

WSR 15-01-004
WITHDRAWAL OF PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed December 3, 2014, 2:17 p.m.]

Please withdraw proposed rule CR-102 WSR 14-20-017 filed on September 19, 2014. The proposal as filed was removed from public hearing by the board.

David Brenna
 Senior Policy Analyst

WSR 15-01-022
PROPOSED RULES
DEPARTMENT OF TRANSPORTATION

[Filed December 5, 2014, 12:50 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-092.

Title of Rule and Other Identifying Information: WAC 468-38-100 Pilot/escort vehicle and operator requirements and 468-38-155 Safety equipment for special permit moves, revisions to these rules are to reflect the national effort to harmonize pilot/escort requirements and safety equipment required for moving special motor vehicle permit loads between states.

Hearing Location(s): Washington State Department of Transportation, Commission Board Room 1D2, 310 Maple Park Avenue S.E., Olympia, WA 98504, on January 28, 2015, at 2:30 p.m.

Date of Intended Adoption: January 28, 2015.

Submit Written Comments to: James L. Wright, P.O. Box 47367, Olympia, WA 98504-7367, e-mail wrightji@wsdot.wa.gov, fax (360) 704-3645, by January 27, 2015.

Assistance for Persons with Disabilities: Contact Grant Heap by January 27, 2015, (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will revise requirements for pilot/escort car operators and pilot/escort car equipment based on recommendations from a national effort lead by the American Association of State Highway and Transportation Officials (AASHTO).

Revisions include when a pilot/escort vehicle is required, certification requirements, and the type of vehicle to be used as a pilot/escort for oversize permitted loads. In addition, this proposal includes the National Traffic Safety Bureau recommendation banning nonemergency use of electronic communication devices by pilot/escort operators when performing escorting duties of oversize loads.

The proposal also would revise requirements for safety equipment used on vehicles transporting oversize loads. Revisions include changes in oversize load signage display and requirements for warning lights and flag placement.

Statutory Authority for Adoption: RCW 46.44.090 and 46.44.093.

Statute Being Implemented: RCW 46.44.090.

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: No fiscal impact.

Name of Proponent: AASHTO and Western Association of State Highway and Transportation Officials, public.

Name of Agency Personnel Responsible for Drafting: James Wriugh [Wright], 7345 Linderson Way S.W., Tumwater, WA, (360) 704-6345; Implementation: Anne Ford, 7345 Linderson Way S.W., Tumwater, WA, (360) 705-7341; and Enforcement: Captain Michael Saunders, Washington State Patrol, 210 11th Street, GA Building, Olympia, WA, (360) 596-3800.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal revises pilot/escort vehicle requirements and has no impact on reporting, recordkeeping, or any other compliance requirements or costs to businesses small or large.

A cost-benefit analysis is not required under RCW 34.05.328. There are no additional costs related to the revisions to be made by this proposal.

December 5, 2014
 Kathryn W. Taylor
 Assistant Secretary

AMENDATORY SECTION (Amending WSR 06-07-025, filed 3/7/06, effective 4/7/06)

WAC 468-38-100 Pilot/escort vehicle and operator requirements. (1) **When is a pilot/escort vehicle(s) required to accompany an extra-legal vehicle or load?** A pilot/escort vehicle(s) must accompany an extra-legal load when:

(a) The vehicle(~~((s))~~) or load (~~((is over eleven))~~) exceeds twelve feet (~~((wide. Two))~~) but does not exceed fourteen feet in width: One front pilot/escort vehicle(~~((s are))~~) is required on two lane (~~((roads, one in front and one in back))~~) state highways, or one rear pilot/escort vehicle is required on a multi-lane state highway.

(b) The vehicle(~~((s))~~) or load (~~((is over))~~) exceeds fourteen feet (~~((wide. One))~~) in width: One front and one rear pilot/escort vehicle is required (~~((at the rear of the movement on multilane))~~) on all state highways.

(c) (~~((The vehicle(s) or load is over twenty feet wide. Two pilot/escort vehicles are required on multilane undivided highways, one in front and one in back.~~)

(~~((d))~~) (i) The trailer length, including load, of a tractor/trailer combination exceeds one hundred five feet(~~((;))~~); or (~~((when))~~)

(ii) The rear overhang of a load measured from the center of the rear axle exceeds one-third of the trailer length (~~((plus))~~) including load of a tractor/trailer or truck/trailer combination(~~((;))~~): One pilot/escort vehicle is required at the rear of the movement on two-lane state highways.

(~~((e))~~) (d) The trailer length, including load, of a tractor/trailer combination exceeds one hundred twenty-five feet(~~((;))~~); One pilot/escort vehicle is required at the rear of the movement on multilane state highways.

(~~((f))~~) (e) The front overhang of a load measured from the center of the front steer axle exceeds twenty feet(~~((;))~~); One

pilot/escort vehicle is required at the front on all two-lane highways.

~~((g))~~ (f) The rear overhang of a load on a single unit vehicle exceeds twenty feet, measured from the center of the rear axle, ~~((exceeds twenty feet.))~~ one pilot/escort vehicle is required at the rear of the movement on two-lane state highways.

~~((h))~~ (g) The height of the vehicle~~((s))~~ or load exceeds fourteen feet six inches~~((s))~~; One pilot/escort vehicle with height measuring device (pole) is required at the front of the movement on all state highways ~~((and roads))~~.

~~((i))~~ (h) The transport operator, using rearview mirrors, cannot see two hundred feet to the rear of the vehicle or vehicle combination; One pilot escort vehicle is required at the rear of the movement on all state highways.

~~((j))~~ (i) In the opinion of the department, a pilot/escort vehicle(s) is necessary to protect the traveling public. Assignments of this nature must be authorized through the department's administrator for commercial vehicle services.

(2) Can a pilot/escort vehicle be temporarily reassigned a position relative to the load during a move? When road conditions dictate that the use of the pilot/escort vehicle in another position would be more effective, the pilot/escort vehicle may be temporarily reassigned. For example: A pilot/escort vehicle is assigned to the rear of an overlength load on a two-lane highway. The load is about to enter a highway segment that has curves significant enough to cause the vehicle and/or load to encroach on the oncoming lane of traffic. The pilot/escort vehicle may be temporarily reassigned to the front to warn oncoming traffic.

(3) Can a certified flag person ever substitute for a pilot/escort vehicle? In subsection (1)~~((d) and (e))~~ (c) and (d) of this section, the special permit may authorize a riding flag person, in lieu of a pilot/escort vehicle, to provide adequate traffic control for the configuration.

(4) Must an operator of a pilot/escort vehicle be certified to operate in the state of Washington? Yes. To help assure compliance with the rules of this chapter, consistent basic operating procedures are needed for pilot/escort vehicle operators to properly interact with the escorted vehicle and the surrounding traffic. Operators of pilot/escort vehicles, therefore, must be certified as having received department-approved base level training as a pilot/escort vehicle operator~~((s))~~ and comply, as appropriate, with the following:

(a) A pilot/escort vehicle operator with a Washington state driver's license must have a valid Washington state pilot/escort vehicle operator certificate/card which must be on the operator's person while performing escort vehicle operator duties.

(b) A pilot/escort vehicle operator~~((s))~~ with a driver's license from a jurisdiction other than the state of Washington ~~((state))~~ may acquire a state of Washington ~~((state))~~ pilot/escort vehicle operator certificate/card, or operate with a certification from another jurisdiction approved by the department, subject to the periodic review of the issuing jurisdiction's certification program. A current list of approved programs will be maintained by the department's commercial vehicle services office. ~~((Washington state pilot/escort vehicle operator cards must be renewed every three years.))~~

(c) A pilot/escort vehicle operator certification does not exempt a pilot/escort vehicle operator from complying with all state laws and requirements of the state in which she/he is traveling.

(d) Every applicant for a Washington state pilot/escort operator certificate shall attend an eight-hour classroom training course offered and presented by a business, organization, governmental entity, or individual approved by the department. At the conclusion of the course, the applicant will be eligible to receive the certification card after successfully completing a written test with at least an eighty percent passing score. State of Washington pilot/escort vehicle operator cards must be renewed every three years.

(5) What are the pretrip procedures that must be followed by the operator of a pilot/escort vehicle?

(a) Discuss with the operator of the extra-legal vehicle the aspects of the move including, but not limited to, the vehicle configuration, the route, and the responsibilities that will be assigned or shared.

(b) Prerun the route, if necessary, to verify acceptable clearances.

(c) Review the special permit conditions with the operator of the extra-legal vehicle. The pilot/escort operator must have a copy of the permit if the permit is a single-trip special motor vehicle permit which displays routing information.

(d) Determine proper position of required pilot/escort vehicles and set procedures to be used among the operators.

(e) Assure availability of additional certified flag persons if stated as a condition of the oversize/overweight special permit.

(f) Check mandatory equipment, provided in subsections (9) and (10) of this section. Each operator is responsible for his or her own vehicle.

(g) Check two-way communication system between the pilot/escort vehicle(s) and transport vehicle to ensure clear communications and predetermine the channel to be used.

(h) Acknowledge that nonemergency electronic communication is prohibited except communication between escort vehicle(s) and transport vehicle during movement.

(i) Adjust mirrors, mount signs and turn on lights, provided in subsections (8)(e) and (9)(a) and (b) of this section.

(6) What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be in front of the extra-legal movement? The operator shall:

(a) Provide general warning to oncoming traffic of the presence of the permitted vehicle by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, road-surface hazards; overhead clearances; obstructions; traffic congestion; pedestrians; etc.;

(c) Provide guidance to the extra-legal vehicle through lane changes, egress from one designated route and access to the next designated route on the approved route itinerary, and around any obstacle;

(d) In the event of traffic buildup behind the extra-legal vehicle, locate a safe place adjacent to the highway where the extra-legal vehicle can make a temporary stop. Notify the operator of the extra-legal vehicle, and the operator(s) of any trailing pilot/escort vehicle(s), in sufficient time for the extra-legal vehicle to move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough in front of the extra-legal vehicle to allow time for extra-legal vehicle to stop or take corrective action as necessary when notified by the front pilot/escort operator. Be far enough in front of the extra-legal vehicle to signal oncoming traffic to stop in a safe and timely manner before entering any narrow structure or otherwise restricted highway where an extra-legal vehicle has entered and must clear before oncoming traffic can enter;

(f) In accordance with training, do not be any farther ahead of the extra-legal vehicle than is reasonably prudent, considering speed of the extra-legal vehicle, other traffic, and highway conditions. Do not exceed ~~((one-half mile))~~ a distance between pilot/escort vehicle and the extra-legal vehicle ((in order to maintain)) that would interfere with maintaining clear two-way radio communication ~~(, except when necessary to safely travel a long narrow section of highway))~~; and

(g) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(7) What are the responsibilities of the operator of a pilot/escort vehicle when assigned to be at the rear of the extra-legal movement? The operator shall:

(a) Provide general warning to traffic approaching from the rear of the extra-legal vehicle ahead by use of signs and lights, provided in subsection (9) of this section;

(b) Notify the operator of the extra-legal vehicle, and the operator(s) of any leading pilot/escort vehicle(s), about any condition that could affect either the safe movement of the extra-legal vehicle or the safety of the traveling public, in sufficient time for the operator of the extra-legal vehicle to take corrective action. Conditions requiring communication include, but are not limited to, objects coming loose from the extra-legal vehicle; flat tires on the extra-legal vehicle; rapidly approaching traffic or vehicles attempting to pass the extra-legal vehicle; etc.;

(c) Notify the operator of the extra-legal vehicle, and/or the operator of the lead pilot/escort vehicle, about traffic buildup or other delays to normal traffic flow resulting from the extra-legal move;

(d) In the event of traffic buildup behind the extra-legal vehicle, notify the operator of the extra-legal vehicle, and the operator(s) of any pilot/escort vehicle(s) in the lead, and assist the extra-legal vehicle in its move out of the traffic flow into the safe place, allowing the following traffic to pass safely;

(e) In accordance with training, be far enough behind the extra-legal vehicle to provide visual warning to approaching traffic to slow or stop in a timely manner, depending upon the action to be taken by the extra-legal vehicle, or the condition of the highway segment (i.e., limited sight distance, mountainous terrain, narrow corridor, etc.);

(f) Do not follow more closely than is reasonably prudent, considering the speed of the extra-legal vehicle, other

traffic, and highway conditions. Do not exceed one-half mile distance between the pilot/escort vehicle and the extra-legal vehicle in order to maintain radio communication, except when necessary to safely travel a long narrow section of highway; ~~((and))~~

(g) Pilot/escort operators shall not perform tillerman duties while performing escorting duties. For this section, tillerman refers to an individual that operates the steering of the trailer or trailing unit of the transport vehicle; and

(h) Assist in guidance to a safe place, and/or traffic control, in instances when the extra-legal vehicle becomes disabled.

(8) What kind of vehicle can be used as a pilot/escort vehicle? In addition to being in safe and reliable operating condition, the vehicle shall:

(a) Be either a single unit passenger car, including passenger van, or a two-axle truck, including a nonplacarded service truck;

(b) Not exceed a maximum gross vehicle weight or gross vehicle weight rating of ~~((fourteen))~~ sixteen thousand pounds;

(c) Have a body width of at least sixty inches but no greater than one hundred two inches;

(d) Not exceed the legal limits of size and weight, as defined in chapter 46.44 RCW; ~~((and))~~

(e) Be equipped with outside rear-view mirrors, located on each side of the vehicle;

(f) Not tow a trailer while escorting; and

(g) Not have the appearance of an oversize load.

(9) In addition to equipment required by traffic law, what additional equipment is required on the vehicle when operating as a pilot/escort, and when is it used?

(a) A minimum of ~~((two))~~ one flashing or rotating amber (yellow) light ~~((s))~~ or strobe, positioned above the roof line, visible from a minimum of five hundred feet to approaching traffic from the front or rear of the vehicle and visible a full three hundred sixty degrees around the pilot/escort vehicle. Light bars, with appropriately colored lights, meeting the visibility minimums are acceptable. Lights must only be activated while escorting an extra-legal vehicle, or when used as traffic warning devices while stopped at the side of the road taking height measurements during the prerunning of a planned route. The vehicle's headlights must also be activated while escorting an extra-legal vehicle.

(b) A sign reading "OVERSIZE LOAD," measuring at least five feet wide, ten inches high with black lettering at least eight inches high in a one-inch brush stroke on yellow background. The sign shall be mounted over the roof of the vehicle and shall be displayed only while performing as the pilot/escort of an extra-legal load. When the vehicle is not performing as a pilot/escort, the sign must be removed, retracted or otherwise covered.

(c) A two-way radio communications system capable of providing reliable two-way voice communications, at all times, between the operators of the pilot/escort vehicle(s) and the extra-legal vehicle ~~((s))~~.

(d) Nonemergency electronic communications is prohibited except communication between the pilot/escort vehicle(s) and the transport vehicle during movement.

(10) What additional or specialized equipment must be carried in a pilot/escort vehicle?

(a) A standard eighteen-inch STOP AND SLOW paddle sign.

(b) Three bi-directional emergency reflective triangles.

(c) A minimum of one five-pound B, C fire extinguisher, or equivalent.

(d) A high visibility safety garment designed according to Class 2 specifications in ANSI/ISEA 107-1999, *American National Standard for High Visibility Safety Apparel*, to be worn when performing pilot/escort duties outside of the vehicle. The acceptable high visibility colors are fluorescent yellow-green, fluorescent orange-red or fluorescent red.

(e) A highly visible colored hard hat, also to be worn when performing pilot/escort duties outside of the vehicle, per WAC 296-155-305.

