasoline and Gasoline Substitutes**

<b>Calendar Year</b>	<b>Washington Carbon Intensity Standard (gCO<sub>2</sub>e per MJ)</b>	<b>Percent Reduction</b>
2023	98.36	0.50 percent
2024	97.86	1.00 percent
2025	96.87	2.00 percent
2026	95.88	3.00 percent
2027	94.90	4.00 percent
2028	93.41	5.50 percent
2029	91.93	7.00 percent
2030	90.45	8.50 percent
2031	88.97	10.00 percent
2032	88.97	10.00 percent
2033	88.97	10.00 percent
2034	79.08	20.00 percent
2035	79.08	20.00 percent
2036	79.08	20.00 percent
2027	79.08	20.00 percent
2038	79.08	20.00 percent
Carbon intensity of gasoline and gasoline substitute for the baseline year (2017) is 98.85 gCO <sub>2</sub> per MJ		

**Table 2. Washington Carbon Intensity Standards for Diesel and Diesel Substitutes**

<b>Calendar Year</b>	<b>Washington Carbon Intensity Standard (gCO<sub>2</sub>e per MJ)</b>	<b>Percent Reduction</b>
2023	99.52	0.50 percent
2024	99.02	1.00 percent
2025	98.02	2.00 percent
2026	97.02	3.00 percent
2027	96.02	4.00 percent
2028	94.52	5.50 percent
2029	93.02	7.00 percent
2030	91.52	8.50 percent
2031	90.02	10.00 percent
2032	90.02	10.00 percent
2033	90.02	10.00 percent
2034	80.02	20.00 percent
2035	80.02	20.00 percent
2036	80.02	20.00 percent
2037	80.02	20.00 percent
2038	80.02	20.00 percent
Carbon intensity of diesel and diesel substitute for the baseline year (2017) is 100.02 gCO <sub>2</sub> per MJ		

**Table 3. Washington Energy Densities and Conversion Factors for Fuels and Blendstocks**

Fuel (unit)	MJ/unit
Gasoline blendstock (gallon)	122.48 (MJ/gallon)
Washington gasoline (gallon)	117.73 (MJ/gallon)
Diesel fuel (gallon)	134.48 (MJ/gallon)
Compressed natural gas (therm) <sup>1</sup>	105.5 (MJ/therm)
Electricity (kiloWatt hour)	3.60 (MJ/kiloWatt hour)
Denatured ethanol (gallon)	81.51 (MJ/gallon)
Clear biodiesel (gallon)	126.13 (MJ/gallon)
Liquefied natural gas (gallon)	78.83 (MJ/gallon)
Hydrogen (kilogram)	120.00 (MJ/kilogram)
Liquefied petroleum gas (gallon)	89.63 (MJ/gallon)
Renewable hydrocarbon diesel (gallon)	129.65 (MJ/gallon)
Undenatured anhydrous ethanol (gallon)	80.53 (MJ/gallon)
Alternative Jet Fuel (gallon)	126.37 (MJ/gallon)
Renewable naphtha (gallon)	117.66 (MJ/gallon)

<sup>1</sup> If therms are reported on a LHV basis. For therms reported on an HHV basis, this value must be converted to HHV basis.

**Table 4. Washington Energy Economy Ratio Values for Fuels in Vehicles**

Light/Medium Duty Applications (Fuels used as gasoline replacements)		Heavy-Duty/Off-Road Applications (Fuels used as diesel replacements)		Aviation Applications (Fuels used as jet fuel replacements)	
Fuel/Vehicle Combination	EER Value Relative to Gasoline	Fuel/Vehicle Combination	EER Value Relative to Diesel	Fuel/Vehicle Combination	EER Value Relative to conventional jet
Gasoline (including E10) or any other gasoline-ethanol blend	1	Diesel fuel (including B5) or any other blend of diesel and biodiesel or renewable hydrocarbon diesel	1	Alternative Jet Fuel+	1
CNG Internal Combustion Engine Vehicle (ICEV)	1	CNG, LNG, or LPG (Spark-Ignition Engines)	0.9		
Electricity/ Battery Electric Vehicle or Plug-In Hybrid Electric Vehicle	3.4	CNG, LNG, or LPG (Compression-Ignition Engines)	1		

Light/Medium Duty Applications (Fuels used as gasoline replacements)		Heavy-Duty/Off-Road Applications (Fuels used as diesel replacements)		Aviation Applications (Fuels used as jet fuel replacements)	
Fuel/Vehicle Combination	EER Value Relative to Gasoline	Fuel/Vehicle Combination	EER Value Relative to Diesel	Fuel/Vehicle Combination	EER Value Relative to conventional jet
Electricity/On-Road Electric Motorcycle	4.4	Electricity/Battery Electric Vehicle or Plug-In Hybrid Electric Vehicle	5		
Propane/Propane Forklift	0.9	Electricity/Battery Electric or Plug-in Hybrid Transit Bus	5		
Propane/Propane Forklift	0.9	Electricity/Battery Electric or Plug-in Hybrid Transit Bus	5		
Hydrogen/Fuel Cell Vehicle	2.5	Electricity/Fixed Guideway Light Rail	3.3		
		Electricity/Fixed Guideway Streetcar	2.1		
		Electricity/Fixed Guideway Aerial Tram	2.6		
		Electricity/Electric Forklift	3.8		
		Electricity/Electric TRU (eTRU)	3.4		
		Hydrogen/Fuel Cell Vehicle	1.9		
		Hydrogen/Fuel Cell Forklift	2.1		
		Electricity/Cargo Handling Equipment	2.7		

**Table 5. Washington Land Use Change CI Values for Biofuels CI Determination**

Feedstock	LUC Value (gCO <sub>2</sub> e/MJ)
Corn Ethanol	19.80
Sorghum Ethanol	19.40
Sugarcane Ethanol	11.80
Soybean Biodiesel or Renewable Diesel	29.10
Canola Biodiesel or Renewable Diesel	14.50

Feedstock	LUC Value (gCO <sub>2</sub> e/MJ)
Palm Biodiesel or Renewable Diesel	71.40

**Table 6. Washington Carbon Intensity Lookup Fuel Pathway Table**

Fuel	Pathway Code	Pathway Description	Carbon Intensity Values (gCO <sub>2</sub> e/MJ)
Gasoline	WAGAS001	Clear gasoline - based on a weighted average of gasoline supplied to Washington. The CI of the gasoline supply was based on average crude oil supplied to the states (WA, UT, and MT) and U.S. average refinery efficiency	100.37
	WAGAS002	Washington gasoline - blended with corn ethanol as supplied to Washington <sup>2</sup>	98.85
Diesel	WAULSD001	Clear diesel - based on a weighted average of diesel fuel supplied to Washington. The CI of the diesel supply was based on average crude oil supplied to the states (WA, UT, and MT) and U.S. average refinery efficiency	101.09
	WAULSD002	Washington diesel - blended with soy biodiesel as supplied to Washington <sup>3</sup>	100.02
Compressed Natural Gas	WACNG	Average North American natural gas delivered via pipeline; compressed in WA	77.98
Liquefied Natural Gas	WALNG	Average North American natural gas delivered via pipeline; liquefied in WA	86.76
Liquefied Petroleum Gas	WALPG	Fossil Liquefied petroleum gas from crude oil and natural gas <sup>4</sup>	83.14
Electricity	WAELEC001	Washington average grid electricity used as transportation fuel in Washington	63.51 (subject to annual update)
	WAELEC002	Renewable power deemed to have a carbon intensity of zero	0

Fuel	Pathway Code	Pathway Description	Carbon Intensity Values (gCO <sub>2</sub> e/MJ)
Hydrogen	WAHYF	Compressed H <sub>2</sub> produced in Washington from central steam methane reformation of North American fossil-based NG	124.86
	WAHYB	Compressed H <sub>2</sub> produced in WA from central steam methane reformation of biomethane (renewable feedstock) from North American landfills	104.88
	WAHYEG	Compressed H <sub>2</sub> produced in WA from electrolysis using WA average grid electricity	101.47
	WAHYER	Compressed H <sub>2</sub> produced in WA from electrolysis using solar- or wind-generated electricity <sup>5</sup>	6.48

<sup>2</sup> Based on 2017 WA blending level derived from EIA data, using standard corn ethanol pathway CI from WA-GREET.

<sup>3</sup> Based on 2017 WA blending level derived from EIA data, using standard soy biodiesel pathway CI from WA-GREET.

<sup>4</sup> Based on CARB estimate of 25% NG and 75% petroleum for PADD5.

<sup>5</sup> Assumes WAMX grid electricity is used for compression and dispensing at refueling stations.

**Table 7. Washington Substitute Fuel Pathway Codes**

Fuel	Fuel Pathway code	CI (gCO <sub>2</sub> e/MJ)
Substitute CI for Ethanol. This pathway may only be used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use.	ETH0116	40
Substitute CI for Biodiesel. This pathway may only be used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use.	BIOD0116	15
Substitute CI for Renewable Diesel. This pathway may only be used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use.	RNWD0116	15
Substitute CI for E10 Gasoline. This pathway may only be used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use.	WAGAS0116	96.35 (subject to annual update)
Substitute CI for B2.5 Diesel <sup>6</sup> . This pathway may only be used to report transactions that are sales or purchases without obligation, exports, loss of inventory, not for transportation use, and exempt fuel use.	WAULSD0116	99.08 (subject to annual update)

<sup>6</sup> Based on 2017 WA average diesel blending level derived from EIA data.



Table 8. Washington Temporary Fuel Pathway Codes

Fuel	Feedstock	Process Energy	FPC	CI (gCO <sub>2</sub> e/MJ)
Ethanol	Corn	Grid electricity, natural gas, and/or renewables	WAETH100T	90 <sup>7</sup>
	Sorghum	Grid electricity, natural gas, and/or renewables	WAETH101T	95 <sup>8</sup>
	Sugarcane and Molasses	Bagasse and straw only, no grid electricity	WAETH102T	55
	Any other starch or sugar feedstock	Any	WAETH103T	98.85 <sup>1</sup>
	Any cellulosic biomass including Corn Stover, Wheat Straw, or Sugarcane Straw	As specified in WA-GREET	WAETH104T	50
Biodiesel	Any feedstock derived from animal fats, corn oil, or a waste stream	Grid electricity, natural gas, and/or renewables	WABIOD200T	45
	Any feedstock derived from plant oils except for Palm-derived oils	Grid electricity, natural gas, and/or renewables	WABIOD201T	65
	Any feedstock	Any	WABIOD202T	100.02 <sup>2</sup>
Renewable Diesel	Any feedstock derived from animal fats, corn oil, or a waste stream	Grid electricity, natural gas, and/or renewables	WARNWD300T	45
	Any feedstock derived from plant oils except for Palm-derived oils	Grid electricity, natural gas, and/or renewables	WARNWD301T	65
	Any other feedstock	Any	WARNWD302T	100.02 <sup>3</sup>
Biomethane CNG	Landfill or Digester Gas	Grid electricity, natural gas, and/or renewables	WACNG500T	70
	Municipal Wastewater sludge, Food Waste, Green Waste, or Other Organic Waste	Grid electricity, natural gas, and/or parasitic load	WACNG501T	45
Biomethane LNG	Landfill or Digester Gas	Grid electricity, natural gas, and/or renewables	WALNG501T	85
	Municipal Wastewater sludge, Food Waste, Green Waste, or Other Organic Waste	Grid electricity, natural gas, and/or parasitic load	WALNG502T	60

Fuel	Feedstock	Process Energy	FPC	CI (gCO <sub>2</sub> e/MJ)
Biomethane L-CNG	Landfill or Digester Gas	Grid electricity, natural gas, and/or renewables	WALCNG502T	90
	Municipal Wastewater sludge, Food Waste, Green Waste, or Other Organic Waste	Grid electricity, natural gas, and/or parasitic load	WALCNG503T	65
Biomethane CNG, LNG, L-CNG	Dairy and Swine Manure	Grid electricity, natural gas, and/or parasitic load	WALCNG504T	-150
Hydrogen	Centralized SMR of fossil natural gas or LNG	Grid electricity, natural gas, and/or renewables	WAHYG601T	185
Renewable LPG	Fats, Oils, and Grease residues	Grid electricity, natural gas, and/or renewables	WARNWP400T	45
	Any feedstock derived from plant oils (excluding palm and palm derivatives)	Grid electricity, natural gas, and/or renewables	WARNWP401T	65
Any Gasoline Substitute Feedstock-Fuel Combination Not Included Above	Any	Any	WASG800T	98.85 <sup>4</sup>
Any Diesel Substitute Feedstock- Fuel Combination not Included Above	Any	Any	WASD801T	100.02 <sup>5</sup>

1 2017 baseline carbon intensity for Washington gasoline is 98.85 gCO<sub>2</sub>e/MJ.  
 2 2017 baseline carbon intensity for Washington diesel is 100.02 gCO<sub>2</sub>e/MJ.  
 3 2017 baseline carbon intensity for Washington diesel is 100.02 gCO<sub>2</sub>e/MJ.  
 4 2017 baseline carbon intensity for Washington gasoline is 98.85 gCO<sub>2</sub>e/MJ.  
 5 2017 baseline carbon intensity for Washington diesel is 100.02 gCO<sub>2</sub>e/MJ.  
 7 Reflects an iLUC value of 19.8. If iLUC value under WA CFS is modified, this may be adjusted accordingly.  
 8 Reflects an iLUC value of 19.4. If iLUC value under WA CFS is modified, this may be adjusted accordingly.

**Table 9. Summary Checklist of Quarterly and Annual Reporting Requirements**

Parameters to report	Gasoline & Diesel Fuel	Ethanol, Biomass based diesel, Renewable Diesel, Alternative Jet Fuel, Other alternative fuels	Natural Gas and Propane	Electricity	Hydrogen
For Quarterly Reporting					
Organization/Company	x	x	x	x	x
Organization FEIN	x	x	x	x	x
Fuel Pathway Code	x	x	x	x	x
Transaction Type	x	x	x	x	x
*Transaction Date	x	x	x	x	x
Business Partner (if applicable)	x	x	x	x	x
Production Company ID and Facility ID	x**	x**	n/a	x	x**
Fuel Supplying Equipment ID	n/a	x	x	x	n/a
Vehicle Identifier (if applicable)	n/a	n/a	x	n/a	n/a
Physical Transport Mode Code (all)	x	x	x	x	x

Parameters to report	Gasoline & Diesel Fuel	Ethanol, Biomass based diesel, Renewable Diesel, Alternative Jet Fuel, Other alternative fuels	Natural Gas and Propane	Electricity	Hydrogen
Aggregated Transaction Indicator (T/F)	x	x	n/a	x	x
Fuel Application/EER	x	x	x	x	x
Amount of each gasoline and diesel blendstock	x	n/a	n/a	n/a	n/a
Amount of each fuel used as gasoline replacement	n/a	x	x	x	x
Amount of each fuel used as diesel fuel replacement	n/a	x	x	x	x
Amount of each fuel used as a jet fuel replacement	n/a	n/a	n/a	n/a	x
MCON or other crude oil name designation, volume (in gal), and country (or state) of origin for each crude supplied to the refinery	x	n/a	n/a	n/a	n/a
Credits/deficits generated per quarter (MT)	x	x	x	x	x
For Annual Compliance Reporting (in addition to the items above)					
***Credits/deficits generated per year (MT)	x	x	x	x	x
***Credits/deficits carried over from the previous year (MT), if any	x	x	x	x	x
***Credits acquired from another entity (MT), if any	x	x	x	x	x
***Credits sold from another entity (MT), if any	x	x	x	x	x
***Credits pledged for sale into CCM from another entity (MT), if any	x	x	x	x	x
***Credits retired within CFP (MT) to meet compliance obligation, if any	x	x	x	x	x
MCON or other crude oil name designation, volume (in gal), and country (or state) of origin for each crude supplied to the refinery.	x	n/a	n/a	n/a	n/a
* Same as Title Transfer Date; For Aggregated Transactions enter the last day of the reporting period. ** Does not apply to CARBOB, Diesel Fuel, Fossil Propane, or Fossil NG. *** Value will be calculated, stored and displayed in the WFRS.					

**Table 10. Utility Specific Carbon Intensity of Electricity**

Fuel Mix Disclosure Claimant ID	Claimant Utility Name	2018 Carbon Intensity of electricity, gCO <sub>2</sub> e/MJ
1	Alder Mutual Light	7.06
4	Benton County PUD #1	6.43
5	Benton Rural Electric Assn.	7.07
6	Big Bend Electric Coop	16.19
12	City of Blaine	7.07
18	Centralia City Light	48.63
19	Chelan County PUD #1	0.00

Fuel Mix Disclosure Claimant ID	Claimant Utility Name	2018 Carbon Intensity of electricity, gCO <sub>2</sub> e/MJ
20	Cheney Light Department	16.21
21	Chewelah Electric Department	7.07
22	Clallam County PUD #1	6.97
23	Clark County PUD #1	61.14
26	Clearwater Power (WA)	7.09
30	Columbia Rural Electric Assn. (WA)	20.01
32	Coulee Dam, Town of	7.06
33	Cowlitz County PUD #1	16.10
35	Douglas County PUD #1	41.01
38	Eatonville Electric Department	7.07
39	Elmhurst Mutual Power & Light	7.07
41	Ellensburg Electric Division	7.07
44	Ferry County PUD #1	7.07
46	Franklin County PUD #1	10.83
47	Grays Harbor County PUD #1	7.17
48	Inland Power & Light	14.19
51	Kittitas County PUD #1	7.31
52	Klickitat County PUD #1	25.18
53	Kootenai Electric Coop	0.00
54	Lakeview Light & Power	7.07
56	Lewis County PUD #1	6.59
59	McCleary Light & Power	7.06
63	Milton Electric Division	7.07
64	Modern Electric Water Company	7.07
66	Nespelem Valley Electric Coop	7.07
69	Northern Lights (WA)	6.61
71	Ohop Mutual Light	7.07
72	Okanogan County PUD #1	10.63
73	Okanogan County Electric Coop	0.00
75	Orcas Power & Light Coop	0.00
76	Pacific County PUD #2	14.65
81	Parkland Light & Water	7.07
82	Grant County PUD #2	118.63
83	Pend Oreille County PUD #1	11.73
84	Peninsula Light	6.27
85	Asotin County PUD #1	7.03
86	Port Angeles Light Operations	7.07
88	Wahkiakum County PUD #1	7.07
89	Mason County PUD #3	6.78
90	Puget Sound Energy	134.79
91	Richland Energy Services	18.21
92	Ruston, Town of	0.53
95	Seattle City Light	4.45
96	Skamania County PUD #1	7.07
97	Snohomish County PUD #1	6.22

Fuel Mix Disclosure Claimant ID	Claimant Utility Name	2018 Carbon Intensity of electricity, gCO <sub>2</sub> e/MJ
99	Steilacoom Electric Utility	7.07
101	Sumas, City of	7.07
102	Tacoma Power	4.02
103	Tanner Electric Coop	7.07
106	Vera Water & Power	14.57
109	Avista (WA)	113.08
111	Mason County PUD #1	6.60
117	Whatcom County PUD #1	7.07
118	Jefferson County PUD #1	7.07
119	Port of Seattle	7.07
120	Yakama Power	7.07
124	Port Townsend	0.00
130	Pacific Power (WA)	178.47
143	Solar City (WA)	0.00
144	Kalispel Tribal Utility	7.07
157	Okanogan County Electric Coop	15.64
158	Orcas Power & Light Coop	7.07
160	Energy Northwest	7.06
161	Consolidated Irrigation District #19	7.11
162	Fairchild Airforce Base	7.07

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### OTS-3844.1

#### NEW SECTION

**WAC 173-455-150 Clean fuels program fees.** (1) Fee determination. All entities required to participate or voluntarily participating under WAC 173-424-130 must pay an annual fee. Ecology must establish fees based on workload using the process outlined below. The fees must be sufficient to cover ecology's costs to administer the clean fuels program.

(2) Fee eligible activities. All costs of activities associated with implementing and administering the clean fuels program are fee eligible.

(3) Deficit and credit generators. Deficit and credit generators are entities that generate credits or deficits as defined in WAC 173-424-110.

(4) Ecology identifies deficit generators based on the following:

(a) In 2024, ecology determines deficit generators based on quarterly reports submitted in 2023.

(b) For all subsequent years, ecology determines deficit generators based on the annual compliance reports required by WAC 173-424-430 and covering deficits generated during the previous compliance year.

(5) Workload analysis and budget development. Each year, ecology must conduct a workload analysis and develop a budget for administration of the clean fuels program. The workload analysis must project resource requirements for administering the clean fuels program. The budget must be based on the resource requirements identified in the workload analysis.

(6) Allocation methodology. Ecology must allocate the clean fuels program budget among the entities required to participate or voluntarily participating under WAC 173-424-120.

(a) For fees assessed in 2023, ecology may collect a participation fee only. Ecology must allocate the participation fee as follows:

(i) Eighty percent of the annual budget is to be paid by deficit generators.

(ii) Twenty percent of the annual budget is to be paid by credit generators.

(b) For fees assessed after 2024, ecology may collect both a participation fee and a deficit generation fee.

(i) The participation fee must equal 20 percent of the annual budget, and ecology must split the fee equally amongst all program participants (deficit and credit generators).

(ii) The deficit generation fee must equal 80 percent of the annual budget, and ecology must allocate the fee based on the number of deficits generated by an entity as follows:

(A) Category 1 (highest fee): Top 30 percent of deficit generators.

(B) Category 2 (middle fee): Middle 30 percent of deficit generators.

(C) Category 3 (lowest fee): Lower 30 percent of deficit generators.

(D) Category 4 (fee exemption): The lowest 10 percent of deficit generators will be exempt from the deficit generation fee.

(7) Fee schedule.

(a) In 2023, ecology must prepare an annual budget that reflects the estimated cost of administering the clean fuels program. Ecology must post the annual budget and estimated participation fee on ecology's website by February 1, 2023.

(b) In 2024, ecology must prepare an annual budget that reflects the estimated cost of administering the clean fuels program. Following preparation of the annual budget, ecology must:

(i) Post the draft annual budget, estimated fees, and list of deficit generators on ecology's website by February 1, 2024.

(ii) Provide a 30-day public comment period on the draft budget, fees, and deficit generator list.

(iii) Post the final budget, fees, and deficit generator list by March 15, 2024.

(c) For all subsequent years, ecology must prepare an annual budget that reflects the estimated cost of the program. Following preparation of the annual budget, ecology must:

(i) Post the draft annual budget, estimated fees, and list of deficit generators on ecology's website by May 15th.

(ii) Provide a 30-day public comment period on the draft budget, fees, and deficit generator list.

(iii) Post the final budget, fees, and deficit generator list by June 30th.

(8) Fee payments. Fees specified in this section must be paid within 60 calendar days of receipt of ecology's billing statement. All fees collected under this section must be made payable to the Washing-

ton department of ecology. Ecology may assess a late fee surcharge of \$50 or 10 percent of the fee, whichever is more, for any fee received after 90 calendar days past the due date for fee payment.

(9) Dedicated account. Ecology must deposit all clean fuels program fees and penalties in the clean fuels program account.

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## WSR 22-15-078

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Nursing Care Quality Assurance Commission)

[Filed July 18, 2022, 12:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-01-002.

Title of Rule and Other Identifying Information: WAC 246-840-300 ARNP scope of practice, 246-840-700 Standards of nursing conduct or practice, and 246-840-710 Violations of standards of nursing conduct or practice. The nursing care quality assurance commission (commission) is proposing amendments to WAC 246-840-300 to create consistency with national advanced registered nurse practitioners (ARNP) standards, WAC 246-840-700 and 246-840-710 to update gender pronouns for registered nurses (RNs) and licensed practical nurses (LPNs), and other housekeeping and grammatical changes.

Hearing Location(s): On September 9, 2022, at 1:15 p.m. The hearing will take place at the Spokane Convention Center in Room 302AB, located at 322 North Spokane Falls Court, Spokane, WA 99201. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the commission will require all in-person attendees to wear masks.

If attending virtually, you can register in advance for this meeting at <https://us02web.zoom.us/meeting/register/tZ0lduyupz0pE9bqEgWTxcL-S2XcNQJbylDC>.

Date of Intended Adoption: September 9, 2022.

Submit Written Comments to: Shad Bell, P.O. Box 47864, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-4738, by August 26, 2022.

Assistance for Persons with Disabilities: Contact Shad Bell, phone 360-236-4711, fax 360-236-4738, TTY 711, email [NCQAC.rules@doh.wa.gov](mailto:NCQAC.rules@doh.wa.gov), by August 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to WAC 246-840-300, 246-840-700, and 246-840-710 introduce new and revised language that clarify the ARNP scope of practice and update gender pronouns.

Proposed amendments to WAC 246-840-300 strengthen the ARNP scope of practice rules by more fully supporting the ARNP role, remaining consistent with current ARNP national standards and incorporating more inclusive language. These proposed changes will allow the ARNP to provide services for which the individual is qualified and has appropriate education and competence. The proposed amendments also eliminate the need to list specific topics or procedures, such as medical acupuncture, within the scope of practice rules by incorporating language that more accurately represents the evolving role of the ARNP.

Proposed amendments to WAC 246-840-700 and 246-840-710 include gender pronoun changes that replace "he/she" with "they," as well as "his/her" with "their" and "him or herself" with "themselves."

Reasons Supporting Proposal: Proposed amendments to WAC 246-840-300 strengthen the current rule language by providing clarification and consistency with national ARNP standards. The proposed rule amendments will reduce barriers and provide clarification for ARNP scope of practice. Meeting the changing needs of residents of Washington state requires continuous education, training, and the provision of new procedures as appropriate. Clarification of this language will



strengthen the scope of practice rules for ARNPs so they can more nimbly respond to a rapidly changing practice environment.

Proposed amendments to WAC 246-840-700 and 246-840-710 will remove specific gender pronouns and introduce more inclusive language.

Background: The commission received a petition on April 3, 2018, from Representative Eileen Cody citing concerns about Nursing Commission Advisory Opinion (NCAO) 12.00 Medical Acupuncture: Scope of Practice for ARNPs, dated January 12, 2018. The petition requested the commission open rules to provide additional interested party involvement and enforceable guidelines. It is the commission's decision to not include specific topics or procedures, such as medical acupuncture, in nursing scope of practice rules due to the ever-evolving practice environment of nurses and the timely process it takes for specific rule changes, but rather issue specific advisory opinions on these topics to provide guidance and clarification. Advisory opinions offer the commission's interpretation of rule and are not enforceable. In response to Representative Cody's petition and the commission's recognition of the need for rule clarification, the commission voted at their May 11, 2018, meeting to open the ARNP scope of practice rules to further discuss concerns regarding nursing scope of practice and practice standards.

Since receiving Representative Cody's petition in 2018, the commission has provided multiple opportunities for interested party comment, input and discussion at open public meetings. Many of the comments and recommendations presented to the commission have been incorporated into the proposed language.

The commission also received several comments regarding the NCAO 12.00 Medical Acupuncture advisory opinion. The commission intends to update the advisory opinion with current and modern information.

Statutory Authority for Adoption: RCW 18.79.010, 18.79.110, and 18.79.250.

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: Not applicable.

Name of Proponent: Washington state nursing care quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Shad Bell, 111 Israel Road S.E., Tumwater, WA 98504, 360-236-4711; 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 required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Shad Bell, P.O. Box 47864, Olympia, WA 98504-7864, phone 360-236-4711, fax 360-236-4738, TTY 711, email Shad.Bell@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impact businesses, the proposed rules only impact provider licensing requirements.

July 18, 2022

Paula R. Meyer, MSN, RN, FRE  
Executive Director

Nursing Care Quality Assurance Commission

OTS-3671.2

AMENDATORY SECTION (Amending WSR 16-08-042, filed 3/30/16, effective 4/30/16)

**WAC 246-840-300 ARNP scope of practice.** The scope of practice of a licensed ARNP is as provided in RCW 18.79.250 and this section.

(1) The ARNP is prepared and qualified to assume primary responsibility and accountability for the care of patients within their roles of ARNP licensure: Certified nurse practitioner (CNP), certified registered nurse anesthetist (CRNA), certified nurse midwife (CNM), and clinical nurse specialist (CNS).