(f) A height-measuring device (pole), which is nonconductive and nondestructive to overhead clearances, when required by the terms of the special permit. The upper portion of the height pole shall be constructed of flexible material to prevent damage to wires, lights, and other overhead objects or structures. The pole may be carried outside of the vehicle when not in use. See also subsection ~~((14))~~ (15) of this section.

(g) First-aid supplies as prescribed in WAC 296-800-15020.

(h) A flashlight in good working order with red nose cone. Additional batteries should also be on hand.

(11) Can the pilot/escort vehicle carry passengers? A pilot/escort vehicle may not contain passengers(~~(, human or animal,))~~; except ~~((for))~~ that a certified individual in training status or necessary flag person may be in the pilot/escort vehicle.

(12) Can the pilot/escort vehicle carry any other items, equipment, or load? Yes, as long as the items, equipment or load have been properly secured~~((;))~~; provided that, no equipment or load may be carried in or on the pilot/escort vehicle that:

(a) Exceeds the height, length, or width of the pilot/escort vehicle, or overhangs the vehicle, or otherwise impairs its immediate recognition as a pilot/escort vehicle by the traveling public;

(b) Obstructs the view of the flashing or rotating amber lights, or "OVERSIZE LOAD" sign on the vehicle;

(c) Causes safety risks; or

(d) Otherwise impairs the performance by the operator of the pilot/escort vehicle of the duties required by these rules.

(13) Can a pilot/escort vehicle escort more than one extra-legal load at the same time? No, unless the department determines there are special circumstances that have resulted in an express authorization on the special permit.

(14) When and how must a pilot/escort vehicle use a height-measuring device? The height-measuring device (pole) must be used when escorting an extra-legal load in excess of fourteen feet six inches high, unless an alternative authorization has been granted by the department and stated on the special permit~~((, or in rule))~~. The height pole must extend between three and six inches above the maximum height of the extra-legal vehicle, or load, to compensate for the affect of wind and motion. The height pole shall be

mounted on the front of the lead escort vehicle. When not in the act of escorting an extra-legal height move, or prunning a route to determine height acceptance, the height pole shall be removed, tied down or otherwise reduced to legal height.

(15) Do the rules change when a uniformed off-duty law enforcement officer, using official police car or motorcycle, performs the escorting function? While the spirit of the rules remains the same, specific rules may be modified to fit the situation.

AMENDATORY SECTION (Amending WSR 05-04-053, filed 1/28/05, effective 2/28/05)

WAC 468-38-155 Safety equipment for special permit moves. In addition to any codified vehicle safety requirements, what other safety equipment may be required on a special permit move? The following items may be required on a vehicle or vehicle combination making a move under special permit:

(1) Brakes.

(a) Braking equipment must comply with the performance and maintenance requirements of RCW 46.37.360, unless specifically stated on the special permit.

(b) A special permit will not be issued to a vehicle "in tow" of another vehicle without brakes unless a three-axle truck or truck-tractor with a minimum unladen weight of fifteen thousand pounds is employed as the power unit. The power unit must also have sufficient power and brakes to control the towed unit at all times.

(2) Drawbar—Towline.

(a) The drawbar or other connection between vehicles in combination must be of sufficient strength to hold the weight of the towed vehicle on any grade where operated.

(b) No trailing unit shall whip, weave, or oscillate or fail to follow substantially in the course of the towing vehicle.

(3) Flags.

(a) Flags must be displayed on all four corners of all overwidth loads, and at the extreme ends of all protrusions, projections, or overhangs as required by RCW 46.37.140. During hours of darkness, lights as required by RCW 46.37.140 shall be located at each point where the flags are required.

~~(b) ((Flags must be allowed to wave freely.~~

~~(e) All flags used to identify the extremities of a load must be clean, bright red, and at least twelve inches square.~~

~~((d))~~ When the distance between the towed vehicle and the towing vehicle exceeds fifteen feet, a white flag or cloth not less than ~~((twelve))~~ eighteen inches square must be fastened at the approximate middle of the span.

(4) Lights. Vehicles, whether factory direct or custom built, used in the transport of extra-legal loads must be equipped with brake lights and turn signals as required by RCW 46.37.200.

(5) When pilot/escort vehicle(s) are required, the transport vehicle must be equipped with a two-way radio communications system capable of providing reliable two-way voice communications at all times between the operators of the pilot/escort vehicle(s) and the transport vehicle.

(6) Rear-view mirrors.

(a) Rear-view mirrors must be mounted in compliance with RCW 46.37.400.

(b) Pilot/escort vehicles may be used in lieu of the two hundred-foot rear sight/distance requirement in RCW 46.37.400.

~~((6))~~ (7) Safety chains and devices.

(a) A load being moved by special permit must be securely fastened and protected by safety chains or other load securing devices pursuant to *Code of Federal Regulation*, 49 C.F.R. Part 393.100.

(b) Dragging of the load on the highway shall not be permitted.

(c) A vehicle with a boom or other aerial device attached must have the boom or device secured in such a manner that it cannot elevate (ratchet up) or sway during transport.

~~((7))~~ (8) Signs.

(a) ~~((A))~~ Warning signs displaying "OVERSIZE LOAD" must be displayed on any vehicle or load that exceeds the legal dimension limits as defined in RCW 46.44.010, 46.44.020, 46.44.030, and 46.44.034.

(b) "OVERSIZE LOAD" signs ~~((must))~~ shall be mounted in the front ~~((of the towing vehicle at a height of five feet from ground level. If the towing vehicle cannot accommodate the five-foot height, the sign should be placed as high as practicable on the vehicle or load.~~

~~(b) An "OVERSIZE LOAD" sign must be mounted on the rear of the vehicle, or towed vehicle if in combination, at a height of five to seven feet from ground level. If the towed vehicle cannot accommodate the five- to seven-foot height for the sign, the sign should be placed as high as practicable on the vehicle or load))~~ and rear of the transporting vehicle where the lights and license plate(s) are not blocked and are visible from the front and rear of the transport vehicle.

(c) Signs are to be displayed only during transit of an over-dimensional load and must be removed or retracted at all other times.

(d) An "OVERSIZE LOAD" sign must be at least seven feet wide and eighteen inches high with black lettering at least ten inches high ~~((in 1.41 inch))~~ with brush stroke between 1.4 and 1.5 inches on yellow background.

parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>, on January 27, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 28, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., January 27, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant by January 13, 2015, TTY (360) 664-6178 or (360) 664-6092, e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This department is proposing to amend WAC 388-414-0001 to fully incorporate requirements under Title 7 of the Code of Federal Regulations (C.F.R.) §273.2(j) related to categorically eligible (CE) for the federal supplemental nutrition assistance program (SNAP) and the requirement to verify residency if questionable at application and recertification for certain households.

The department is also proposing to amend WAC 388-468-0005 to clarify that households that are considered CE based on the receipt of noncash public assistance benefits (broad-based CE) have the same state residency verification requirements as non-CE households. Proposed amendments also clarify that both household types can be out-of-state for more than one month and still be considered a resident.

Reasons Supporting Proposal: Current rules in WAC are not fully aligned with federal regulations.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. 273.2 and 273.3.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects certain households served by DSHS who receive food assistance under Basic Food and travel out-of-state with the intention of returning making their residency questionable or the household moves out-of-state permanently.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are 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."

December 8, 2014
Katherine I. Vasquez
Rules Coordinator

WSR 15-01-049
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed December 9, 2014, 2:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-113.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-414-0001 Do I have to meet all eligibility requirements for Basic Food? and 388-468-0005 Residency.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504, (public

AMENDATORY SECTION (Amending WSR 14-15-070, filed 7/15/14, effective 8/15/14)

WAC 388-414-0001 Do I have to meet all eligibility requirements for Basic Food? (1) What is "categorically eligible" (CE)?

(a) Being categorically eligible (CE) means that you have already met requirements for the program. If you are CE, you do not have to meet **every** program requirement to be eligible for Basic Food.

(b) If your assistance unit (AU) is CE, you automatically meet the following requirements for Basic Food:

~~(i) (Residency under WAC 388-468-0005;~~
~~(ii))~~ Countable resource limit under WAC 388-470-0005;

~~((iii))~~ (ii) Maximum gross monthly income under WAC 388-478-0060; and

~~((iv))~~ (iii) Maximum net monthly income under WAC 388-478-0060.

(c) If your AU is CE and the information is available from another program, you do not need to provide the following for Basic Food:

(i) Social Security number information under WAC 388-476-0005; ~~(and)~~

(ii) Sponsored alien information under WAC 388-450-0155; and

(iii) Residency under WAC 388-468-0005.

(d) Being CE does not mean that your AU is guaranteed to get Basic Food benefits. If your AU is CE:

(i) You must still meet the other Basic Food program requirements under WAC 388-400-0040; and

(ii) If you meet the other program requirements, we must budget your AU's income to determine the amount of benefits your AU will receive.

(2) Who is categorically eligible for Basic Food? Your Basic Food AU is CE when your household meets the conditions in subsection (2)(a) or (2)(b) below:

(a) Your AU's income that we do not exclude under WAC 388-450-0015 is at or under two hundred percent of the federal poverty guidelines we use for department programs.

(i) The federal government publishes the federal poverty guidelines on the health and human services web site. These are currently posted at <http://aspe.hhs.gov/poverty/index.shtml>.

(ii) The department uses the monthly value of the income guidelines for the current year beginning the first of April every year.

(iii) If your income is not over two hundred percent of the federal poverty guidelines, we provide your AU information about the department programs and resources in the community.

(b) Everyone in your AU receives one of the following cash assistance programs:

(i) Temporary assistance for needy families (TANF)/state family assistance (SFA) or Tribal TANF under WAC 388-400-0005 and WAC 388-400-0010;

(ii) Aged, blind, or disabled (ABD) cash assistance under WAC 388-400-0060;

(iii) Supplemental security income (SSI) under Title XVI of the Social Security Act; or

(iv) Diversion cash assistance (DCA) under WAC 388-432-0005. DCA makes the Basic Food AU CE for the month it receives DCA and the following three months.

(3) Who is not CE even if my AU meets the above criteria?

(a) Even if your AU is CE, members of your AU are not eligible for Basic Food if they:

(i) Are not eligible because of their alien or student status;

(ii) Were disqualified from Basic Food under WAC 388-444-0055 for failing work requirements;

(iii) Are not eligible for failing to provide or apply for a Social Security number;

(iv) Receive SSI in a cash-out state (state where SSI payments are increased to include the value of the client's food stamp allotment); or

(v) Live in an institution not eligible for Basic Food under WAC 388-408-0040.

(b) If a person in your AU is not eligible for Basic Food, we do not include them as an **eligible member** of your CE AU.

(c) Your AU is not CE if:

(i) Your AU is not eligible because of striker requirements under WAC 388-480-0001;

(ii) Your AU is ineligible for knowingly transferring countable resources in order to qualify for benefits under WAC 388-488-0010;

(iii) Your AU refused to cooperate in providing information that is needed to determine your eligibility;

(iv) The head of household for your AU failed to meet work requirements; or

(v) Anyone in your AU is disqualified because of an intentional program violation under WAC 388-446-0015.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-468-0005 Residency. Subsections (1) through (4) applies to cash, the Basic Food program, and medical programs.

(1) A resident is a person who:

(a) Currently lives in Washington and intends to continue living here permanently or for an indefinite period of time; or

(b) Entered the state looking for a job; or

(c) Entered the state with a job commitment.

(2) A person does not need to live in the state for a specific period of time to be considered a resident.

(3) A child under age eighteen is a resident of the state where the child's primary custodian lives.

(4) ~~((With the exception of subsection (5) of this section,~~
a) A client can temporarily be out of the state for more than one month. If so, the client must supply the department with adequate information to demonstrate the intent to continue to reside in the state of Washington.

(5) ~~((Basic Food program assistance units who are not categorically eligible do not meet residency requirements if they stay out of the state more than one calendar month.~~

~~(6))~~ A client may not receive comparable benefits from another state for the cash and Basic Food programs.

~~((7))~~ (6) A former resident of the state can apply for the ABD cash program while living in another state if:

(a) The person:

- (i) Plans to return to this state;
- (ii) Intends to maintain a residence in this state; and
- (iii) Lives in the United States at the time of the application.

(b) In addition to the conditions in subsection ~~((7))~~ (6)(a)(i), (ii), and (iii) being met, the absence must be:

- (i) Enforced and beyond the person's control; or
- (ii) Essential to the person's welfare and is due to physical or social needs.

(c) See WAC 388-406-0035, 388-406-0040, and 388-406-0045 for time limits on processing applications.

~~((8))~~ (7) Residency is not a requirement for detoxification services.

~~((9))~~ (8) A person is not a resident when the person enters Washington state only for medical care. This person is not eligible for any medical program. The only exception is described in subsection ~~((10))~~ (9) of this section.

~~((10))~~ (9) It is not necessary for a person moving from another state directly to a nursing facility in Washington state to establish residency before entering the facility. The person is considered a resident if they intend to remain permanently or for an indefinite period unless placed in the nursing facility by another state.

~~((11))~~ (10) For purposes of medical programs, a client's residence is the state:

- (a) Paying a state supplemental security income (SSI) payment; or
- (b) Paying federal payments for foster or adoption assistance; or
- (c) Where the noninstitutionalized individual lives when medicaid eligibility is based on blindness or disability; or
- (d) Where the parent or legal guardian, if appointed, for an institutionalized:
 - (i) Minor child; or
 - (ii) Client twenty-one years of age or older, who became incapable of determining residential intent before reaching age twenty-one.

(e) Where a client is residing if the person becomes incapable of determining residential intent after reaching twenty-one years of age; or

(f) Making a placement in an out-of-state institution; or

(g) For any other institutionalized individual, the state of residence is the state where the individual is living with the intent to remain there permanently or for an indefinite period.

~~((12))~~ (11) In a dispute between states as to which is a person's state of residence, the state of residence is the state in which the person is physically located.

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

WSR 15-01-061
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed December 11, 2014, 1:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-083.

Title of Rule and Other Identifying Information: New section WAC 181-79A-227, requiring dual endorsements for science endorsements beginning in September 2019.

Hearing Location(s): Radisson Hotel, SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on March 19, 2015, at 8:30.

Date of Intended Adoption: March 19, 2015.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by March 12, 2015.

Assistance for Persons with Disabilities: Contact David Brenna by March 12, 2015, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Endorsements in science include designated science: Biology, chemistry, physics and earth/space. Additional rigor is required in the designated science. New issue certificates for science must include one designated endorsement in order to hold the general science beginning in September 2019. Applies to out-of-state transfer teachers as well.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

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).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

December 11, 2014
 David Brenna
 Senior Policy Analyst

NEW SECTION

WAC 181-79A-227 Science endorsement requirements. (1) Per WAC 181-82A-215, all teachers are required to hold at least one endorsement. Candidates pursuing a science endorsement in a state-approved program must earn and/or hold the science endorsement before September 1, 2019. After September 1, 2019, only certified teachers with designated science endorsements, which include biology,

chemistry, Earth and space science, or physics, can obtain the general science endorsement.

(2) Individuals certified in Washington state and holding a science endorsement prior to September 1, 2019, are exempt from the requirements of this section.

(3) Individuals applying for a Washington state teacher certificate that have completed an out-of-state teacher preparation program in general science may have two years in which to add one of the designated science endorsements.

WSR 15-01-076
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed December 12, 2014, 1:29 p.m.]

Continuance of WSR 14-23-076.

Preproposal statement of inquiry was filed as WSR 14-16-108.

Title of Rule and Other Identifying Information: Adds a new section to chapter 181-78A WAC requiring preparation programs to assure passage of the WEST B prior to admission and WEST E prior to student teaching per chapters 181-01 and 181-02 WAC.

Hearing Location(s): Radisson Hotel, SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on March 19, 2015, at 8:30.

Date of Intended Adoption: March 12, 2015.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by March 12, 2015.

Assistance for Persons with Disabilities: Contact David Brenna by March 12, 2015, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Requires preparation programs to assure and document that teacher candidates have successfully completed the requirements for the WEST B per chapter 181-01 WAC prior to entering a program. Requires preparation programs to assure and document that teacher candidates have successfully completed the requirements for WEST E per chapter 181-02 WAC.

Reasons Supporting Proposal: Addresses candidates needing to complete assessments in a timely manner.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

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).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by

contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

December 12, 2014

David Brenna
Senior Policy Analyst

NEW SECTION

WAC 181-78A-300 Program requirements for teacher candidates. (1) Approved programs for teachers shall assure that all candidates entering the program shall have successfully completed the WEST B or its alternative or exemptions per chapter 181-01 WAC. The candidate must take and pass the WEST B, or provide evidence of meeting an alternative or exception at the time of admissions. The program shall collect and hold evidence of this requirement.

(2) Approved programs, when placing a teacher candidate in the student teaching role with a school district, shall assure that the candidate has successfully passed at least one WEST E or equivalent content assessment test per chapter 181-02 WAC. The program shall collect and hold evidence of this requirement.

(3) This section shall be in effect beginning in the 2015-16 school year.

WSR 15-01-077
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed December 15, 2014, 7:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-11-041.

Title of Rule and Other Identifying Information: Revise WAC 36-14-545 Physician and ambulance or paramedical unit requirements for amateur events.

Hearing Location(s): Combative Sports Program, Business and Professions Division, Department of Licensing, Building 2, Floor 2, Conference Room #209, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on January 29, 2015, at 3:00 p.m.

Date of Intended Adoption: February 3, 2015.

Submit Written Comments to: Cameron Dalmas, Combative Sports Program, Department of Licensing, P.O. Box 9026, Olympia, WA 98507, e-mail plssunit@dol.wa.gov, fax (360) 664-2550, by January 29, 2015.

Assistance for Persons with Disabilities: Contact Cameron Dalmas by January 29, 2015, TTY (360) 664-0116 or (360) 664-6643.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current rule is in conflict with the law which requires all promoters to have both a physician and ambulance or paramedical unit on site at all times during an event.

The proposed change will require promoters of amateur mixed martial arts events, overseen by a sanctioning organi-

zation, to have a physician **and** an ambulance or paramedical unit on site at all times.

Reasons Supporting Proposal: Chapter 67.08 RCW, the law relating to boxing, martial arts, and wrestling requires all promoters of amateur and professional mixed martial arts events to have a physician and ambulance or paramedical unit on site at all times during an event.

Statutory Authority for Adoption: RCW 67.08.017 and 43.24.023.

Statute Being Implemented: RCW 67.08.017.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Colard, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-6643.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt under RCW 34.05.32 [34.05.328].

A cost-benefit analysis is not required under RCW 34.05.328. Washington state department of licensing is not a named agency, therefore a cost-benefit analysis is not required under RCW 34.05.328.

December 15, 2014

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-24-045, filed 11/30/12, effective 1/1/13)

WAC 36-14-545 Physician and ambulance or paramedical unit requirements for amateur events. Promoters of an amateur mixed martial arts event held under an amateur mixed martial arts sanctioning organization shall have at least one physician in attendance at the event (~~(or)~~ **and** an ambulance or paramedical unit with transportation and resuscitation capabilities to be present at the event location at all times during the event.

WSR 15-01-083

WITHDRAWAL OF PROPOSED RULES BUILDING CODE COUNCIL

(By the Code Reviser's Office)

[Filed December 16, 2014, 8:51 a.m.]

WAC 51-52-0403, proposed by the building code council in WSR 14-12-028, appearing in issue 14-12 of the Washington State Register, which was distributed on June 18, 2014, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 15-01-084

WITHDRAWAL OF PROPOSED RULES LIQUOR CONTROL BOARD

(By the Code Reviser's Office)

[Filed December 16, 2014, 8:51 a.m.]

WAC 314-23-060, 314-23-065, 314-23-070, 314-23-075, 314-23-080 and 314-23-085, proposed by the liquor control board in WSR 14-12-099, appearing in issue 14-12 of the Washington State Register, which was distributed on June 18, 2014, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 15-01-093

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed December 17, 2014, 11:28 a.m.]

Supplemental Notice to WSR 14-12-099.

Preproposal statement of inquiry was filed as WSR 13-07-026.

Title of Rule and Other Identifying Information: Six new sections are being created in chapter 314-23 WAC: WAC 314-23-060 What are "volume discounts"?, 314-23-065 What are "unfair trade practices"?, 314-23-070 What is "local market"?, 314-23-075 Are licensed distributors or other suppliers of spirits and wine allowed to provide discounts to on-premises or off-premises retail licensees based on a commitment from the retailer to purchase a particular percentage of the spirits back-bar, well drinks, wine by the glass, or any combination of these?, [314-23-080 Are licensed distributors or other licensed suppliers of spirits and wine allowed to provide volume discounts to on-premises or off-premises retail licensees?], and 314-23-085 What type of discounts are not allowed?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on January 28, 2015, at 10:00 a.m.

Date of Intended Adoption: February 4, 2015.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by January 28, 2015.

Assistance for Persons with Disabilities: Contact Karen McCall by January 28, 2015, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is a result of a stakeholder petition for rule making to clarify RCW 66.28.170 regarding discrimination in price to purchaser for resale prohibited. Confusion in the alcohol industry regarding "volume discounts" since the passing of Initiative 1183 requires further clarification in the rules.

Reasons Supporting Proposal: Additional rule language needs to be created to fully clarify the statute.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.28.170.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Randy Simmons, Deputy Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1671; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

In order to assess the potential impact of the proposed rules on businesses, the board circulated a survey to stakeholders and individuals on the rule making distribution list maintained by the board. The board received responses from one hundred forty-six businesses. At least one organization, the Washington Restaurant Association, sent the survey to all of their members. The analysis below incorporates comments received in response to the survey. The board had received comments on an earlier set of proposed rules and made the changes reflected in the proposed rules based on comments made in rule-making hearings, as well as comments received from stakeholders.

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: The proposed rules do not add any reporting or recordkeeping requirements beyond what are required by existing law or rules.

2. Kinds of Additional Professional Services, If Any, Will Your Business Need in Order to Comply with the Rules as Proposed: Thirty-six percent of the responses stated there would be no additional professional services needed to comply with the rules as proposed. In response to the board's proposed rule, one distributor notified its customers that the rule would require it to begin charging fees for delivering orders that included less than full case lots of one product (split case fees) to customers that it had not charged those fees in the past. The proposed rules do not allow or prohibit split case fees, but do require that charges that differ between customers be justified under one of the bases allowed in the law.

Despite the rule not addressing split case fees, sixty-four percent of the responses stated they would need additional professional services to maintain additional recordkeeping to monitor their alcohol ordering to avoid split case fees charged by distributors. Another cost listed was renting additional storage space to warehouse their inventory so they could order in full cases to avoid split case fees.

Respondents with more than one location stated they would need to rent a warehouse space to have their orders delivered to a central warehouse to take advantage of volume discounts on spirits and wine purchases. They also stated they would need to hire additional staff to maintain the warehouse and deliver product to their licensed locations. The board maintains that practices that have been used in the past, with distributors providing volume discounts to licensees who

have more than one location, but making separate deliveries to each location, are not allowed by the law, and the retail licensees should have been having deliveries to a central location in order to receive the volume discounts.

The estimated costs that survey respondents listed as imposed by the proposed rules break down as follows:

- Less than \$1000 - 22%
- \$1000 - \$5000 - 29%
- \$5000 - \$10,000 - 11%
- \$10,000 - \$15,000 - 11%
- More than \$15,000 - 27%

3. Costs of Compliance for Businesses in the Following Areas; Reporting, Recordkeeping, Equipment, Supplies, Labor and Administrative Costs: Twenty-six percent of the respondents stated there would be no additional costs for recordkeeping, labor, and administrative costs to comply with the proposed rules. Seventy-three percent of the respondents stated there would be additional costs for recordkeeping, labor, and administrative costs to comply with the proposed rules. Despite the rule not addressing split case fees, sixty-four percent of the responses stated they would need additional professional services to maintain additional recordkeeping to monitor their alcohol ordering to avoid split case fees charged by distributors.

Another cost listed was renting additional storage space to warehouse their inventory so they could order in full cases to avoid split case fees. Respondents with more than one location stated they would need to rent a warehouse space to have their orders delivered to a central warehouse to take advantage of volume discounts on spirits and wine purchases. They also stated they would need to hire additional staff to maintain the warehouse and deliver product to their licensed locations. The board maintains that practices that have been used in the past, with distributors providing volume discounts to licensees who have more than one location, but making separate deliveries to each location, are not allowed by the law, and the retail licensees should have been having deliveries to a central location in order to receive the volume discounts. The estimated costs that survey respondents reported break down as follows:

- Less than \$1000 - 6%
- \$1000 - \$5000 - 29%
- \$5000 - \$10,000 - 30%
- \$10,000 - \$15,000 - 12%
- More than \$15,000 - 23%

4. Will Compliance with the Proposed Draft Rules Cause Businesses to Lose Sales or Revenue? Thirteen percent of respondents stated their business would not lose sales or revenue. Eighty-seven percent of respondents stated their business would lose sales or revenue. For those respondents who listed a cause, the reasons for loss of revenue were split case fees charged by distributors and the allowance in the proposed rules for channel pricing for on-premises and off-premises liquor licensees. If the licensee is required to pay higher prices for their products they will have to raise the price of drinks to their customers. The estimated loss of revenue submitted by respondents is as follows:

- Less than \$1000 - 8%
- \$1000 - \$5000 - 15%
- \$5000 - \$10,000 - 22%
- \$10,000 - \$15,000 - 16%
- More than \$15,000 - 39%

5. Number of Jobs That Will Be Created or Lost as a Result of Complying with the Proposed Draft Rules?

Sixty percent of respondents stated there would be no jobs created or lost as a result of complying with the proposed rules. Thirty percent of respondents stated one to five jobs would be created or lost as a result of complying with the proposed draft rules. Ten percent of respondents stated one to five jobs would be created as a result of complying with the proposed rules.

6. Cost of Compliance for Small Businesses Compared with the Cost of Compliance of Large Businesses:

The survey sought information on the size of the businesses who replied, to enable a comparison of compliance costs. Most of the businesses who responded to the survey identified themselves as small businesses. Seventy-two percent of the respondents stated they had ten to fifty employees. Twenty-eight percent of respondents stated they had over fifty employees.

Despite the rule not addressing split case fees, eighty-three percent of the responses stated they would need additional professional services to maintain additional record-keeping to monitor their alcohol ordering to avoid split case fees charged by distributors. They are smaller businesses and don't always purchase product in full cases.

Central warehousing is also not part of the proposed draft rules, but eight percent of respondents stated the reason for additional costs and loss of revenue would be due to central warehousing. Respondents stated they would need to rent a warehouse space to have their orders delivered to a central warehouse to take advantage of volume discounts on spirits and wine purchases. They also stated they would need to hire additional staff to maintain the warehouse and deliver product to their licensed locations.

Nine percent of respondents stated the reason for additional costs and loss of revenue would be the allowance of channel pricing. All nine percent of those respondents were small business[es] employing fewer than fifty employees.

The board considered whether any changes could be made to the proposed rules to lessen or eliminate the potential impact on small businesses. This rule making was originally begun in response to a petition from small businesses who believe that the law prohibits certain sales and marketing practices that are addressed by the proposed rules. The board determined to open this rule making to examine the business practices that are occurring, and whether those practices comply with the law. The comments on the rule making demonstrate a strong split of opinion on what the law does, and does not, allow, thus the board believes the rules are necessary to interpret the law to define the limits on business practices in the liquor industry. The original petitioners believe the proposed rules allow too much leeway in spirits pricing and delivery, while other stakeholders assert the board is prohibiting practices that are allowed by law. The board believes the proposed rules strike a legitimate balance in the liquor marketplace and appropriately prohibit unfair trade practices.

A copy of the statement may be obtained by contacting Karen McCall, P.O. Box 43080, Olympia, WA 98504, phone (360) 664-1631, fax (360) 664-9689, e-mail rules@liq.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required.

December 17, 2015

Sharon Foster
Chairman

NEW SECTION

WAC 314-23-060 What are "volume discounts"?

Volume discounts are discounts that are based solely on the volume of the spirits and/or wine that is purchased by a retailer from a distributor or supplier. However, the limitations on interactions between the levels of licenses remain including, but not limited to, the prohibition on undue influence and sales below cost.

NEW SECTION

WAC 314-23-065 What are "unfair trade practices"?

(1) "Unfair trade practice" means one retailer or industry member directly or indirectly influencing the purchasing, marketing, or sales decisions of another retailer or industry member by any agreement written or unwritten or any other business practices or arrangements such as, but not limited to, the following:

(a) Any form of coercion between industry members and retailers or between retailers and industry members through acts or threats of physical or economic harm, including threat of loss of supply or threat of curtailment of purchase;

(b) A retailer on an involuntary basis purchasing less than it would have of another industry member's product;

(c) Purchases made by a retailer or industry member as a prerequisite for purchase of other items;

(d) A retailer purchasing a specific or minimum quantity or type of a product or products from an industry member;

(e) An industry member requiring a retailer to take and dispose of a certain product type or quota of the industry member's products;

(f) A retailer having a continuing obligation to purchase or otherwise promote or display an industry member's product;

(g) An industry member having a continuing obligation to sell a product to a retailer;

(h) A retailer having a commitment not to terminate its relationship with an industry member with respect to purchase of the industry member's products or an industry member having a commitment not to terminate its relationship with a retailer with respect to the sale of a particular product or products;

(i) An industry member being involved in the day-to-day operations of a retailer or a retailer being involved in the day-to-day operations of an industry member in a manner that violates the provisions of this subsection;

(j) Discriminatory pricing practices as prohibited by law or other practices that are discriminatory in that the product is

not offered to all retailers in the local market at the same price.

(2) The exercise of undue influence is an unfair trade practice and is prohibited.

NEW SECTION

WAC 314-23-070 What is "local market"? Local market is limited to businesses in geographic recognized market areas such as town, city, county or other recognized geographic area in which distribution services are provided. For the purposes of differential pricing, sales to on-premises retailers and off-premises retailers constitute separate markets.

NEW SECTION

WAC 314-23-075 Are licensed distributors or other suppliers of spirits and wine allowed to provide discounts to on-premises or off-premises retail licensees based on a commitment from the retailer to purchase a particular percentage of the spirits back-bar, well-drinks, wine by the glass, or any combination of these? (1) It is unlawful for a distributor or other supplier of spirits or wine to offer a lower price to an on-premises or off-premises retailer if the retailer is required to purchase a specific portion of some or all of its wine or spirits from that distributor or supplier in order to qualify for the lower price. Such requirements include, but are not necessarily limited to, agreeing to devote certain percentage of the spirits back-bar, well-drinks, wine by the glass, or any combination of these or other types of purchases to products sold by that distributor or supplier.

(2) Such exclusive discounts are prohibited under RCW 66.28.170 and federal law 27 C.F.R. 6.72.