~~(2) ((ARNP practice is grounded in nursing process and incorporates the use of independent judgment. Practice includes collaborative interaction with other health care professionals in the assessment and management of wellness and health conditions.~~

~~(3) The ARNP functions within his or her)) As a licensed independent practitioner, an ARNP provides a wide range of health care services including the diagnosis and management of acute, chronic, and complex health conditions, health promotion, disease prevention, health education, and counseling to individuals, families, groups, and communities. Performing within the scope of the ARNP's education, training, and experience, the licensed ARNP may perform the following:~~

~~(a) Examine patients and establish diagnoses by patient history, physical examination, and other methods of assessment;~~

~~(b) Admit, manage, and discharge patients to and from health care facilities;~~

~~(c) Order, collect, perform, and interpret diagnostic tests;~~

~~(d) Manage health care by identifying, developing, implementing, and evaluating a plan of care and treatment for patients;~~

~~(e) Prescribe therapies and medical equipment;~~

~~(f) Prescribe medications when granted prescriptive authority under this chapter;~~

~~(g) Refer patients to other health care practitioners, services, or facilities; and~~

~~(h) Perform procedures or provide care services that are within the ARNP's scope of practice according to a commission approved certifying body as defined in WAC 246-840-302.~~

~~(3) As leaders in health care, an ARNP may serve in a variety of capacities including, but not limited to, mentors, educators, coaches, advocates, researchers, interprofessional consultants, and administrators.~~

~~(4) ARNP practice is grounded in nursing process and incorporates the use of independent judgment. Practice includes interprofessional interaction with other health care professionals in the assessment and management of wellness and health conditions.~~

~~(5) Health care is a dynamic field requiring the scope of the ARNP to continually evolve. The ARNP is responsible for possessing a clear understanding of, and functioning within, the scope of practice of the role for which a license has been issued following the standards of care defined by the applicable certifying body as defined in WAC 246-840-302. ((An ARNP may choose to limit the area of practice within the commission approved certifying body's practice.~~

~~(4) An ARNP shall obtain instruction, supervision, and consultation as necessary before implementing new or unfamiliar techniques or practices.~~

- ~~(5) Performing within the scope of the ARNP's knowledge, experience and practice, the licensed ARNP may perform the following:~~
- ~~(a) Examine patients and establish diagnoses by patient history, physical examination, and other methods of assessment;~~
  - ~~(b) Admit, manage, and discharge patients to and from health care facilities;~~
  - ~~(c) Order, collect, perform, and interpret diagnostic tests;~~
  - ~~(d) Manage health care by identifying, developing, implementing, and evaluating a plan of care and treatment for patients;~~
  - ~~(e) Prescribe therapies and medical equipment;~~
  - ~~(f) Prescribe medications when granted prescriptive authority under this chapter;~~
  - ~~(g) Refer patients to other health care practitioners, services, or facilities; and~~
  - ~~(h) Perform procedures or provide care services that are within the ARNP's scope of practice according to the commission approved certifying body as defined in WAC 246-840-302.)~~
- (6) An ARNP may choose to specialize and perform those acts for which the individual is qualified and has appropriate education and competence.

[Statutory Authority: RCW 18.79.050, 18.79.110, and 18.79.160. WSR 16-08-042, § 246-840-300, filed 3/30/16, effective 4/30/16. Statutory Authority: RCW 18.79.010, [18.79.]050, [18.79.]110, and [18.79.]210. WSR 09-01-060, § 246-840-300, filed 12/11/08, effective 1/11/09. Statutory Authority: RCW 18.79.110 and 18.79.050. WSR 00-21-119, § 246-840-300, filed 10/18/00, effective 11/18/00. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-300, filed 6/18/97, effective 7/19/97.]

AMENDATORY SECTION (Amending WSR 04-14-065, filed 7/2/04, effective 7/2/04)

**WAC 246-840-700 Standards of nursing conduct or practice. (1)**

The purpose of defining standards of nursing conduct or practice through WAC 246-840-700 and 246-840-710 is to identify responsibilities of the professional registered nurse and the licensed practical nurse in health care settings and as provided in the Nursing Practice Act, chapter 18.79 RCW. Violation of these standards may be grounds for disciplinary action under chapter 18.130 RCW. Each individual, upon entering the practice of nursing, assumes a measure of responsibility and public trust and the corresponding obligation to adhere to the professional and ethical standards of nursing practice. The nurse shall be responsible and accountable for the quality of nursing care given to clients. This responsibility cannot be avoided by accepting the orders or directions of another person. The standards of nursing conduct or practice include, but are not limited to the following;

(2) The nursing process is defined as a systematic problem solving approach to nursing care which has the goal of facilitating an optimal level of functioning and health for the client, recognizing diversity. It consists of a series of phases: Assessment and planning, intervention and evaluation with each phase building upon the preceding phases.

**(a) Registered Nurse:**

Minimum standards for registered nurses include the following:

**(i) Standard I Initiating the Nursing Process:**

**(A) Assessment and Analysis:** The registered nurse initiates data collection and analysis that includes pertinent objective and subjective data regarding the health status of the clients. The registered nurse is responsible for ongoing client assessment, including assimilation of data gathered from licensed practical nurses and other members of the health care team;

**(B) Nursing Diagnosis/ Problem Identification:** The registered nurse uses client data and nursing scientific principles to develop nursing diagnosis and to identify client problems in order to deliver effective nursing care;

**(C) Planning:** The registered nurse shall plan nursing care which will assist clients and families with maintaining or restoring health and wellness or supporting a dignified death;

**(D) Implementation:** The registered nurse implements the plan of care by initiating nursing interventions through giving direct care and supervising other members of the care team; and

**(b) Licensed Practical Nurse:**

Minimum standards for licensed practical nurses include the following:

**(i) Standard I - Implementing the Nursing Process:** The practical nurse assists in implementing the nursing process;

**(A) Assessment:** The licensed practical nurse makes basic observations, gathers data and assists in identification of needs and problems relevant to the clients, collects specific data as directed, and, communicates outcomes of the data collection process in a timely fashion to the appropriate supervising person;

**(B) Nursing Diagnosis/ Problem Identification:** The licensed practical nurse provides data to assist in the development of nursing diagnoses which are central to the plan of care;

**(C) Planning:** The licensed practical nurse contributes to the development of approaches to meet the needs of clients and families, and, develops client care plans utilizing a standardized nursing care plan and assists in setting priorities for care;

**(D) Implementation:** The licensed practical nurse carries out planned approaches to client care and performs common therapeutic nursing techniques; and

(E) **Evaluation:** The registered nurse evaluates the responses of individuals to nursing interventions and is responsible for the analysis and modification of the nursing care plan consistent with intended outcomes;

(ii) **Standard II Delegation and Supervision:** The registered nurse is accountable for the safety of clients receiving nursing service by:

(A) Delegating selected nursing functions to others in accordance with their education, credentials, and demonstrated competence as defined in WAC 246-840-010(10);

(B) Supervising others to whom ~~((he/she has))~~ they have delegated nursing functions as defined in WAC 246-840-010(10);

(C) Evaluating the outcomes of care provided by licensed and other paraprofessional staff;

(D) The registered nurse may delegate certain additional acts to certain individuals in community-based long-term care and in-home settings as provided by WAC 246-840-910 through 246-840-970 and WAC 246-841-405; and

(E) In a home health or hospice agency regulated under chapter 70.127 RCW, a registered nurse may delegate the application, instillation, or insertion of medications to a registered or certified nursing assistant under a plan of care pursuant to chapter 246-335 WAC;

(E) **Evaluation:** The licensed practical nurse, in collaboration with the registered nurse, assists with making adjustments in the care plan. The licensed practical nurse reports outcomes of care to the registered nurse or supervising health care provider;

(ii) **Standard II Delegation and Supervision:** Under direction, the practical nurse is accountable for the safety of clients receiving nursing care:

(A) The practical nurse may delegate selected nursing tasks to competent individuals in selected situations, in accordance with their education, credentials and competence as defined in WAC 246-840-010(10);

(B) The licensed practical nurse in delegating functions shall supervise the persons to whom the functions have been delegated;

(C) The licensed practical nurse reports outcomes of delegated nursing care tasks to the RN or supervising health care provider; and

(D) In community based long-term care and in-home settings as provided by WAC 246-840-910 through 246-840-970 and WAC 246-841-405, the practical nurse may delegate only personal care tasks to qualified care givers;

**(iii) Standard III Health Teaching.** The registered nurse assesses learning needs including learning readiness for patients and families, develops plans to meet those learning needs, implements the teaching plan and evaluates the outcome.

**(iii) Standard III Health Teaching.** The practical nurse assists in health teaching of clients and provides routine health information and instruction recognizing individual differences.

(3) The following standards apply to registered nurses and licensed practical nurses:

(a) The registered nurse and licensed practical nurse shall communicate significant changes in the client's status to appropriate members of the health care team. This communication shall take place in a time period consistent with the client's need for care. Communication is defined as a process by which information is exchanged between individuals through a common system of speech, symbols, signs, and written communication or behaviors that serves as both a means of gathering information and of influencing the behavior, actions, attitudes, and feelings of others; and

(b) The registered nurse and licensed practical nurse shall document, on essential client records, the nursing care given and the client's response to that care; and

(c) The registered nurse and licensed practical nurse act as client advocates in health maintenance and clinical care.

(4) Other responsibilities:

(a) The registered nurse and the licensed practical nurse shall have knowledge and understanding of the laws and rules regulating nursing and shall function within the legal scope of nursing practice;

(b) The registered nurse and the licensed practical nurse shall be responsible and accountable for his or her practice based upon and limited to the scope of (~~his/her~~) their education, demonstrated competence, and nursing experience consistent with the scope of practice set forth in this document; and

(c) The registered nurse and the licensed practical nurse shall obtain instruction, supervision, and consultation as necessary before implementing new or unfamiliar techniques or procedures which are in (~~his/her~~) their scope of practice.

(d) The registered nurse and the licensed practical nurse shall be responsible for maintaining current knowledge in (~~his/her~~) their field of practice; and

(e) The registered nurse and the licensed practical nurse shall respect the client's right to privacy by protecting confidential information and shall not use confidential health care information for other than legitimate patient care purposes or as otherwise provided in the Health Care Information Act, chapter 70.02 RCW.

[Statutory Authority: RCW 18.79.110, 18.79.260 (3) (f), 18.88A.210, 2003 c 140. WSR 04-14-065, § 246-840-700, filed 7/2/04, effective 7/2/04. Statutory Authority: RCW 18.79.110. WSR 02-06-117, § 246-840-700, filed 3/6/02, effective 4/6/02. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-700, filed 6/18/97, effective 7/19/97.]

AMENDATORY SECTION (Amending WSR 02-06-117, filed 3/6/02, effective 4/6/02)

**WAC 246-840-710 Violations of standards of nursing conduct or practice.** The following conduct may subject a nurse to disciplinary action under the Uniform Disciplinary Act, chapter 18.130 RCW:

- (1) Engaging in conduct described in RCW 18.130.180;
- (2) Failure to adhere to the standards (~~(enumerated)~~) in WAC 246-840-700 which may include, but are not limited to:
  - (a) Failing to assess and evaluate a client's status or failing to institute nursing intervention as required by the client's condition;
  - (b) Willfully or repeatedly failing to report or document a client's symptoms, responses, progress, medication, or other nursing care accurately (~~(and/or)~~) and legibly;
  - (c) Willfully or repeatedly failing to make entries, altering entries, destroying entries, making incorrect or illegible entries (~~(and/or)~~) and making false entries in employer or employee records or client records pertaining to the giving of medication, treatments, or other nursing care;
  - (d) Willfully or repeatedly failing to administer medications (~~(and/or)~~) and treatments in accordance with nursing standards;
  - (e) Willfully or repeatedly failing to follow the policy and procedure for the wastage of medications where the nurse is employed or working;
  - (f) Nurses shall not sign any record attesting to the wastage of controlled substances unless the wastage was personally witnessed;
  - (g) Willfully causing or contributing to physical or emotional abuse to the client;
  - (h) Engaging in sexual misconduct with a client as defined in WAC 246-840-740; or
  - (i) Failure to protect clients from unsafe practices or conditions, abusive acts, and neglect;
- (3) Failure to adhere to the standards (~~(enumerated)~~) in WAC 246-840-700(2) which may include:
  - (a) Delegating nursing care function or responsibilities to a person the nurse knows or has reason to know lacks the ability or knowledge to perform the function or responsibility, or delegating to unlicensed persons those functions or responsibilities the nurse knows or has reason to know are to be performed only by licensed persons. This section should not be construed as prohibiting delegation to family members and other caregivers exempted by RCW 18.79.040(3), 18.79.050, 18.79.060 or 18.79.240; or
  - (b) Failure to supervise those to whom nursing activities have been delegated. Such supervision shall be adequate to prevent an unreasonable risk of harm to clients;
- (4)
  - (a) Performing or attempting to perform nursing techniques (~~(and/or)~~) and procedures for which the nurse lacks the appropriate knowledge, experience, and education (~~(and/or)~~) and failing to obtain instruction, supervision (~~(and/or)~~) and consultation for client safety;
  - (b) Violating the confidentiality of information or knowledge concerning the client, except where required by law or for the protection of the client; or
  - (c) Writing prescriptions for drugs unless authorized to do so by the commission;
- (5) Other violations:

- (a) Appropriating for personal use medication, supplies, equipment, or personal items of the client, agency, or institution. The nurse shall not solicit or borrow money, materials or property from clients;
- (b) Practicing nursing while affected by alcohol or drugs, or by a mental, physical or emotional condition to the extent that there is an undue risk that ~~((he or she))~~ they, as a nurse, would cause harm to ~~((him or herself))~~ themselves or other persons; or
- (c) Willfully abandoning clients by leaving a nursing assignment, when continued nursing care is required by the condition of the client(s), without transferring responsibilities to appropriate personnel or caregiver;
- (d) Conviction of a crime involving physical abuse or sexual abuse including convictions of any crime or plea of guilty, including crimes against persons as defined in ~~((chapter 43.830 RCW [RCW 43.43.830]))~~ RCW 43.43.830 and crimes involving the personal property of a patient, whether or not the crime relates to the practice of nursing; or
- (e) Failure to make mandatory reports to the Nursing Care Quality Assurance Commission concerning unsafe or unprofessional conduct as required in WAC 246-840-730;
- ~~((Other:))~~
- (6) The nurse shall only practice nursing in the state of Washington with a current Washington license;
- (7) The licensed nurse shall not permit ~~((his or her))~~ their license to be used by another person;
- (8) The nurse shall have knowledge of the statutes and rules governing nursing practice and shall function within the legal scope of nursing practice;
- (9) The nurse shall not aid, abet or assist any other person in violating or circumventing the laws or rules pertaining to the conduct and practice of professional registered nursing and licensed practical nursing; or
- (10) The nurse shall not disclose the contents of any licensing examination or solicit, accept or compile information regarding the contents of any examination before, during or after its administration.

[Statutory Authority: RCW 18.79.110. WSR 02-06-117, § 246-840-710, filed 3/6/02, effective 4/6/02. Statutory Authority: Chapter 18.79 RCW. WSR 97-13-100, § 246-840-710, filed 6/18/97, effective 7/19/97.]



**WSR 22-15-088**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed July 19, 2022, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-23-081.

Title of Rule and Other Identifying Information: Occupational disease presumptions for firefighters, emergency medical technicians, fire investigators, and law enforcement officers, under chapter 296-14 WAC, Industrial insurance. WAC 296-14-310, 296-14-325, and 296-14-330.

Hearing Location(s): On August 24, 2022, at 9:00 a.m., Zoom hearing. Join Zoom meeting at <https://lni-wa-gov.zoom.us/j/9361655337>, Meeting ID 936 165 5337; or join by phone +1 253-215-8782 US (Tacoma). Find your local number: <https://lni-wa-gov.zoom.us/u/kdFrdfe0fg>.

The Zoom [hearing] starts at 9:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: October 4, 2022.

Submit Written Comments to: Jordan Ely, Department of Labor and Industries (L&I), Insurance Services, Legal Services, P.O. Box 44270, Olympia, WA 98504-4270, email [Jordan.Ely@Lni.wa.gov](mailto:Jordan.Ely@Lni.wa.gov), fax 360-902-5029, by August 24, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Ashley Misener, phone 360-902-4252, fax 360-902-6509, TTY 360-902-4252, email [Ashley.Misener@Lni.wa.gov](mailto:Ashley.Misener@Lni.wa.gov), by August 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Based on legislation passed in 2018 and 2019, this rule making proposes to amend these WAC sections:

WAC 296-14-310 When does a presumption of occupational disease for certain members of firefighters' and law enforcement officers' retirement systems apply? Emergency medical technicians (EMTs), fire investigators, and law enforcement officers were added as covered under the presumption for certain disease[s] identified in RCW 51.32.185 (i.e. respiratory diseases, heart problems related to exposure to smoke or toxins). For each of these job classes, specific medical conditions are now covered under this presumption. Posttraumatic stress disorder was also added as a coverable condition for firefighters, EMTs, and law enforcement officers under the presumption.

WAC 296-14-325 When does a presumption apply to firefighters, emergency medical technicians (EMTs), fire investigators and law enforcement officers who are former smokers with heart or lung conditions? EMTs, fire investigators, and law enforcement officers were added under the presumption for certain diseases identified in RCW 51.32.185. For law enforcement officers, the presumption for heart problems was also added if they were a former smoker and last smoked two years or more prior to the cardiac event.

WAC 296-14-330 What tobacco use may exclude a firefighter, emergency medical technician (TMT), fire investigator, or law enforcement officer from a presumption of coverage? The updates will include all covered occupations and accepted medical conditions currently specified in RCW 51.32.185. EMTs, fire investigators, and law enforcement officers were added as job classes where the presumption of coverage may not apply due to specific tobacco use.

Reasons Supporting Proposal: Legislation passed during the 2018 and 2019 sessions (chapter 264, Laws of 2018 (SSB 6214), and chapter 133, Laws of 2019, (HB 1913)) resulted in updates to RCW 51.32.185.

This rule making proposes to amend existing rules to align with the statute and clarify presumptive occupational disease coverage for certain firefighters, law enforcement officers, and emergency medical technicians covered under workers' compensation. SSB 6214 allowed industrial insurance coverage under RCW 51.32.185 for posttraumatic stress disorders of law enforcement and firefighters. HB 1913 extended the presumption of occupational disease for certain firefighters' supervisor, fire investigators, and law enforcement officers (definitions of these types of positions that can receive the presumption where updated by both bills).

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.185.

Statute Being Implemented: RCW 51.32.185.

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: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jordan Ely, Tumwater, Washington, 360-902-4616; Implementation: Debra Hatzialexiou, Tumwater, Washington, 360-902-6695; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. The rule is exempt from a cost-benefit analysis under RCW 34.05.328 (5)(b)(iii) because the rule is adopting, without material change, language from RCW 51.32.185 as amended by SSB 6214 (2018) and HB 1913 (2019).

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

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

Explanation of exemptions: The rule is exempt in its entirety, it is adopting without material change language from RCW 51.32.185 as amended by SSB 6214 (2018) and HB 1913 (2019).

July 19, 2022  
Joel Sacks  
Director

## OTS-2137.1

AMENDATORY SECTION (Amending WSR 03-12-046, filed 5/30/03, effective 7/1/03)

**WAC 296-14-310 When does a presumption of occupational disease for certain members of firefighters' and law enforcement officers' retirement systems apply?** RCW 51.32.185 specifies a presumption that certain medical conditions are occupational diseases ((for firefighters)). A presumption of occupational disease applies to firefighters and emergency medical technicians (EMTs) as defined in RCW 41.26.030

(17) (a), (b), (c), and (h) and fire investigators. The presumption also applies to law enforcement officers as defined in RCW 41.26.030 (19) (b), (c), and (e).

(1) For firefighters and EMTs those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances; or experienced within twenty-four hours of strenuous physical exertion due to firefighting activities; respiratory disease; specific cancers ((as defined by RCW 51.32.185; and)); infectious diseases ((as defined by RCW 51.32.185.)); and posttraumatic stress disorder (PTSD).

(2) For fire investigators those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion due to firefighting activities; respiratory disease; specific cancers; and infectious diseases.

(3) For law enforcement officers those conditions are heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substances, or experienced within twenty-four hours of strenuous physical exertion in the line of duty; infectious diseases; and PTSD.

(4) The presumption extends to covered members after the last date of employment for a period of three calendar months for each year of service. The presumption may not extend more than sixty months after the last date of employment.

(5) For consideration of a PTSD presumption, the active or former firefighter or law enforcement officer must work on or after July 7, 2018, and serve at least ten years before the PTSD develops.

(6) For consideration of a cancer presumption, the active or former firefighter or fire investigator must serve at least ten years before the cancer develops.

(7) For claims filed on or after July 1, 2003, the presumption may not apply to heart or lung conditions ((if a firefighter is a)) for users of tobacco products.

(8) When the presumption does not apply, the claim is not automatically denied. However, the burden is on the worker to prove that the condition is ((an)) otherwise allowable as an injury or occupational disease.

[Statutory Authority: RCW 51.04.020, 51.32.185. WSR 03-12-046, § 296-14-310, filed 5/30/03, effective 7/1/03.]

AMENDATORY SECTION (Amending WSR 03-12-046, filed 5/30/03, effective 7/1/03)

**WAC 296-14-325 When does the presumption apply to firefighters, emergency medical technicians (EMTs), fire investigators and law enforcement officers who are former smokers with heart or lung conditions?** (1) Heart problems: The presumption for heart problems ((will apply)) applies if a firefighter or EMT as defined in RCW 41.26.030 (17) (a), (b), (c), and (h) or fire investigator is a former smoker and last smoked two years or more prior to the cardiac event. The presumption for heart problems also applies if a law enforcement officer as defined in RCW 41.26.030 (19) (b), (c), and (e) is a former smoker and last smoked two years or more prior to the cardiac event.

(2) **Lung conditions:** The presumption for lung conditions in firefighters, EMTs, and fire investigators will apply:

(a) For **asthma** if ~~((the firefighter is))~~ they are a former smoker ~~((who))~~ and last smoked five years or more prior to the date of manifestation of the disease; or

(b) For ~~((COPD))~~ **chronic obstructive pulmonary disease/emphysema/chronic bronchitis** if ~~((the firefighter is))~~ they are a former smoker who last smoked fifteen years or more prior to the date of manifestation of the disease; or

(c) For **lung cancer** if ~~((the firefighter is))~~ they are a former smoker who last smoked fifteen years or more prior to the date of manifestation of the disease.

[Statutory Authority: RCW 51.04.020, 51.32.185. WSR 03-12-046, § 296-14-325, filed 5/30/03, effective 7/1/03.]

AMENDATORY SECTION (Amending WSR 03-12-046, filed 5/30/03, effective 7/1/03)

**WAC 296-14-330 What tobacco use ~~((shall))~~ may exclude a firefighter, emergency medical technician (EMT), fire investigator, or law enforcement officer from a presumption of coverage?** The following table summarizes the situations listed in WAC 296-14-310 through 296-14-325 under which a presumption of coverage ~~((shall or shall not))~~ may not apply for firefighters and EMTs as defined in RCW 41.26.030 (17) (a), (b), (c), and (h) and fire investigators; and law enforcement officers as defined in RCW 41.26.030 (19) (b), (c), and (e) due to tobacco use.

Medical condition	Presumptions shall not apply	Presumption shall apply
Heart problems experienced within seventy-two hours of exposure to smoke, fumes, or toxic substance	<u>Firefighters, EMTs, fire investigators, and law enforcement officers that are current smokers</u>	<u>Firefighters, EMTs, fire investigators, and law enforcement officers that never smoked tobacco</u>
	<u>Firefighters, EMTs, fire investigators, and law enforcement officers that are former smokers <del>((who))</del> and last smoked less than two years prior to the cardiac event</u>	<u>Firefighters, EMTs, fire investigators, and law enforcement officers that are former smokers <del>((who))</del> and last smoked two years or more prior to the cardiac event</u>

Medical condition	Presumptions shall not apply	Presumption shall apply
Asthma	<u>Firefighters, EMTs, and fire investigators that are current smokers</u>	Firefighters, EMTs, and fire investigators that never smoked tobacco
	<u>Firefighters, EMTs, and fire investigators that are former smokers ((who)) and last smoked less than five years before date of manifestation of the disease</u>	<u>Firefighters, EMTs, and fire investigators that are former smokers ((who)) and last smoked five years or more before date of manifestation of the disease</u>
((COPD)) Chronic obstructive pulmonary disease/ emphysema/ chronic bronchitis	<u>Firefighters, EMTs, and fire investigators that are current smokers</u>	Firefighters, EMTs, and fire investigators that never smoked tobacco
	<u>Firefighters, EMTs, and fire investigators that are former smokers ((who)) and last smoked less than fifteen years before date of manifestation of the disease</u>	<u>Firefighters, EMTs, and fire investigators that are former smokers ((who)) and last smoked fifteen years or more before date of manifestation of the disease</u>
Lung cancer	<u>Firefighters, EMTs, and fire investigators that are current smokers</u>	Firefighters, EMTs, and fire investigators that never smoked tobacco
	<u>Firefighters, EMTs, and fire investigators that are former smokers ((who)) and last smoked less than fifteen years before date of manifestation of the disease</u>	<u>Firefighters, EMTs, and fire investigators that are former smokers ((who)) and last smoked fifteen years or more before date of manifestation of the disease</u>

[Statutory Authority: RCW 51.04.020, 51.32.185. WSR 03-12-046, § 296-14-330, filed 5/30/03, effective 7/1/03.]

## WSR 22-15-097

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed July 19, 2022, 11:26 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-027 [22-11-027].

Title of Rule and Other Identifying Information: WAC 182-502-0110 Conditions of payment and prior authorization requirements—Medicare coinsurance, copayments, and deductibles, and 182-500-0065 Definitions—L.

Hearing Location(s): On August 23, 2022, at 10:00 a.m. Until further notice, health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state.

To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_RT4WVYrRRrOZ6tCJOhN7YQ](https://us02web.zoom.us/webinar/register/WN_RT4WVYrRRrOZ6tCJOhN7YQ). 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 sooner than August 24, 2022.

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 August 23, 2022.

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 August 12, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-502-0110 to add that for long-term civil commitments, if medicare and medicaid cover the service, HCA pays the greater of medicare or medicaid's allowed amount, minus what medicare paid. Due to the amendment in WAC 182-502-0110, HCA is amending WAC 182-500-0065 to add a definition for long-term civil commitments.

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.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Abby Frazier-Cole, P.O. Box 45500, Olympia, WA 98504-5500, 360-725-1835.

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

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

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

costs were calculated. The proposed rule does not impose more-than-minor costs on businesses.

July 19, 2022  
Wendy Barcus  
Rules Coordinator

### OTS-3922.1

AMENDATORY SECTION (Amending WSR 19-02-046, filed 12/27/18, effective 1/27/19)

**WAC 182-500-0065 Definitions—L. "Limitation extension"** see WAC 182-501-0169.

**"Limited casualty program (LCP)"** means the medically needy (MN) program.

**"Long-term civil commitment"** means inpatient mental health treatment for clients on 90-day or 180-day court orders whose treatment is authorized by the agency in agency-contracted beds.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 19-02-046, § 182-500-0065, filed 12/27/18, effective 1/27/19. WSR 11-14-075, recodified as § 182-500-0065, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 2011 1st sp.s. c 15. WSR 11-14-053, § 388-500-0065, filed 6/29/11, effective 7/30/11.]

### OTS-3923.1

AMENDATORY SECTION (Amending WSR 17-06-063, filed 2/28/17, effective 3/31/17)

**WAC 182-502-0110 Conditions of payment and prior authorization requirements—Medicare coinsurance, copayments, and deductibles.** (1)

The following people are eligible for benefits under this section:

- (a) Dual-eligible clients enrolled in categorically needy Washington apple health programs;
- (b) Dual-eligible clients enrolled in medically needy Washington apple health programs; or
- (c) Clients enrolled in the qualified medicare beneficiary (QMB) program.

(2) The agency pays the medicare coinsurance, copayments, and deductibles for Part A, Part B, and medicare advantage Part C for an eligible person under subsection (1) of this section:

- (a) Up to the published or calculated medicaid-only rate; and
- (b) If the provider accepts assignment for medicare payment.

(3) If a medicare Part A recipient has remaining lifetime reserve days, the agency pays the deductible and coinsurance amounts up to the allowed amount as calculated by the agency.

(4) If a medicare Part A recipient has exhausted lifetime reserve days during an inpatient hospital stay, the agency pays the deductible and coinsurance amounts up to the agency-calculated allowed amount minus any payment made by medicare, and any payment made by the agency, up to the outlier threshold. Once the outlier threshold is reached, the agency pays according to WAC 182-550-3700.