NEW SECTION

WAC 314-23-080 Are licensed distributors or other licensed suppliers of spirits and wine allowed to provide volume discounts to on-premises or off-premises retail licensees? (1) Yes, distributors or other licensed suppliers are allowed to provide volume discounts to licensed on-premises and off-premises retailers. The discounts must be based solely on the volume of the spirits and/or wine that is purchased by a retailer from a distributor or other licensed suppliers. However, the limitations on interactions between the levels of licenses remain, including the prohibition on undue influence and sales below cost of acquisition.

(2) Differential pricing between on-premises licensed retailers and off-premises licensed retailers is allowed as long as there are no sales below cost. This business practice is referred to as "channeling."

NEW SECTION

WAC 314-23-085 What type of discounts are not allowed? The following types of discounts are not allowed. Please note that this list is representative and not inclusive of all practices that are not allowed:

(1) **Volume discounts that violate local, state, or federal laws.**

(2) **Discounts on purchases over time.** Prices must be based on the spirits or wine delivered in a single shipment or single invoice.

(3) **Discounts on a combined order that is delivered to multiple licensed sites.** Volume discounts may only be provided based on combined orders by one or more licensees to the "central warehouse" or a single location to which the order is delivered. The delivery of product to multiple sites cannot be used in determining the volume discount for a combined order.

WSR 15-01-094

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Operations Support and Services Division)

(Background Check Central Unit)

[Filed December 17, 2014, 11:48 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-065.

Title of Rule and Other Identifying Information: The operations support and services division, background check central unit, is coordinating with the human resources division to create new WAC 388-06-0030, repeal WAC 388-06-0600 through 388-06-0640 and create chapter 388-06B WAC, DSHS Employee background checks.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504, (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on January 27, 2014 [2015], at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 28, 2014 [2015].

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., January 27, 2014 [2015].

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, TTY (360) 664-6178 or (360) 664-6092 or e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this coordinated rule-making is to move DSHS employee background check requirements from WAC 388-06-0600 through 388-06-0640, to chapter 388-06B WAC. DSHS employee background check requirements will be revised to align with federal and state laws and current department standards. This rule making will permanently adopt emergency rules filed under WSR 14-21-062 implementing chapter 88, Laws of 2014.

Reasons Supporting Proposal: This rule making is intended to comply with federal and state law and to provide clarity for the affected individuals and hiring authorities.

Statutory Authority for Adoption: RCW 43.43.832.

Statute Being Implemented: For chapter 388-06 WAC is RCW 43.43.832 and 43.43.837; and for chapter 388-06B WAC is RCW 43.43.832, 43.20A.710, and 43.43.837.

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

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

Name of Agency Personnel Responsible for Drafting: Cindy LaRose-Eatwell, FSA, Background Check Central Unit, (360) 902-8072; Implementation and Enforcement: Ellen Andrews, Human Resources Division, (360) 725-5802.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rule revisions relate to internal governmental operations and have no impact on outside businesses.

A cost-benefit analysis is not required under RCW 34.05.328. These rule revisions relate to internal governmental operations and is [are] exempt under RCW 34.05.328.

December 10, 2014
Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-06-0030 What is the purpose of this chapter? (1) WAC 388-06-500 through 388-06-0540 defines when the one hundred twenty-day provisional hire is allowed by DSHS.

(2) WAC 388-06-0700 through 388-06-0720 describes the responsibilities of the background check central unit.

NEW SECTION

WAC 388-06B-0010 What is the purpose of this chapter? The purpose of this chapter is to establish standards for the department of social and health services to conduct background checks for department employees, applicants for employment, volunteers and student interns.

NEW SECTION

WAC 388-06B-0020 What definitions apply to this chapter? **"Applicant"** means a person who has applied for work in a department-covered position, including current employees, volunteers, students, or interns serving or working in a similarly situated position or any person who must meet state and federal background check requirements to work in a department-covered position.

"Background check central unit" means the program responsible for conducting background checks for the department of social and health services.

"Child or children" means any person under eighteen years of age.

"Department" means the department of social and health services.

"Department-covered position" means a position that has:

(1) Unsupervised access to vulnerable adults, juveniles, or children; or

(2) Access to the internal databases in the background check central unit and the division of disability determination services.

"Division of disability determination services" means the DSHS program contracted to perform medical determinations for the Social Security Administration in accordance with Social Security Administration regulations and requirements.

"DSHS" means the department of social and health services.

"Employee" means a permanent or non-permanent department of social and health services employee who is appointed to a department-covered position for any reason including but not limited to: transfer, promotion, demotion, elevation, layoff, reassignment, reallocation, and reversion.

"Juvenile" means a person under the age of twenty-one under the juvenile rehabilitation administration's (JRA) jurisdiction, or under the department of corrections' jurisdiction while placed in a JRA facility.

"Pending charge or pending action" means a charge or action awaiting a decision by a court or a civil adjudication proceeding. The term pending charge also includes specific types of court action where the defendant has agreed to certain conditions. Examples include a deferred prosecution or a stipulated order of continuance on an agreed condition. The department considers these types of cases on an individual case-by-case basis.

"Permanent employee" means a department employee who has successfully completed a Washington general service probationary period or Washington management service review period after appointment to a permanent position.

"Sensitive positions" means positions in the division of disability determination services and the background check central unit with access to federal databases or databases containing background check information.

"Unsupervised access" means a DSHS employee, volunteer or student intern who:

(1) Works, volunteers or serves in a setting, such as an institution, that provides residential services to vulnerable adults, juveniles and children;

(2) Works, volunteers or serves in a position where, during the course of his or her employment, the employee may transport, or visit the residence of, a vulnerable adult, juvenile or child; or

(3) Works, volunteers or serves in a position, other than one described in subsection (1) and (2) in this section, where the employee may be left alone with a vulnerable adult, juvenile or child. "Left alone" does not include the possibility of a public encounter, or public interaction.

"Vulnerable adult" means a person who is a client of the department who is:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Developmentally disabled as defined under RCW 71A.10.020; or

(4) Admitted to any facility that is operated by the department; or

(5) Receiving services from a department contracted, authorized, certified, licensed, or individual provider, including those certified under chapter 70.96A RCW; or

(6) Receiving services through home health, hospice, or home care agencies required to be licensed under chapter 70.127 RCW; or

(7) Admitted for detoxification in a certified chemical dependency treatment facility in accordance with chapter 70.96A RCW; or

(8) A vulnerable adult as defined in chapter 74.34 RCW.

NEW SECTION

WAC 388-06B-0100 Must the DSHS secretary or designee conduct background checks on all employees in department-covered positions and applicants under consideration for a covered position? (1) The secretary of the department of social and health services or designee must conduct a background check, as authorized by statute, on all employees in covered positions; employees in sensitive positions, and applicants under final consideration for a covered position.

(2) A national fingerprint-based background check will be conducted if required by state law, federal regulations, or presidential directive.

NEW SECTION

WAC 388-06B-0200 What are the DSHS secretary's responsibilities in carrying out the requirements to conduct background checks? The DSHS secretary or designee will:

(1) Develop policies and guidelines pertaining to background checks. The department's background check policies and guidelines must minimally address the following:

(a) Process for identifying department-covered positions;

(b) Notification to employees and applicants that a background check is required for covered positions;

(c) When employees and applicants may be hired on a conditional basis pending the results of a background check;

(d) When a character, competence, and suitability review will be required to determine if the applicant and/or employee may have unsupervised access to vulnerable adults, juveniles and children;

(e) When rechecks may be initiated;

(f) What happens when a permanent DSHS employee is denied a department-covered position because of a background check or failure to authorize a background check to include:

(i) Employment options available when a permanent employee is disqualified from holding a department covered position;

(ii) Interim measures available while exploring employment options;

(iii) Process that will be used to identify non-covered department positions; and

(iv) Specific time-frame allowed for exploration of employment options prior to separation of a permanent employee.

(g) When an employee may request a review of a disqualification for employment in a covered position;

(2) Not further disseminate background check information unless authorized or required by law to do so; and

(3) Comply with public disclosure requirements and the rules of civil discovery when applicable.

NEW SECTION

WAC 388-06B-0300 What information is considered in a background check conducted by DSHS and how are the results of the background check used? (1) The background check information considered by the DSHS secretary or designee will include but is not limited to conviction records, pending charges, and civil adjudications as defined in RCW 43.43.830.

(2) The background information must be used by DSHS to determine the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

(3) If the applicant or employee's criminal history was reviewed in 2002 by DSHS through its background assessment review team (BART) process, and if DSHS determined the employee could remain in a covered position, the applicant or employee will not be disqualified based upon criminal history, including his or her conviction record, that was known and considered during the BART process.

(4) Background information that was the subject of a pardon, annulment, or other equivalent procedure will not disqualify an applicant and/or employee from having unsupervised access to vulnerable adults, juveniles and children.

(5) Results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

NEW SECTION

WAC 388-06B-0400 Must an employee or applicant authorize the secretary of the department of social and health services or designee to conduct a background check and what happens if the employee or applicant does not provide authorization? (1) An employee and/or applicant applying for or being considered for retention in a department-covered position must authorize the secretary of DSHS or designee to conduct a background check which may include fingerprinting when required by state or federal law or regulations.

(2) Failure to authorize the DSHS secretary or designee to conduct a background check shall disqualify an employee or applicant from consideration for any covered position including their current covered position.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-06-0600 Must the DSHS secretary or designee conduct background checks on all employees in covered positions and applicants under consideration for a covered position?

- WAC 388-06-0605 What is a covered position?
- WAC 388-06-0610 Who are vulnerable adults, juveniles or children?
- WAC 388-06-0615 What is unsupervised access?
- WAC 388-06-0620 What information is considered in a background check conducted by DSHS and what are the results of the background check used for?
- WAC 388-06-0625 Must an employee and/or applicant authorize the secretary of the department of social and health services or designee to conduct a background check and what happens if the employee or applicant does not provide authorization?
- WAC 388-06-0630 What happens when a permanent DSHS employee is disqualified because of a background check or failure to authorize a background check?
- WAC 388-06-0635 What are the DSHS secretary's responsibilities in carrying out the requirements to conduct background checks?
- WAC 388-06-0640 Does a DSHS permanent employee who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification?

Assistance for Persons with Disabilities: Contact Kelly Richters by January 19, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To eliminate subsection (4)(c) in WAC 182-527-2790 because it is not within the scope of authority of state administrative law judges.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 2716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Mick Pettersen, P.O. Box 5534, Olympia, WA 98504-5534, (360) 725-0913.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative [rules] review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

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.

December 18, 2014

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-19-038, filed 9/11/13, effective 10/12/13)

WAC 182-527-2790 Filing liens. (1) The medicaid agency or its designee may file liens to recover the cost of ~~((medical assistance or state only funded))~~ Washington apple health long-term care (WAH-LTC) services~~((, or both,))~~ correctly paid on behalf of a client consistent with 42 U.S.C. 1396p ~~((and)),~~ chapters 41.05A and 43.20B RCW, and 182-527 WAC.

(2) ~~((Prior to))~~ Before the agency or its designee ~~((filing))~~ files a lien under this section, the agency or its designee sends a notice via first class mail to:

(a) The address of the property and other assets subject to the lien;

(b) The probate estate's personal representative, if any;

(c) Any other person known to have title to the affected property ~~((and/or))~~ or to the decedent's heir(s) as defined by WAC 182-527-2730, or both; and

(d) The decedent's last known address or the address listed on the title, if any.

(3) The notice in subsection (2) of this section includes:

(a) The decedent's name, identification number, date of birth, and date of death;

(b) The amount of ~~((medical assistance or state only funded long term care services, or both,))~~ WAH-LTC services correctly paid on behalf of the deceased client that the agency or its designee seeks to recover;

WSR 15-01-114

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed December 18, 2014, 1:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-159.

Title of Rule and Other Identifying Information: WAC 182-527-2790 Filing liens.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106B, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on January 27, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 28, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on January 27, 2015.

(c) The agency's or its designee's intent to file a lien against the deceased client's property and other assets to recover the amount of ~~((medical assistance or state-only funded long-term care services, or both,))~~ WAH-LTC services correctly paid on behalf of the deceased client;

(d) The county in which the property and other assets are located; and

(e) The procedures to contest the agency's or its designee's decision to file a lien by applying for an administrative hearing.

(4) An administrative hearing ~~((only))~~ determines only:

(a) ~~((Whether the medical assistance or state-only funded long-term care services, or both, correctly paid on behalf of the decedent alleged by the agency's or its designee's notice is correct;))~~ The correctness of the dollar amount paid on behalf of the decedent for WAH-LTC services; and

(b) Whether the decedent had legal title to the property~~(; and~~

~~(c) Whether a lien is allowed under the provisions of Title 42 U.S.C. Section 1396p (a) and (b)).~~

(5) A request for an administrative hearing must:

(a) Be in writing;

(b) State the basis for contesting the lien;

(c) Be signed by the requester and must include the requester's address and telephone number; and

(d) Be served to the office of financial recovery (OFR) as described in WAC 182-527-2870, within twenty-eight calendar days of the date the agency or its designee mailed the notice.

(6) Upon receiving a request for an administrative hearing, the agency or its designee notifies persons known to have title to the property and other assets of the time and place of the administrative hearing.

(7) People known to have title to disputed assets ~~((must not be distributed))~~ cannot collect them while in litigation.

(8) An administrative hearing under this section is governed by chapters 34.05 RCW and 182-526 WAC and this section. If a provision in this section conflicts with a provision in chapter 182-526 WAC, the provision in this section governs.

(9) If an administrative hearing is conducted in accordance with this ~~((regulation))~~ section, and the final agency decision is issued, the agency or its designee ~~((only))~~ files a lien against the decedent's property and other assets ~~((only))~~ if upheld by the final agency decision.

(10) If no known title holder requests an administrative hearing, the agency or its designee files a lien twenty-eight calendar days after the date the agency or its designee mailed the notice described in subsection (2) of this section.

Title of Rule and Other Identifying Information: Decommissioning planning and licensing materials: Chapter 246-220 WAC, Radiation protection—General provisions; WAC 246-232-010, definitions, radioactive material-licensing applicability; chapter 246-235 WAC, Radioactive materials—Specific licenses; chapter 246-246 WAC, Radioactive criteria for license termination; and chapter 246-252 WAC, Radiation protection—Uranium and/or thorium milling. The department of health (DOH) is proposing to change Washington state rules to make them consistent with the federal Nuclear Regulatory Commission's rules and make editorial changes.

Hearing Location(s): DOH, Town Center Two, Room 419, 111 Israel Road S.E., Tumwater, WA 98501, on January 27, 2015, at 1:30 p.m.

Date of Intended Adoption: January 30, 2015.

Submit Written Comments to: Michelle K. Austin, P.O. Box 47827, Tumwater, WA 98504-7827, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2266, by January 27, 2015.

Assistance for Persons with Disabilities: Contact Michelle K. Austin by January 20, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to adopt the two federal rule changes titled, "2011-1: decommissioning planning" and "2011-2: licenses, certification, and approvals for materials licensees". Revisions resulting from "2011-1" improve decommissioning planning and reduce the likelihood a current operating facility could potentially become an abandoned facility that would require state or federal funds to clean-up. Revisions resulting from "2011-2" improve the effectiveness and efficiency of the licensing and approval processes for future materials license applications.

Reasons Supporting Proposal: Under the formal state agreement between the governor and the Nuclear Regulatory Commission, the office of radiation protection (the state radiation control program) is required to remain compatible with the Nuclear Regulatory Commission rules. This is done through rule making. This rule making is required to comply with RCW 70.98.050 (4)(d) and the agreement between the state of Washington and the Atomic Energy Commission (predecessor to the Nuclear Regulatory Commission) under section 274 of the Atomic Energy Act of 1954 as amended (42 U.S.C. sec. 2021), by the Energy Policy Act of 2005.