(5) If medicare and medicaid cover the service, the agency pays:

(a) The deductible and coinsurance up to medicare or medicaid's allowed amount, whichever is less; or

(b) For long-term civil commitments, as defined in WAC 182-500-0065, the greater of medicare or medicaid's allowed amount, minus what medicare paid.

(6) If only medicare covers the service, the agency pays the deductible and coinsurance up to the agency's allowed amount established for a QMB client, and at zero for a non-QMB client.

(7) If a client exhausts medicare benefits, the agency pays for medicaid-covered services under Title 182 WAC and the agency's billing instructions.

(8) When medicaid requires prior authorization for a service covered by both medicare and medicaid:

(a) Medicaid does not require prior authorization when the client's medicare benefit is not exhausted.

(b) Medicaid does require prior authorization when the client's medicare benefit is exhausted. See also WAC 182-501-0050(5).

(9) Providers must meet the timely billing requirements under WAC 182-502-0150 in order to be paid for services.

(10) Payment for services is subject to postpayment review.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-06-063, § 182-502-0110, filed 2/28/17, effective 3/31/17; WSR 16-13-157, § 182-502-0110, filed 6/22/16, effective 7/23/16. WSR 11-14-075, recodified as § 182-502-0110, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.500, 74.09.530. WSR 00-15-050, § 388-502-0110, filed 7/17/00, effective 8/17/00.]



## WSR 22-15-098

## PROPOSED RULES

## WESTERN WASHINGTON UNIVERSITY

[Filed July 19, 2022, 11:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-12-028.

Title of Rule and Other Identifying Information: Proposed chapter 516-32 WAC, Small works roster.

Hearing Location(s): On August 25, 2022, at 11:00 a.m. Virtual public hearings necessitated by the COVID-19 pandemic have proven effective in allowing greater public access, eliminating the burden of physical travel, and maintaining public safety. Accordingly, a virtual meeting will be held with an optional in-person component. To attend the virtual public hearing, you must register in advance at <https://wwu-edu.zoom.us/meeting/register/tJwoc-msrzvwHdR-1rpnvSmT0TiGmVcKOP1C>. You may also register at the university rules website at <https://president.wwu.edu/proposed-chapter-516-32-wac-small-works-roster>. After registering, you will receive a confirmation email containing information about joining the public hearing. To attend in person, email the university rules coordinator for meeting location. The hearing will start at 11:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: October 14, 2022.

Submit Written Comments to: Jennifer Sloan, Rules Coordinator, 516 High Street, Mailstop 9044, email [sloanj2@wwu.edu](mailto:sloanj2@wwu.edu), by August 22, 2022.

Assistance for Persons with Disabilities: Contact Jennifer Sloan, rules coordinator, phone 360-650-3117, TTY 711, email [sloanj2@wwu.edu](mailto:sloanj2@wwu.edu) [[sloanj2@wwu.edu](mailto:sloanj2@wwu.edu)], by August 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A small works roster will allow the university to expeditiously solicit bids for contractors on projects with a construction cost of \$350,000 and below.

Reasons Supporting Proposal: Eliminates the requirement to formally advertise for bidding to include a cost saving of \$2,500 per bid and a time saving of three to four weeks.

Statutory Authority for Adoption: RCW 28B.35.120(12), 39.04.155.

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

Name of Proponent: Western Washington University, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brian Ross, Associate Director Facilities Development and Operations, 516 High Street, Bellingham, WA 98225-9122, 360-650-6539.

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 university, and the university has not voluntarily decided to apply it.

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.

July 19, 2020 [2022]  
Jennifer L. Sloan  
Rules Coordinator

OTS-3920.1

**Chapter 516-32 WAC  
SMALL WORKS ROSTER**NEW SECTION

**WAC 516-32-010 Purpose and authority.** This chapter of the Washington Administrative Code is adopted pursuant to RCW 39.04.155, authorizing Western Washington University to adopt procedures to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property in lieu of other procedures for such work with an estimated cost of \$350,000 or less. The university, in establishing a small works roster, shall use the procedures set forth in this chapter.

[]

NEW SECTION

**WAC 516-32-020 Project construction cost.** Whenever the estimated cost of any construction or improvement of real property does not exceed \$350,000, the university is authorized to use the small works roster in lieu of public advertisement for bids. In the event that the legislature further increases the small works roster limit, the university is authorized to use the small works roster for any projects up to the legislatively authorized limit. No project shall be broken into units or phases for the purpose of avoiding the maximum dollar amount of a contract that may be met using the small works roster.

[]

NEW SECTION

**WAC 516-32-030 Creation of small works roster or rosters.** The university may create a single general small works roster, or it may create a small works roster for different specialties or categories of anticipated work. The rosters may make distinctions between contractors based upon different geographic areas served by the contractors.

[]

NEW SECTION

**WAC 516-32-040 Notice of small works rosters and solicitation of contractors.** At least once per year, the university shall cause to be published, in a newspaper of general circulation within the counties

where small works are expected to be performed, a notice of the existence of any rosters, and shall solicit the names of contractors for such roster or rosters.

[]

NEW SECTION

**WAC 516-32-050 Procedure for use.** Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder. Bids may be solicited from all appropriate contractors on the roster or, alternatively, from at least five contractors who have indicated the capability of performing the kind of work being contracted. If the estimated cost of the work is from \$250,000 to \$350,000, and bids are not solicited from all appropriate contractors, all appropriate contractors must be notified that bids are being solicited. Detailed plans and specifications are not required as part of the bid invitation.

[]

NEW SECTION

**WAC 516-32-060 Applicable statutes.** All statutes pertaining to contracts for public works shall be otherwise fully applicable to contracts awarded through the small works roster procedure.

[]

NEW SECTION

**WAC 516-32-070 Qualification requirements.** To qualify for placement on the Western Washington University small works roster, contractors must demonstrate the following in experience and qualifications:

- (1) Be a licensed contractor in the state of Washington;
- (2) Have successfully completed a public works project, as defined by RCW 39.04.010; and
- (3) Have experience in the area of expertise for which listing is sought.

[]

NEW SECTION

**WAC 516-32-080 Administration.** The vice president for business and financial affairs, or designee, is authorized to establish procedures for university use of its small works roster.

[]

NEW SECTION

**WAC 516-32-090 Denial or removal of contractors from small works roster—Reasons.** A contractor may be denied placement on or, after such placement, may be removed from a small works roster for any of the following reasons:

(1) The contractor has failed to respond to five solicitations for bids on jobs offered through the small works roster;

(2) The contractor's past performance has demonstrated the firm not to be a responsible bidder per the provisions in RCW 39.04.350.

[]

**WSR 22-15-099**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
(Community Services Division)  
[Filed July 19, 2022, 1:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-082.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-310-0800 WorkFirst—Support services.

Hearing Location(s): On August 23, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtual. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than August 24, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by August 23, 2022, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov) [[Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov)], by August 9, 2022, 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments will allow the department to expand use of WorkFirst support services to include housing and utilities assistance to help families with needs related to housing stability.

Reasons Supporting Proposal: These amendments will implement an expansion of support services to directly address housing and utilities needs in state fiscal year (SFY) 2023 per the supplemental operating budget (ESSB 5693). These amendments have been in place as of July 1, 2022, via emergency rule adoption filed as WSR 22-14-058, to expand the types of available support services to include assistance with housing and utilities in SFY 2023 to support ongoing recovery from the COVID-19 pandemic.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 74.08A.250.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathryn Gussett, P.O. Box 45470, Olympia, WA 98504-5770, 509-290-8435.

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 amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his 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 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

July 18, 2022  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4934.1

AMENDATORY SECTION (Amending WSR 22-01-143, filed 12/15/21, effective 1/15/22)

### **WAC 388-310-0800 WorkFirst—Support services. (1) Who can get support services?**

People who can get support services include:

- (a) WorkFirst participants who receive a TANF cash grant;
- (b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted or applicants who were terminated while in noncompliance sanction who are doing activities required to reopen cash assistance (WAC 388-310-1600);
- (c) TANF/SFA applicants as needed to meet the WorkFirst orientation requirements under WAC 388-400-0005(2) or 388-400-0010(3);
- (d) Unmarried or pregnant minors who are income eligible to receive TANF and are:
  - (i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or
  - (ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangement (~~(and/)~~) or meeting the school requirements.
- (e) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.
- (f) Former WorkFirst participants who are working at least 15 hours per week or more, for up to three months after leaving TANF if they need employment-related transportation support services to meet a temporary need or emergency.

### **(2) Why do I receive support services?**

Although not an entitlement, you may receive support services for the following reasons:

- (a) To help you participate in work and WorkFirst activities that lead to independence.
- (b) To help you to participate in job search, accept a job, keep working, advance in your job, (~~(and/)~~) or increase your wages.
- (c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter 110-15 WAC describes the rules for this child care assistance program.)

**(3) What type of support services may I receive and what limits apply?**

There is a limit of (~~five thousand dollars~~) \$5,000 per person per program year (July 1st to June 30th) for WorkFirst support services you may receive.

The chart below shows the types of support services that are available for the different activities (as indicated by an "x") and the restrictions that apply.

**Definitions:**

- Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.

- Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence.

- Some support services are available if you need them for other required activities in your IRP.

Type of Support Service	Restrictions	• Work	•• Safety	••• Other
Reasonable accommodation for employment		x		
Clothing/uniforms		x		
Diapers		x	x	x
Haircut		x		
Lunch	Same rate as established by OFM for state employees	x		
Personal hygiene		x	x	x
Professional, trade, association, union, and bonds		x		x
Relocation related to employment or safety (can include rent, housing, and deposits)		x	x	
Short-term lodging and meals in connection with job interviews/tests	Same rate as established by OFM for state employees	x		
Tools/equipment		x	x	x
Car repair needed to restore car to operable condition		x	x	x
License/fees		x	x	x
Mileage reimbursement	Same rate as established by OFM for state employees	x	x	x
Transportation allotment, including fuel support		x	x	x
Counseling		x	x	x
Educational expenses		x	x	x
Medical exams (not covered by medicaid)		x	x	x
Public transportation		x	x	x
Testing-diagnostic		x	x	x
<u>Housing and utilities</u>	<u>Funding allocated for 07/01/2022 - 06/30/2023 only</u>	<u>x</u>	<u>x</u>	<u>x</u>

**(4) What are the other requirements to receive support services?**

Other restrictions on receiving support services are determined by the department or its agents. They will consider whether:

- (a) It is within available funds; and
- (b) It does not assist, promote, or deter religious activity; and
- (c) There is no other way to meet the cost.

**(5) What happens to my support services if I do not participate as required?**

The department will give you (~~ten~~) 10 days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, 74.08A.120, and 74.08A.250. WSR 22-01-143, § 388-310-0800, filed 12/15/21, effective 1/15/22. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057. WSR 15-18-024, § 388-310-0800, filed 8/25/15, effective 9/25/15. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.62.030, 74.09.035, 74.08.090, 74.09.530, 41.05.021, 2011 1st sp.s. c 15, and 2013 2nd sp.s. c 10. WSR 14-10-046, § 388-310-0800, filed 4/30/14, effective 6/1/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.250. WSR 13-02-048, § 388-310-0800, filed 12/24/12, effective 2/1/13. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090. WSR 10-22-061, § 388-310-0800, filed 10/29/10, effective 12/1/10; WSR 09-06-053, § 388-310-0800, filed 2/26/09, effective 4/1/09. Statutory Authority: RCW 74.04.050 and 74.04.055. WSR 08-18-045, § 388-310-0800, filed 8/29/08, effective 10/1/08. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.260, chapter 74.08A RCW. WSR 06-10-035, § 388-310-0800, filed 4/27/06, effective 6/1/06. Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340. WSR 05-02-014, § 388-310-0800, filed 12/27/04, effective 1/27/05. Statutory Authority: RCW 74.08.090, 74.04.050, 74.08A.340, and 2003 c 10 § 207. WSR 03-21-154, § 388-310-0800, filed 10/22/03, effective 10/27/03. Statutory Authority: RCW 74.08.090, 74.04.050, 78.08A.340, and [WSR] 99-14-043. WSR 02-11-130, § 388-310-0800, filed 5/21/02, effective 7/1/02; WSR 01-17-053, § 388-310-0800, filed 8/13/01, effective 9/1/01. Statutory Authority: RCW 74.08.090, 74.04.050, and 78.08A.340. WSR 00-13-106, § 388-310-0800, filed 6/21/00, effective 7/1/00. Statutory Authority: RCW 74.08.090 and 74.04.050. WSR 99-14-043, § 388-310-0800, filed 6/30/99, effective 7/31/99; WSR 97-20-129, § 388-310-0800, filed 10/1/97, effective 11/1/97.]



**WSR 22-15-102**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 19, 2022, 2:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-12-088.

Title of Rule and Other Identifying Information: WAC 392-349-015  
Small school plants, proposed changes regarding review of remote and necessary status.

Hearing Location(s): On August 23, 2022, at 10:00 a.m. Webinar via Zoom (call-in option also available). Participation link available on the office of the superintendent of public instruction (OSPI) website [k12.wa.us/policy-funding/ospi-rulemaking-activity](http://k12.wa.us/policy-funding/ospi-rulemaking-activity). Due to ongoing public health emergency related to the COVID-19 virus pandemic, this public hearing will be held by webinar via Zoom (with a call-in option). There will be no physical location for the hearing. For information on participating, please visit OSPI's website at [k12.wa.us/policy-funding/ospi-rulemaking-activity](http://k12.wa.us/policy-funding/ospi-rulemaking-activity). For questions, please email [kristin.murphy@k12.wa.us](mailto:kristin.murphy@k12.wa.us).

Date of Intended Adoption: August 26, 2022.

Submit Written Comments to: Scott Black, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, email [schoolfacilitiesrules@k12.wa.us](mailto:schoolfacilitiesrules@k12.wa.us), by August 23, 2022.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, TTY 360-664-3631, email [kristin.murphy@k12.wa.us](mailto:kristin.murphy@k12.wa.us), by August 16, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing to remove the requirement concerning reviewing remote and necessary schools every four years to determine if the schools can continue to keep their remote and necessary status.

Reasons Supporting Proposal: Existing statutes and rules establish the conditions necessary to become a remote and necessary district and further defines conditions when a school would lose its remote and necessary status. The conditions that designate the remote and necessary status do not change due to the remoteness of the schools. The change will save administrative time and effort.

Statutory Authority for Adoption: RCW 28A.525.020.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Scott Black, OSPI, 600 South Washington Street, Olympia, WA, 360-742-4028; Enforcement: Randy Newman, OSPI, 600 South Washington Street, Olympia, WA.

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 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore, does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

July 19, 2022

Chris P. S. Reykdal

State Superintendent of Public Instruction

**OTS-3972.1**

AMENDATORY SECTION (Amending WSR 15-17-074, filed 8/17/15, effective 9/17/15)

**WAC 392-349-015 Remote and necessary small school plants—Review committee.** (1) There is hereby established by the superintendent of public instruction a remote and necessary review committee comprised of at least the following five members:

(a) One member of the state board of education selected by the president of the board;

(b) Two staff members from the office of the superintendent of public instruction, one who is knowledgeable about finance issues and one who is knowledgeable about curriculum issues, both selected by the state superintendent;

(c) One school director selected by the Washington State School Directors' Association;

(d) One school district administrator selected by the Washington Association of School Administrators.

(2) Vacancies on the review committee shall be filled by the person or organization responsible for appointments.

(3) At the discretion of the superintendent of public instruction, other members may be added to the review committee.

(4) It is the responsibility of the review committee to receive and review all applications from school districts requesting the superintendent of public instruction to grant remote and necessary status to a small school plant located in the district. Following the review of applications, the review committee shall recommend to the superintendent of public instruction whether such designation should be granted. Recommendations of the review committee shall be advisory only. The final determination rests solely with the superintendent of public instruction.

~~(5) ((Every small school plant with remote and necessary status beginning 1996, shall be reviewed every four years by the review committee and the superintendent of public instruction. The review committee shall submit its findings and recommendations to the superintendent of public instruction. The review committee may conduct the review on-site, with the number of members participating determined by the committee, or may conduct the review by other means as determined by the committee.~~

~~(6))~~) A small school plant shall lose its remote and necessary status if the number of students exceeds the enrollment requirements set forth in the state Operating Appropriations Act for three consecutive years. The loss of remote and necessary status shall take effect the immediate ensuing school year. If a small school site should lose its remote and necessary status, the local serving school district may continue to maintain and operate the school site. When the enrollment of such small school plant again meets the requirements of the state

Operating Appropriations Act, the school district may apply to the superintendent of public instruction for redesignation as a remote and necessary plant.

~~((7))~~ (6) A small school plant shall lose its remote and necessary status if a local school district closes the small school plant. If the small school plant is reopened by the district, or a new small school plant is opened, the school district may apply to the superintendent of public instruction for remote and necessary designation for the small school plant. If such designation is granted, the remote and necessary status shall take effect as determined by the superintendent of public instruction.

[Statutory Authority: RCW 28A.315.175. WSR 15-17-074, § 392-349-015, filed 8/17/15, effective 9/17/15. Statutory Authority: RCW 28A.305.130 (5), (10), 28A.315.015 (2) (e), 28A.315.175, 28A.315.195(4), 28A.315.205(3). WSR 06-17-038, amended and recodified as § 392-349-015, filed 8/8/06, effective 9/8/06. WSR 05-13-061, recodified as § 180-16-243, filed 6/10/05, effective 6/10/05. Statutory Authority: 1994 sp.s. c 6 § 502 (i) (e). WSR 02-14-113, § 180-24-415, filed 7/2/02, effective 8/2/02. Statutory Authority: 1994 1st sp.s. c 6 § 502 (1) (e). WSR 97-21-069, § 180-24-415, filed 10/15/97, effective 11/15/97. Statutory Authority: 1994 sp.s. c 6 § 502(i) (e). WSR 95-20-055, § 180-24-415, filed 10/2/95, effective 11/2/95.]

## WSR 22-15-107

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed July 19, 2022, 4:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-029.

Title of Rule and Other Identifying Information: WAC 182-557-0225  
Health home services—Methodology for calculating a person's risk score.

Hearing Location(s): On August 23, 2022, at 10:00 a.m. Until further notice, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_RT4WVYrRRrOZ6tCJOHn7YQ](https://us02web.zoom.us/webinar/register/WN_RT4WVYrRRrOZ6tCJOHn7YQ). 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 sooner than August 24, 2022.

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 August 23, 2022.

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 August 12, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending WAC 182-557-0225(7) to update the risk score weights specifically pertaining to children of various age groups outlined and the weights for health diagnoses for children. This update aligns with the release of version 6.5 of the University of San Diego's Chronic Illness and Disability Payment System.

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.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Glenda Crump, P.O. Box 45502, Olympia, WA 98502-5500, 360-725-1338.

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

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

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

July 19, 2022

Wendy Barcus

## OTS-3839.1

AMENDATORY SECTION (Amending WSR 17-24-111, filed 12/6/17, effective 1/6/18)

**WAC 182-557-0225 Health home services—Methodology for calculating a person's risk score.** The agency uses eight steps to calculate a person's risk score.

(1) **Step 1. Collect paid claims and health plan encounter data.** The agency obtains a set of paid fee-for-service claims and managed care encounters for a client.

(a) For clients age (~~(seventeen)~~) 17 and younger, the agency uses all paid claims and encounters within the last (~~(twenty-four)~~) 24 months.

(b) For clients age (~~(eighteen)~~) 18 and older, the agency uses all paid claims and encounters within the last (~~(fifteen)~~) 15 months.

(i) The claims and encounters include the international classification of diseases (ICD) diagnosis codes and national drug codes (NDC) submitted by health care providers. These are used in steps 2 and 3 to create a set of risk categories.

(ii) The agency uses two algorithms developed by the University of San Diego:

(A) Chronic illness and disability payment system (CDPS) which assigns ICD diagnosis codes to CDPS risk categories (see Table 3 in subsection (5)(b) of this section); and

(B) Medical Rx (MRx) which assigns NDCs to MRx risk categories (see Table 2 in subsection (3)(b) of this section).

(2) **Step 2. Group ICD diagnosis codes into chronic illness and disability payment system risk categories.**

(a) To group ICD diagnosis codes into the CDPS risk categories (see Table 1 in (b) of this subsection), the agency uses an ICD diagnosis code to CDPS risk categories crosswalk in subsection

(1)(b)(ii)(A) of this section. Each of the ICD diagnosis codes listed is assigned to one risk category. If an ICD diagnosis code is not listed in the crosswalk it does not map to a risk category that is used in the calculation of the risk score.

(b) **Table 1. Titles of Chronic Illness and Disability Payment System Risk Categories**

CARVH	Cardiovascular, very high
CARM	Cardiovascular, medium
CARL	Cardiovascular, low
CAREL	Cardiovascular, extra low
PSYH	Psychiatric, high
PSYM	Psychiatric, medium
PSYML	Psychiatric, medium low
PSYL	Psychiatric, low
SKCM	Skeletal, medium
SKCL	Skeletal, low

SKCVL	Skeletal, very low
CNSH	Central Nervous System, high
CNSM	Central Nervous System, medium
CNSL	Central Nervous System, low
PULVH	Pulmonary, very high
PULH	Pulmonary, high
PULM	Pulmonary, medium
PULL	Pulmonary, low
GIH	Gastro, high
GIM	Gastro, medium
GIL	Gastro, low
DIA1H	Diabetes, type 1 high
DIA1M	Diabetes, type 1 medium
DIA2M	Diabetes, type 2 medium
DIA2L	Diabetes, type 2 low
SKNH	Skin, high
SKNL	Skin, low
SKNVL	Skin, very low
RENEH	Renal, extra high
RENVH	Renal, very high
RENM	Renal, medium
RENL	Renal, low
SUBL	Substance abuse, low
SUBVL	Substance abuse, very low
CANVH	Cancer, very high
CANH	Cancer, high
CANM	Cancer, medium
CANL	Cancer, low
DDM	Developmental Disability, medium
DDL	Developmental Disability, low
GENEL	Genital, extra low
METH	Metabolic, high
METM	Metabolic, medium
METVL	Metabolic, very low
PRGCMP	Pregnancy, complete
PRGINC	Pregnancy, incomplete
EYEL	Eye, low
EYEVL	Eye, very low
CERL	Cerebrovascular, low
AIDSH	AIDS, high
INFH	Infectious, high
HIVM	HIV, medium
INFM	Infectious, medium
INFL	Infectious, low
HEMEH	Hematological, extra high
HEMVH	Hematological, very high
HEMM	Hematological, medium
HEML	Hematological, low

(3) **Step 3. Group national drug codes (NDCs) into MRx risk categories.**

(a) To group the NDC codes into MRx risk categories (see Table 2 in (b) of this subsection), the agency uses a NDC code to MRx risk categories crosswalk in subsection (1)(b)(ii)(B) of this section.

(b) **Table 2. Titles of Medicaid Rx Risk Categories**

MRx1	Alcoholism
MRx2	Alzheimer's
MRx3	Anti-coagulants
MRx4	Asthma/COPD
MRx5	Attention Deficit
MRx6	Burns
MRx7	Cardiac
MRx8	Cystic Fibrosis
MRx9	Depression/Anxiety
MRx10	Diabetes
MRx11	EENT
MRx12	ESRD/Renal
MRx13	Folate Deficiency
MRx14	CMV Retinitis
MRx15	Gastric Acid Disorder
MRx16	Glaucoma
MRx17	Gout
MRx18	Growth Hormone
MRx19	Hemophilia/von Willebrands
MRx20	Hepatitis
MRx21	Herpes
MRx22	HIV
MRx23	Hyperlipidemia
MRx24	Infections, high
MRx25	Infections, medium
MRx26	Infections, low
MRx27	Inflammatory/Autoimmune
MRx28	Insomnia
MRx29	Iron Deficiency
MRx30	Irrigating Solution
MRx31	Liver Disease
MRx32	Malignancies
MRx33	Multiple Sclerosis/Paralysis
MRx34	Nausea
MRx35	Neurogenic Bladder
MRx36	Osteoporosis/Pagets
MRx37	Pain
MRx38	Parkinsons/Tremor
MRx39	Prenatal Care
MRx40	Psychotic Illness/Bipolar
MRx41	Replacement Solution
MRx42	Seizure Disorders
MRx43	Thyroid Disorder

MRx44 Transplant  
 MRx45 Tuberculosis

(4) **Step 4. Remove duplicate risk categories.** After mapping all diagnosis and drug codes to the risk categories, the agency eliminates duplicates of each client's risk categories so that there is only one occurrence of any risk category for each client.

(5) **Step 5. Select the highest CDPS risk category within a disease group.**

(a) The agency organizes CPDS risk categories into risk category groups of different intensity levels. The high risk category in each group is used in the calculation of the risk score. The lower level risk categories are eliminated from further calculations.

(b) **Table 3. Chronic Disease Payment System Risk Category Groups**

Group Description	Risk Categories (Ordered Highest to Lowest Intensity)
AIDS/HIV and Infection	AIDSH, INFH, HIVM, INFM, INFL
Cancer	CANVH, CANH, CANM, CANL
Cardiovascular	CARVH, CARM, CARL, CAREL
Central Nervous System	CNSH, CNSM, CNSL
Diabetes	DIA1H, DIA1M, DIA2M, DIA2L
Developmental Disability	DDM, DDL
Eye	EYEL, EYEVL
Gastrointestinal	GIH, GIM, GIL
Hematological	HEMEH, HEMVH, HEMM, HEML
Metabolic	METH, METM, METVL
Pregnancy	PRGCMP, PRGINC
Psychiatric	PSYH, PSYM, PSYML, PSYL
Substance Abuse	SUBL, SUBVL
Pulmonary	PULVH, PULH, PULM, PULL
Renal	RENEH, RENVH, RENM, RENL
Skeletal	SKCM, SKCL, SKCVL
Skin	SKNH, SKNL, SKNVL

(6) **Step 6. Determine age/gender category.**

(a) For each client, the agency selects the appropriate age/gender category. The ((eleven)) 11 categories are listed in Table 4 in (b) of this subsection. The categories for ages below five and above ((sixty-five)) 65 are gender neutral.

(b) **Table 4. Age/Gender Categories**

Age	Gender
Age <1	
Age 1 to 4	
Age 5 to 14	Male
Age 5 to 14	Female



Age	Gender
Age 15 to 24	Male
Age 15 to 24	Female
Age 25 to 44	Male
Age 25 to 44	Female
Age 45 to 64	Male
Age 45 to 64	Female
Age 65+	

(7) **Step 7. Apply risk weights.**

(a) The agency assigns each risk category and age/gender category a weight. The weight comes from either the model for clients who are age ~~((seventeen))~~ 17 and younger or from the model for clients age ~~((eighteen))~~ 18 and older.

(b) In each model there are three types of weights.

(i) Age/gender - Weights that correspond to the age/gender category of a client.

(ii) CDPS - Weights that correspond to ~~((fifty-eight))~~ 58 of the CDPS risk categories.

(iii) MRx - Weights that correspond to ~~((forty-five))~~ 45 of the MRx risk categories.

(c) **Table 5. Risk Score Weights**

Category Type	Category	Description	Weights for Children (age <18)	Weights for Adults (age 18+)
Age/Gender	Age <1	Clients of age less than 1	<del>((0.40671))</del> <u>0.91261</u>	0.00000
	Age 1 to 4	Clients age 1 to 4	<del>((0.40671))</del> <u>0.31764</u>	0.00000
	Age 5 to 14, Male	Male clients age 5 to 14	<del>((0.28867))</del> <u>0.25834</u>	0.00000
	Age 5 to 14, Female	Female clients age 5 to 14	<del>((0.29441))</del> <u>0.26338</u>	0.00000
	Age 15 to 24, Male	Male clients age 15 to 24	<del>((0.22630))</del> <u>0.25662</u>	-0.01629
	Age 15 to 24, Female	Female clients age 15 to 24	<del>((0.26930))</del> <u>0.29685</u>	0.03640
	Age 25 to 44, Male	Male clients age 25 to 44	0.00000	0.04374
	Age 25 to 44, Female	Female clients age 25 to 44	0.00000	0.06923
	Age 45 to 64, Male	Male clients age 45 to 64	0.00000	0.13321
	Age 45 to 64, Female	Female clients age 45 to 64	0.00000	0.06841
	Age 65+	Clients age 65 and older	0.00000	-0.05623
CDPS	CARVH	Cardiovascular, very high	<del>((0.53941))</del> <u>0.84325</u>	2.86702
	CARM	Cardiovascular, medium	<del>((0.23927))</del> <u>0.33428</u>	0.73492
	CARL	Cardiovascular, low	<del>((0.18510))</del> <u>0.12835</u>	0.24620
	CAREL	Cardiovascular, extra low	<del>((0.06589))</del> <u>0.04307</u>	0.06225
	PSYH	Psychiatric, high	<del>((0.47759))</del> <u>0.40351</u>	0.27085
	PSYM	Psychiatric, medium	<del>((0.31301))</del> <u>0.23892</u>	0.00000

Category Type	Category	Description	Weights for Children (age <18)	Weights for Adults (age 18+)
	PSYML	Psychiatric, medium low	((0.16307)) <u>0.13796</u>	0.00000
	PSYL	Psychiatric, low	((0.10344)) <u>0.07675</u>	0.00000
	SKCM	Skeletal, medium	((0.23477)) <u>0.21071</u>	0.42212
	SKCL	Skeletal, low	((0.10630)) <u>0.08343</u>	0.15467
	SKCVL	Skeletal, very low	((0.07873)) <u>0.06244</u>	0.06773
	CNSH	Central Nervous System, high	((0.30440)) <u>0.80483</u>	0.78090
	CNSM	Central Nervous System, medium	((0.34386)) <u>0.31945</u>	0.40886
	CNSL	Central Nervous System, low	((0.16334)) <u>0.15106</u>	0.18261
	PULVH	Pulmonary, very high	((1.28955)) <u>1.14056</u>	4.01723
	PULH	Pulmonary, high	((0.67772)) <u>0.34356</u>	0.39309
	PULM	Pulmonary, medium	((0.39768)) <u>0.35587</u>	0.31774
	PULL	Pulmonary, low	((0.14708)) <u>0.11315</u>	0.13017
	GIH	Gastro, high	((0.78046)) <u>0.65934</u>	1.34924
	GIM	Gastro, medium	((0.29755)) <u>0.24699</u>	0.24372
	GIL	Gastro, low	((0.14579)) <u>0.09767</u>	0.05104
	DIA1H	Diabetes, type 1 high	((0.31680)) <u>0.27018</u>	1.04302
	DIA1M	Diabetes, type 1 medium	((0.31680)) <u>0.27018</u>	0.23620
	DIA2M	Diabetes, type 2 medium	((0.16104)) <u>0.13647</u>	0.17581
	DIA2L	Diabetes, type 2 low	((0.16104)) <u>0.13647</u>	0.09635
	SKNH	Skin, high	((0.49898)) <u>0.56322</u>	0.37981
	SKNL	Skin, low	((0.25185)) <u>0.23664</u>	0.45155
	SKNVL	Skin, very low	((0.07523)) <u>0.05697</u>	0.02119
	RENEH	Renal, extra high	((2.43609)) <u>1.80489</u>	3.41999
	RENVH	Renal, very high	((0.93888)) <u>0.59311</u>	0.69251
	RENM	Renal, medium	((0.33264)) <u>0.28630</u>	0.92846
	RENL	Renal, low	((0.17492)) <u>0.21048</u>	0.17220
	SUBL	Substance Abuse, low	((0.27104)) <u>0.15170</u>	0.16104

Category Type	Category	Description	Weights for Children (age <18)	Weights for Adults (age 18+)
	SUBVL	Substance Abuse, very low	<del>((0.04493))</del> 0.01794	0.08784
	CANVH	Cancer, very high	<del>((1.31064))</del> 1.19700	2.80074
	CANH	Cancer, high	<del>((0.57909))</del> 0.51985	0.97173
	CANM	Cancer, medium	<del>((0.29642))</del> 0.22164	0.38022
	CANL	Cancer, low	<del>((0.15058))</del> 0.10350	0.22625
	DDM	Developmental Disability, medium	<del>((0.31414))</del> 0.50073	0.27818
	DDL	Developmental Disability, low	<del>((0.11095))</del> 0.19696	0.05913
	GENEL	Genital, extra low	<del>((0.02242))</del> 0.00790	0.01121
	METH	Metabolic, high	<del>((0.51575))</del> 0.47167	0.47226
	METM	Metabolic, medium	<del>((0.33856))</del> 0.26297	0.11310
	METVL	Metabolic, very low	<del>((0.14658))</del> 0.11546	0.18678
	PRGCMP	Pregnancy, complete	<del>((0.00000))</del> 0.00244	0.00000
	PRGINC	Pregnancy, incomplete	<del>((0.17563))</del> 0.12631	0.51636
	EYEL	Eye, low	<del>((0.11538))</del> 0.09919	0.13271
	EYEVL	Eye, very low	<del>((0.04094))</del> 0.02835	0.00000
	CERL	Cerebrovascular, low	<del>((0.10623))</del> 0.14294	0.00000
	AIDSH	AIDS, high	<del>((0.91357))</del> 0.70597	0.47361
	INFH	Infectious, high	<del>((0.91357))</del> 0.70597	0.79689
	HIVM	HIV, medium	<del>((0.60245))</del> 0.26129	0.07937
	INFM	Infectious, medium	<del>((0.41047))</del> 0.26129	0.79689
	INFL	Infectious, low	<del>((0.15311))</del> 0.07784	0.05617
	HEMEH	Hematological, extra high	<del>((2.80021))</del> 5.37808	12.71981
	HEMVH	Hematological, very high	<del>((0.97895))</del> 0.72873	3.08836
	HEMM	Hematological, medium	<del>((0.46032))</del> 0.37824	0.63211
	HEML	Hematological, low	<del>((0.17762))</del> 0.18676	0.25601
<b>MRx</b>	MRx1	Alcoholism	<del>((0.11051))</del> 0.05982	0.01924
	MRx2	Alzheimer's	0.00000	0.08112

Category Type	Category	Description	Weights for Children (age <18)	Weights for Adults (age 18+)
	MRx3	Anti-coagulants	<del>((0.31284))</del> <u>0.34428</u>	0.13523
	MRx4	Asthma/COPD	<del>((0.09825))</del> <u>0.08758</u>	0.05751
	MRx5	Attention Deficit	0.00000	0.00779
	MRx6	Burns	<del>((0.13977))</del> <u>0.16633</u>	0.00000
	MRx7	Cardiac	<del>((0.09177))</del> <u>0.0906</u>	0.06425
	MRx8	Cystic Fibrosis	<del>((0.48222))</del> <u>0.50399</u>	0.37265
	MRx9	Depression/Anxiety	<del>((0.07013))</del> <u>0.06743</u>	0.09436
	MRx10	Diabetes	<del>((0.16852))</del> <u>0.1519</u>	0.17046
	MRx11	EENT	0.00000	0.00072
	MRx12	ESRD/Renal	<del>((1.32358))</del> <u>1.24598</u>	1.20707
	MRx13	Folate Deficiency	<del>((0.17618))</del> <u>0.17973</u>	0.11899
	MRx14	CMV Retinitis	<del>((0.41138))</del> <u>0.37762</u>	0.00000
	MRx15	Gastric Acid Disorder	<del>((0.11001))</del> <u>0.10082</u>	0.15470
	MRx16	Glaucoma	<del>((0.03738))</del> <u>0.04221</u>	0.12971
	MRx17	Gout	0.00000	0.00000
	MRx18	Growth Hormone	<del>((0.97620))</del> <u>0.9741</u>	1.59521
	MRx19	Hemophilia/von Willebrands	<del>((11.68858))</del> <u>13.56192</u>	89.14461
	MRx20	Hepatitis	<del>((0.16213))</del> <u>0.03018</u>	0.00000
	MRx21	Herpes	<del>((0.04497))</del> <u>0.0348</u>	0.01725
	MRx22	HIV	<del>((0.69702))</del> <u>0.65537</u>	1.01178
	MRx23	Hyperlipidemia	0.00000	0.03791
	MRx24	Infections, high	<del>((1.23096))</del> <u>1.38405</u>	1.51663
	MRx25	Infections, medium	<del>((0.07841))</del> <u>0.07462</u>	0.06192
	MRx26	Infections, low	0.00000	0.00918
	MRx27	Inflammatory/Autoimmune	<del>((0.09058))</del> <u>0.08075</u>	0.20046
	MRx28	Insomnia	<del>((0.08510))</del> <u>0.07093</u>	0.06437
	MRx29	Iron Deficiency	<del>((0.12948))</del> <u>0.13306</u>	0.15054
	MRx30	Irrigating Solution	<del>((0.64194))</del> <u>0.87573</u>	0.16387
	MRx31	Liver Disease	<del>((0.34084))</del> <u>0.45314</u>	0.22681

Category Type	Category	Description	Weights for Children (age <18)	Weights for Adults (age 18+)
	MRx32	Malignancies	<del>((0.36730))</del> <u>0.36859</u>	0.44200
	MRx33	Multiple Sclerosis/Paralysis	<del>((0.03542))</del> <u>0.0345</u>	0.04353
	MRx34	Nausea	<del>((0.16101))</del> <u>0.18219</u>	0.17120
	MRx35	Neurogenic Bladder	<del>((0.13864))</del> <u>0.15282</u>	0.07675
	MRx36	Osteoporosis/Pagets	0.00000	0.00000
	MRx37	Pain	<del>((0.04154))</del> <u>0.0295</u>	0.04151
	MRx38	Parkinsons/Tremor	<del>((0.17179))</del> <u>0.17163</u>	0.06257
	MRx39	Prenatal Care	0.00000	0.13192
	MRx40	Psychotic Illness/Bipolar	<del>((0.24399))</del> <u>0.22819</u>	0.20274
	MRx41	Replacement Solution	<del>((0.47152))</del> <u>0.58622</u>	1.49405
	MRx42	Seizure Disorders	<del>((0.23418))</del> <u>0.23997</u>	0.19837
	MRx43	Thyroid Disorder	<del>((0.04267))</del> <u>0.03948</u>	0.06326
	MRx44	Transplant	<del>((0.34858))</del> <u>0.37388</u>	0.05810
	MRx45	Tuberculosis	<del>((0.22778))</del> <u>0.20006</u>	0.00000

**(8) Step 8. Sum risk weights to obtain the risk score.**

After obtaining the weights that correspond to a client's age/gender category and set of risk categories, the agency takes a sum of the values of all of the weights. This sum is the risk score for a client.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 17-24-111, § 182-557-0225, filed 12/6/17, effective 1/6/18; WSR 15-17-065, § 182-557-0225, filed 8/14/15, effective 9/14/15.]

## WSR 22-15-110

## PROPOSED RULES

## HEALTH CARE AUTHORITY

[Filed July 19, 2022, 5:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-06-079.

Title of Rule and Other Identifying Information: WAC 182-533-0701 Chemical-using pregnant (CUP) women program—Purpose, 182-533-0710 Chemical-using pregnant (CUP) women program—Client eligibility, 182-533-0720 Chemical-using pregnant (CUP) women program—Provider requirements, and 182-533-0730 Chemical-using pregnant (CUP) women program—Covered services.

Hearing Location(s): On August 23, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the health care authority (HCA) continues to hold public hearings virtually without a physical meeting place. This promotes social distancing and the safety of the residents of Washington state. To attend the virtual public hearing, you must register in advance [https://us02web.zoom.us/webinar/register/WN\\_RT4WVYrRRrOZ6tCJOHn7YQ](https://us02web.zoom.us/webinar/register/WN_RT4WVYrRRrOZ6tCJOHn7YQ). 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 sooner than August 24, 2022.

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 August 23, 2022, 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 August 5, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising these rules to update language from "chemical" to "substance" and "detox" to "withdrawal management." Language will also be updated to gender-neutral terminology.

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.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

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: Heather Weiher, P.O. Box 45530, Olympia, WA 98504-5530, 360-725-1293.

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

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

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

July 19, 2022  
Wendy Barcus  
Rules Coordinator

OTS-3889.1

**((CHEMICAL-USING)) SUBSTANCE-USING PREGNANT ((-CUP)-WOMEN)) PEOPLE (SUPP) SERVICES**

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-533-0701 ((Chemical-using)) Substance-using pregnant ((-CUP)-women)) people (SUPP) program—Purpose.** The ((chemical-using)) substance-using pregnant ((-CUP)-women)) people (SUPP) program provides immediate access to medical care in a hospital setting to ((chemical-using or chemical-dependent)) substance-using or substance-dependent pregnant ((women)) people and their fetuses. The purpose of the immediate access to medical care is to reduce harm to and improve birth outcomes for ((mothers)) birthing parents and their fetuses by preventing obstetric and prenatal complications related to ((chemical dependency)) substance use disorder.

[WSR 11-14-075, recodified as § 182-533-0701, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090, 74.09.800. WSR 04-11-008, § 388-533-701 (codified as WAC 388-533-0701), filed 5/5/04, effective 6/5/04.]

AMENDATORY SECTION (Amending WSR 15-14-038, filed 6/24/15, effective 7/25/15)

**WAC 182-533-0710 ((Chemical-using)) Substance-using pregnant ((-CUP)-women)) people (SUPP) program—Client eligibility.** (1) To be eligible for the ((chemical-using)) substance-using pregnant ((-CUP)-women)) people (SUPP) program, a ((woman)) person must be:

- (a) Pregnant; and
- (b) Eligible for medicaid.

(2) A client eligible under subsection (1) of this section who is enrolled in ((a medicaid agency)) an agency-contracted managed care plan is eligible for ((CUP)) SUPP services outside ((her)) their plan. ((CUP)) SUPP services and reimbursement are delivered outside a managed care plan and are subject to fee-for-services rules.

(3) A client receiving ((three-day or five-day detoxification)) withdrawal management services or secure withdrawal management serv-

ices through the agency is not eligible for the ((CUP-women)) SUPP program.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-14-038, § 182-533-0710, filed 6/24/15, effective 7/25/15. WSR 11-14-075, recodified as § 182-533-0710, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.800. WSR 05-08-061, § 388-533-0710, filed 3/31/05, effective 5/1/05; WSR 04-11-008, § 388-533-710 (codified as WAC 388-533-0710), filed 5/5/04, effective 6/5/04.]

AMENDATORY SECTION (Amending WSR 15-14-038, filed 6/24/15, effective 7/25/15)

**WAC 182-533-0720 ((Chemical-using)) Substance-using pregnant ((CUP-women)) people (SUPP) program—Provider requirements.** (1) The ((medicaid)) agency pays only those providers who:

(a) Have been approved by the agency to provide ((chemical-using)) substance-using pregnant ((CUP-women)) people (SUPP) program services;

(b) Have been licensed and certified as ((chemical-dependency service providers by the division of)) a behavioral health ((and recovery (DBHR) under chapter 388-877 WAC)) agency by the department of health (DOH) under chapter 246-341 WAC;

(c) Meet the department of health hospital ((accreditation standards)) licensing regulations in chapter 246-320 WAC; and

(d) Meet the general provider requirements in chapter 182-502 WAC ((; and

~~(e) Are not licensed as an institution for mental disease (IMD) under Centers for Medicare and Medicaid Services (CMS) criteria).~~

(2) Providers must:

(a) Report any changes in their certification, level of care, or program operations to the agency ((CUP-women)) SUPP program manager;

(b) Have written policies and procedures that include a working statement describing the purpose and methods of treatment for ((chemical-using or chemical-dependent)) substance-using or substance-dependent pregnant ((women)) people;

(c) Provide guidelines and resources for current medical treatment methods by specific ((chemical)) substance type;

(d) Have linkages with state and community providers to ensure a working knowledge exists of current medical and substance ((abuse)) use disorder resources; and

(e) Ensure that ((a-chemical-dependency)) an assessment for substance use disorders of the client has been completed:

(i) By a ((chemical-dependency)) substance use disorder professional under chapter 246-811 WAC;

(ii) Using the latest criteria of the American Society of Addiction Medicine (ASAM); and

(iii) No earlier than six months before, and no later than five days after, the client's admission to the ((CUP-women)) SUPP program.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-14-038, § 182-533-0720, filed 6/24/15, effective 7/25/15. WSR 11-14-075, recodified as § 182-533-0720, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.800. WSR 05-08-061, § 388-533-0720,



filed 3/31/05, effective 5/1/05; WSR 04-11-008, § 388-533-720 (codified as WAC 388-533-0720), filed 5/5/04, effective 6/5/04.]

AMENDATORY SECTION (Amending WSR 15-14-038, filed 6/24/15, effective 7/25/15)

**WAC 182-533-0730 ((Chemical-using)) Substance-using pregnant ((CUP-women)) people (SUPP) program—Covered services.** (1) The ((medicaid)) agency pays for the following covered services for a pregnant client and ((her)) their fetus under the ((chemical-using)) substance-using pregnant ((CUP-women)) people (SUPP) program:

(a) Primary acute ((detoxification)) withdrawal management and medical stabilization;

(b) Secondary subacute ((detoxification)) withdrawal management and medical stabilization; and

(c) Rehabilitation treatment and services as determined by the provider.

(2) The maximum length of treatment per inpatient stay that the agency will pay for is ((twenty-six)) 26 days, unless additional days have been preauthorized by the agency ((CUP-women)) (SUPP) program manager.

(3) If a client's pregnancy ends before inpatient treatment is completed, a provider may continue ((her)) treatment through the ((twenty-sixth)) 26th day.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 15-14-038, § 182-533-0730, filed 6/24/15, effective 7/25/15. WSR 11-14-075, recodified as § 182-533-0730, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090 and 74.09.800. WSR 05-08-061, § 388-533-0730, filed 3/31/05, effective 5/1/05; WSR 04-11-008, § 388-533-730 (codified as WAC 388-533-0730), filed 5/5/04, effective 6/5/04.]

**WSR 22-15-111**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed July 20, 2022, 8:42 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: The Washington department of fish and wildlife (WDFW) received a rule-making petition in January 2022 asking WDFW to amend RCW 220-312-050 by opening fishing in a section of the Chelan River upstream from the Chelan PUD safety barrier to the lake. In February 2022, the fish and wildlife commission voted on the petition and directed WDFW to commence rule making. This CR-102 carries out the commission's direction. The proposed change opens a previously closed section of Chelan River by allowing catch-and-release fishing only, using only barbless hooks with no bait.

Hearing Location(s): On September 22-24, 2022, at 8:00 a.m., at Ocean Shores Convention Center, Ocean Shores, Washington. This meeting of the fish and wildlife commission will take place in person and by webinar. See <https://wdfw.wa.gov/about/commission> or contact the commission office at 360-902-2267 or [commission@dfw.wa.gov](mailto:commission@dfw.wa.gov) for instructions on how to join the meeting.

Date of Intended Adoption: No sooner than October 27, 2022.

Submit Written Comments to: Kelly Henderson, email [PetitionChelanRiver@PublicInput.com](mailto:PetitionChelanRiver@PublicInput.com), phone 855-925-2801, project code 7813, website <https://publicinput.com/PetitionChelanRiver>, by September 24, 2022.

Assistance for Persons with Disabilities: Contact Title VI/ADA Compliance Coordinator, phone 360-902-2349, TTY 711, phone 360-902-2207, email [Title6@dfw.wa.gov](mailto:Title6@dfw.wa.gov), <https://wdfw.wa.gov/accessibility/requests-accommodation>, by September 24, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The upper reach of the Chelan River from the Chelan PUD powerhouse up to the Lake Chelan Dam (3.6-miles) is inaccessible by anadromous salmon and steelhead due to a 0.4-mile steep gorge area with several waterfalls (5-20 feet). This reach is currently closed to fishing under permanent WAC. Open the currently closed portion of the Chelan River to recreational fishing. No anticipated effects are expected. This proposal would change the existing closed fishing rule and open it up to recreational fishing.

Reasons Supporting Proposal: The WDFW agrees with the petitioner in that the currently closed portion of the upper Chelan River should be open to recreational fishing. The specific fishing season and rules/restrictions will be developed and recommended (by WDFW) following a public comment period.

In 2015, fishing was closed in the upper Chelan River to facilitate a multi-year evaluation of resident game fish restoration efforts. Closing recreational fishing was deemed necessary and appropriate to eliminate the effect of angler harvest and/or catch-and-release mortality on resident game fish. Results from the evaluation show that populations of resident gamefish in the upper Chelan River are sufficiently abundant to support recreational fishing.

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

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: [No information provided by agency], governmental.

Name of Agency Personnel Responsible for Drafting: Chad Jackson, 1550 Alder Street, Ephrata, WA 98823, 509-754-4624 ext. 250; Implementation: Craig Burley, 1111 Washington Street, Olympia, WA 98501, 360-902-2784; and Enforcement: Chief Steve Bear, 1111 Washington Street, 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 rule proposal does not require a cost-benefit analysis per 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(4). This chapter does not apply to the adoption of a rule if an agency is able to demonstrate that the proposed rule does not affect small businesses.

Explanation of exemptions: The department is exempt from the requirements of chapter 19.85 because the proposed recreational fishing rules do not regulate small businesses; rather, the department's proposed fishing rules open fishing seasons, and provide fishing opportunity, that would otherwise be closed. In doing so, the proposed rules regulate individuals who undertake recreational fishing activities. The proposed statewide recreational rules simply govern the time, place and manner for individuals who want to enjoy the recreational fishing opportunities provided. While recreational fisheries contribute to statewide or local economies, and while those economic effects are part of the department's consideration in opening fisheries, the economic effect of different possible recreational fishery packages does not constitute the direct imposition of any regulatory compliance costs on small businesses that supply recreational fishers, or that benefit from the state's decision to open such fisheries.

July 19, 2022  
Annie Szvetcz  
Rules Coordinator

## OTS-3969.1

AMENDATORY SECTION (Amending WSR 22-05-066, filed 2/11/22, effective 7/1/22)

**WAC 220-312-050 Freshwater exceptions to statewide rules—East-side.** (1) **Countywide freshwater exceptions to statewide rules:**

(a) Irrigation canals, wasteways, drains and the inlets and outlets of all lakes, ponds, and reservoirs in Grant and Adams counties (except Crab Creek, Rocky Ford Creek and Ponds, Columbia Basin Hatchery Creek, Bobcat Creek, Coyote Creek, Frenchman Hills Wasteway and Drains, Hays Creek, Red Rock Creek, Sand Hollow Creek, and Lake Lenore

inlet and outlet) are open year-round, statewide lake rules apply to all species.

(b) In Adams, Douglas, Franklin, Grant, and Okanogan counties, except Zosel Dam (Okanogan River) and Enloe Dam (Similkameen River): It is permissible to fish up to the base of all dams.

(2) **Aeneas Lake (Okanogan County):**

(a) Open the fourth Saturday in April through October 31.

(b) Fly fishing only.

(c) It is unlawful to fish from a floating device equipped with a motor.

(d) Game fish: Statewide minimum length/daily limit, except:

Trout: Daily limit 1; minimum length 18 inches.

(3) **Ahtanum Creek (Yakima County):** Selective gear rules.

(4) **Ahtanum Creek, North Fork (Yakima County):**

(a) From the Grey Rock Trailhead Bridge crossing upstream to Shellneck Creek: Closed waters.

(b) Selective gear rules.

(5) **Ahtanum Creek, Middle Fork (Yakima County):**

(a) From the A2000 Spur Road Bridge in NE 1/4 of Section 34 upstream to the A2800 Road Bridge at Tree Phones Campground: Closed waters.

(b) Selective gear rules.

(6) **Alta Lake (Okanogan County):** Open the fourth Saturday in April through October 31.

(7) **Amber Lake (Spokane County):**

(a) Selective gear rules.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Open March 1 through November 30.

(d) Game fish: Statewide minimum length/daily limit, except:

Trout: Daily limit 1; minimum length 18 inches.

(8) **American River (Yakima County):**

(a) Selective gear rules.

(b) From the Highway 410 Bridge at river mile 5.4 to the Mesatchee Creek Trail crossing at river mile 15.8: Closed waters from July 16 through September 15.

(9) **Amon Wasteway (Benton County):** Selective gear rules.

(10) **Andrews Creek (tributary to Chewuch River) (Okanogan County):** From the mouth to the falls approximately 0.5 miles upstream: Closed waters.

(11) **Asotin Creek, mainstem and forks (Asotin County):**

(a) Closed waters:

(i) South Fork from mouth upstream.

(ii) North Fork from USFS border upstream.

(b) Game fish: Statewide minimum length/daily limit, except: It is unlawful to fish for steelhead.

(c) Selective gear rules.

(12) **Aspen Lake (Okanogan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(13) **Badger Lake (Spokane County):** Open the fourth Saturday in April through September 30.

(14) **Banks Lake (Grant County):**

(a) Chumming is permissible.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Crappie: Daily limit 10; minimum length 9 inches.

(ii) Yellow perch: Daily limit 25.

- (15) **Bayley Lake (Stevens County):**  
(a) Inlet stream: Closed waters.  
(b) Open the fourth Saturday in April through October 31.  
(c) Fly fishing only.  
(d) It is unlawful to fish from a floating device equipped with a motor.  
(e) Release all fish.
- (16) **Bear Creek (tributary to South Fork Tieton River) (Yakima County):** From the mouth to the falls (approximately 0.75 mile): Closed waters.
- (17) **Bear Lake (Spokane County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.
- (18) **Beaver Creek (tributary to Methow River) (Okanogan County):** Closed waters.
- (19) **Beaver Lake (Big) (Okanogan County):** Open the fourth Saturday in April through October 31.
- (20) **Beaver Lake, (Little):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (21) **Beda Lake (Grant County):**  
(a) Selective gear rules.  
(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.  
(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.
- (22) **Beehive (Lake) Reservoir (Chelan County):**  
(a) Open the fourth Saturday in April through October 31.  
(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (23) **Beth Lake (Okanogan County):** Open the fourth Saturday in April through October 31.
- (24) **Big Four Lake (Columbia County):**  
(a) Fly fishing only.  
(b) It is unlawful to fish from any floating device.  
(c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.
- (25) **Big Meadow Lake (Pend Oreille County):**  
(a) Open the fourth Saturday in April through October 31.  
(b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.
- (26) **Big Twin Lake (Okanogan County):**  
(a) Open the fourth Saturday in April through October 31.  
(b) Selective gear rules.  
(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.  
(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.
- (27) **Blackbird Island Pond (Chelan County):** Open July 1 through September 30 for juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.
- (28) **Black Canyon Creek (tributary to Methow River) (Okanogan County):** Closed waters.
- (29) **Black Lake (Chelan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (30) **Black Lake (Okanogan County):** Selective gear rules.