Statutory Authority for Adoption: RCW 70.98.050.

Statute Being Implemented: RCW 70.98.050.

Rule is necessary because of federal law, 76 F.R. 35512 and 76 F.R. 56951.

Name of Proponent: DOH, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Curt DeMaris, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-3223.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, Washington state law, the rules of other

WSR 15-01-133

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed December 19, 2014, 2:44 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required 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.

December 16, 2014
Dennis E. Worsham
Deputy Secretary
for John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 14-01-077, filed 12/16/13, effective 1/16/14)

WAC 246-220-010 Definitions, abbreviations, and acronyms. The definitions, abbreviations, and acronyms in this section apply throughout chapters 246-220 through 246-254 WAC unless the context clearly indicates otherwise. Additional definitions used only in a certain chapter (~~will be found~~) are included in that chapter.

(1) **"Absorbed dose"** means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

(2) **"Accelerator produced material"** means any material made radioactive by exposing it in a particle accelerator.

(3) **"Act"** means nuclear energy and radiation, chapter 70.98 RCW.

(4) **"Activity"** means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

(5) **"Adult"** means an individual eighteen or more years of age.

(6) **"Agreement state"** means any state with which the NRC has entered into an effective agreement under subsection 274b of the Atomic Energy Act of 1954, as amended.

(7) **"Airborne radioactive material"** means any radioactive material dispersed in the air in the form of particulates, dusts, fumes, mists, vapors, or gases.

(8) **"Airborne radioactivity area"** means a room, enclosure, or operating area in which airborne radioactive material exists in concentrations (a) in excess of the derived air concentration (DAC) specified in WAC 246-221-290, Appendix A, or (b) to the degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or twelve DAC-hours.

(9) **"Air purifying respirator"** means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(10) **"ALARA"** (as low as reasonably achievable) means making every reasonable effort to maintain exposures to radiation as far below the dose limits in this chapter as is practical, consistent with the purpose for which the licensed activity is undertaken, taking into account the state of technology, the economics of improvements in relation to the

state of technology, the economics of improvements in relation to the benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to the utilization of nuclear energy and licensed materials in the public interest.

(11) **"Alert"** means events may occur, are in progress, or have occurred that could lead to a release of radioactive material but that the release is not expected to require a response by off-site response organizations to protect persons off-site.

~~((11))~~ (12) **"ALI (annual limit on intake)"** means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of 0.05 Sv (5 rem) or a committed dose equivalent of 0.5 Sv (50 rem) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in WAC 246-221-290.

~~((12))~~ (13) **"APF (assigned protection factor)"** means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

~~((13))~~ (14) **"Atmosphere-supplying respirator"** means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes SARs and SCBA units.

~~((14))~~ (15) **"Background radiation"** means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the department.

~~((15))~~ (16) **"Bq (becquerel)"** means the SI unit of activity. One becquerel is equal to 1 disintegration or transformation per second (s⁻¹).

~~((16))~~ (17) **"Bioassay"** means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

~~((17))~~ (18) **"By-product material"** means:

(a) Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution

extraction operations do not constitute "by-product material" within this definition;

(c)(i) Any discrete source of radium 226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; or

(ii) Any material that:

(A) Has been made radioactive by use of a particle accelerator; and

(B) Is produced, extracted, or converted after extraction, for use for a commercial, medical, or research activity; and

(d) Any discrete source of naturally occurring radioactive material, other than source material, that:

(i) The commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency determines would pose a threat similar to the threat posed by a discrete source of radium 226 to the public health and safety or the common defense and security; and

(ii) Is extracted or converted after extraction for use for in a commercial, medical, or research activity.

~~((18))~~ (19) **"Calendar quarter"** means at least twelve but no more than fourteen consecutive weeks. The first calendar quarter of each year begins in January and subsequent calendar quarters shall be arranged so that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. A licensee or registrant may not change the method of determining calendar quarters for purposes of these rules.

~~((19))~~ (20) **"Calibration"** means the determination of (a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or (b) the strength of a source of radiation relative to a standard.

~~((20))~~ (21) **"C.F.R."** means Code of Federal Regulations.

~~((21))~~ (22) **"Class"** means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: For Class D, Days, of less than ten days, for Class W, Weeks, from ten to one hundred days, and for Class Y, Years, of greater than one hundred days. For purposes of these rules, "lung class" and "inhalation class" are equivalent terms. For "class of waste" see WAC 246-249-040.

~~((22))~~ (23) **"Collective dose"** means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

~~((23))~~ (24) **"Commencement of construction"** means taking any action defined as construction or any other activity at the site of a facility subject to the regulations in this chapter that has a reasonable nexus to radiological health and safety.

(25) **"Committed dose equivalent"** ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the fifty-year period following the intake.

~~((24))~~ (26) **"Committed effective dose equivalent"** ($H_{E,50}$) is the sum of the products of the weighting factors

applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = \sum w_T H_{T,50}$).

~~((25))~~ (27) **"Consortium"** means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution or a federal facility or a medical facility.

~~((26))~~ (28) **"Constraint"** or dose constraint means a value above which specified licensee actions are required.

~~((27))~~ (29) **"Construction"** means the installation of foundations, or in-place assembly, erection, fabrication, or testing for any structure, system, or component of a facility or activity subject to the requirements in chapters 246-220 through 246-254 WAC that are related to radiological safety or security. The term construction does not include:

(a) Changes for temporary use of the land for public recreational purposes;

(b) Site exploration, including necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(c) Preparation of the site for construction of the facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(d) Erection of fences and other access control measures that are not related to the safe use of, or security of, radiological materials;

(e) Excavation;

(f) Erection of support buildings (e.g., construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and office buildings) for use in connection with the construction of the facility;

(g) Building of service facilities (e.g., paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, and transmission lines);

(h) Procurement or fabrication of components or portions of the proposed facility occurring at other than the final in-place location at the facility; or

(i) Taking any other action that has no reasonable nexus to radiological health and safety.

(30) **"Controlled area."** See "Restricted area."

~~((28))~~ (31) **"Curie"** means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7×10^{10} transformations per second (tps).

~~((29))~~ (32) **"Declared pregnant woman"** means a woman who has voluntarily informed the licensee or registrant, in writing, of her pregnancy, and the estimated date of conception. The declaration remains in effect until the

declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

~~((30))~~ (33) **"Deep dose equivalent"** (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm^2).

~~((31))~~ (34) **"Demand respirator"** means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

~~((32))~~ (35) **"Department"** means the Washington state department of health, which has been designated as the state radiation control agency under chapter 70.98 RCW.

~~((33))~~ (36) **"Depleted uranium"** means the source material uranium in which the isotope Uranium-235 is less than 0.711 percent by weight of the total uranium present. Depleted uranium does not include special nuclear material.

~~((34))~~ (37) **"Derived air concentration"** (DAC) means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of two thousand hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for two thousand hours in a year. DAC values are given in WAC 246-221-290.

~~((35))~~ (38) **"DAC-hour (derived air concentration-hour)"** means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take two thousand DAC-hours to represent one ALI, equivalent to a committed effective dose equivalent of 0.05 Sv (5 rem).

~~((36))~~ (39) **"Discrete source"** means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical or research activities.

~~((37))~~ (40) **"Disposable respirator"** means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

~~((38))~~ (41) **"Dose"** is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

~~((39))~~ (42) **"Dose commitment"** means the total radiation dose to a part of the body that will result from retention in the body of radioactive material. For purposes of estimating the dose commitment, it is assumed that from the time of intake the period of exposure to retained material will not exceed fifty years.

~~((40))~~ (43) **"Dose equivalent"** (H_T) means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

~~((41))~~ (44) **"Dose limits"** means the permissible upper bounds of radiation doses established in accordance with these rules. For purposes of these rules, "limits" is an equivalent term.

~~((42))~~ (45) **"Dosimetry processor"** means a person that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

~~((43))~~ (46) **"dpm"** means disintegrations per minute. See also "curie."

~~((44))~~ (47) **"Effective dose equivalent"** (H_E) means the sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \sum w_T H_T$).

~~((45))~~ (48) **"Embryo/fetus"** means the developing human organism from conception until the time of birth.

~~((46))~~ (49) **"Entrance or access point"** means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, without respect to their intended use.

~~((47))~~ (50) **"Exposure"** means (a) being exposed to ionizing radiation or to radioactive material, or (b) the quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. The special unit of exposure is the roentgen (R) and the SI equivalent is the coulomb per kilogram (c/kg). One roentgen is equal to 2.58×10^{-4} coulomb per kilogram of air.

~~((48))~~ (51) **"Exposure rate"** means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

~~((49))~~ (52) **"External dose"** means that portion of the dose equivalent received from any source of radiation outside the body.

~~((50))~~ (53) **"Extremity"** means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

~~((51))~~ (54) **"Filtering facepiece"** (dust mask) means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

~~((52))~~ (55) **"Fit factor"** means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

~~((53))~~ (56) **"Fit test"** means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

~~((54))~~ (57) **"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities"** means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment

plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

~~((55))~~ (58) **"Generally applicable environmental radiation standards"** means standards issued by the United States Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

~~((56))~~ (59) **"Gray"** (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of 1 joule/kilogram (100 rad).

~~((57))~~ (60) **"Healing arts"** means the disciplines of medicine, dentistry, osteopathy, chiropractic, podiatry, and veterinary medicine.

~~((58))~~ (61) **"Helmet"** means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

~~((59))~~ (62) **"High radiation area"** means any area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of 1 mSv (0.1 rem) in one hour at 30 centimeters from any source of radiation or 30 centimeters from any surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic X-ray systems are used for healing arts purposes are not considered high radiation areas.

~~((60))~~ (63) **"Hood"** means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

~~((61))~~ (64) **"Human use"** means the intentional internal or external administration of radiation or radioactive material to human beings.

~~((62))~~ (65) **"Immediate"** or **"immediately"** means as soon as possible but no later than four hours after the initiating condition.

~~((63))~~ (66) **"IND"** means investigatory new drug for which an exemption has been claimed under the United States Food, Drug and Cosmetic Act (Title 21 C.F.R.).

~~((64))~~ (67) **"Individual"** means any human being.

~~((65))~~ (68) **"Individual monitoring"** means the assessment of:

(a) Dose equivalent (i) by the use of individual monitoring devices or (ii) by the use of survey data; or

(b) Committed effective dose equivalent (i) by bioassay or (ii) by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

~~((66))~~ (69) **"Individual monitoring devices"** (individual monitoring equipment) means devices designed to be worn by a single individual for the assessment of dose equivalent e.g., as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

~~((67))~~ (70) **"Inspection"** means an official examination or observation by the department including but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions of the department.

~~((68))~~ (71) **"Interlock"** means a device arranged or connected so that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

~~((69))~~ (72) **"Internal dose"** means that portion of the dose equivalent received from radioactive material taken into the body.

~~((70))~~ (73) **"Irretrievable source"** means any sealed source containing licensed material which is pulled off or not connected to the wireline downhole and for which all reasonable effort at recovery, as determined by the department, has been expended.

~~((71))~~ (74) **"LDE (lens dose equivalent)"** applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeters (300 mg/cm²).

~~((72))~~ (75) **"License"** means a license issued by the department.

~~((73))~~ (76) **"Licensed material"** means radioactive material received, possessed, used, transferred, or disposed under a general or specific license issued by the department.

~~((74))~~ (77) **"Licensee"** means any person who is licensed by the department under these rules and the act.

~~((75))~~ (78) **"Loose-fitting facepiece"** means a respiratory inlet covering that is designed to form a partial seal with the face.

~~((76))~~ (79) **"Lost or missing licensed material"** means licensed material whose location is unknown. This definition includes licensed material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

~~((77))~~ (80) **"Member of the public"** means an individual except when the individual is receiving an occupational dose.

~~((78))~~ (81) **"Minor"** means an individual less than eighteen years of age.

~~((79))~~ (82) **"Monitoring"** means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

~~((80))~~ (83) **"NARM"** means any naturally occurring or accelerator-produced radioactive material. It does not include by-product, source, or special nuclear material.

~~((81))~~ (84) **"Nationally tracked source"** means a sealed source containing a quantity equal to or greater than Category 1 or Category 2 levels of any radioactive material listed in WAC 246-221-236. In this context a sealed source is defined as radioactive material that is sealed in a capsule or closely bonded, in a solid form and which is not exempt from regulatory control. It does not mean material encapsulated solely for disposal, or nuclear material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet. Category 1 nationally tracked sources are those containing radioactive material at a quantity equal to or greater than the Category 1 threshold. Category 2 nationally tracked sources are those containing radioactive material at a quantity equal to or

greater than the Category 2 threshold but less than the Category 1 threshold.

~~((82))~~ (85) **"Natural radioactivity"** means radioactivity of naturally occurring nuclides.

~~((83))~~ (86) **"NDA"** means a new drug application which has been submitted to the United States Food and Drug Administration.

~~((84))~~ (87) **"Negative pressure respirator"** (tight-fitting) means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

~~((85))~~ (88) **"Nonstochastic effect"** means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, a "deterministic effect" is an equivalent term.

~~((86))~~ (89) **"NRC"** means the U.S. Nuclear Regulatory Commission.

~~((87))~~ (90) **"Occupational dose"** means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation or to radioactive material from licensed and unlicensed sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose does not include dose received: From background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under chapter 246-240 WAC, from voluntary participation in medical research programs, or as a member of the public.

~~((88))~~ (91) **"Ore refineries"** means all processors of a radioactive material ore.

~~((89))~~ (92) **"Particle accelerator"** means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this definition, "accelerator" is an equivalent term.

~~((90))~~ (93) **"Permittee"** means a person who has applied for, and received, a valid site use permit for use of the low-level waste disposal facility at Hanford, Washington.

~~((91))~~ (94) **"Person"** means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, and any legal successor, representative, agent or agency of the foregoing.

~~((92))~~ (95) **"Personal supervision"** means supervision where the supervisor is physically present at the facility and in sufficient proximity that contact can be maintained and immediate assistance given as required.

~~((93))~~ (96) **"Personnel monitoring equipment."** See individual monitoring devices.

~~((94))~~ (97) **"PET"** means positron emission tomography.

~~((95))~~ (98) **"Pharmacist"** means an individual licensed by this state to compound and dispense drugs, and poisons.

~~((96))~~ (99) **"Physician"** means a medical doctor or doctor of osteopathy licensed by this state to prescribe and dispense drugs in the practice of medicine.

~~((97))~~ (100) **"Planned special exposure"** means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

~~((98))~~ (101) **"Positive pressure respirator"** means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

~~((99))~~ (102) **"PAPR (powered air-purifying respirator)"** means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

~~((100))~~ (103) **"Practitioner"** means an individual licensed by the state for the practice of a healing art (i.e., physician, dentist, podiatrist, chiropractor, etc.).

~~((101))~~ (104) **"Pressure demand respirator"** means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

~~((102))~~ (105) **"Public dose"** means the dose received by a member of the public from exposure to sources of radiation under the licensee's or registrant's control or to radiation or radioactive material released by the licensee. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released under chapter 246-240 WAC, or from voluntary participation in medical research programs.

~~((103))~~ (106) **"Qualified expert"** means an individual who has demonstrated to the satisfaction of the department the knowledge, training, and experience to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs. The department reserves the right to recognize the qualifications of an individual in specific areas of radiation protection.