- (31) **Black Lake (Stevens County)**: Open the fourth Saturday in April through October 31.
- (32) **Blue Lake (Columbia County)**: It is unlawful to fish from any floating device.
- (33) **Blue Lake (Grant County)**: Open the fourth Saturday in April through September 30.
- (34) **Blue Lake (near Sinlahekin) (Okanogan County)**:
- (a) Open the fourth Saturday in April through October 31.
  - (b) Selective gear rules.
  - (c) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.
  - (d) It is unlawful to fish from a floating device equipped with an internal combustion motor.
  - (e) Game fish: Statewide minimum length/daily limit, except:  
Trout: Daily limit 1; minimum length 18 inches.
- (35) **Blue Lake (near Wannacut Lake) (Okanogan County)**:
- (a) Open the fourth Saturday in April through October 31.
  - (b) Selective gear rules.
  - (c) It is unlawful to fish from a floating device equipped with an internal combustion motor.
  - (d) Game fish: Statewide minimum length/daily limit, except:  
Trout: Daily limit 1, minimum length 18 inches.
- (36) **Bobcat Creek and Ponds (Adams County)**: Open the fourth Saturday in April through September 30.
- (37) **Bonaparte Creek (Okanogan County)**: From the mouth to the falls approximately river mile 1.0: Closed waters.
- (38) **Bonaparte Lake (Okanogan County)**:
- (a) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.
  - (b) Game fish: Statewide minimum length/daily limit, except:  
Eastern brook trout count as part of trout daily limit.
- (39) **Boulder Creek and tributaries (Okanogan County)**: From the mouth to the barrier falls at river mile 1.0: Closed waters.
- (40) **Box Canyon Creek and tributaries (Kittitas County)**: From mouth (Kachess Reservoir) upstream approximately 2 miles to the 20 foot high waterfall, including that portion of the creek that flows through the dry lake bed: Closed waters.
- (41) **Browns Lake (Pend Oreille County)**:
- (a) Open the fourth Saturday in April through October 31.
  - (b) Fly fishing only.
  - (c) It is unlawful to fish from a floating device equipped with a motor.
- (42) **Bumping Lake (Reservoir) (Yakima County)**: Chumming is permissible.
- (43) **Buckskin Creek and tributaries (Yakima County)**: From the mouth to the west boundary of Suntides Golf Course: Closed waters.
- (44) **Bumping River (Yakima County)**:
- (a) It is permissible to fish up to the base of Bumping Dam.
  - (b) From the mouth to Bumping Reservoir; selective gear rules.
- (45) **Burke Lake (Grant County)**: Open March 1 through September 30.
- (46) **Buttermilk Creek (tributary to Twisp River) (Okanogan County), including tributaries**:
- (a) Open the Saturday before Memorial Day through August 15.
  - (b) Release all fish.
  - (c) Selective gear rules.
- (47) **Buzzard Lake (Okanogan County)**:

- (a) Open the fourth Saturday in April through October 31.
- (b) Selective gear rules.
- (c) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.
- (48) **Caldwell Lake (Pend Oreille County):**
  - (a) Open the fourth Saturday in April through October 31.
  - (b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (49) **Caliche Lakes, Upper (Grant County):** Open March 1 through September 30.
- (50) **Calispell Creek (Calispell River) (Pend Oreille County):** From the mouth to Calispell Lake: Open year-round.
- (51) **Campbell Lake (Okanogan County):**
  - (a) Selective gear rules.
  - (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
  - (c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.
- (52) **Carl's Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.
- (53) **Cascade Lake (Grant County):** Open March 1 through September 30.
- (54) **Cattail Lake (Grant County):** Open the fourth Saturday in April through September 30.
- (55) **Cedar Creek (tributary to Early Winters Creek) (Okanogan County):**
  - (a) From the mouth to Cedar Falls:
    - (i) Open the Saturday before Memorial Day through August 15.
    - (ii) Selective gear rules.
    - (iii) Release all fish.
  - (b) From Cedar Falls upstream including tributaries: Selective gear rules.
- (56) **Cedar Lake (Stevens County):** Open the fourth Saturday in April through October 31.
- (57) **Chain Lake (Pend Oreille County):**
  - (a) Open the fourth Saturday in April through October 31.
  - (b) Game fish: Statewide minimum length/daily limit, except: Release kokanee.
- (58) **Chapman Lake (Spokane County):**
  - (a) Open the fourth Saturday in April through October 31.
  - (b) Chumming is permissible.
- (59) **Chelan Hatchery Creek (Chelan County):** Closed waters.
- (60) **Chelan Lake (Chelan County):**
  - (a) Game fish: Statewide minimum length/daily limit, except:
    - (i) Release wild cutthroat trout.
    - (ii) Lake trout: No limit and no size restriction.
  - (b) Salmon: Daily limit 1; minimum length 15 inches.
  - (c) No catch record card required.
- (61) **Chelan Lake tributaries (Chelan County):**
  - (a) Selective gear rules.
  - (b) Game fish: Statewide minimum length/daily limit, except: Release wild cutthroat trout.
- (62) **Chelan River (Chelan County):**
  - (a) From the railroad bridge to the Chelan PUD safety barrier below the power house:

- ((a)) (i) Salmon: Open July 16 through October 15:  
 ((i)) (A) Daily limit 6; up to 2 may be adult hatchery Chinook.  
 Release sockeye, coho, and wild adult Chinook.  
 ((ii)) (B) July 16 through October 15: Anti-snagging rule and night closure.  
 ((b)) (ii) Game fish: Statewide minimum length/daily limit, except:  
 ((i)) (A) Release trout.  
 ((ii)) (B) Steelhead: Closed to fishing.  
 ((e)) (b) From the Chelan PUD safety barrier below the power house upstream to Chelan Lake: (~~Closed waters.~~)  
 (i) Catch and release fishing only.  
 (ii) No bait allowed.  
 (iii) Barbless hooks are required.
- (63) **Chewuch River (Okanogan County):**  
 (a) From the mouth to Eight Mile Creek:  
 (i) Open the Saturday before Memorial Day through August 15.  
 (ii) Selective gear rules.  
 (iii) Release all fish.  
 (b) From the mouth to Pasayten Wilderness boundary falls: Whitefish:  
 (i) Open December 1 through the last day in February for whitefish only.  
 (ii) Whitefish gear rules.
- (64) **Chiwaukum Creek (Chelan County):**  
 (a) From the mouth to Fool Hen Creek, including Fool Hen Creek and tributaries: Closed waters.  
 (b) From Fool Hen Creek upstream and tributaries: Selective gear rules.
- (65) **Chiwawa River (Chelan County):**  
 (a) From the mouth to Buck Creek and tributaries not including Buck Creek: Closed waters.  
 (b) From Buck Creek upstream and tributaries (including Buck Creek): Selective gear rules.
- (66) **Chopaka Lake (Okanogan County):**  
 (a) Open the fourth Saturday in April through October 31.  
 (b) Fly fishing only.  
 (c) It is unlawful to fish from a floating device equipped with a motor.  
 (d) Game fish: Statewide minimum length/daily limit, except:  
 Trout: Daily limit 1; minimum length 18 inches.
- (67) **Chumstick Creek (Chelan County):** Closed waters.
- (68) **Clear Lake (Chelan County):**  
 (a) Open the fourth Saturday in April through October 31.  
 (b) Game fish: Statewide minimum length/daily limit, except:  
 Eastern brook trout count as part of trout daily limit.
- (69) **Clear Lake (Spokane County):** Open the fourth Saturday in April through October 31.
- (70) **Cle Elum Lake (Reservoir) (Kittitas County):** Game fish: Statewide minimum length/daily limit, except: Kokanee: Daily limit 5; minimum length 9 inches and maximum length 15 inches.
- (71) **Cle Elum River (Kittitas County):**  
 (a) From the mouth to Cle Elum Dam:  
 (i) Open year-round.  
 (ii) Selective gear rules.  
 (iii) Game fish: Statewide minimum length/daily limit, except:  
 Release rainbow trout and cutthroat trout.



- (iv) It is permissible to fish up to the base of Cle Elum Dam.
- (v) Whitefish:
  - (A) Open December 1 through last day in February for whitefish only.
  - (B) Whitefish gear rules.
    - (b) From above Cle Elum Lake to outlet of Hyas Lake: Selective gear rules.
- (72) **Cliff Lake (Grant County)**: Open March 1 through September 30.
  - (73) **Coffee Pot Lake (Lincoln County)**:
    - (a) Open March 1 through September 30.
    - (b) Selective gear rules.
    - (c) Game fish: Statewide minimum length/daily limit, except:
      - (i) Trout: Daily limit 1; minimum length 18 inches.
      - (ii) Crappie: Daily limit 10; minimum length 9 inches.
  - (74) **Columbia Basin Hatchery Creek (Grant County)**:
    - (a) Open April 1 through September 30 from the hatchery outflow to the confluence with Rocky Coulee Wasteway.
    - (b) Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.
  - (75) **Columbia Park Pond (Benton County)**: Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.
  - (76) **Colville River (Stevens County)**: From the mouth to bridge at the town of Valley including Meyers Falls Reservoir: Open year-round.
  - (77) **Conconully Lake (Okanogan County)**: Open the fourth Saturday in April through October 31.
  - (78) **Conconully Reservoir (Okanogan County)**: Open the fourth Saturday in April through October 31.
  - (79) **Conger Pond (Pend Oreille County)**: Open the fourth Saturday in April through October 31.
  - (80) **Conner Lake (Okanogan County)**:
    - (a) Open the fourth Saturday in April through October 31.
    - (b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
  - (81) **Cooper River (Kittitas County)**: From the mouth to Cooper Lake: Selective gear rules.
  - (82) **Coot Lake (Grant County)**: Open the fourth Saturday in April through September 30.
  - (83) **Corral Creek (Benton County)**: Selective gear rules.
  - (84) **Cougar Lake (Pasayten Wilderness) (Okanogan County)**: Selective gear rules.
  - (85) **Cougar Lake (near Winthrop) (Okanogan County)**:
    - (a) Selective gear rules.
    - (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
    - (c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.
  - (86) **Cowiche Creek (Yakima County)**: Selective gear rules.
  - (87) **Coyote Creek and Ponds (Adams County)**: Open the fourth Saturday in April through September 30.
  - (88) **Crab Creek (Adams/Grant/Lincoln counties)**:
    - (a) From the mouth to Morgan Lake Road: Open the Saturday before Memorial Day through September 30.
    - (b) From Morgan Lake Road to O'Sullivan Dam (including Marsh Unit I and II impoundments): Closed waters.

- (c) From the confluence of the Moses Lake outlets to Sand Dunes Road including tributaries:
- (i) Open year-round.
  - (ii) Statewide lake rules apply to all species, except:
    - (A) Crappie: Minimum length 9 inches.
    - (B) Crappie and bluegill: Combined limit of 25 fish.
    - (C) Yellow perch: Daily limit 25 fish.
- (d) From the fountain buoy and shoreline markers of 150 feet down stream of the Alder Street fill to Grant County Road 7 NE:
- (i) Open year-round.
  - (ii) Statewide lake rules apply to all species, except:
    - (A) Crappie: Daily limit 10; minimum length 9 inches.
    - (B) Bluegill: Daily limit 5; minimum length 8 inches.
    - (C) Yellow perch: Daily limit 25.
- (e) From Grant County Road 7 NE upstream (including all tributaries, except Goose Creek in the city of Wilbur): Open year-round.
- (89) **Crawfish Lake (Okanogan County):**
- (a) Open the fourth Saturday in April through October 31.
  - (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
  - (c) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (90) **Crescent Lake (Pend Oreille County):** Open the fourth Saturday in April through October 31.
- (91) **Crystal Lake (Grant County):** Open March 1 through September 30.
- (92) **Cub Creek (tributary to Chewuch River) (Okanogan County):** From mouth upstream to West Chewuch Road Bridge: Closed waters.
- (93) **Cup Lake (Grant County):** Open March 1 through September 30.
- (94) **Curl Lake (Columbia County):**
- (a) Open the Saturday before Memorial Day through October 31.
  - (b) It is unlawful to fish from any floating device.
- (95) **Davis Lake (Ferry County):** Open the fourth Saturday in April through October 31.
- (96) **Davis Lake (Okanogan County):**
- (a) Selective gear rules.
  - (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
  - (c) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.
- (97) **Dayton Pond (Columbia County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.
- (98) **Deadman Lake (Adams County):** Open the fourth Saturday in April through September 30.
- (99) **Deep Creek (tributary to Bumping Lake) (Yakima County):** From the mouth to the waterfall approximately 0.33 mile above the second bridge crossing on USFS Road 1808 (approximately 3.7 miles from the junction of USFS Roads 1800 and 1808): Closed waters.
- (100) **Deep Lake (Grant County):** Open the fourth Saturday in April through September 30.
- (101) **Deep Lake (Stevens County):** Open the fourth Saturday in April through October 31.
- (102) **Deer Lake (Columbia County):**
- (a) Open March 1 through November 30.
  - (b) It is unlawful to fish from any floating device.

(103) **Deer (Deer Springs) Lake (Lincoln County)**: Open the fourth Saturday in April through September 30.

(104) **Deer Lake (Stevens County)**:

(a) Open March 1 through November 30.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(105) **Delaney Springs (Grant County)**: Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(106) **De Roux Creek (Kittitas County)**: From the mouth to the USFS trail 1392 (De Roux Creek Trail) stream crossing (approximately 1 river mile): Closed waters.

(107) **Dog Creek (tributary to Chewuch) (Okanogan County)**: From mouth upstream to falls approximately 1.5 miles: Closed waters.

(108) **Domerie Creek (Kittitas County)**: Selective gear rules.

(109) **Downs Lake (Lincoln/Spokane counties)**:

(a) Open March 1 through September 30.

(b) Game fish: Statewide minimum length/daily limit, except: Crappie: Daily limit 10; minimum length 9 inches.

(110) **Dry Falls Lake (Grant County)**:

(a) Open March 1 through November 30.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except:

Trout: Daily limit 1; minimum length 18 inches.

(111) **Dune Lake (Grant County)**:

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except:

Trout: Daily limit 1; minimum length 18 inches.

(112) **Dusty Lake (Grant County)**:

(a) Open March 1 through November 30.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except:

Trout: Daily limit 1; minimum length 18 inches.

(113) **Eagle Creek (tributary to Twisp River) (Okanogan County)**:

From mouth upstream to the falls approximately 0.5 miles: Closed waters.

(114) **Early Winters Creek (tributary to Methow River) (Okanogan County)**:

(a) From the mouth upstream to Forest Road 300: Closed waters.

(b) From Forest Road 300 upstream; including tributaries except Cedar Creek:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules.

(iii) Release all fish.

(115) **Eightmile Creek (tributary to Chewuch River) (Okanogan County)**: From the mouth upstream to Forest Road 5130 Bridge: Closed waters.

(116) **Elbow Lake (Stevens County)**:

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(117) **Ell Lake (Okanogan County)**:

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(118) **Eloika Lake (Spokane County)**: Game fish: Statewide minimum length/daily limit, except: Crappie: Daily limit 10; minimum length 9 inches.

(119) **Empire Lake (Ferry County)**:

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(120) **Entiat River (Chelan County)**:

(a) From mouth (railroad bridge) to the boundary marker/markers located approximately 1,500 feet upstream of the upper Roaring Creek Road Bridge (immediately downstream of the Entiat National Fish Hatchery):

(i) Salmon: Open from July 16 through September 30:

(A) Daily limit 6 Chinook salmon. Release all other salmon.

(B) Night closure.

(ii) Open December 1 through the last day in February for whitefish only.

(iii) Whitefish gear rules.

(b) From the boundary marker/markers located approximately 1,500 feet upstream of the upper Roaring Creek Road Bridge (immediately downstream of the Entiat National Fish Hatchery) to Entiat Falls:

(i) Whitefish:

(ii) Open December 1 through the last day in February for whitefish only.

(iii) Whitefish gear rules.

(c) Entiat River and all tributaries above Entiat Falls: Selective gear rules.

(121) **Ephrata Lake (Grant County)**: Closed waters.

(122) **Esquatzel Coulee (Franklin County)**: Open year-round.

(123) **Esquatzel Coulee, West Branch (Franklin County)**: Open year-round.

(124) **Falls Creek (tributary to Chewuch River) (Okanogan County)**: From mouth upstream to the falls approximately .15 miles: Closed waters.

(125) **Fan Lake (Pend Oreille County)**:

(a) Open the fourth Saturday in April through September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(126) **Ferry Lake (Ferry County)**: It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(127) **Fiorito Lakes (Kittitas County)**: It is unlawful to fish from a floating device equipped with an internal combustion motor.

(128) **Fish Lake (Chelan County)**: Game fish: Statewide minimum length/daily limit, except: Yellow perch: Daily limit 25.

(129) **Fish Lake (Okanogan County)**: Open the fourth Saturday in April through October 31.

(130) **Fish Lake (Spokane County)**:

(a) Open the fourth Saturday in April through September 30.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

- (131) **Fishhook Pond (Walla Walla County)**: It is unlawful to fish from a floating device.
- (132) **Fishtrap Lake (Lincoln/Spokane counties)**: Open the fourth Saturday in April through September 30.
- (133) **Forde Lake (Okanogan County)**:
- (a) Open the fourth Saturday in April through October 31.
  - (b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (134) **Fourth of July Lake (Adams/Lincoln counties)**:
- (a) Open the Friday after Thanksgiving through March 31.
  - (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (135) **Frank's Pond (Chelan County)**:
- (a) Open the fourth Saturday in April through October 31.
  - (b) Open to juvenile anglers only.
- (136) **Frater Lake (Pend Oreille County)**: Open the fourth Saturday in April through October 31.
- (137) **Frenchman Hills Wasteway and Drains (Grant County)**: Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (138) **Gadwall Lake (Grant County)**: Open the fourth Saturday in April through September 30.
- (139) **Garfield Juvenile Pond (Whitman County)**: Open to juvenile anglers only.
- (140) **Goat Creek (tributary to Methow River) (Okanogan County)**: Closed waters.
- (141) **Gold Creek, Gold Creek Pond and outlet channel (tributary to Keechelus Lake)**: Including that portion of Gold Creek that flows through the dry Keechelus Reservoir lakebed: Closed waters.
- (142) **Gold Creek (tributary to Methow River) (Okanogan County)**: Closed waters.
- (143) **Goose Creek (Lincoln County), within the city limits of Wilbur**: Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.
- (144) **Goose Lake, Lower (Grant County)**: Game fish: Statewide minimum length/daily limit, except:
- (a) Crappie: Daily limit 10; minimum length 9 inches.
  - (b) Bluegill: It is unlawful to retain more than 5 fish over 6 inches in length.
- (145) **Grande Ronde River (Asotin County)**:
- (a) From the mouth to County Road Bridge, about 2.5 miles upstream:
    - (i) Open year-round for game fish other than trout and steelhead.
    - (ii) From August 1 through April 15: Selective gear rules.
    - (iii) Trout: Open from the Saturday before Memorial Day through October 31.
    - (iv) Steelhead:
      - (A) Open January 1 through April 15; daily limit 3 hatchery steelhead; minimum length 20 inches.
      - (B) August 1 through December 31; release steelhead.
  - (b) From the County Road Bridge upstream to the Oregon state line:
    - (i) Open year-round for game fish other than trout and steelhead.
    - (ii) From August 1 through April 15: Barbless hooks required.
    - (iii) Trout: Open from the Saturday before Memorial Day through October 31.

- (iv) Steelhead: Open August 1 through April 15; daily limit 3 hatchery steelhead; minimum length 20 inches.
- (c) All tributaries: Closed waters.
- (146) **Green Lakes (Lower and Upper) (Okanogan County):**
- (a) Selective gear rules.
- (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (c) Game fish: Statewide minimum length/daily limit, except:
- (i) Trout: Daily limit 2; minimum length 14 inches.
- (ii) Eastern brook trout count as part of trout daily limit.
- (147) **Grimes Lake (Douglas County):**
- (a) Open June 1 through August 31.
- (b) Selective gear rules.
- (c) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (d) Game fish: Statewide minimum length/daily limit, except:
- Trout: Daily limit 1; minimum length 18 inches.
- (148) **Halfmoon Lake (Adams County):** Open the fourth Saturday in April through September 30.
- (149) **Hampton Lakes (Lower and Upper) (Grant County):** Open the fourth Saturday in April through September 30.
- (150) **H and H Reservoir Number One (Pascal's Pond) (Chelan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (151) **Harris Lake (Grant County):**
- (a) Selective gear rules.
- (b) Game fish: Statewide minimum length/daily limit, except:
- Trout: Daily limit 1; minimum length 18 inches.
- (152) **Hatch Lake (Stevens County):** Open the Friday after Thanksgiving through March 31.
- (153) **Hays Creek and Ponds (Adams County):** Open the fourth Saturday in April through September 30.
- (154) **Headgate Pond (Asotin County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.
- (155) **Hen Lake (Grant County):** Open the fourth Saturday in April through September 30.
- (156) **Hog Canyon Creek (Spokane County):** From the mouth to Scroggie Road: Closed waters.
- (157) **Hog Canyon Lake (Spokane County):** Open the Friday after Thanksgiving through March 31.
- (158) **Homestead Lake (Grant County):**
- (a) Selective gear rules.
- (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (c) Game fish: Statewide minimum length/daily limit, except:
- Trout: Daily limit 1; minimum length 18 inches.
- (159) **Hourglass Lake (Grant County):** Open the fourth Saturday in April through September 30.
- (160) **Hutchinson Lake (Adams County):** Open the fourth Saturday in April through September 30.
- (161) **I-82 Ponds, 1 through 7 (Yakima County):** It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (162) **Icicle River and tributaries (Creek) (Chelan County):**
- (a) From the mouth upstream 800 feet to posted signs: Closed waters.

(b) From posted signs 800 feet upstream of the mouth to 500 feet below Leavenworth National Fish Hatchery: Closed waters.

(c) From 500 feet below Leavenworth National Fish Hatchery to shoreline markers where Cyo Road would intersect the Icicle River at the Sleeping Lady Resort: Closed waters.

(d) From shoreline markers where Cyo Road would intersect the Icicle River at the Sleeping Lady Resort to the Icicle Peshastin Irrigation District footbridge (approximately 750 feet upstream of the "Snow Lakes Trailhead" parking lot): Closed waters.

(e) From the Icicle Irrigation Peshastin District footbridge upstream, and tributaries: Selective gear rules.

(163) **Indian Creek (Yakima County)**: From the mouth to the waterfall approximately six miles upstream including that portion that flows through the dry lake bed of Rimrock Reservoir: Closed waters.

(164) **Ingalls Creek (Chelan County)**: From the mouth to Alpine Lakes Wilderness boundary and tributaries: Closed waters.

(165) **Jameson Lake (Douglas County)**: Open the fourth Saturday in April through October 31.

(166) **Jasmine Creek (Okanogan County)**:

(a) Open year-round to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(b) Game fish: Statewide minimum length/daily limit, except: Steelhead: Closed to fishing.

(167) **Jefferson Park Pond (Walla Walla County)**: Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(168) **Jolanda, Lake (Chelan County)**: Closed waters.

(169) **Kachess Lake (Reservoir) (Kittitas County)**:

(a) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(b) Chumming is permissible.

(170) **Kachess River (Kittitas County)**:

(a) From Kachess Lake (Reservoir) upstream to the waterfall approximately 0.5 miles above Mineral Creek: Closed waters.

(b) It is permissible to fish up to the base of Kachess Dam.

(c) From the mouth to Kachess Dam: Selective gear rules.

(171) **Keechelus Lake (Reservoir) (Kittitas County)**:

(a) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(b) Chumming is permissible.

(172) **Kettle Creek (tributary to American River) (Yakima County)**: Closed waters.

(173) **Kettle River (Stevens County)**: From Barstow Bridge upstream:

(a) Selective gear rules, except for juvenile anglers, from the Canadian border upstream to Highway 21 Bridge at Curlew.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except: Trout: Minimum length 14 inches.

(d) Whitefish:

(i) Open December 1 through the last day in February for whitefish only.

(ii) Whitefish gear rules.

(174) **Kings Lake and tributaries (Pend Oreille County)**: Closed waters.

(175) **Kiwanis Pond (Kittitas County)**: Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(176) **Lake Creek (Okanogan County)**:

(a) From the mouth to Black Lake: Closed waters.

(b) From Black Lake to Three Prong Creek: Closed waters.

(177) **Ledbetter Lake (Pend Oreille County)**: Open the fourth Saturday in April through October 31.

(178) **Ledking Lake (Pend Oreille County)**: Open the fourth Saturday in April through October 31.

(179) **Leech Lake (Yakima County)**:

(a) Fly fishing only.

(b) It is unlawful to fish from a floating device equipped with a motor.

(c) Game fish: Statewide minimum length/daily limit, except: Rainbow trout: Daily limit 1; minimum length 18 inches.

(180) **Lemna Lake (Grant County)**: Open the fourth Saturday in April through September 30.

(181) **Lenice Lake (Grant County)**:

(a) Open March 1 through November 30.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(182) **Lenore Lake (Grant County)**:

(a) The waters within a 200 yard radius of the trash rack leading to the irrigation pumping station (on the south end of the lake) and the area approximately 100 yards beyond the mouth of inlet stream to State Highway 17: Closed waters.

(b) Open March 1 through November 30.

(c) Selective gear rules.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(183) **Libby Creek (tributary to Methow River) (Okanogan County)**: Closed waters.

(184) **Liberty Lake (Spokane County)**: Open March 1 through October 31.

(185) **Lilly Lake (Chelan County)**:

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(186) **Lions Park Pond (Walla Walla County)**: Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(187) **Little Bridge Creek (tributary of Twisp River) (Okanogan County)**:

(a) Open the Saturday before Memorial Day through August 15.

(b) Release all fish.

(c) Selective gear rules.

(188) **Little Falls Reservoir (Spokane River) (Lincoln County)**: From Little Falls Dam to Long Lake Dam: Landlocked salmon rules.

(189) **Little Lost Lake (Pend Oreille County)**: Open the fourth Saturday in April through October 31.

(190) **Little Naches River including tributaries (Yakima County)**: Selective gear rules.



- (191) **Little Pend Oreille River and tributaries (Stevens County):** Selective gear rules.
- (192) **Little Spokane River and tributaries (Spokane County):**
- (a) From the inlet of Chain Lake upstream 0.25 mile to the rail-road crossing culvert: Closed waters.
  - (b) From the SR 291 Bridge upstream:
    - (i) Open Saturday before Memorial Day through October 31.
    - (ii) Whitefish:
      - (A) Open December 1 through the last day in February for whitefish only.
      - (B) Whitefish gear rules.
- (193) **Little Twin Lake (Okanogan County):**
- (a) Open the fourth Saturday in April through October 31.
  - (b) Selective gear rules.
  - (c) It is unlawful to fish from a floating device equipped with an internal combustion motor.
  - (d) Game fish: Statewide minimum length/daily limit, except:
    - (i) Trout: Daily limit 1; minimum length 18 inches.
    - (ii) Eastern brook trout count as part of trout daily limit.
- (194) **Little Twin Lake (Stevens County):** Open the fourth Saturday in April through October 31.
- (195) **Little Wenatchee River (Chelan County):**
- (a) From the mouth to USFS road 6700 Bridge and tributaries: Closed waters.
  - (b) From the USFS road 6700 Bridge upstream including tributaries: Selective gear rules.
- (196) **Long Lake (Ferry County):**
- (a) Open the fourth Saturday in April through October 31.
  - (b) Fly fishing only.
  - (c) It is unlawful to use flies containing lead.
  - (d) It is unlawful to fish from a floating device equipped with a motor.
- (197) **Long Lake (Okanogan County):** Open the fourth Saturday in April through October 31.
- (198) **Long Lake (Lake Spokane) (Spokane County):** From Long Lake Dam to Nine Mile Dam, including Little Spokane River from the mouth to the SR 291 Bridge: Landlocked salmon rules.
- (199) **Loon Lake (Stevens County):** Open the fourth Saturday in April through October 31.
- (200) **Lost Lake (Kittitas County):** Game fish: Statewide minimum length/daily limit, except: Rainbow trout: Daily limit 2; minimum length 14 inches.
- (201) **Lost Lake (Okanogan County):**
- (a) It is unlawful to fish from a floating device equipped with an internal combustion motor.
  - (b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.
  - (c) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (202) **Lost River (tributary to Methow River) (Okanogan County):**
- (a) From the mouth to the mouth of Monument Creek: Closed waters.
  - (b) From the mouth of Monument Creek including tributaries upstream to Deception Creek:
    - (i) Open the Saturday before Memorial Day through August 15.
    - (ii) Selective gear rules.
    - (iii) Game fish: Statewide minimum length/daily limit, except:
      - (A) Trout: Minimum length 14 inches; daily limit 2.

(B) Dolly Varden/bull trout may be retained as part of trout daily limit.

(203) **Lyman Lake (Okanogan County)**: Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(204) **Mad River (Chelan County)**:

(a) From the mouth to Windy Creek, including Windy Creek and tributaries except Tillicum Creek: Closed waters.

(b) From Windy Creek upstream and tributaries: Selective gear rules.

(205) **Manastash Creek (Kittitas County)**: Selective gear rules.

(206) **Marshall Lake (Pend Oreille County)**: Open the fourth Saturday in April through October 31.

(207) **Martha Lake (Grant County)**: Open March 1 through September 30.

(208) **Mary Ann Lake (Okanogan County)**: Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(209) **Mattoon Lake (Kittitas County)**: It is unlawful to fish from a floating device equipped with an internal combustion motor.

(210) **McCabe Pond (Kittitas County)**: It is unlawful to fish from any floating device equipped with a motor.

(211) **McDowell Lake (Stevens County)**:

(a) Open the fourth Saturday in April through October 31.

(b) Fly fishing only.

(c) It is unlawful to fish from a floating device equipped with a motor.

(d) Release all fish.

(212) **McManaman Lake (Adams County)**: Open the fourth Saturday in April through September 30.

(213) **Medical Lake (Spokane County)**:

(a) Open March 1 through November 30.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with a motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(214) **Medical Lake, West (Spokane County)**: Open the fourth Saturday in April through September 30.

(215) **Mercer Creek (Kittitas County)**: Selective gear rules.

(216) **Merry Lake (Grant County)**:

(a) Open March 1 through November 30.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(217) **Methow River (Okanogan County)**:

(a) From mouth to County Road 1535 (Burma Road) Bridge: Closed waters.

(b) Tributaries from mouth to County Road 1535 (Burma Road) Bridge except Black Canyon Creek:

(i) Release all fish, except: Eastern brook trout: No minimum length/daily limit.

(ii) Steelhead: Closed to fishing.

(c) From County Road 1535 (Burma Road) Bridge to Gold Creek:

(i) Open the Saturday before Memorial Day through September 15.

- (ii) Selective gear rules.
- (iii) Release all fish.
- (iv) Steelhead: Closed to fishing.
- (d) All tributaries from the County Road 1535 (Burma Road) to Gold Creek except Gold Creek:
  - (i) Selective gear rules.
  - (ii) Release all fish, except: Eastern brook trout: No minimum length/daily limit.
  - (iii) Steelhead: Closed to fishing.
- (e) From Gold Creek to Foghorn Dam:
  - (i) Open the Saturday before Memorial Day through September 30.
  - (ii) Selective gear rules.
  - (iii) Release all fish.
  - (iv) Steelhead: Closed to fishing.
  - (v) Whitefish:
    - (A) Open December 1 through the last day in February for whitefish only.
    - (B) Whitefish gear rules.
- (f) Methow River tributaries from Gold Creek to Foghorn Dam; except Twisp River, Chewuch River, Libby Creek, and Beaver Creek:
  - (i) Release all fish, except: Eastern brook trout: No minimum length/daily limit.
  - (ii) Steelhead: Closed to fishing.
- (g) From Foghorn Dam to Weeman Bridge including tributaries:
  - (i) Open the Saturday before Memorial Day through August 15:
    - (A) Release all fish.
    - (B) Selective gear rules.
    - (C) Steelhead: Closed to fishing.
  - (ii) Whitefish:
    - (A) Open December 1 through the last day in February for Whitefish only.
    - (B) Whitefish gear rules.
- (h) From Weeman Bridge to the falls above Brush Creek: Whitefish:
  - (i) Open December 1 through the last day in February for whitefish only.
    - (ii) Whitefish gear rules.
  - (i) Methow River tributaries from Weeman Bridge to the falls above Brush Creek; excluding Lost River, Goat Creek, Early Winters Creek, and Wolf Creek:
    - (i) Selective gear rules.
    - (ii) Release all fish.
    - (iii) Steelhead: Closed to fishing.
- (218) **Mill Creek (tributary to the Walla Walla River) (Walla Walla County):**
  - (a) From the mouth to Bennington Dam, including tributaries: Closed waters.
  - (b) From Bennington Dam upstream excluding tributaries: Selective gear rules.
  - (c) All tributaries upstream of Bennington Dam: Closed waters.
- (219) **Mineral Creek (tributary to upper Kachess River) (Kittitas County):** From the mouth to the Wilderness Boundary: Closed waters.
- (220) **Molson Lake (Okanogan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (221) **Monument Creek (Okanogan County), including tributaries:** Selective gear rules.

(222) **Morgan Lake (Adams County)**: Open the fourth Saturday in April through September 30.

(223) **Moses Lake (Grant County)**: Game fish: Statewide minimum length/daily limit, except:

(a) Crappie: Daily limit 10; minimum length 9 inches.

(b) Bluegill: Daily limit 5; minimum length 8 inches.

(c) Yellow perch: Daily limit 25.

(224) **Mud Lake (Yakima County)**:

(a) Selective gear rules.

(b) It is unlawful to fish from a floating device equipped with a motor.

(c) Game fish: Statewide minimum length/daily limit, except:

Trout: Daily limit 1; minimum length 18 inches.

(225) **Mudgett Lake (Stevens County)**: Open the fourth Saturday in April through October 31.

(226) **Muskegon Lake (Pend Oreille County)**:

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except:

Trout: Daily limit 2; minimum length 14 inches.

(227) **Myron Lake (Yakima County)**:

(a) Selective gear rules.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(c) Game fish: Statewide minimum length/daily limit, except:

Trout: Daily limit 2; minimum length 14 inches.

(228) **Mystic Lake (Pend Oreille County)**: Open the fourth Saturday in April through October 31.

(229) **Naches River (Yakima/Kittitas counties)**:

(a) From the mouth to Little Naches River:

(i) Selective gear rules.

(ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(iii) Game fish: Statewide minimum length/daily limit, except:

(A) Trout: Daily limit 2; minimum length 14 inches.

(B) Release trout from the confluence with Tieton River to the confluence of the Little Naches River and Bumping River (origin of Naches River).

(b) From the mouth to the Tieton River:

(i) Whitefish: December 1 through the last day in February for whitefish only.

(ii) Whitefish gear rules.

(230) **Naneum Creek and tributaries (Kittitas County)**: Selective gear rules.

(231) **Naneum Pond (Kittitas County)**: Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(232) **Napeequa River (Chelan County)**: From mouth to Twin Lakes Creek (including Twin Lakes Creek and all tributaries): Closed waters.

(233) **Nason Creek (Chelan County)**:

(a) From the mouth to Gaynor Falls and tributaries except White-pine Creek: Closed waters.

(b) From Gaynor Falls (approximately 0.7 miles upstream of White-pine Creek) upstream and tributaries: Selective gear rules.

- (234) **Nile Creek and tributaries (Yakima County)**: Selective gear rules.
- (235) **No Name Lake (Pend Oreille County)**: Open the fourth Saturday in April through October 31.
- (236) **North Creek (tributary to Twisp River) (Okanogan County)**: From the mouth upstream to Twisp River Road Bridge: Closed waters.
- (237) **North Elton Pond (Yakima County)**:
- (a) Open the Friday after Thanksgiving through March 31.
  - (b) It is unlawful to fish from a floating device equipped with an internal combustion motor.
- (238) **North Potholes Reserve Ponds (Grant County)**: Open March 1 through the day before waterfowl season begins.
- (239) **Nunnally Lake (Grant County)**:
- (a) The outlet stream of Nunnally Lake is closed waters.
  - (b) Open March 1 through November 30.
  - (c) Selective gear rules.
  - (d) It is unlawful to fish from a floating device equipped with an internal combustion motor.
  - (e) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.
- (240) **Oak Creek and tributaries (Yakima County)**: Selective gear rules.
- (241) **Okanogan River (Okanogan County)**:
- (a) From the mouth to Highway 97 Bridge immediately upstream of the mouth:
    - (i) Salmon: Open July 1 through October 15:
      - (A) Daily limit 6; up to 2 adult Chinook may be retained.
      - (B) Release sockeye, coho, and wild adult Chinook.
    - (ii) July 1 through October 15: Anti-snagging rule and night closure.
    - (iii) Game fish: Open year-round. Statewide minimum length/daily limit, except:
      - (A) Release trout.
      - (B) Steelhead: Closed to fishing.
  - (b) From Highway 97 Bridge immediately upstream of the mouth to the highway bridge at Malott:
    - (i) Salmon: Open July 1 through September 15:
      - (A) Daily limit 6; up to 2 adult hatchery Chinook may be retained.
      - (B) Release sockeye, coho, and wild adult Chinook.
    - (ii) July 1 through September 15: Anti-snagging rule and night closure.
    - (iii) Game fish: Open year-round. Statewide minimum length/daily limit, except:
      - (A) Release trout.
      - (B) Steelhead: Closed to fishing.
      - (c) From the highway bridge at Malott upstream:
        - (i) From Zosel Dam downstream to the first Highway 97 Bridge downstream of the dam: Closed waters.
        - (ii) Salmon: Open July 1 through September 15:
          - (A) Daily limit 6; up to 2 adult hatchery Chinook may be retained.
          - (B) Release sockeye, coho, and wild adult Chinook.
        - (iii) July 1 through September 15: Anti-snagging rule and night closure.
      - (iv) Game fish: Open the Saturday before Memorial Day through September 15. Statewide minimum length/daily limit, except:

- (A) Release trout.
- (B) Steelhead: Closed to fishing.
- (d) All Okanogan River tributaries, except Salmon Creek, Jasmine Creek, Bonaparte Creek, and the Similkameen River:
  - (i) Selective gear rules.
  - (ii) Game fish: Statewide minimum length/daily limit, except:
    - (A) Release trout.
    - (B) Steelhead: Closed to fishing.
- (242) **Osoyoos Lake (Okanogan County)**: Game fish: Statewide minimum length/daily limit, except:
  - (a) Largemouth bass: Daily limit 10; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.
  - (b) Smallmouth bass: Daily limit 15; no minimum length; only 1 smallmouth bass over 14 inches may be retained.
  - (c) Channel catfish: Daily limit 10; no size restriction.
  - (d) Walleye: Daily limit 16; only 1 walleye over 22 inches may be retained.
- (243) **Palouse River (Whitman County)**: From the mouth to the base of Palouse Falls:
  - (a) Open year-round for game fish except trout and steelhead.
  - (b) Trout: Open the Saturday before Memorial Day through October 31.
  - (c) Steelhead:
    - (i) Open August 1 through April 15.
    - (ii) Daily limit 3 hatchery steelhead; minimum length 20 inches.
  - (d) It is permissible to fish with two poles so long as the angler possesses a valid two-pole endorsement, except for steelhead.
- (244) **Palouse River (Whitman County) mainstem above Palouse Falls and tributaries (Washington waters only), except Rock Creek and Hog Canyon Creek**: Open year-round.
- (245) **Pampa Pond (Whitman County)**:
  - (a) Open March 1 through September 30.
  - (b) It is unlawful to fish from any floating device.
- (246) **Park Lake (Grant County)**: Open the fourth Saturday in April through September 30.
- (247) **Parker Lake (Pend Oreille County)**: Open the fourth Saturday in April through October 31.
- (248) **Pataha Creek (Garfield County)**:
  - (a) Within the city limits of Pomeroy: Open to juvenile anglers, senior angler, and anglers with a disability who possess a designated harvester companion card only.
  - (b) From the city limits of Pomeroy upstream: Selective gear rules.
- (249) **Pearrygin Lake (Okanogan County)**: Open the fourth Saturday in April through October 31.
- (250) **Pend Oreille River (Pend Oreille County)**:
  - (a) Open year-round.
  - (b) Game fish: Statewide lake rules.
  - (c) All sloughs within the boundaries of the Kalispel Reservation, except Calispell Slough: Closed waters.
- (251) **Perch Lake (Grant County)**: Open the fourth Saturday in April through September 30.
- (252) **Peshastin Creek and all tributaries except Ingalls Creek (Chelan County)**: Closed waters.
- (253) **Petit Lake (Pend Oreille County)**:
  - (a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(254) **Phalon Lake (Stevens County)**: Closed waters.

(255) **Phillips Lake (Stevens County)**: Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(256) **Pierre Lake (Stevens County)**: It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(257) **Pillar Lake (Grant County)**: Open the fourth Saturday in April through September 30.

(258) **Ping Pond (Oasis Park Pond) (Grant County)**: Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(259) **Pit Lake (Douglas County)**: Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(260) **Poacher Lake (Grant County)**: Open the fourth Saturday before April through September 30.

(261) **Potholes Reservoir (Grant County)**: Game fish: Statewide minimum length/daily limit, except:

(a) Crappie: Minimum length 9 inches.

(b) Crappie and bluegill: Combined limit of 25 fish.

(c) Yellow perch: Daily limit 25 fish.

(262) **Potter's Pond (Stevens County)**: Open the fourth Saturday in April through October 31.

(263) **Powerline Lake (Franklin County)**: Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(264) **Quail Lake (Adams County)**:

(a) Fly fishing only.

(b) It is unlawful to fish from any floating device equipped with a motor.

(c) Release all fish.

(265) **Quarry Pond (Walla Walla County)**: It is unlawful to fish from any floating device.

(266) **Quincy Lake (Grant County)**: Open March 1 through September 30.

(267) **Rainbow Lake (Columbia County)**:

(a) Open March 1 through November 30.

(b) It is unlawful to fish from any floating device.

(268) **Rat Lake (Okanogan County)**:

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(269) **Rattlesnake Creek and tributaries (Yakima County)**:

(a) Selective gear rules.

(b) Release all fish.

(270) **Red Rock Creek (Grant County)**: Open the Saturday before Memorial Day through September 30.

(271) **Reflection Pond (Okanogan County)**:

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(272) **Renner Lake (Ferry County)**:

(a) Open the fourth Saturday in April through October 31.

(b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(273) **Rigley Lake (Stevens County):**

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except:

Trout: Daily limit 2, minimum length 14 inches.

(274) **Rimrock Lake (Reservoir) (Yakima County):** Chumming is permissible.

(275) **Ringold Springs Hatchery Creek (Franklin County):** Closed waters.

(276) **Roaring Creek (Entiat River tributary) (Chelan County):** Closed waters.

(277) **Rock Creek (Adams/Whitman counties):**

(a) From the mouth to the bridge on Jordan Knott Road at Revere:

(i) Selective gear rules.

(ii) Release all fish.

(b) From the bridge on Jordan Knott Road upstream: Open year-round.

(278) **Rocky Ford Creek and Ponds (Grant County):**

(a) Open to fly fishing and fishing from the bank only (no wading).

(b) Release all fish.

(279) **Rocky Lake (Stevens County):** Open the fourth Saturday in April through October 31.

(280) **Roosevelt Lake (Grant/Ferry/Lincoln/Stevens counties):** Columbia River from Grand Coulee Dam to U.S. Canadian border including Hawk Creek downstream of the falls at Hawk Creek Campground, Spokane River from 400 feet downstream of Little Falls Dam, Kettle River downstream of Barstow Bridge, and Colville River downstream of S.R. 25 Bridge.

(a) The following areas are closed waters:

(i) From the Little Dalles power line crossing upstream approximately one mile to the marked rock point from March 1 through the Friday before Memorial Day.

(ii) Northport power line crossing upstream to the most upstream point of Steamboat Rock, from March 1 through the Friday before Memorial Day.

(iii) The Kettle River upstream to Barstow Bridge from March 1 through the Friday before Memorial Day.

(b) From Grand Coulee Dam to the Little Dalles power line crossing:

(i) Game fish: Statewide minimum length/daily limit, except:

(A) Kokanee: Daily limit 6; no more than 2 with intact adipose fins.

(B) Trout (except kokanee): Daily limit 5; it is unlawful to retain trout with an intact adipose fin.

(C) Walleye: Daily limit 16 fish; no size restrictions.

(ii) Salmon:

(A) Salmon count toward trout daily limit.

(B) No catch record card required.

(c) From the Little Dalles power line crossing to the Canadian border:

(i) Game fish: Statewide minimum length/daily limit, except:



- (A) Kokanee: Daily limit 6; no more than 2 with intact adipose fins.
- (B) Trout (except kokanee): Daily limit 2; minimum size 18 inches.
- (C) Walleye: Daily limit 16; no size restrictions.
- (ii) Salmon:
- (A) Salmon count toward trout daily limit.
- (B) No catch record card required.
- (281) **Round Lake (Okanogan County)**: Open the fourth Saturday in April through October 31.
- (282) **Royal Lake (Adams County)**: Closed waters.
- (283) **Royal Slough (including Marsh Unit IV impoundments) (Adams County)**: Closed waters.
- (284) **Rufus Woods Lake (Douglas/Okanogan counties)**:
- (a) From Grand Coulee Dam downstream to State Route 155 Bridge: Closed waters.
- (b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2.
- (c) Sturgeon: Closed to fishing.
- (d) A nonmember fishing permit issued by the Colville Tribes shall satisfy the license requirement of RCW 77.32.010 on the waters of Lake Rufus Woods and on the north shore of Lake Rufus Woods.
- (e) A Colville tribal member identification card satisfies the license requirement of RCW 77.32.010 on all waters of Lake Rufus Woods.
- (285) **Sacheen Lake (Pend Oreille County)**: Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (286) **Saddle Mountain Lake (Grant County)**: Closed waters.
- (287) **Sago Lake (Grant County)**: Open the fourth Saturday in April through September 30.
- (288) **Salmon Creek (Okanogan County)**:
- (a) From the mouth to Conconully Reservoir:
- (i) Selective gear rules.
- (ii) Game fish: Statewide minimum length/daily limit, except:
- (A) Release trout other than eastern brook trout.
- (B) Steelhead: Closed to fishing.
- (b) From Conconully Reservoir upstream including tributaries: Selective gear rules.
- (289) **San Poil River (Ferry County)**:
- (a) From the western shoreline at the mouth of the San Poil Arm (as marked by a regulatory buoy) directly eastward across the San Poil Arm to the eastern shoreline of the San Poil Arm (as marked by a regulatory buoy) upstream to the north shore of the outlet of French Johns Lake (Manila Creek) northeast across the San Poil Arm to the north shore of the outlet of Dick Creek:
- (i) Game fish: Open year-round; statewide minimum length/daily limit, except:
- (A) Open June 1 through January 31 for kokanee, smallmouth bass, trout, and walleye:
- (I) Kokanee: Daily limit 2.
- (II) Trout: Daily limit 5; it is unlawful to retain trout with an intact adipose fin.
- (III) Walleye: Daily limit 16; no size restrictions.
- (IV) Smallmouth bass: Daily limit 10; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(B) Largemouth bass: Daily limit 5; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(ii) Salmon: Open year-round:

(A) Salmon count toward trout daily limit.

(B) No catch record card required.

(iii) Carp: Open year-round.

(b) From the north shore of the outlet of French Johns Lake (Manila Creek) northeast across the San Poil Arm to the north shore of the outlet of Dick Creek to approximately 5 miles upstream from the outlet of French Johns Lake, as marked by regulatory buoys:

(i) Game fish: Open year-round; statewide minimum length/daily limit, except:

(A) Kokanee: Unlawful to fish for or retain.

(B) Trout: Unlawful to fish for or retain.

(C) Open June 1 through January 31 for walleye and smallmouth bass:

(I) Walleye: Daily limit 16; no size restrictions.

(II) Smallmouth bass: Daily limit 10; no minimum length; only 1 smallmouth bass over 14 inches may be retained.

(D) Largemouth bass: Daily limit 5; no minimum length; only largemouth bass under 12 inches may be retained, except 1 over 17 inches may be retained.

(ii) Salmon: Open year-round; landlocked salmon rules apply.

(iii) Carp: Open year-round; unlawful to fish for carp with bow and arrow.

(c) The waters from approximately 5 miles upstream from the outlet of French Johns Lake, as marked by regulatory buoys, to all waters north of the regulatory buoy line at or above 1,310 feet mean sea level elevation upstream to the northern reservation boundary are managed under the regulatory authority of the Colville Confederated Tribes.

**(290) Sand Hollow Creek (Grant County) including tributaries:**

From the mouth (State Route 243) upstream: Open the Saturday before Memorial Day through September 30.

**(291) Sarg Hubbard Park Pond (Reflection Pond) (Yakima County):**

Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

**(292) Schallow Pond (Okanogan County):** Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

**(293) Sedge Lake (Grant County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

**(294) Shellneck Creek (Yakima County):** Closed waters.

**(295) Sherman Creek (Ferry County) and tributaries:** From the hatchery boat dock to 400 feet upstream of hatchery water diversion dam: Closed waters.

**(296) Shiner Lake (Adams County):** Open the fourth Saturday in April through September 30.

**(297) Shoveler Lake (Grant County):** Open the fourth Saturday in April through September 30.

**(298) Silver Lake (Spokane County):** Game fish: Statewide minimum length/daily limit, except: Crappie: Daily limit 10; minimum length 9 inches.

- (299) **Silver Nail Lake (Okanogan County):** Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.
- (300) **Similkameen River (Okanogan County):**
- (a) From Enloe Dam downstream 400 feet: Closed waters.
  - (b) From the mouth to Enloe Dam:
    - (i) Open July 1 through September 15.
    - (ii) Salmon: Daily limit 6; up to 2 adult hatchery Chinook may be retained. Release sockeye, coho, and wild adult Chinook:
      - (A) Anti-snagging rule.
      - (B) Night closure.
      - (v) Game fish: Statewide minimum length/daily limit, except:
        - (A) Release trout.
        - (B) Steelhead: Closed to fishing.
      - (vi) Whitefish:
        - (A) Open December 1 through the last day in February for whitefish only.
        - (B) Whitefish gear rules.
      - (c) From Enloe Dam to the Canadian border, including tributaries, except Sinlahekin Creek:
        - (i) Open the Saturday before Memorial Day through October 31.
        - (ii) Whitefish:
          - (A) Open December 1 through the last day in February for whitefish only.
          - (B) Whitefish gear rules.
- (301) **Sinlahekin Creek (Okanogan County):** From Palmer Lake to Cecile Creek Bridge:
  - (a) Open the Saturday before Memorial Day through August 31.
  - (b) Selective gear rules.
  - (c) Whitefish:
    - (i) Open December 1 through the last day in February for whitefish only.
    - (ii) Whitefish gear rules.
- (302) **Skookum Lake, North (Pend Oreille County):** Open the fourth Saturday in April through October 31.
- (303) **Skookum Lake, South (Pend Oreille County):**
  - (a) Open the fourth Saturday in April through October 31.
  - (b) It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.
- (304) **Snake River:**
  - (a) Tributaries except Palouse River, Tucannon River, Asotin Creek, and Grande Ronde River: Closed waters.
  - (b) Columbia River rules apply downstream of the Burbank-to-Pasco railroad bridge at Snake River mile 1.5.
  - (c) Within 400 feet of the base of any dam: Closed waters.
  - (d) Within a 400 foot radius around the fish ladder entrance at Lyons Ferry Hatchery: Closed waters.
  - (e) Within a 200 foot radius upstream of the fish ladder exit above Lower Granite Dam: Closed waters.
  - (f) Within an area 1,200 feet downstream from the base of the west lock gate at Little Goose Dam on the south bank of the Snake River and 100 feet out into the river from the south river bank: Closed waters.
  - (g) Game fish: Open year-round; statewide minimum length/daily limit, except:
    - (i) Trout: Open the Saturday before Memorial Day through October 31.

(ii) Steelhead:

(A) Open July 1 through August 31; catch and release only. Barbless hooks required.

(B) Open September 1 through March 31; Daily limit 3 hatchery steelhead; barbless hooks required.

(C) April 1 through June 30; closed to fishing.

(305) **Snipe Lake (Grant County)**: Open the fourth Saturday in April through September 30.

(306) **Snipes Creek (Benton County)**: Selective gear rules.

(307) **South Columbia Basin Irrigation PE16.4 spillway at the Ringold Springs access downstream 400' towards the Columbia River. (46°30'20.0"N 119°15'28.7"W) (Franklin County)**: Closed waters.

(308) **Spectacle Lake (Okanogan County)**: Open April 1 through September 30.

(309) **Spokane River (Spokane County)**: From Nine Mile Dam upstream to the Idaho/Washington state line:

(a) Selective gear rules.

(b) Open the Saturday before Memorial Day through March 15.

(c) Game fish: Release all fish, except: Hatchery rainbow trout: Daily limit 2.

(310) **Sprague Lake (Adams/Lincoln counties)**:

(a) The following waters are closed waters:

(i) Cow Creek.

(ii) The marsh at the southwest end of the lake from the lakeside edge of the reeds, including Cow Creek, to Danekas Road.

(iii) The small bay at the southeast end of the lake.

(b) All other waters southwest of the southwest tip of Harper Island: Closed from October 1 through April 30.

(c) Game fish: Statewide minimum length/daily limit except:

(i) Crappie: Minimum length 9 inches.

(ii) Crappie and bluegill: Combined limit of 25 fish.

(311) **Spring Creek (Benton County)**: Selective gear rules.

(312) **Spring Hill Reservoir (Black Lake, Lower Wheeler Reservoir) (Chelan County)**:

(a) Open the fourth Saturday in April through October 31.

(b) Selective gear rules.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(d) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1, minimum length 18 inches.

(313) **Spring Lake (Columbia County)**: It is unlawful to fish from any floating device.

(314) **Spring Lakes (Upper and Lower) (Grant County)**: Open March 1 through September 30.

(315) **Springdale Pond (Lucky Duck Pond) (Stevens County)**: Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(316) **Spruce Creek (tributary to South Fork Tieton River) (Yakima County)**: Closed waters.

(317) **Starvation Lake (Stevens County)**: Open the fourth Saturday in April through October 31.

(318) **Starzman Lakes (Okanogan County)**: Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(319) **Stehekin River (Chelan County)**: From the mouth (Powerline crossing) upstream and tributaries:

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Release wild cutthroat.

(320) **Stratford/Brook Lake (Grant County)**: Open March 1 through September 30.

(321) **Sugarloaf Lake (Okanogan County)**: Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(322) **Sullivan Creek and tributaries (Pend Oreille County)**:

(a) Game fish: Statewide minimum length/daily limit, except: Release cutthroat trout.

(b) Selective gear rules.

(323) **Sullivan Lake (Pend Oreille County)**: Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 2; minimum length 14 inches.

(324) **Summit Lake (Okanogan County)**: Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.

(325) **Summit Lake (Stevens County)**: Open the fourth Saturday in April through October 31.

(326) **Swan Lake (Ferry County)**: It is unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

(327) **Swauk Creek and tributaries (Kittitas County)**: Selective gear rules.

(328) **Taneum Creek and tributaries (Kittitas County)**: Selective gear rules.

(329) **Teal Lakes (North and South) (Grant/Adams counties)**: Open the fourth Saturday in April through September 30.

(330) **Teanaway River (Kittitas County), and tributaries except North Fork**: Selective gear rules.

(331) **Teanaway River, North Fork (Kittitas County)**:

(a) From the mouth to Beverly Creek and tributaries; including Beverly Creek:

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Release trout.

(b) From Beverly Creek to the impassable waterfall at the end of USFS Road 9737: Closed waters.

(332) **Tern Lake (Grant County)**:

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(333) **Thirtymile Creek (tributary to Chewuch River) (Okanogan County)**: From mouth upstream to falls (approximately 700 feet): Closed waters.

(334) **Tieton River (Yakima County)**:

(a) It is permissible to fish up to the base of Tieton (Rimrock) Dam.

(b) Selective gear rules apply.

(335) **Tieton River, North Fork (Yakima County)**:

(a) From mouth to USFS Road 740 Bridge:

(i) Open the Saturday before Memorial Day through August 15.

(ii) Selective gear rules.

(b) The Clear Lake spillway channel: Closed waters.

(c) From the USFS Road 740 Bridge to Clear Lake Dam: Closed waters.

(d) The mainstem and tributaries including that portion of the river that flows through the dry lakebed of Rimrock Reservoir, upstream of Clear Lake:

- (i) Open the Saturday before Memorial Day through August 15.
- (ii) Selective gear rules.

(336) **Tieton River, South Fork (Yakima County)**: From the bridge on USFS Road 1200 to bridge on USFS road 1070: Closed waters.

(337) **Tillicum Creek (tributary to Mad River) (Chelan River)**:

(a) From mouth to the intersection of USFS 5800 and USFS 5808: Closed waters.

(b) From the intersection of USFS 5800 and USFS 5808 upstream (upstream 2.25 miles) including tributaries: Selective gear rules.

(338) **Touchet River and tributaries (Columbia/Walla Walla counties)**:

(a) From the mouth to the confluence of the North and South Forks:

- (i) All tributaries: Closed waters.
- (ii) Game fish: Open the Saturday before Memorial Day through April 15; statewide minimum length/daily limit, except:

(A) November 1 through April 15: Release all fish except steelhead.

(B) August 1 through April 15: Hatchery steelhead daily limit 3, barbless hooks required.

(b) From the confluence of the North and South Forks upstream including both forks, Robinson Fork, and Wolf Fork:

- (i) All other tributaries: Closed waters.
- (ii) Open the Saturday before Memorial Day through August 31.
- (iii) Selective gear rules.

(339) **Trout Lake (Ferry County)**: Open the fourth Saturday in April through October 31.

(340) **Tucannon River (Columbia County)**:

(a) All tributaries are closed waters, except Pataha Creek.

(b) Mouth upstream to Tucannon Hatchery Road Bridge:

(c) Game fish: Open the Saturday before Memorial Day through April 15; statewide minimum length/daily limit, except:

(i) November 1 through April 15: Release all fish except steelhead.

(ii) August 1 through April 15: Hatchery steelhead daily limit 3, barbless hooks required.

(d) Tucannon Hatchery Bridge to 500 feet above intake for Rainbow Lake: Closed waters.

(e) 500 feet above intake for Rainbow Lake to Cow Camp Bridge:

- (i) Open the Saturday before Memorial Day through August 31.
- (ii) Selective gear rules.

(f) Cow Camp Bridge upstream: Closed waters.

(341) **Tucquala Lake (Kittitas County)**:

(a) Open the Saturday before Memorial Day through October 31.

(b) Statewide stream rules apply.

(342) **Twentymile Creek (tributary to Chewuch River) (Okanogan County)**: From the mouth upstream to falls (approximately 0.75 miles): Closed waters.

(343) **Twin Lakes, tributaries, and Twin Lakes Creek (outlet stream) to the confluence with the Napeequa River (Chelan County)**: Closed waters.

(344) **Twisp River (Okanogan County)**:

(a) Mouth to War Creek:

- (i) Open the Saturday before Memorial Day through August 15.