~~((104))~~ (107) **"QLFT (qualitative fit test)"** means a pass/fail fit test to assess the adequacy of respirator fit which relies on the individual's response to the test agent.

~~((105))~~ (108) **"Quality factor(^a) (Q)"** means the modifying factor, listed in Tables I and II, that is used to derive dose equivalent from absorbed dose.

TABLE I
QUALITY FACTORS AND ABSORBED DOSE EQUIVALENCIES

TYPE OF RADIATION	Quality Factor (Q)	Absorbed Dose Equal to A Unit Dose Equivalent ^a
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

^a Absorbed dose in rad equal to 1 rem or the absorbed dose in gray equal to 1 Sv.

If it is more convenient to measure the neutron fluence rate rather than to determine the neutron dose equivalent rate in sievert per hour or rem per hour as required for Table I, then 0.01 Sv (1 rem) of neutron radiation of unknown energies may, for purposes of these rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or the appropriate Q value from Table II to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE II
MEAN QUALITY FACTORS, Q, AND FLUENCE PER UNIT DOSE EQUIVALENT FOR MONOENERGETIC NEUTRONS

Neutron Energy (MeV)	Quality Factor ^a (Q)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² rem ⁻¹)	Fluence per Unit Dose Equivalent ^b (neutrons cm ⁻² Sv ⁻¹)
(thermal) 2.5 x 10 ⁻⁸	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻⁷	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻⁶	2	810 x 10 ⁶	810 x 10 ⁸
1 x 10 ⁻⁵	2	810 x 10 ⁶	810 x 10 ⁸
1 x 10 ⁻⁴	2	840 x 10 ⁶	840 x 10 ⁸
1 x 10 ⁻³	2	980 x 10 ⁶	980 x 10 ⁸
1 x 10 ⁻²	2.5	1010 x 10 ⁶	1010 x 10 ⁸
1 x 10 ⁻¹	7.5	170 x 10 ⁶	170 x 10 ⁸
5 x 10 ⁻¹	11	39 x 10 ⁶	39 x 10 ⁸
1	11	27 x 10 ⁶	27 x 10 ⁸
2.5	9	29 x 10 ⁶	29 x 10 ⁸
5	8	23 x 10 ⁶	23 x 10 ⁸
7	7	24 x 10 ⁶	24 x 10 ⁸
10	6.5	24 x 10 ⁶	24 x 10 ⁸
14	7.5	17 x 10 ⁶	17 x 10 ⁸
20	8	16 x 10 ⁶	16 x 10 ⁸
40	7	14 x 10 ⁶	14 x 10 ⁸
60	5.5	16 x 10 ⁶	16 x 10 ⁸
1 x 10 ²	4	20 x 10 ⁶	20 x 10 ⁸
2 x 10 ²	3.5	19 x 10 ⁶	19 x 10 ⁸
3 x 10 ²	3.5	16 x 10 ⁶	16 x 10 ⁸
4 x 10 ²	3.5	14 x 10 ⁶	14 x 10 ⁸

a Value of quality factor (Q) at the point where the dose equivalent is maximum in a 30-cm diameter cylinder tissue-equivalent phantom.
 b Monoenergetic neutrons incident normally on a 30-cm diameter cylinder tissue-equivalent phantom.

~~((106))~~ (109) "**QNFT (quantitative fit test)**" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

~~((107))~~ (110) "**Quarter**" means a period of time equal to one-fourth of the year observed by the licensee, approximately thirteen consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

~~((108))~~ (111) "**Rad**" means the special unit of absorbed dose. One rad equals one-hundredth of a joule per kilogram of material; for example, if tissue is the material of interest, then 1 rad equals 100 ergs per gram of tissue. One rad is equal to an absorbed dose of 100 erg/gram or 0.01 joule/kilogram (0.01 gray).

~~((109))~~ (112) "**Radiation**" means alpha particles, beta particles, gamma rays, X rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these rules: Radiation does not include magnetic fields or nonionizing radiation, such as radiowaves or microwaves, visible, infrared, or ultraviolet light; and ionizing radiation is an equivalent term.

~~((110))~~ (113) "**Radiation area**" means any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in one hour at thirty centimeters from the source of radiation or from any surface that the radiation penetrates.

~~((111))~~ (114) "**Radiation machine**" means any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

~~((112))~~ (115) "**Radiation safety officer**" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned that responsibility by the licensee or registrant.

~~((113))~~ (116) "**Radiation source.**" See "Source of radiation."

~~((114))~~ (117) "**Radioactive material**" means any material (solid, liquid, or gas) which emits radiation spontaneously.

~~((115))~~ (118) "**Radioactive waste**" means any radioactive material which is no longer of use and intended for disposal or treatment for the purposes of disposal.

~~((116))~~ (119) "**Radioactivity**" means the transformation of unstable atomic nuclei by the emission of radiation.

~~((117))~~ (120) "**Reference man**" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

~~((118))~~ (121) "**Registrable item**" means any radiation-producing machine except those exempted by RCW 70.98.180 or exempted by the department under the authority of RCW 70.98.080.

~~((119))~~ (122) "**Registrant**" means any person who is registered by the department or is legally obligated to register with the department in accordance with these rules and the act.

~~((120))~~ (123) "**Registration**" means registration with the department in accordance with the rules adopted by the department.

~~((121))~~ (124) "**Regulations of the United States Department of Transportation**" means the regulations in 49 C.F.R. Parts 170-189, 14 C.F.R. Part 103, and 46 C.F.R. Part 146.

~~((122))~~ (125) "**Rem**" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent

lent in rem is equal to the absorbed dose in rad multiplied by the quality factor (1 rem = 0.01 Sv).

~~((123))~~ (126) **"Research and development"** means: (a) Theoretical analysis, exploration, or experimentation; or (b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

~~((124))~~ (127) **"Respiratory protective equipment"** means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

~~((125))~~ (128) **"Restricted area"** means any area to which access is limited by the licensee or registrant for purposes of protecting individuals against undue risks from exposure to radiation and radioactive material. "Restricted area" does not include any areas used for residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

~~((126))~~ (129) **"Roentgen" (R)** means the special unit of exposure. One roentgen equals 2.58×10^{-4} coulombs/kilogram of air.

~~((127))~~ (130) **"Sanitary sewerage"** means a system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

~~((128))~~ (131) **"Sealed source"** means any radioactive material that is encased in a capsule designed to prevent leakage or the escape of the radioactive material.

~~((129))~~ (132) **"SEPA" means the State Environmental Policy Act under chapter 43.21C RCW.**

(133) **"SCBA (self-contained breathing apparatus)"** means an atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

~~((130))~~ (134) **"Shallow dose equivalent" (H_s)**, which applies to the external exposure of the skin of the whole body or the skin of an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (7 mg/cm^2).

~~((131))~~ (135) **"SI"** means an abbreviation of the International System of Units.

~~((132))~~ (136) **"Sievert"** means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor (1 Sv = 100 rem).

~~((133))~~ (137) **"Site area emergency"** means events which may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by off-site response organizations to protect persons off-site.

~~((134))~~ (138) **"Site boundary"** means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

~~((135))~~ (139) **"Source container"** means a device in which radioactive material is transported or stored.

~~((136))~~ (140) **"Source material"** means: (a) Uranium or thorium, or any combination thereof, in any physical or chemical form, or (b) ores which contain by weight one-twentieth of one percent (0.05 percent) or more of uranium,

thorium, or any combination thereof. Source material does not include special nuclear material.

~~((137))~~ (141) **"Source material milling"** means the extraction or concentration of uranium or thorium from any ore processing primarily for its source material content.

~~((138))~~ (142) **"Source of radiation"** means any radioactive material, or any device or equipment emitting or capable of producing ionizing radiation.

~~((139))~~ (143) **"Special nuclear material"** means:

(a) Plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC, under the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) Any material artificially enriched in any of the foregoing, but does not include source material.

~~((140))~~ (144) **"Special nuclear material in quantities not sufficient to form a critical mass"** means uranium enriched in the isotope U-235 in quantities not exceeding three hundred fifty grams of contained U-235; uranium-233 in quantities not exceeding two hundred grams; plutonium in quantities not exceeding two hundred grams; or any combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of the ratios for all of the kinds of special nuclear material in combination shall not exceed "1" (i.e., unity). For example, the following quantities in combination would not exceed the limitation and are within the formula:

175 (grams contained U-235)	+
350	
50 (grams U-233)	+
200	
50 (grams Pu)	< 1
200	

~~((141))~~ (145) **"Stochastic effect"** means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules, probabilistic effect is an equivalent term.

~~((142))~~ (146) **"SAR (supplied-air respirator)"** or **"airline respirator"** means an atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

~~((143))~~ (147) **"Survey"** means an evaluation of the radiological conditions and potential hazards incident to the production, use, release, disposal, or presence of sources of radiation. When appropriate, the evaluation includes, but is not limited to, tests, physical examinations, calculations and measurements of levels of radiation or concentration of radioactive material present.

~~((144))~~ (148) **"Test"** means (a) the process of verifying compliance with an applicable rule, or (b) a method for determining the characteristics or condition of sources of radiation or components thereof.

((145)) (149) **"These rules"** mean all parts of the rules for radiation protection of the state of Washington.

((146)) (150) **"Tight-fitting facepiece"** means a respiratory inlet covering that forms a complete seal with the face.

((147)) (151) **"TEDE (total effective dose equivalent)"** means the sum of the effective dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

((148)) (152) **"TODE (total organ dose equivalent)"** means the sum of the deep dose equivalent and the committed dose equivalent to the organ or tissue receiving the highest dose.

((149)) (153) **"United States Department of Energy"** means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the department exercises functions formerly vested in the United States Atomic Energy Commission, its chairman, members, officers and components and transferred to the United States Energy Research and Development Administration and to the administrator thereof under sections 104 (b), (c) and (d) of the Energy Reorganization Act of 1974 (Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, 42 U.S.C. 5814 effective January 19, 1975) and retransferred to the Secretary of Energy under section 301(a) of the Department of Energy Organization Act (Public Law 95-91, August 4, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977).

((150)) (154) **"Unrefined and unprocessed ore"** means ore in its natural form prior to any processing, such as grinding, roasting, beneficiating, or refining.

((151)) (155) **"Unrestricted area"** (uncontrolled area) means any area which is not a restricted area. Areas where the external dose exceeds 2 mrem in any one hour or where the public dose, taking into account occupancy factors, will exceed 100 mrem total effective dose equivalent in any one year must be restricted.

((152)) (156) **"User seal check"** (fit check) means an action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

((153)) (157) **"Very high radiation area"** means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving an absorbed dose in excess of 5 Gy (500 rad) in one hour at one meter from a source of radiation or one meter from any surface that the radiation penetrates.

((154)) (158) **"Waste"** means those low-level radioactive wastes containing source, special nuclear or by-product material that are acceptable for disposal in a land disposal facility. For purposes of this definition, low-level radioactive waste means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in subsection (17)(b), (c), and (d) of the definition of by-product material in this section.

((155)) (159) **"Waste handling licensees"** mean persons licensed to receive and store radioactive wastes prior to disposal or persons licensed to dispose of radioactive waste.

((156)) (160) **"Week"** means seven consecutive days starting on Sunday.

((157)) (161) **"Weighting factor"** w_T for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T are:

ORGAN DOSE WEIGHTING FACTORS	
Organ or Tissue	w_T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30 ^a
Whole Body	1.00 ^b

^a 0.30 results form 0.06 for each of 5 "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

^b For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, $w_T=1.0$, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

((158)) (162) **"Whole body"** means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knee.

((159)) (163) **"Worker"** means an individual engaged in activities under a license or registration issued by the department and controlled by a licensee or registrant but does not include the licensee or registrant. Where the licensee or registrant is an individual rather than one of the other legal entities defined under "person," the radiation exposure limits for the worker also apply to the individual who is the licensee or registrant. If students of age eighteen years or older are subjected routinely to work involving radiation, then the students are considered to be workers. Individuals of less than eighteen years of age shall meet the requirements of WAC 246-221-050.

((160)) (164) **"WL (working level)"** means any combination of short-lived radon daughters in 1 liter of air that will result in the ultimate emission of 1.3×10^5 MeV of potential alpha particle energy. The short-lived radon daughters are — For radon-222: Polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: Polonium-216, lead-212, bismuth-212, and polonium-212.

((161)) (165) **"WLM (working level month)"** means an exposure to one working level for one hundred seventy hours — Two thousand working hours per year divided by twelve months per year is approximately equal to one hundred seventy hours per month.

((162)) (166) **"Year"** means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the change is made at the

beginning of the year and that no day is omitted or duplicated in consecutive years.

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

WAC 246-232-010 Exempt concentrations and exempt quantities. This section shall not be deemed to authorize the import of radioactive material or products containing radioactive material.

(1) Exempt concentrations.

(a) Except as provided in (b) of this subsection, 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, products or materials containing radioactive material in concentrations in excess of those in WAC 246-232-130, Schedule C, exempt concentrations.

(b) 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 equivalent regulations of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555.

(c) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license and from this chapter and chapters 246-233 and 246-235 WAC to the extent that this person transfers radioactive material contained in a product or material in concentrations not in excess of those specified in WAC 246-232-130, Schedule C, and introduced into the product or material by a licensee holding a specific license issued by the NRC expressly authorizing such manufacture or introduction. This exemption does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(2) Exempt quantities.

(a)(i) Except as provided in (b) through (d) of this subsection, any 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 such person receives, possesses, uses, transfers, owns, or acquires, and does not apply radioactive material to, or incorporate radioactive material into, radioactive material in individual quantities, each of which does not exceed the applicable quantity set forth in WAC 246-232-120, Schedule B, exempt quantities of radioactive materials.

(ii) Any person who possesses radioactive material received or acquired under the general license is exempt from the requirements for a license set forth in chapters 246-333, 246-235 WAC, and this chapter to the extent that such person uses, transfers, or owns such radioactive material. Such exemption does not apply for Radium-226 ~~((or use by agreement states whose regulations formerly contained a general license for small quantities of radioactive material)).~~

(b) This subsection does not authorize the production, packaging, repackaging, or transfer of radioactive material

for the purposes of commercial distribution, or the incorporation of radioactive material into products intended for commercial distribution.

(c) No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in WAC 246-232-120, Schedule B, exempt quantities of radioactive materials, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under this section or equivalent rules of the NRC or an agreement state, except in accordance with a specific license issued by the NRC, Washington, D.C. 20555.

(d) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the limits set forth in WAC 246-232-120, Schedule B, exempt quantities of radioactive materials, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise permitted by these rules.

AMENDATORY SECTION (Amending WSR 91-15-112, filed 7/24/91, effective 8/24/91)

WAC 246-235-001 Purpose and scope. (1) This chapter ~~((prescribes))~~ establishes requirements for the issuance of specific licenses.

(2) The provisions and requirements of this chapter are in addition to, and not in substitution for, other requirements of these regulations. In particular the provisions of chapter 246-232 WAC apply to applications and licenses subject to this chapter.

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

WAC 246-235-010 Filing application for specific licenses. (1) Applications for specific licenses ~~((shall))~~ must be filed on department 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 ~~((shall))~~ 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.

(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) 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) Identify the source or device by manufacturer and model number; or

(b) Be registered with the NRC under 10 C.F.R. 32.210; or

(c) For sources not registered with the NRC, provide 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, relevant operational safety history, and the results of the most recent leak test.