- (ii) Selective gear rules.
- (iii) Release all fish.
- (b) Twisp River tributaries from War Creek upstream except North Creek and North Fork Twisp River:
  - (i) Selective gear rules.
  - (ii) It is unlawful to fish from a floating device equipped with an internal combustion motor.
  - (iii) Release all fish.
  - (c) From War Creek upstream: Closed waters.
- (345) **Twisp River, North Fork (Okanogan County)**: From mouth to falls including tributaries: Closed waters.
- (346) **Umtanum Creek (Kittitas County)**: Selective gear rules.
- (347) **Union Creek (Yakima County)**: From the mouth to the falls: Closed waters.
- (348) **Upper Wheeler Reservoir (Chelan County)**:
  - (a) Open the fourth Saturday in April through October 31.
  - (b) Fly fishing only.
  - (c) It is unlawful to fish from a floating device equipped with a motor.
  - (d) Release all fish.
- (349) **Vic Meyers (Rainbow) Lake (Grant County)**:
  - (a) Open the fourth Saturday in April through September 30.
  - (b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (350) **Walla Walla River (Walla Walla County)**: From mouth to Washington/Oregon stateline:
  - (a) All tributaries except Touchet River and Mill Creek: Closed waters.
  - (b) Game fish: Open year-round; statewide minimum length/daily limit, except for trout and steelhead:
    - (i) Trout: Open the Saturday before Memorial day through October 31; statewide minimum length/daily limit.
    - (ii) Steelhead:
      - (A) Open the Saturday before Memorial Day through July 31; daily limit 2 hatchery steelhead.
      - (B) Open August 1 through April 15; daily limit 3 hatchery steelhead, barbless hooks required.
- (351) **Wannacut Lake (Okanogan County)**: Open the fourth Saturday in April through October 31.
- (352) **Wapato Lake (Chelan County)**: Open the fourth Saturday in April through October 31.
- (353) **Ward Lake (Ferry County)**:
  - (a) Open the fourth Saturday in April through October 31.
  - (b) Game fish: Statewide minimum length/daily limit, except: Eastern brook trout count as part of trout daily limit.
- (354) **Warden Lake (Grant County)**: Open the fourth Saturday in April through September 30.
- (355) **Warden Lake, South (Grant County)**: Open the fourth Saturday in April through September 30.
- (356) **Washburn Island Pond (Okanogan County)**:
  - (a) Open April 1 through September 30.
  - (b) An internal combustion motor may be attached to a floating device, but cannot be used.
- (357) **Washburn Lake (Okanogan County)**:
  - (a) Open the fourth Saturday in April through October 31.
  - (b) Game fish: Statewide minimum length/daily limit, except: Trout: Daily limit 1; minimum length 18 inches.

(c) Selective gear rules.

(d) It is unlawful to fish from a floating device equipped with an internal combustion motor.

(358) **Watson Lake (Columbia County):**

(a) Open March 1 through November 30.

(b) It is unlawful to fish from any floating device.

(359) **Wenaha River tributaries:**

(a) Open the Saturday before Memorial Day through August 31.

(b) Selective gear rules.

(360) **Wenas Creek (Yakima County):** From the mouth to Wenas Lake, including tributaries: Selective gear rules.

(361) **Wenatchee Lake (Chelan County):**

(a) Selective gear rules.

(b) Game fish: Statewide minimum length/daily limit, except:

(i) Release trout.

(ii) Steelhead: Closed to fishing.

(iii) Kokanee: Closed to fishing.

(362) **Wenatchee River (Chelan County):**

(a) From the mouth to the Icicle Road Bridge:

(i) Game fish: Closed to fishing.

(ii) Salmon: Open August 1 through September 30:

(A) Daily limit 6; up to 2 adult hatchery Chinook may be retained.

(B) Release sockeye, coho, and wild adult Chinook.

(iii) Night closure.

(iv) Selective gear rules, except bait allowed.

(b) From Icicle Road Bridge upstream to Lake Wenatchee: Closed waters.

(363) **Whitepine Creek (Chelan County):** From the mouth to Whitepine Creek Falls (1 mile upstream of mouth) and tributaries: Closed waters.

(364) **White River (Chelan County):** From the mouth to White River Falls and tributaries, except Napeequa River: Closed waters.

(365) **Widgeon Lake (Grant County):** Open the fourth Saturday in April through September 30.

(366) **Williams Lake (Spokane County):** Open the fourth Saturday in April through September 30.

(367) **Williams Lake (Stevens County):** Open the Friday after Thanksgiving through March 31.

(368) **Wilson Creek (Kittitas County):** From BNSF railroad bridge upstream: Selective gear rules.

(369) **Winchester Wasteway (Grant County) (that portion within the Winchester Game Reserve):** Open March 1 through September 30.

(370) **Wolf Creek (Methow River tributary) (Okanogan County):** Closed waters.

(371) **Yakima River (Yakima County):**

(a) Downstream of Highway 240 Bridge, Columbia River rules apply.

(b) From the Highway 240 Bridge to the downstream side of the westbound I-82 Bridge: Open March 1 through October 31.

(i) From 200 feet downstream of the USBR Chandler Powerhouse to 200 feet upstream of the Chandler Powerhouse: September 1 through October 31: Closed waters.

(ii) Chumming is permissible.

(iii) Game fish: Statewide minimum size/daily limit, except: Release trout.

(iv) Barbless hooks required for steelhead.



(c) From the Grant Avenue bridge in Prosser downstream approximately 1.25 miles to the downstream side of the westbound I-82 Bridge: Open March 1 through October 31.

(i) Chumming is permissible.

(ii) Fishing from a floating device is prohibited September 1 through October 31.

(iii) Game fish: Statewide minimum size/daily limit, except: Release trout.

(iv) Barbless hooks required for steelhead.

(d) From Grant Avenue Bridge to Prosser Dam: Closed waters.

(e) From Prosser Dam to Highway 223 Bridge:

(i) Open March 1 through October 31.

(ii) Game fish: Statewide minimum size/daily limit, except: Release trout.

(iii) Barbless hooks required for steelhead.

(f) From Highway 223 Bridge to 3,500 feet below Roza Dam:

(i) From Yakima Avenue-Terrace Heights Bridge upstream 400 feet: Closed waters.

(ii) Selective gear rules.

(iii) Game fish: Statewide minimum length/daily limit, except: Trout: Minimum length 14 inches.

(iv) Whitefish:

(A) Open December 1 through the last day in February for whitefish only.

(B) Whitefish gear rules.

(g) From 3,500 feet below Roza Dam to Roza Dam: Closed waters.

(h) From Roza Dam to 400 feet below Easton Dam; including the portion of Wilson Creek from the mouth upstream to the BNSF railroad bridge: Open year-round.

(i) It is permissible to fish from floating devices equipped with motors only from the U.S. Bureau of Reclamation restricted area signs at Roza Dam upstream to the boat launch ramp on the Roza Access Area (approximately 1.3 river miles).

(ii) Selective gear rules.

(iii) Game fish: Statewide minimum length/daily limit, except: Release trout.

(iv) Whitefish: December 1 through the last day in February: Whitefish gear rules.

(i) From Easton Dam to the base of Keechelus Dam including Easton Lake:

(i) Selective gear rules.

(ii) Game fish: Statewide minimum length/daily limit, except: Release rainbow and cutthroat trout.

(372) **Yakima Sportsmen's Park Ponds (Yakima County)**: Open to juvenile anglers, senior anglers, and anglers with a disability who possess a designated harvester companion card only.

(373) **Yocum Lake (Pend Oreille County)**:

(a) Open the fourth Saturday in April through October 31.

(b) It is unlawful to use lead weights or lead jigs that measure 1.5 inches or less along the longest axis.

(c) It is unlawful to fish from a floating device equipped with an internal combustion motor.

[Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 22-05-066 (Order 22-06), § 220-312-050, filed 2/11/22, effective 7/1/22. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047. WSR 21-14-067 (Order 21-95), §

220-312-050, filed 7/2/21, effective 8/2/21; WSR 20-14-052 (Order 20-97), § 220-312-050, filed 6/25/20, effective 7/26/20. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 20-03-130 (Order 20-09), § 220-312-050, filed 1/17/20, effective 2/17/20. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 19-15-050 (Order 19-139), § 220-312-050, filed 7/12/19, effective 8/12/19. Statutory Authority: RCW 77.04.012, 77.04.020, and 77.04.130. WSR 19-03-003 (Order 19-01), § 220-312-050, filed 1/2/19, effective 2/2/19. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 18-15-065 (Order 18-163), § 220-312-050, filed 7/16/18, effective 8/16/18. Statutory Authority: RCW 77.04.012, 77.04.020, and 77.12.047. WSR 18-06-045 (Order 18-30), § 220-312-050, filed 3/1/18, effective 4/1/18. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-17-029, § 220-312-050, filed 8/8/17, effective 9/8/17; WSR 17-05-112 (Order 17-04), recodified as § 220-312-050, filed 2/15/17, effective 3/18/17; WSR 16-23-002 (Order 16-280), § 220-310-195, filed 11/2/16, effective 12/3/16. Statutory Authority: RCW 77.04.012 and 77.12.047. WSR 16-06-073 (Order 16-30), § 220-310-195, filed 2/26/16, effective 7/1/16. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 15-13-081 (Order 15-177), § 220-310-195, filed 6/12/15, effective 7/13/15. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047. WSR 15-06-065 and 15-06-006 (Order 15-033), § 220-310-195, filed 3/4/15 and 2/20/15, effective 7/1/15. Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047. WSR 14-16-027 (Order 14-185), § 220-310-195, filed 7/25/14, effective 8/25/14. Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047. WSR 14-04-120 (Order 14-26), § 220-310-195, filed 2/4/14, effective 3/7/14.]

**WSR 22-15-116**  
**PROPOSED RULES**  
**TRANSPORTATION COMMISSION**  
[Filed July 20, 2022, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-11-071.

Title of Rule and Other Identifying Information: State Route (SR) 16 Tacoma Narrows Bridge (TNB) toll rates, fees, and policies.

Hearing Location(s): On August 23, 2022, at 10-11 a.m., virtual. To attend, please register at [https://us02web.zoom.us/webinar/register/WN\\_4Yec9sn2Q26Y1DUsqmlyTAl](https://us02web.zoom.us/webinar/register/WN_4Yec9sn2Q26Y1DUsqmlyTAl). The Washington state transportation commission (WSTC) will hold this hearing virtually in an effort to minimize the spread of COVID-19 and protect the safety of the citizens of Washington state. Doing so will enable citizens to attend from any computer using internet access. For more information, please visit 2022 Tacoma Narrows Bridge Rate Reduction - Washington State Transportation Commission.

Date of Intended Adoption: August 23, 2022.

Submit Written Comments to: WSTC, P.O. Box 47308, Olympia, WA 98504-7308, email [transc@wsdot.wa.gov](mailto:transc@wsdot.wa.gov), fax 360-705-6802, by August 15, 2022.

Assistance for Persons with Disabilities: Contact Doreen Maasjo, phone 360-705-7070, fax 360-705-6802, TTY 711, connect to 360-705-7070, email [transc@wstc.wa.gov](mailto:transc@wstc.wa.gov), by August 15, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2022, the state legislature provided \$130,000,000, as referenced under RCW 47.56.165 (see SSB 5488 for amendments). It is the intent of the legislature that WSTC will adjust tolls on the State Route (SR) 16 TNB accordingly (RCW 47.46.190(4)) in consideration of annual contributions from nontoll sources and the costs required to be covered under RCW 47.46.100. The purpose of this rule is therefore to decrease toll rates for the TNB in an amount which maintains financial sufficiency.

The anticipated effects of this proposal are that toll rates for the TNB will decrease \$0.75 for two-axle vehicles, and between \$1.15 for three-axle vehicles to \$2.25 for six plus axle vehicles, effective October 1, 2022.

Reasons Supporting Proposal: Pursuant to RCW 47.56.165 (SSB 5488 for amendments), RCW 47.46.190 (see SSB 5488 for amendments), and 47.46.100, these rules establish adjusted toll rates for the TNB, reducing the tolls based upon funding provided by the legislature. Additionally, pursuant to RCW 47.46.100(3), WSTC must set toll rates to be sufficient to meet maintenance and operations costs, insurance costs, make repayments to the motor vehicle fund, and make principal and interest payments on the debt.

Statutory Authority for Adoption: RCW 47.56.165, 47.46.190, 47.46.100, 47.56.030.

Statute Being Implemented: RCW 47.46.100, 47.46.190, 47.56.165.

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

Name of Proponent: WSTC, governmental.

Name of Agency Personnel Responsible for Drafting: Carl See, 2404 Chandler Court S.W., Olympia, WA 98504, 360-705-7070; Implementation and Enforcement: Ed Barry, 2901 Third Avenue, Suite 500, Seattle, WA 98121, 206-464-1217.

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. Pursuant to RCW 34.05.328 (5) (b) (vi), a cost-benefit analysis is not required, as this is setting or adjusting fees or rates pursuant to legislative standards established in RCW 47.56.850.

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.

July 20, 2022  
 Reema Griffith  
 Executive Director

**OTS-3909.2**

AMENDATORY SECTION (Amending WSR 21-18-070, filed 8/26/21, effective 9/26/21)

**WAC 468-270-070 What are the toll rates on the Tacoma Narrows Bridge?** The toll rates for the Tacoma Narrows Bridge are shown in Table 1.

**Table 1, Effective October 1, ((2021)) 2022  
 Tacoma Narrows Bridge Toll Rates**

Vehicle Axles	Good to Go!™ Pass <sup>1</sup>	Cash <sup>1</sup>	Pay By Mail <sup>1</sup>	Good To Go!™ Pay by Plate <sup>2</sup>
2	(((\$5.25)) \$4.50	(((\$6.25)) \$5.50	(((\$7.25)) \$6.50	(((\$5.50)) \$4.75
3	(((\$7.90)) \$6.75	(((\$9.40)) \$8.25	(((\$10.90)) \$9.75	(((\$8.15)) \$7.00
4	(((\$10.50)) \$9.00	(((\$12.50)) \$11.00	(((\$14.50)) \$13.00	(((\$10.75)) \$9.25
5	(((\$13.15)) \$11.25	(((\$15.65)) \$13.75	(((\$18.15)) \$16.25	(((\$13.40)) \$11.50
6	(((\$15.75)) \$13.50	(((\$18.75)) \$16.50	(((\$21.75)) \$19.50	(((\$16.00)) \$13.75

Notes: <sup>1</sup>The rate has been rounded to the nearest five cents, as needed.  
<sup>2</sup>For this type of payment method, the customer is charged the Good to Go!™ Pass toll rate plus a \$0.25 fee as provided in WAC 468-270-300.

[Statutory Authority: RCW 47.46.100 and 47.56.030. WSR 21-18-070, § 468-270-070, filed 8/26/21, effective 9/26/21. Statutory Authority: RCW 47.46.100, 47.56.030, 47.46.105, 47.56.795, and 47.56.850. WSR 18-17-163, 19-01-066 and 19-10-006, § 468-270-070, filed 8/21/18, 12/14/18 and 4/18/19, effective 8/1/19. Statutory Authority: Chapter 47.46 RCW and RCW 47.56.240. WSR 16-11-092, § 468-270-070, filed 5/18/16, effective 7/1/16. Statutory Authority: Chapter 47.46 RCW and RCW 47.56.165. WSR 15-12-013, § 468-270-070, filed 5/21/15, effective 7/1/15; WSR 13-12-006, § 468-270-070, filed 5/23/13, effective 7/1/13; WSR 12-12-036, § 468-270-070, filed 5/30/12, effective 7/1/12. Statutory Authority: RCW 47.46.100 (1) and (2), 47.46.105(1), 47.56.030 (1) (b), 47.56.795(6), and 47.56.165(4). WSR 11-04-070, § 468-270-070, filed 1/28/11, effective 12/3/11. Statutory Authority: RCW 47.56.240. WSR 09-13-038, § 468-270-070, filed 6/10/09, effective 7/11/09. Statu-

tory Authority: RCW 47.56.030, 47.46.100. WSR 08-12-054, § 468-270-070, filed 6/2/08, effective 7/3/08. Statutory Authority: RCW 47.56.403. WSR 08-06-032, § 468-270-070, filed 2/26/08, effective 4/7/08. Statutory Authority: RCW 47.56.030, 47.46.100. WSR 07-13-010, § 468-270-070, filed 6/8/07, effective 7/9/07.]

## WSR 22-15-120

## PROPOSED RULES

## THE EVERGREEN STATE COLLEGE

[Filed July 20, 2022, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-01-078.

Title of Rule and Other Identifying Information: Chapter 174-276 WAC, Access to public records.

Hearing Location(s): On August 31, 2022, at 10:00 a.m., via Zoom <https://evergreen.zoom.us/j/82902816387>. Hearing will be conducted virtually via Zoom due to COVID-19 protocols. Any person interested in providing comments must either attend the virtual session, or provide written comment to Kate MacKinnon at [mackinnk@evergreen.edu](mailto:mackinnk@evergreen.edu). Comments must be received by September 2nd.

Date of Intended Adoption: September 6, 2022.

Submit Written Comments to: Kate MacKinnon, 2700 Evergreen Parkway N.W., L3200, Olympia, WA 98505, email [publicrecords@evergreen.edu](mailto:publicrecords@evergreen.edu), phone 360-867-6914, by September 2, 2022.

Assistance for Persons with Disabilities: Contact access services, The Evergreen State College, phone 360-867-6384, email [accessservices@evergreen.edu](mailto:accessservices@evergreen.edu), by August 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) To bring chapter 174-276 WAC up-to-date and into compliance with current public records law; (2) to update, clarify, and streamline procedures governing access to public records of the college; and (3) to improve service to requesters via updated rules and procedures that make use of the current tools available to the college's public records staff.

Reasons Supporting Proposal: By the date of the hearing, the college's current chapter 174-276 WAC will be over 25 years old. It does not reflect current standard practices and the proposed changes would help increase our efficiency, implement process improvements, and provide clarity to requestors with regard to the request process.

Statutory Authority for Adoption: RCW 28B.40.120; chapters 34.05, 42.56 RCW.

Statute Being Implemented: Chapter 42.56 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: The Evergreen State College, business services, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kate MacKinnon, The Evergreen State College, Olympia Campus, 360-867-6914.

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. Evergreen is not an organization listed under subsection (5)(a) of RCW 34.05.328. The proposed rules are not "significant legislative rules" as defined under RCW 34.05.238(5) and the institution has not voluntarily made this section applicable.

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 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.

July 20, 2022  
Daniel B. Ralph  
Rules Coordinator

## OTS-3782.1

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-005 Purpose.** The purpose of this chapter is to provide ~~((rules))~~ for public access to existing, identifiable, nonexempt public records of The Evergreen State College ~~((implementation of the provisions of chapter 42.17 RCW relating to public records))~~ in accordance with the Public Records Act, chapter 42.56 RCW.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-005, filed 6/13/97, effective 7/14/97.]

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-010 Definitions ~~((of public record))~~.** ~~((1) A public record includes 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 Evergreen State College, regardless of the physical form or characteristics.~~

~~((2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, symbols, or combination thereof; and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.))~~ (1) Public record. The term "public record" and other terms defined in the Public Records Act shall have the same meaning in this chapter that they have under the Public Records Act.

(2) Public Records Act. References in this chapter to the "Public Records Act" are to chapter 42.56 RCW.

(3) Requestor. A "requestor" is any person or entity requesting public records of The Evergreen State College pursuant to the Public Records Act.

(4) College. The term "college" means The Evergreen State College.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-010, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-010, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 90-04-011, filed 1/26/90, effective 2/26/90)

**WAC 174-276-030** (~~(Informal procedures regarding the general course and methods of decision.)~~) **Description of the college.** ((~~In-~~formal procedures regarding the methods and general course of operations at the college are, for the purposes of these rules, either:

(1) ~~Decisions made by persons authorized by board resolution, the president, or any designee to make a decision within the scope of responsibility assigned to such person; or~~

(2) ~~Methods of human persuasion utilized by any member of the college's constituencies or of the public to attempt to influence one in power to make decisions within that person's scope of responsibility.~~) (1) **Mission - Governance.** The college is a public institution of higher education, established under chapter 28B.40 RCW as a state college. The college is governed by a board of trustees appointed by the governor. The board appoints a president who serves as the chief executive officer responsible for the administration of the college.

(2) **College campus.** The campus of the college is located at 2700 Evergreen Parkway N.W., Olympia, WA 98505. The college is located within Thurston County. The college operates the Tacoma Program at 1210 6th Ave, Tacoma, WA 98405.

(3) **Policies and procedures.** College policies meeting the definition of a "rule" under the Administrative Procedure Act, chapter 34.05 RCW are adopted by the board of trustees or designees and published in Title 174 of the Washington Administrative Code (WAC). Other college policies approved by the administration are published in college policies and procedures manuals.

(4) **Documents index.** As an institution of higher education, the college generally does not have occasion to issue nonexempt "final orders," "declaratory orders," "interpretive statements," or "policy statements" as those terms are defined and used in the Public Records Act. Should the college possess such records, an index of final orders, declaratory orders, interpretive statements, and policy statements, entered after June 30, 1990, shall be available at the office of the public records officer. The secretary of the college's board of trustees does maintain and publish on the college website a document index of the board's approved meeting agendas and minutes. Inquiries may be directed to the secretary of the board in the office of the college president.

(5) **College website.** The college's official website, available at [www.evergreen.edu](http://www.evergreen.edu), provides general information about the college and its governing board, administration, educational programs, and policies and procedures. Persons seeking public records of the college are encouraged to view the records available on the website prior to submitting a records request.

[Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-030, filed 1/26/90, effective 2/26/90.]



AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-040 ((Designation of)) Public records officer(s)).**

~~((The public records officer for the college shall be the executive associate to the president or the president's designee within the office of the president. The public records officer shall be responsible for insuring full public access to public records in accordance with chapter 42.17 RCW. The public records officer shall enforce the rules and regulations related to release of public records and coordinate such with the faculty, staff, and students of the college.))~~ (1) Designation. A public records officer designated by the college shall be responsible for responding to public records requests in accordance with the provisions of this chapter and applicable provisions of the Public Records Act, chapter 42.56 RCW. The duties of the public records officer under this chapter may be delegated to one or more public records assistants designated by the college.

(2) Duties. The public records officer shall oversee the college's compliance with the Public Records Act. The records officer (or designee) and the college are responsible for providing the fullest assistance to requestors of public records, for ensuring that public records are protected from damage or disorganization, and for preventing records requests from excessively interfering with essential institutional functions or unreasonably disrupting the operations of the college. The college may take reasonable precautions to prevent a requestor from being unreasonably disruptive or disrespectful to college staff.

(3) Records office. Inquiries regarding public records of the college may be addressed to the public records officer at the following office address:

Public Records Officer  
The Evergreen State College  
2700 Evergreen Parkway N.W., Library 3200  
Olympia, WA 98505  
360-867-6914  
publicrecords@evergreen.edu

(4) Office hours. The regular office hours of the public records office are from 8:00 am to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays and college closures.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-040, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-040, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-050 ((Availability for public inspection and copying of)) Requests for public records.** ~~((Public records shall be available for inspection and copying during the customary office hours of the college. For the purposes of this chapter, the customary office hours shall be from 9 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, unless the person making the request~~

and the college, acting through the public records officer, agree on a different time.) (1) **Written requests preferred.** Requests for public records of the college may be addressed to the public records officer at the address given in WAC 174-276-040. The college encourages, but does not require, requestors to submit their request via email or by using the form made available on the college website ([www.evergreen.edu/publicrecords](http://www.evergreen.edu/publicrecords)). Requests made orally, whether by phone or in person, may be confirmed in writing by the public records officer or designee.

(2) **Contents of records requests.** A request for public records must include the following information:

(a) The name and contact information of the person requesting public records;

(b) The requestor's mailing address or email address;

(c) The date and time of the request;

(d) A description of the requested records that is sufficiently detailed to enable the public records officer and records custodians to identify and locate the responsive records;

(e) A statement indicating whether the requestor wishes to inspect the records or to receive copies of the records, and if copies are requested, the preferred format for receipt of the records (e.g., paper or electronic, and if electronic, pdf or other format); and

(f) A statement indicating the requestors preferred method for receipt of responsive records (i.e., email, postal service, or pick-up).

(3) **Lists of individuals for commercial purposes.** State agencies and institutions are not permitted to provide lists of individuals for commercial purposes. A request for lists of individuals must be accompanied by the requestor's signed declaration that the list will not be used for commercial purposes. The public records officer may inquire as to the requestor's intended use of the list and may deny the request if it is evident from the request that the list will be used for commercial purpose.

(4) **Assistance in identifying records.** The public records officer may assist requestors in identifying the specific records sought by the requestor. With limited exceptions, a requestor may not be required to state the purpose of the request. However, the records officer may ask the purpose of the request if such inquiry will assist in identifying the records requested.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-050, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-050, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-060 ((Requests for)) Processing of public records requests.** ((In accordance with the requirements of chapter 42.17 RCW, that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records are only obtainable by members of the public when those members of the public comply with the following procedures:

~~(1) A request shall be made in writing upon a form which shall be available at the office of the public records officer and shall be presented to the public records officer or the president's designee. Such request shall include the following:~~

~~(a) The name of the person requesting the record.~~

~~(b) The time of day and calendar date on which the request was made.~~

~~(c) If the matter requested is referenced within the current index maintained by the college records officer, a reference to the requested record as it is described in such index.~~

~~(d) If the requested matter is not identifiable by reference to the college records current index, a statement that succinctly describes the record requested.~~

~~(e) A verification that the records requested shall not be used to compile a commercial sales list.~~

~~(2) In all cases in which a member of the public is making a request, it shall be the obligation of the college person to whom the request is being made to assist the member of the public in succinctly identifying the public record requested.)~~ (1) **Applicable law.** Requests for public records will be processed in accordance with these rules and applicable provisions of the Public Records Act, chapter 42.56 RCW. Guidance concerning the application of these rules may be found in the advisory model rules adopted by the attorney general under chapter 44-14 WAC.

(2) **Prioritizing requests.** Public records requests generally will be processed in the order in which they are received by the college's public records office, and within the staffing limitations of the office. However, the records office may expedite requests for a single record or for only a few records, if such records are easily identifiable and can be readily retrieved. The records office may ask, but not require, a requestor to prioritize the records the requestor is seeking.

(3) **Clarification of requests.** The public records officer may request clarification of a records request in accordance with applicable provisions of the Public Records Act. The requestor must respond to the request for clarification within 30 days of the request.

(4) **Providing records by installment.** If a requestor submits multiple records requests, or if a request seeks a large number of records or many different types of records, the public records office may provide access to the records in installments in accordance with applicable provisions of the Public Records Act.

(5) **Denial of bot requests.** The public records officer may deny a bot request as defined under the Public Records Act, RCW 42.56.080(3), if responding to the multiple requests would cause excessive interference with other essential functions of the college and the records officer reasonably believes the request was automatically generated by a computer program or script.

(6) **Closure of requests.** When the requestor withdraws the request, fails to respond to a request for clarification from the college within 30 days or clarify an entirely unclear request within 30 days, fails to provide signed certification that a request for records including a list of names is not for commercial purposes, or fails to fulfill the requestor's obligations to inspect records, pay the deposit, pay the required fees for an installment, or make final payment for the requested copies, the public records officer will close the request and notify the requestor that the request has been closed.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-060, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-060, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 90-04-011, filed 1/26/90, effective 2/26/90)

**WAC 174-276-070 ((Charges for copying.)) Records exempt from inspection or copying.** ((~~(1) No fee shall be charged for inspection of public records. The college may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records; such charges shall not exceed the amount necessary to reimburse the college for its actual costs incident to such copying.~~

~~(2) No person shall be released a record which has been copied by photostatic process until and unless the person requesting the copied public record has tendered payment for such copying to the records official from whom the public record was obtained, or to any person designated by such records official.)) (1) **Public Records Act exemptions.** The Public Records Act, chapter 42.56 RCW, exempts from inspection or copying certain categories of records as set forth in the Public Records Act or under other statutes. The public records officer will disclose the existence of exempt records as required by law, but will deny the inspection or copying of such records to the extent that the records are exempt from inspections or copying under the Public Records Act or other applicable law.~~

(2) **Commonly applied exemptions.** The public records office maintains a list explaining the exemptions most commonly applied by the college in processing requests for public records. A copy of the list can be requested from the public records officer. Relevant exemptions will be provided to the requestor by the public records officer in responding to a request for records that are determined in whole or in part to be exempt from inspection or copying.