(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.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-235-020 General requirements for the issuance of specific licenses. A license application will be approved if the department determines that:

(1) 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 health and safety or property;

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

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

(4) 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 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 ~~((agency))~~ department determines will significantly affect the quality of the environment, the applicant ~~((shall))~~ 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. 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. ~~((As used in this paragraph the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.))~~ Commencement of construction may include nonconstruction activities if the activity has a reasonable nexus to radiological safety and security.

AMENDATORY SECTION (Amending WSR 91-15-112, filed 7/24/91, effective 8/24/91)

WAC 246-235-040 Expiration of licenses. Except as provided in WAC 246-235-050(2), each specific license ~~((shall))~~ expires at the end of the day, in the month and year stated therein.

AMENDATORY SECTION (Amending WSR 94-01-073, filed 12/9/93, effective 1/9/94)

WAC 246-235-055 Precedence of license condition over regulation. (1) A license condition may be used to specifically modify any regulation pertaining to the possession, use, storage, transfer, or disposal of radioactive material. Any license condition used to modify an existing regulation ~~((shall))~~ must set forth the title, chapter, section, and, where applicable, any subsection and paragraph numbers for the regulation being modified, and fully define the nature and extent of the modification.

(2) In the event a regulation is changed, an existing license condition that is more restrictive than the new regulation remains in force until there is an amendment or renewal of the license that removes or modifies the license condition.

AMENDATORY SECTION (Amending WSR 91-15-112, filed 7/24/91, effective 8/24/91)

WAC 246-235-060 Amendment of licenses at request of licensee. Applications for amendment of a license ~~((shall))~~ must be filed in accordance with WAC 246-235-010 and ~~((shall))~~ must specify the respects in which the licensee desires the license to be amended and the grounds for such amendment.

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

WAC 246-235-075 Financial assurance and record-keeping 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 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 ~~((shall))~~ must be submitted for review and approval and must contain the following:

~~(a) (A cost estimate for decommissioning facilities impacted by the activities authorized in the specific license.~~

~~(b) A description of the method of assuring funds for decommissioning.~~

~~(c) A means for adjusting cost estimates and associated funding levels periodically over the life of the facility or facilities.~~

~~(d) A description of methods and general procedures for performing facility decontamination, maintaining security, and performing a final radiation survey.~~

~~(e)) 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 months of ceasing operation involving radioactive material.~~

(3) Each cost estimate for decommissioning ~~((shall))~~ must include(=

~~(a) A description of the facility and areas within the facility likely to require decommissioning as a result of routine operation.~~

~~(b) Anticipated labor, equipment and material costs.~~

~~(c) Anticipated waste volume.~~

~~(d) Anticipated packaging, transportation and waste disposal costs.~~

~~(e) An assessment of costs associated with an accident involving licensed material)) 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 ~~((shall be provided by))~~ 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 ~~((shall))~~ 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 ~~((shall))~~ must be open-ended or, if written for a specified term, such as five years, ((shall)) must be renewed automatically unless ninety 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 ((shall)) 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 days after receipt of notification of cancellation.

(ii) The surety method or insurance ~~((shall))~~ 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 ((shall)) 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 ~~((shall))~~ 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 ~~((shall))~~ 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.

~~((e))~~ (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 ~~((shall))~~ must be submitted to the department before receipt of licensed material.

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

~~((a))~~ (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 ~~((shall))~~ must include any known information on identification of involved nuclides, quantities, forms, and concentrations.

~~((b))~~ (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.

~~((c))~~ (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 days, a list contained in a single document and updated every two years, of the following:

~~((d))~~ (A) All areas designated and formerly designated as restricted areas as defined under WAC 246-220-010;

~~((i+))~~ (B) All areas outside of restricted areas that require documentation under ~~((i+))~~ (b)(i) of this subsection;

~~((i+))~~ (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

~~((i+))~~ (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.

AMENDATORY SECTION (Amending WSR 95-01-108, filed 12/21/94, effective 1/21/95)

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 off-site due to a release of radioactive materials would not exceed 1 rem effective dose equivalent or 5 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 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 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, and a brief description of the means available, 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 ~~((shall))~~ 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 ~~((shall))~~ must familiarize personnel with site-specific emergency procedures. Also, the training ~~((shall))~~ 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 ~~((shall))~~ 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 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 days to the department with the emergency plan.

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

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 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 ~~((shall))~~ 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 ~~((shall))~~ 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.

AMENDATORY SECTION (Amending WSR 00-08-013, filed 3/24/00, effective 4/24/00)

WAC 246-235-084 Special requirements for issuance of specific licenses for industrial radiography. In addition to the requirements set forth in WAC 246-235-020, a specific license for use of sealed sources in industrial radiography will be issued if:

(1) The applicant submits an adequate program for training radiographers and radiographer's assistants that meets the requirements of WAC 246-243-050 and 246-243-130.

(a) After June 30, 2000, a license applicant need not describe its initial training and examination program for radiographers in the subjects outlined in WAC 246-243-230.

(b) From June 30, 2000, to January 1, 2001, a license applicant may affirm that all individuals acting as industrial radiographers will be certified in radiation safety by a certifying entity before beginning duty as radiographers. This affirmation substitutes for a description of its initial training and examination program for radiographers in the subjects outlined in WAC 246-243-230.

(2) The applicant submits procedures for verifying and documenting the certification status of radiographers and for ensuring that the certification of individuals acting as radiographers remains valid.

(3) The applicant submits written operating and emergency procedures as described in WAC 246-243-140.

(4) The applicant submits a description of a program for inspections of the job performance of each radiographer and radiographers' assistant at intervals not to exceed six months as described in WAC 246-243-050.

(5) The applicant submits a description of the applicant's overall organizational structure as it applies to the radiation safety responsibilities in industrial radiography, including specified delegation of authority and responsibility.

(6) The applicant identifies and lists the qualifications of the individual(s) designated as the RSO (WAC 246-243-047) and potential designees responsible for ensuring that the

licensee's radiation safety program is implemented in accordance with approved procedures.

(7) If an applicant intends to perform leak testing of sealed sources or of exposure devices containing depleted uranium (~~(DU)~~) shielding, the applicant shall describe the procedures for performing and the qualifications of the person(s) authorized to do the leak testing. If the applicant intends to analyze its own wipe samples, the application must include a description of the procedures to be followed. The description must include the:

- (a) Instruments to be used;
- (b) Methods of performing the analysis; and
- (c) Pertinent experience of the person who will analyze the wipe samples.

(8) If the applicant intends to perform "in-house" calibrations of survey instruments, the applicant must describe methods to be used and the relevant experience of the person(s) who will perform the calibrations. All calibrations must be performed according to these procedures and the intervals prescribed in WAC 246-243-080.

(9) The applicant identifies and describes the location(s) of all field stations and permanent radiographic installations.

(10) The applicant identifies the location where all records required by this section and other sections of these regulations will be maintained.

NEW SECTION

WAC 246-235-085 Special requirements for issuance of a specific license for wireline services. In addition to the requirements set forth in this chapter, a specific license for use of radioactive material in wireline services must be issued if:

(1) The applicant satisfies the applicable requirements in chapter 246-244 WAC and any special requirements contained in this chapter.

(2) The applicant shall develop a program for training logging supervisors and logging assistants and submit to the department a description of this program which specifies:

- (a) Initial training;
- (b) On-the-job training;
- (c) Annual safety reviews provided by the licensee;
- (d) Means the applicant will use to demonstrate the logging supervisor's knowledge and understanding of, and ability to comply with, the department's rules and licensing requirements and the applicant's operating and emergency procedures; and
- (e) Means the applicant will use to demonstrate the logging assistant's knowledge and understanding of, and ability to comply with, the applicant's operating and emergency procedures.

(3) The applicant shall submit to the department written operating and emergency procedures as described in WAC 246-244-150 or an outline or summary of the procedures which includes the important radiation safety aspects of the procedures.

(4) The applicant shall establish and submit to the department its program for annual inspections of the job performance of each logging supervisor to ensure the department's rules, license requirements, and the applicant's operat-

ing and emergency procedures are followed. Inspection records must be retained for at least three years after each annual internal inspection.

(5) The applicant shall submit a description of its overall organizational structure as it applies to the radiation safety responsibilities in wireline services, including specified delegations of authority and responsibility.

(6) If an applicant wants to perform their own leak testing of their own sealed sources, the applicant shall identify the manufacturers and the model number(s) of the leak test kits to be used. If the applicant wants to analyze its own leak test samples, the applicant shall establish procedures to be followed and submit a description of the procedures to the department. This description must include:

- (a) Instruments to be used;
- (b) Methods of performing the analysis;
- (c) Sample calculation and sample leak test report forms; and
- (d) Pertinent experience of the person who will analyze the wipe samples.

AMENDATORY SECTION (Amending WSR 00-08-013, filed 3/24/00, effective 4/24/00)

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 (~~(State Environmental Policy Act)~~)SEPA(~~(S)~~) 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.

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" (~~means any clearing of land, excavation or other substantial action related to a proposed activity for specific licensing that would adversely affect the natural environment of a site; this term does not include changes desirable for the temporary use of the land for public recreational use, limited borings to determine site characteristics as necessary for environmental assessment, or other preconstruction monitoring to establish background information related to suitability of a site or to the protection of environmental values~~) 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 (~~shall~~) must be addressed in the final environmental impact statement:

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

(ii) Long-term impacts (~~shall~~) 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 (~~shall~~) must be addressed.

(iv) Alternative disposal sites and techniques for disposal (~~shall~~) 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, (~~shall~~) 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, (~~shall~~) 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 (~~shall~~) 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 minimum amount, a surety bond, or other acceptable surety instrument as defined above (~~shall~~) 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 (~~shall~~) 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 (~~shall~~) 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 (~~shall~~) 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 ~~((shall))~~ 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 days after January 1 and July 1 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 ~~((shall))~~ 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 nonradiological environmental monitoring program will also be submitted for the same time period and frequency as specified above. The data ~~((shall))~~ 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.

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

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.*

*Note: ~~((No))~~ 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 ~~((shall))~~ 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 ~~((shall))~~ 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 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.

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

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 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 ((~~shall~~)) 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 ((~~shall~~)) must be submitted within thirty 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 ((~~shall~~)) 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 ((~~shall~~)) 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 ((~~shall~~)) must be submitted within thirty 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 ((~~shall~~)) 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 ((~~shall~~)) 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 ((~~shall~~)) must be maintained for a period of two years and ((~~shall~~)) 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.

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

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 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*, 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 ((shall)) must be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION - RADIOACTIVE MATERIAL

(Name of manufacturer or distributor)*

(B) The receipt, possession, use and transfer of this device, Model, Serial No. Note*, are subject to a general license or the equivalent, and the rules of an agreement state. This label ((shall)) must be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION - RADIOACTIVE MATERIAL

(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.

(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.

(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 ((shall)) 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 ((shall)) 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 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 ~~((shall))~~ **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.

(ii) 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 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 ~~((shall))~~ **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 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 (~~shall~~) 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 information (~~shall~~) 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 this subsection (4)(e).

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

WAC 246-235-100 Manufacture, production, preparation, or transfer of radiopharmaceuticals for medical use. (1) An application for a specific license to manufacture, produce, prepare, or transfer for distribution radiopharmaceuticals containing radioactive material for use by persons

licensed under 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:

(i) Registered or licensed with the Food and Drug Administration (FDA) as a drug manufacturer, preparer, propagator, compounder or processor of a drug under 21 C.F.R. 207.20(a); or

(ii) Licensed as a nuclear pharmacy by the (~~state board of~~) Pharmacy Quality Assurance Commission;

(iii) Registered or licensed as a radiopharmaceutical production facility or nuclear pharmacy with the NRC or a state agency;

(iv) Operating as a nuclear pharmacy within a federal medical institution; or

(v) A positron emission tomography drug production facility registered with a state agency.

(c) The applicant submits information on the radionuclide, chemical and physical form, maximum activity per vial, syringe, generator, or other container of the radiopharmaceutical, and shielding provided by the packaging of the radioactive material which is appropriate for safe handling and storage of radiopharmaceuticals by medical use licensees; and

(d) The applicant satisfies the following labeling requirements:

(i) Those specified by the (~~state board of~~) 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 days, the time may be omitted;

(iii) 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 the syringe, vial, or other container to be correlated with the information on the transport radiation shield label; 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 licensee:

(a) May prepare radiopharmaceuticals for medical use provided the radiopharmaceutical is prepared by or under the supervision of an authorized nuclear pharmacist.

(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 ~~((state board of))~~ Pharmacy Quality Assurance Commission requirements in WAC 246-903-030, Nuclear pharmacists, and the requirements of WAC 246-240-081 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 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, and 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.

(e) Shall provide to the department a copy of each individual's letter of notification from the ~~((state board of))~~ 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 licensee shall possess and use instrumentation to measure the radioactivity of radiopharmaceuticals. The licensee shall have procedures for use of the instrumentation. The licensee shall measure, by direct measurement or by combination of measurements and

calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radiopharmaceuticals, prior to transfer for commercial distribution. In addition, the licensee shall:

(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) Nothing in this section relieves the licensee from complying with applicable FDA, federal, and state requirements governing radiopharmaceuticals.

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

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 ~~((shall))~~ must be measured by direct counting of the source.

(2) *Dry wipe test.* The entire radioactive surface of the source ~~((shall))~~ must be wiped with filter paper with the application of moderate finger pressure. Removal of radioactive material from the source ~~((shall))~~ 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 ~~((shall))~~ must be wiped with filter paper, moistened with water, with the application of moderate finger pressure. Removal of radioactive material from the source ~~((shall))~~ 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 ~~((shall))~~ must be immersed in water at room temperature for a period of twenty-four consecutive hours. The source ~~((shall))~~ must then be removed from the water. Removal of radioactive material from the source ~~((shall))~~ 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 ((shall)) must be repeated.

(6) *Observations.* Removal of more than 0.005 microcurie (185 becquerels) of radioactivity in any test prescribed by this section ((shall)) must be cause for rejection of the source design. Results of prototype tests submitted to the department or the NRC ((shall)) 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.

AMENDATORY SECTION (Amending WSR 06-05-019, filed 2/6/06, effective 3/9/06)

WAC 246-235-110 Special requirements for issuance of specific licenses for source material milling. In addition to the requirements set forth in WAC 246-235-020, the department will issue a specific license for source material milling when the applicant submits a satisfactory application and meets the other conditions specified below:

(1) An application for a license to receive title to, receive, possess, and use source material for milling or byproduct material as defined in WAC 246-220-010 ((shall)) must address the following:

(a) Description of the proposed project or action.

(b) Area/site characteristics including geology, demography, topography, hydrology and meteorology.

(c) Radiological and nonradiological impacts of the proposed project or action, including waterway and groundwater impacts.

(d) Environmental effects of accidents.

(e) Tailings disposal and decommissioning.

(f) Site and project alternatives.

(g) Description of how the provisions of chapter 246-252 WAC ((shall)) must be met.

(2) Under WAC 246-235-086, the applicant shall not commence construction of the project until the department has weighed the environmental, economic, technical, and other benefits against the environmental costs and has concluded that the issuance of the license is appropriate.

(3) Prior to issuance of a license, the department shall hold a public hearing. The hearing will address the adequacy of the reclamation, disposal, decommissioning, and decontamination plans.

(4) At least one full year prior to any major site construction, a preoperational monitoring program ((shall)) must be conducted to provide complete baseline data on a milling site and its environs. Throughout the construction and operating phases of the mill, an operational monitoring program ((shall)) must be conducted to measure or evaluate compliance with applicable standards and regulations; to evaluate performance of control systems and procedures; to evaluate environmental impacts of operation; and to detect potential long-term effects.