(3) **Determining applicable exemptions.** The public records officer may seek information from the requestor sufficient to determine whether another statute prohibits disclosure of the requested records. For example, student education records generally may not be disclosed to third parties without the student's written consent.

[Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-070, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-080 ((Determination regarding exempt records.)) Public records available for inspection.** ((~~(1) The college reserves the right to determine that a public record requested in accordance with the procedures of this chapter is exempt under the provisions of RCW 42.17.310. Such determination may be made in consultation with any of~~

~~the records officers of the college, president of the college, or an assistant attorney general assigned to the college.~~

~~(2) Responses to requests for records must be made promptly. For the purpose of these rules, a prompt response occurs if the person requesting the public record is notified within five business days as to whether her or his request for a public record will be honored.~~

~~(3) No denial of a request for public records shall be valid unless accompanied by a written statement, signed by the public records officer or his or her designee, specifying the specific reasons therefor. The following nonexhaustive lists are examples of records exempted from public inspection and copying:~~

~~(a) Personal information in any files maintained for students in public schools; patients or clients of public institutions or public health agencies; welfare recipients; prisoners, probationers, or parolees.~~

~~(b) Personal information in files maintained for employees, appointed or elected officials, or any public agency to the extent that disclosure would violate their right to privacy.~~

~~(c) Information required of any taxpayer in connection with the assessment or collection of any tax, if the disclosure of the information to other persons would violate the taxpayer's right to privacy or would result in unfair competitive disadvantage to such taxpayer.~~

~~(d) Specific intelligence information and specific investigative files compiled by investigative, law enforcement and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.~~

~~(e) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement or penology agencies, except as the complainant may authorize.~~

~~(f) Test questions, scoring keys, and other examination data used to administer a license, employment or academic examination.~~

~~(g) Except as provided by chapter 8.26 RCW, the contents of real estate appraisals, made for or by any agency relative to the acquisition of property, until the project is abandoned or until such time as all of the property has been acquired, but in no event shall disclosure be denied for more than three years after the appraisal.~~

~~(h) Valuable formulae, designs, drawings and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss.~~

~~(i) Preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific record shall not be exempt when publicly cited by an agency in connection with any agency action.~~

~~(j) Records which are relevant to a controversy to which an agency is a party but which records would not be available to another party under the rules of pretrial discovery for causes pending in the superior courts.~~

~~(k) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of information would:~~

~~(i) Be prohibited to such persons by RCW 82.32.330; or~~

~~(ii) Violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.~~

~~(l) Records, maps, or other information identifying the location of archeological sites in order to avoid the looting or depredation of such sites.~~

~~(m) Any library record, the primary purpose of which is to maintain control of library materials, or to gain access to information, which discloses or could be used to disclose the identity of a library user.~~

~~(n) All applications for public employment, including the names of applicants, resumes, and other related materials submitted with respect to the applicant.~~

~~(o) The residential addresses and residential telephone numbers of employees or volunteers of a public agency which are held by the agency in personnel records, employment or volunteer rosters, or mailing lists of employees or volunteers. RCW 51.36.120.~~

~~(p) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.~~

~~(q) Information that identifies a person who, while an agency employee:~~

~~(i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and~~

~~(ii) Requests his or her identity or any identifying information not be disclosed.~~

~~(r) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.~~

~~(s) Business related information protected from public inspection and copying under RCW 15.86.110.~~

~~(4) The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital government interest, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.~~

~~(5) Prior to releasing personal information regarding an identifiable person or persons, the college must notify the affected person or persons in writing and provide them with a two-week opportunity to seek an injunction through Thurston County superior court preventing the release of the document or documents in question. The affected person or persons may waive the two-week notice requirement under this section by contacting the public records officer in writing of said waiver.)~~

(1) **Scheduling of appointments.** Public records identified as responsive to a public records request may be made available for inspection and copying during regular office hours by scheduling an appointment with the public records officer. The requestor must review the assembled records or installment of records within 30 days of being notified that the records are available for review. The records officer will notify the requestor in writing of this requirement and will ask the requestor to contact the records office to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the 30-day period or make other arrangements, the college may close the request.

(2) **Protection of records.** The public records officer will be responsible for providing full access to public records made available for inspection, for protecting the records from damage or disorganization, and for preventing excessive interference with essential college functions. Public records made available for inspection may not be removed from the office without the permission of the records officer.

(3) **Copying of records.** The public records officer will arrange for copying of any records designated by the requestor and will charge such copying fees as may apply under WAC 174-276-090.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-080, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-080, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 97-13-047, filed 6/13/97, effective 7/14/97)

**WAC 174-276-090 ((Review of denials for public records requests.)) Copying fees—Payments. ((1) Any person who objects to the denial of a request for a public record shall petition for prompt review of such decision by tendering a written request for a review of such denial. Such written request by a person demanding prompt review shall specifically reference the written statement by the college denying that person's request for a public record.**

~~(2) Within two business days after receiving the written request by a person petitioning for prompt review of a decision denying a public record, the president of the college or any of her or his designees, which for the purposes of this section may include the public records officer, shall consider such petition.~~

~~(3) During the course of the two business days in which the president or her or his designee reviews the decision of the public records officer denying the request for a public record, the president or designee may conduct an informal hearing. During the course of such informal hearing, the president or designee may require that the person requesting the public record appear in person at a reasonable time and place located on the campus and further explain and identify the exact nature of the public record she or he is seeking. Failure by the person requesting the review hearing to appear at such informal hearing shall be deemed a waiver of that person's right to insist upon completion of the review of his request within two business days. If the petitioner requesting review does appear at such informal hearing, then the period for review by the college shall be extended to a period not exceeding twenty-four hours after such person requesting review has appeared before the president or designee.~~

~~(4) During the course of the informal hearing conducted by the president or his or her designee under this section, the hearing officer shall consider the obligations of the college fully to comply with the intent of chapter 42.17 RCW insofar as it requires providing full public access to official records, but shall also consider the exemptions provided in RCW 42.17.310 and the requirement of RCW 42.17.250 insofar as it requires the college to protect public records from damage or disorganization, prevent excessive interference with essential~~

~~functions of the agency, and to prevent any unreasonable invasion of personal privacy by deleting identifying details.~~

~~(5) Administrative remedies shall not be considered exhausted until the college has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.)~~ (1) **Fees and payment procedures.** The following copying fees and payment procedures apply to requests to the college for public records under chapter 42.56 RCW received on or after the effective date of this section.

(2) **Inspection of records.** There is no fee for inspecting public records made available for inspection by the public records officer under WAC 174-276-080.

(3) **Actual costs not calculated.** Pursuant to RCW 42.56.120 (2)(b), the college is not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons: (a) The institution does not have the resources to conduct a study to determine all its actual copying costs; (b) to conduct such a study would interfere with other essential college functions; and (c) through the 2017 legislative process, the public and requestors have commented on and been informed of authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3), and (4).

(4) **Default fees adopted.** The college will charge for copies of public records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). Under RCW 42.56.130, the college may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The college may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the college are summarized in the fee schedule available on the college's website at [www.evergreen.edu](http://www.evergreen.edu).

(5) **Advanced payment required - Fee waivers.** Requestors are required to pay for copies in advance of receiving records or an installment of records. The public records officer will notify the requestor when payment is due. Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer to waive copying fees when: (i) All of the records responsive to an entire request are paper copies only and consist of 25 or fewer pages; or (ii) all of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of 100 printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments.

(6) **Copying fee deposits.** The public records officer may require an advance deposit of 10 percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceed \$25.

(7) **Payment method.** Payment should be made by credit card or debit card or by check or money order payable to The Evergreen State College. The college prefers not to receive cash. Cash payments will be accepted if made in the exact amount.

(8) **Closure of request for nonpayment.** The college will close a request when a requestor fails by the payment due date to pay in the



manner prescribed for records, an installment of records, or a required deposit.

[Statutory Authority: RCW 28B.40.120(12). WSR 97-13-047, § 174-276-090, filed 6/13/97, effective 7/14/97. Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-090, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 90-04-011, filed 1/26/90, effective 2/26/90)

**WAC 174-276-100 ((~~Form Request for public records.~~) Review of denials of public records requests.**

((~~REQUEST FOR PUBLIC RECORDS~~

~~The Evergreen State College~~

<del>Section I -- IDENTIFICATION. The information requested in Boxes 1 through 4 is not mandatory. If provided, it will allow the Records Officer to contact you, if necessary, in connection with your request.</del>		<del>DATE</del>	
<del>1. Name of Requester</del>	<del>2. Representing (if applicable)</del>		
<del>3. Street Address</del>			
<del>4. City-State-Zip Code</del>	<del>If there is any particular urgency attached to this request, please indicate the date by which you need the information.</del>		
<del>Section II -- NATURE OF REQUEST. Please be specific about the records you wish to see. If you do not know the name of the records, make your request in the form of a question. To comply with RCW 42.17.260(5) (noncommercial use), please sign the certification below.</del> <del>I certify that the information obtained as a result of this request for public records will not be used in whole or in part to compile a list for commercial purposes.</del>			
<del>.....</del> <del>Requester's Signature</del>			
<del>DO NOT FILL IN BELOW THIS LINE</del>			
<del>Section III -- REQUEST FOR REVIEW</del>			
<del>Requested by</del>	<del>Office</del>	<del>Telephone</del>	
<del>Section IV -- DISPOSITION OF REQUEST</del>			
<del>1.</del>	<del>2.</del>	<del>3.</del>	<del>4.</del>

5.	6.	7.	8.	9.))

(1) **Petition for internal administrative review.** A requestor who objects to the denial or partial denial of a records request may petition in writing to the public records officer for a review of that decision. The public records officer will promptly refer the petition to the office of the president. A senior administrator designated by the president will consider the petition and will render a decision within two business days following the initial receipt of the petition by the public records officer. The time for considering the petition may be extended by mutual agreement of the college and the requestor.

(2) **Review by the attorney general's office.** A requestor who objects to the denial or partial denial of a records request may request the office of the attorney general to review the matter as provided in RCW 42.56.530 and WAC 44-06-160. Requests for attorney general review must be directed to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100.

(3) **Judicial review.** A requestor may obtain judicial review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative review.

[Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-100, filed 1/26/90, effective 2/26/90.]

AMENDATORY SECTION (Amending WSR 90-04-011, filed 1/26/90, effective 2/26/90)

**WAC 174-276-110 ((~~Form Public records request for copies.~~))**  
**Court protection of public records.**

((~~PUBLIC RECORDS REQUEST FOR COPIES~~))

The Evergreen State College

Please indicate the records that you wish to have copied, and number of copies of each. When completed, give this request to a staff member who will accompany you to the cashier and then to the nearest copy center. You will be required to pay for the copies before receiving them.

DESCRIPTION OF MATERIALS TO BE COPIED:

.....  
 Requester's Signature))

(1) **Notifying interested persons.** The college, as required by permitted law or contract, including any collective bargaining agreement, and in other appropriate circumstances, may notify persons named in a public record, or to whom the record specifically pertains, that release of the record has been requested and that such persons may apply to the superior court for a protective order under RCW 42.56.540.

(2) **Applying for court protection.** The college in appropriate circumstances may apply to the superior court for a protective order enjoining the examination of any specific public record in accordance with the procedures under RCW 42.56.540. Nothing in this chapter shall

be construed as either requiring or prohibiting the college's application to the court for such an order.

[Statutory Authority: Chapter 34.05 RCW. WSR 90-04-011, § 174-276-110, filed 1/26/90, effective 2/26/90.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                 |   |
|-----------------|---|
| WAC 174-276-020 | General course and method of decision making.   |
| WAC 174-276-095 | Requests for review.                            |
| WAC 174-276-120 | Form—Request for review—Public records request. |

**WSR 22-15-121**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed July 20, 2022, 11:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-10-035.

Title of Rule and Other Identifying Information: The Washington state liquor and cannabis board (WSLCB) proposes new rules and amendments to an existing rule to implement SB 5940 (chapter 64, Laws of 2022; codified as RCW 66.24.248):

- New WAC 314-20-350 Contract packaging services endorsement for domestic breweries and microbreweries.
- New WAC 314-24-350 Contract packaging services endorsement for domestic wineries.
- New WAC 314-28-350 Contract packaging services endorsement for domestic distilleries and craft distilleries.
- Amended WAC 314-11-065 Types of liquor allowed on a licensed premises.

Hearing Location(s): On August 31, 2022, at 10:00 a.m. All public board activity will be held in a "hybrid" environment. This means that the public will have options for in-person or virtual attendance. The boardroom at the headquarters building in Olympia (1025 Union Avenue, Olympia, WA 98504) will be open for in-person attendance. The public may also login using a computer or device, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. TVW also regularly airs these meetings. Please note that although the boardroom will be staffed during a meeting, board members and agency participants may continue to appear virtually. For more information about board meetings, please visit <https://lcb.wa.gov/Boardmeetings/Boardmeetings>.

Date of Intended Adoption: No earlier than September 14, 2022.

Submit Written Comments to: Audrey Vasek, Policy and Rules Coordinator, P.O. Box 43080, Olympia, WA 98504-3080, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov), fax 360-704-5027, by August 31, 2022.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, phone 360-664-1739, fax 360-664-9689, TTY 711 or 1-800-833-6388, email [anita.bingham@lcb.wa.gov](mailto:anita.bingham@lcb.wa.gov), by August 24, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule proposal is to implement SB 5940, which created a new endorsement allowing breweries, wineries, and distilleries to contract with each other, and with other non-liquor licensed businesses if the contract does not include alcohol products, to provide certain packaging services, such as canning, bottling, bagging, mixing, and repacking.

The proposed new rule sections in WAC 314-20-350, 314-24-350, and 314-28-350 describe the contract packaging services endorsement and how to submit an application for an endorsement. The term "good standing" is defined as currently licensed, not suspended, and having the proper federal alcohol and tobacco tax and trade bureau permits. The proposed amendments to WAC 314-11-065 would allow licensees with a contract packaging services endorsement to keep other types of liquor on the premises as needed to provide contract packaging services.

Reasons Supporting Proposal: New rule sections are needed to implement SB 5940, align agency rules with the law, and inform licensees about the availability of the endorsement and its requirements.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.248.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Audrey Vasek, Policy and Rules Coordinator, 1025 Union Avenue, Olympia, WA 98504, 360-664-1758; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98504, 360-664-1753; and Enforcement: Chandra Brady, Director of Enforcement and Education, 1025 Union Avenue, Olympia, WA 98504, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not qualify as a type of rule requiring a cost-benefit analysis under RCW 34.05.328(5). WSLCB is not a listed agency under RCW 34.05.328 (5)(a)(i), so the cost-benefit analysis requirements in RCW 34.05.328 are not applicable to the proposed rules unless voluntarily applied or made applicable by the joint administrative rules review committee under RCW 34.05.328 (5)(a)(ii). In this case, since the proposed rules implement a legislatively mandated endorsement, the agency did not decide to complete a cost-benefit analysis.

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

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

Is exempt under RCW 19.85.025(3) through the exemptions in RCW 34.05.310 (4)(c) and (e).

Explanation of exemptions: Portions of the proposed rules are exempt from the Regulatory Fairness Act's (RFA) small business economic impact statement (SBEIS) requirement under RCW 34.05.310 (4)(c) and (e) as described in the table below:

Proposed Rule	Description	SBEIS Exemption
New Sections: • WAC 314-20-350 Contract packaging services endorsement for domestic breweries and microbreweries; • WAC 314-24-350 Contract packaging services endorsement for domestic wineries; and • WAC 314-28-350 Contract packaging services endorsement for domestic distilleries and craft distilleries. (The content of these three proposed new rule sections is substantially the same.)	<i>The following components of the rule qualify for an SBEIS exemption:</i> Specifically dictated by SB 5940: • Subsections (1) and (2): Description of licensees eligible for the endorsement and activities allowed under the endorsement; • Subsection (3), second sentence: "If a licensee is in good standing at the time of the application request, the endorsement will be issued without further requirement for additional licensing or administrative review."; and • Subsection (5): \$100 annual endorsement fee. Incorporation by reference: • Subsection (4): Incorporates by reference RCW 66.08.130.	RCW 34.05.310 (4)(e): Content of the proposed rules is explicitly and specifically dictated by statute. RCW 34.05.310 (4)(c): Adopts or incorporates by reference without material change Washington state statutes.
	<i>The following components of the rule do not qualify for an SBEIS exemption:</i> • Subsection (3): Endorsement application process and definition of "good standing."	No exemption applies. See estimated cost of compliance and minor cost analysis in section below.
Amending WAC 314-11-065, Types of liquor allowed on a licensed premises.	<i>The following components of the rule qualify for an SBEIS exemption:</i> Incorporation by reference: • Subsection (1)(e): Incorporates by reference the new RCW section created by SB 5940.	RCW 34.05.310 (4)(c): Adopts or incorporates by reference without material change Washington state statutes.
	<i>The following components of the rule do not qualify for an SBEIS exemption:</i> • None	Not applicable.

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. To the extent that the proposed rules are not exempt from the RFA's SBEIS requirement (i.e. with respect to the endorsement application process and definition of "good standing" included in subsection (3) of the three proposed new rule sections, as described in the table above), the agency estimates the annual costs of compliance for potentially impacted businesses as described below.

Estimated Annual Costs of Compliance: Under RFA, agencies are required to consider the costs that complying with proposed rules will impose on businesses. RCW 19.85.040 requires agencies to consider reporting, recordkeeping, and other compliance costs of the proposed rules, including costs 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.

In this case, the nonexempt portion of the proposed rules require licensees who seek to add this endorsement to submit an application to the board's licensing division. The agency anticipates that it will take licensees around 10-15 minutes to complete the application for the endorsement during the initial application year, with no additional time needed beyond what is required to renew their underlying license in following years. The amount of time needed to complete the application can be considered a one-time administrative cost.

To calculate this administrative cost, the agency relied on data from the 2021 Occupational Employment and Wage Statistics (OEWS) Online Databook available in the employment security department (ESD) labor market report library (<https://esd.wa.gov/labormarketinfo/report-library>): The estimated average hourly wage in Washington state for secretaries and administrative assistants, except legal, medical, and executive (using the Standard Occupational Classification (SOC) Code 43-6014) is \$22.68. Based on that data, the estimated administrative cost during the initial application year is \$5.67 (\$22.68 avg.

hourly wage x .25 hours (~15min) = \$5.67), and the estimated cost during subsequent renewal years is \$0. For the purpose of the minor cost calculations, this estimated administrative cost is rounded up to \$6.

For these reasons, the agency estimates that the cost of compliance for potentially impacted businesses is a one-time cost of \$6. The estimated annual cost of compliance would be less than \$6 if this one-time cost were amortized over of the amount of time that the licensee continues to renew the endorsement.

Minor Cost Threshold Estimates: Businesses potentially impacted by the proposed rules include breweries, wineries, and distilleries. The agency applied the following North American Industry Classification System (NAICS) codes to estimate minor cost thresholds for licensees:

Licensee Type	NAICS Code	Description from the 2022 NAICS Manual ( <a href="https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf">https://www.census.gov/naics/reference_files_tools/2022_NAICS_Manual.pdf</a> )
Distilleries and Craft Distilleries	312140 Distilleries	"This industry comprises establishments primarily engaged in one or more of the following: (1) distilling potable liquors (except brandies); (2) distilling and blending liquors; and (3) blending and mixing liquors and other ingredients." There are no separate NAICS codes available for craft distilleries.
Wineries	312130 Wineries	"This industry comprises establishments primarily engaged in one or more of the following: (1) growing grapes and manufacturing wines and brandies; (2) manufacturing wines and brandies from grapes and other fruits grown elsewhere; and (3) blending wines and brandies."
Breweries and Microbreweries	312120 Breweries	"This industry comprises establishments primarily engaged in brewing beer, ale, lager, malt liquors, and nonalcoholic beer." There are no separate NAICS codes available for microbreweries.

As shown in the table below, the estimated annual cost of compliance (~\$6) for potentially impacted businesses in each of these industries does not exceed the minor cost estimate for these industries, so a SBEIS is not required under RCW 19.85.030.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description (Licensee Type)	NAICS Code Title	Minor Cost Estimate = MAX (WT, RT, and \$100)	Wage Threshold (WT) 1% of Avg Annual Payroll (0.01*AvgPay)	Revenue Threshold (RT) 0.3% of Avg Annual Gross Business Income (0.003*AvgGBI)
312120	\$6	Breweries and Microbreweries	Breweries	\$3,085.32	\$2,803.58 2020 Dataset pulled from USBLS	\$3,085.32 2020 Dataset pulled from DOR
312130	\$6	Wineries	Wineries	\$3,905.58	\$3,905.58 2020 Dataset pulled from ESD	\$3,560.33 2020 Dataset pulled from DOR
312140	\$6	Distilleries and Craft Distilleries	Distilleries	\$2,806.14	\$2,806.14 2020 Dataset pulled from USBLS	\$1,707.60 2020 Dataset pulled from DOR

The revenue and wage thresholds used to determine the minor cost estimates for each of the business industries listed in the table above were calculated using minor-cost threshold calculator (updated October 2021) provided by the governor's office for regulatory innovation and assistance (ORIA). For more information, see the ORIA Regulatory Fairness Act Tools and Guidance web page at [https://www.oria.wa.gov/site/alias\\_\\_oria/934/Regulatory-Fairness-Act-Support.aspx](https://www.oria.wa.gov/site/alias__oria/934/Regulatory-Fairness-Act-Support.aspx).

July 20, 2022  
David Postman  
Chair

OTS-3933.1

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

**WAC 314-11-065 ((What)) Types of liquor ((is)) allowed on a licensed premises ((?)).** (1) Licensees may only possess and allow persons to consume or possess the type of liquor permitted by the type of liquor license held on the premises; except:

- (a) Under authority of a banquet permit (see chapter 314-18 WAC);
- (b) Restaurant licensees may allow patrons to bring wine into the premises for consumption with a meal;
- (c) Beer and/or wine restaurant or tavern licensees may keep spirituous liquor on the premises for use in the manufacture of food products, provided that:
  - (i) All food products manufactured contain one percent or less of alcohol by weight (per RCW 66.12.160);
  - (ii) Customers are made aware that the food products contain liquor; and
  - (iii) The beer and/or wine restaurant or tavern licensee notifies the local liquor control board enforcement office in writing before they bring spirituous liquor on the premises((-));
- (d) Under the authority of a special occasion license; and
- (e) Licensees with an endorsement under WAC 314-20-350, 314-24-350, or 314-28-350 may keep other types of liquor on the premises to provide contract packaging services consistent with RCW 66.24.248.

(2) For on-premises liquor licenses, the licensee or employees may not permit the removal of liquor in an open container from the licensed premises, except:

- (a) Liquor brought on a licensed premises under authority of a banquet permit may be resealed in its original container and removed at the end of the banquet permit function;
- (b) Per RCW 66.24.320 and 66.24.400, wine that is sold with a meal may be recorked or resealed and removed from the premises;
- (c) Liquor purchased by registered guests for consumption inside a hotel or motel room may be resealed in its original container and removed from the hotel or motel premises by the guest; and
- (d) Liquor removed from a licensed premises that holds a caterer's endorsement, for the purpose of catering an approved event.

[Statutory Authority: RCW 66.08.030, WSR 17-12-030, § 314-11-065, filed 5/31/17, effective 7/1/17. Statutory Authority: RCW 66.08.030, 66.12.160, 66.44.010, 66.44.200, 66.44.240, 66.44.270, 66.24.291 [66.44.291], 66.44.310, WSR 04-15-162, § 314-11-065, filed 7/21/04, effective 8/21/04. Statutory Authority: RCW 66.08.030, 66.28.100, 66.28.040, 66.28.090, 66.44.010, 66.44.070, 66.44.200, 66.44.270, 66.44.291, 66.44.292, 66.44.310, 66.44.316, 66.44.318, 66.44.340, and 66.44.350, WSR 02-11-054, § 314-11-065, filed 5/9/02, effective 6/9/02. Statutory Authority: RCW 66.08.030, 66.28.100, 66.28.040, 66.28.090, 66.44.010, 66.44.070, 66.44.200, 66.44.270, 66.44.291, 66.44.292, 66.44.310, 66.44.316, 66.44.318, 66.44.340, 66.44.350, and chapter 66.44 RCW, WSR 01-06-014, § 314-11-065, filed 2/26/01, effective 3/29/01.]



OTS-3929.1

NEW SECTION

**WAC 314-20-350 Contract packaging services endorsement for domestic breweries and microbreweries.** Consistent with RCW 66.24.248:

(1) There is an endorsement available to domestic breweries, microbreweries, wineries, distilleries, and craft distilleries to provide contract packaging services to other domestic breweries, microbreweries, wineries, distilleries, craft distilleries, and nonliquor licensed businesses.

(2) Contract packaging services allowed under the endorsement include:

(a) Canning, bottling, and bagging;

(b) Mixing products before packaging;

(c) Repacking of finished products into mixed consumer packs or multipacks; and

(d) Receiving and returning products to the originating liquor licensed businesses as part of a contract in which the contracting liquor licensed party for which the services are being provided retains title and ownership of the products at all times.

(3) An application for an endorsement under this section must be submitted to the board's licensing division. If a licensee is in good standing at the time of the application request, the endorsement will be issued without further requirement for additional licensing or administrative review. "Good standing" means currently licensed, not suspended, and having the proper federal alcohol and tobacco tax and trade bureau permits. The applicant must submit a copy of the proper federal permits with the application. If at any time after the endorsement is issued a licensee begins contract packaging a product for which new federal permits are required, the licensee must submit a copy of the proper federal permits to the board's licensing division.

(4) Consistent with RCW 66.08.130, endorsement holders must make a copy of any contracts and federal permits available to representatives of the board upon request.

(5) The annual fee for this endorsement is \$100.

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OTS-3930.1

NEW SECTION

**WAC 314-24-350 Contract packaging services endorsement for domestic wineries.** Consistent with RCW 66.24.248:

(1) There is an endorsement available to domestic breweries, microbreweries, wineries, distilleries, and craft distilleries to provide contract packaging services to other domestic breweries, microbreweries, wineries, distilleries, craft distilleries, and nonliquor licensed businesses.

(2) Contract packaging services allowed under the endorsement include:

- (a) Canning, bottling, and bagging;
- (b) Mixing products before packaging;
- (c) Repacking of finished products into mixed consumer packs or multipacks; and
- (d) Receiving and returning products to the originating liquor licensed businesses as part of a contract in which the contracting liquor licensed party for which the services are being provided retains title and ownership of the products at all times.

(3) An application for an endorsement under this section must be submitted to the board's licensing division. If a licensee is in good standing at the time of the application request, the endorsement will be issued without further requirement for additional licensing or administrative review. "Good standing" means currently licensed, not suspended, and having the proper federal alcohol and tobacco tax and trade bureau permits. The applicant must submit a copy of the proper federal permits with the application. If at any time after the endorsement is issued a licensee begins contract packaging a product for which new federal permits are required, the licensee must submit a copy of the proper federal permits to the board's licensing division.

(4) Consistent with RCW 66.08.130, endorsement holders must make a copy of any contracts and federal permits available to representatives of the board upon request.

(5) The annual fee for this endorsement is \$100.

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### OTS-3931.1

#### NEW SECTION

**WAC 314-28-350 Contract packaging services endorsement for domestic distilleries and craft distilleries.** Consistent with RCW 66.24.248:

(1) There is an endorsement available to domestic breweries, microbreweries, wineries, distilleries, and craft distilleries to provide contract packaging services to other domestic breweries, microbreweries, wineries, distilleries, craft distilleries, and nonliquor licensed businesses.

(2) Contract packaging services allowed under the endorsement include:

- (a) Canning, bottling, and bagging;
- (b) Mixing products before packaging;
- (c) Repacking of finished products into mixed consumer packs or multipacks; and
- (d) Receiving and returning products to the originating liquor licensed businesses as part of a contract in which the contracting liquor licensed party for which the services are being provided retains title and ownership of the products at all times.

(3) An application for an endorsement under this section must be submitted to the board's licensing division. If a licensee is in good standing at the time of the application request, the endorsement will be issued without further requirement for additional licensing or administrative review. "Good standing" means currently licensed, not

suspended, and having the proper federal alcohol and tobacco tax and trade bureau permits. The applicant must submit a copy of the proper federal permits with the application. If at any time after the endorsement is issued a licensee begins contract packaging a product for which new federal permits are required, the licensee must submit a copy of the proper federal permits to the board's licensing division.

(4) Consistent with RCW 66.08.130, endorsement holders must make a copy of any contracts and federal permits available to representatives of the board upon request.

(5) The annual fee for this endorsement is \$100.

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