(5) Prior to issuance of the license, the mill operator shall establish financial surety arrangements consistent with WAC 246-252-030.

(6) The applicant shall provide procedures describing the means employed to meet the following requirements during the operational phase of any project.

(a) Milling operations ((shall)) must be conducted so that all effluent releases are reduced to as low as ((is)) reasonably achievable below the limits of chapter 246-221 WAC.

(b) The mill operator shall conduct at least a daily inspection of any tailings or waste retention systems. Records of these inspections ((shall)) must be maintained for review by the department.

(c) The mill operator shall immediately notify the department of:

(i) Any failure in a tailings or waste retention system which results in a release of tailings or waste into unrestricted areas; and

(ii) Any unusual conditions (conditions not contemplated in the design of the retention system) which if not corrected could lead to failure of the system and result in a release of tailings or waste into unrestricted areas.

(7) An application for a license to own, receive, possess and use by-product material as defined in WAC 246-220-010 ((shall)) must contain proposed specifications relating to the emissions control and disposition of the by-product material to achieve the requirements and objectives set forth in the criteria listed in WAC 246-252-030.

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

WAC 246-235-130 Appendix—General laboratory rules for safe use of unsealed sources. (1) In addition to the requirements in WAC 246-235-020, a specific licensee who uses unsealed, unplated or liquid sources shall possess adequate facilities including ventilation systems which are compatible with the proposed uses: and,

(2) Possess, use, and store radioactive material in accordance with, but not limited to, the following:

(a) Receive, handle, and store radioactive material only at specifically designated locations within the applicant's facility. Vessels containing radioactive material must be labeled as required by chapter 246-221 WAC.

(b) Wear disposable gloves at all times when handling dispersible radioactive material or potentially contaminated items.

(c) Wear personnel monitoring devices (film badge, OSL, or TLD), when required, at all times when working with, or in the vicinity of, radioactive materials. Extremity doses ((shall)) must be considered when evaluating the need for separate extremity dosimeters. Extremity dosimetry should be worn when working with millicurie or greater quantities of material (excluding low energy beta emitters and pure alpha emitters). Monitoring devices, when not in use, must be stored only in a designated low-background area. Calculations based on whole-body dosimeter results for photon-emitters may be used in lieu of separate extremity dosimeters.

(d) Use remote tools, lead shields, lead-glass shields, or plexiglass shields as appropriate.

(e) Prohibit eating, chewing, drinking, smoking, and application of cosmetics in any area where radioactive material is used or stored.

(f) Do not store food, drink or personal effects in any area, container, or refrigerator designated for radioactive materials use or storage.

(g) Do not pipette radioactive materials or perform any similar operation by employing mouth suction.

(h) Use disposable absorbent material with impervious backing to cover work surfaces where spillage is possible.

(i) Properly dress and protect open wounds on exposed body surfaces before working with radioactive materials.

(j) Wear laboratory coats when working with radioactive material. Potentially contaminated laboratory coats ~~((shall))~~ must not be worn outside the immediate work area.

(k) Nuclides in gaseous or volatile form, or with a high potential for volatilization ~~((shall))~~ must be used only in areas with adequate ventilation systems.

Chapter 246-246 WAC

~~((RADIOACTIVE))~~ RADIATION PROTECTION— RADIOLOGICAL CRITERIA FOR ~~((LICENSE TERMINATION))~~ DECOMMISSIONING

AMENDATORY SECTION (Amending WSR 01-14-045, filed 6/29/01, effective 7/30/01)

WAC 246-246-001 General provisions and scope. (1)

The criteria in this chapter apply to the decommissioning of all facilities licensed or registered under these regulations. For low-level waste disposal facilities (chapter 246-250 WAC), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities. The criteria do not apply to uranium and thorium recovery facilities already subject to chapter 246-252 WAC or to uranium solution extraction facilities.

(2) The criteria in this chapter do not apply to sites which:

(a) Have been decommissioned following department approved procedures prior to the effective date of this rule; and

(b) Have previously submitted and received department approval on a license termination plan ~~((LTP))~~ or decommissioning plan.

(3) After a site has been decommissioned and the license terminated in accordance with the criteria in this chapter, the department will require additional cleanup only if, based on new information, it determines that the criteria of this chapter were not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

(4) When calculating ~~((total effective dose equivalent))~~ TEDE~~((s))~~ to the average member of the critical group the licensee shall determine the peak annual TEDE dose expected within the first one thousand years after decommissioning.

(5) The provisions of this chapter do not relieve licensees of meeting all other applicable state and federal laws and rules.

AMENDATORY SECTION (Amending WSR 00-07-085, filed 3/15/00, effective 4/15/00)

WAC 246-246-010 Definitions, abbreviations, and acronyms. ~~((As used in this chapter, the following definitions apply:))~~ The definitions, abbreviations, and acronyms in this section and WAC 246-220-010 apply throughout this chapter unless the context clearly indicates otherwise.

(1) "Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

(2) "Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) Release of the property for unrestricted use and termination of the license; or

(b) Release of the property under restricted conditions and termination of the license.

(3) "Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

(4) "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of chapter 246-221 WAC.

AMENDATORY SECTION (Amending WSR 00-07-085, filed 3/15/00, effective 4/15/00)

WAC 246-246-020 Radiological criteria for unrestricted use. The department will determine a site is acceptable for unrestricted use if:

(1) The residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 0.25 mSv (25 mrem) per year, including that from groundwater sources of drinking water; and

(2) The residual radioactivity has been reduced to levels that are ~~((as low as reasonably achievable ()))~~ ALARA~~((s))~~. Determination of the levels which are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, expected to potentially result from decontamination and waste disposal.

AMENDATORY SECTION (Amending WSR 00-07-085, filed 3/15/00, effective 4/15/00)

WAC 246-246-030 Criteria for license termination under restricted conditions. A site is acceptable for license termination under restricted conditions if:

(1) The licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provi-

sions of WAC 246-246-020 would result in net public or environmental harm or were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels which are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal;

(2) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (25 mrem) per year;

(3) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are those described in WAC 246-235-075 (4)(a), (b), and (d) and, when a governmental entity is assuming custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity;

(4) The licensee has submitted a decommissioning plan or license termination plan (~~((LTP))~~) to the department indicating the licensee's intent to decommission in accordance with WAC 246-232-060(6), and specifying that the licensee intends to decommission by restricting use of the site. The licensee shall document in the (~~((LTP))~~) license termination plan or decommissioning plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and incorporated, as appropriate, following analysis of that advice;

(a) Licensees proposing to decommission by restricting use of the site shall seek advice from the affected parties regarding the following matters concerning the proposed decommissioning:

(i) Whether provisions for institutional controls proposed by the licensee:

(A) Will provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 0.25 mSv (25 mrem) TEDE per year;

(B) Will be enforceable; and

(C) Will not impose undue burdens on the local community or other affected parties;

(ii) Whether the licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site;

(b) In seeking advice on the issues identified in WAC 246-246-030 (4)(a), the licensee shall provide for:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all discussions, including a description of the individual viewpoints of the participants on the issues and the extent of

agreement and disagreement among the participants on the issues; and

(5) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is as low as reasonably achievable and would not exceed either:

(a) 1 mSv (100 mrem) per year; or

(b) 5 mSv (500 mrem) per year provided the licensee:

(i) Demonstrates that further reductions in residual radioactivity necessary to comply with the 1 mSv/y (100 mrem/y) value of (a) of this subsection are not technically achievable, would be prohibitively expensive, or would result in net public or environmental harm;

(ii) Makes provisions for durable institutional controls;

(iii) Provides sufficient financial assurance to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site no less frequently than every five years to assure that the institutional controls remain in place as necessary to meet the criteria of WAC 246-246-030(2) and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Acceptable financial assurance mechanisms are those in WAC 246-235-075 (4)(a), (b), and (d).

AMENDATORY SECTION (Amending WSR 00-07-085, filed 3/15/00, effective 4/15/00)

WAC 246-246-040 Alternate criteria for license termination. (1) The department may terminate a license using alternate criteria greater than the dose criterion of WAC 246-246-020, 246-246-030(2), and 246-246-030 (4)(a)(i)(A), if the licensee:

(a) Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the 1 mSv/y (100 mrem/y) limit of WAC 246-221-060, by submitting an analysis of possible sources of exposure;

(b) Has employed to the extent practical restrictions on site use according to the provisions of WAC 246-246-030 in minimizing exposures at the site; and

(c) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal;

(d) Has submitted a decommissioning plan or license termination plan (~~((LTP))~~) to the department indicating the licensee's intent to decommission in accordance with WAC 246-232-060(6), and specifying that the licensee proposes to decommission by use of alternate criteria. The licensee shall document in the decommissioning plan or (~~((LTP))~~) the license termination plan how the advice of individuals and institutions in the community who may be affected by the decommissioning has been sought and addressed, as appropriate, following analysis of that advice. In seeking advice, the licensee shall provide:

(i) Participation by representatives of a broad cross section of community interests who may be affected by the decommissioning;

(ii) An opportunity for a comprehensive, collective discussion on the issues by the participants represented; and

(iii) A publicly available summary of the results of all such discussions, including a description of the individual viewpoints of the participants on the issues and the extent of agreement and disagreement among the participants on the issues;

(e) Has provided sufficient financial assurance in the form of a trust fund to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site.

(2) The use of alternate criteria to terminate a license requires the approval of the department after consideration of the department staff's recommendations that will address any comments provided by the environmental protection agency and any public comments submitted pursuant to WAC 246-246-050.

AMENDATORY SECTION (Amending WSR 00-07-085, filed 3/15/00, effective 4/15/00)

WAC 246-246-050 Public notification and public participation. Upon ~~((the))~~ receipt of ~~((an LTP))~~ a license termination plan or decommissioning plan from the licensee, or a proposal by the licensee for release of a site under WAC 246-246-030 or 246-246-040, or whenever the department deems such notice to be in the public interest, the department shall:

(1) Notify and solicit comments from:

(a) Local and other applicable state agencies in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning; and

(b) The environmental protection agency for cases where the licensee proposes to release a site pursuant to WAC 246-246-040.

(2) Publish a notice in the Washington State Register and in a forum, such as local newspapers, letters to state or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site, and solicit comments from affected parties.

AMENDATORY SECTION (Amending WSR 00-07-085, filed 3/15/00, effective 4/15/00)

WAC 246-246-060 Minimization of contamination.

(1) Applicants for licenses, other than renewals, after the effective date of this rule, shall describe in the application how facility design and procedures for operation will minimize, to the extent practicable, contamination of the facility and the environment, facilitate eventual decommissioning, and minimize, to the extent practicable, the generation of radioactive waste.

(2) Licensees shall, to the extent practicable, conduct operations to minimize the introduction of residual radioactivity into the site, including the subsurface, in accordance with the existing radiation protection requirements in chapter

246-221 WAC and radiological criteria for license termination in this chapter.

(3) Each licensee shall make or cause to be made, surveys of areas, including the subsurface, that:

(a) May be necessary for the licensee to comply with the regulations in this chapter; and

(b) Are reasonable under the circumstances to evaluate:

(i) The magnitude and extent of radiation levels;

(ii) Concentrations or quantities of residual radioactivity; and

(iii) The potential radiological hazards of the radiation levels and residual radioactivity detected.

(4) Notwithstanding subsection (3) of this section, records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, and such records must be retained in accordance with WAC 246-235-075, as applicable.

(5) The licensee shall ensure that instruments and equipment used for quantitative radiation measurements (for example, dose rate and effluent monitoring) are calibrated periodically as required in WAC 246-221-110(2), 246-240-101, and 246-240-104.

Chapter 246-252 WAC

RADIATION PROTECTION—URANIUM ~~((AND/OR))~~ OR THORIUM MILLING

AMENDATORY SECTION (Amending WSR 97-13-055, filed 6/16/97, effective 7/17/97)

WAC 246-252-010 Definitions, abbreviations, and acronyms. ~~((The following definitions apply to the specified terms as used in this chapter.))~~ 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) "**Aquifer**" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Any saturated zone created by uranium or thorium recovery operations would not be considered an aquifer unless the zone is, or potentially is (a) hydraulically interconnected to a natural aquifer, (b) capable of discharge to surface water, or (c) reasonably accessible because of migration beyond the vertical projection of the boundary of the land transferred to long-term government ownership and care in accordance with WAC 246-252-030(11).

(2) "**As expeditiously as practicable considering technological feasibility,**" for the purposes of Criterion 6A, means as quickly as possible considering: The physical characteristics of the tailings and the site; the limits of available technology; the need for consistency with mandatory requirements of other regulatory programs; and factors beyond the control of the licensee. The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term "available technology."

(3) "**Available technology**" means technologies and methods for emplacing a final radon barrier on uranium mill tailings piles or impoundments. This term shall not be con-

strued to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry (or one that is reasonably analogous), (such as, by way of illustration only, unreasonable overtime, staffing, or transportation requirements, ~~((etc.))~~) considering normal practice in the industry; laser fusion of soils ~~((etc.))~~), provided there is reasonable progress toward emplacement of the final radon barrier. To determine grossly excessive costs, the relevant baseline against which cost shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's approved reclamation plan, but costs beyond these estimates shall not automatically be considered grossly excessive.

(4) **"Closure"** means the activities following operations to decontaminate and decommission the buildings and site used to produce by-product materials and reclaim the tailings ~~((and/or))~~ or waste disposal area.

(5) **"Closure plan"** means the department approved plan to accomplish closure.

(6) **"Compliance period"** begins when the department sets secondary groundwater protection standards and ends when the owner or operator's license is terminated and the site is transferred to the state or federal agency for long-term care.

(7) **"Dike"** means an embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(8) **"Disposal area"** means the area containing by-product materials to which the requirements of Criterion 6 apply.

(9) **"Existing portion"** means that land surface area of an existing surface impoundment on which significant quantities of uranium or thorium by-product materials had been placed prior to September 30, 1983.

(10) **"Factors beyond the control of the licensee"** means factors proximately causing delay in meeting the schedule in the applicable reclamation plan for the timely emplacement of the final radon barrier notwithstanding the good faith efforts of the licensee to complete the barrier in compliance with paragraph (a) of Criterion 6A. These factors may include, but are not limited to:

- (a) Physical conditions at the site;
- (b) Inclement weather or climatic conditions;
- (c) An act of God;
- (d) An act of war;
- (e) A judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance;
- (f) Labor disturbances;
- (g) Any modifications, cessation or delay ordered by state, federal, or local agencies;
- (h) Delays beyond the time reasonably required in obtaining necessary government permits, licenses, approvals, or consent for activities described in the reclamation plan proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by

the agencies), or other information, including approval of the reclamation plan; and

(i) An act or omission of any third party over whom the licensee has no control.

(11) **"Final radon barrier"** means the earthen cover (or approved alternative cover) over tailings or waste constructed to comply with Criterion 6 of WAC 246-252-030 (excluding erosion protection features).

(12) **"Groundwater"** means water below the land surface in a zone of saturation. For the purposes of this chapter, groundwater is the water contained within an aquifer as defined above.

(13) **"Leachate"** means any liquid, including any suspended or dissolved components in the liquid, that has percolated through or drained from the by-product material.

(14) **"Licensed site"** means the area contained within the boundary of a location under the control of persons generating or storing by-product materials under a department license.

(15) **"Liner"** means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment which restricts the downward or lateral escape of by-product material, hazardous constituents, or leachate.

(16) **"Milestone"** means an action or event that is required to occur by an enforceable date.

(17) **"Operation"** means that a uranium or thorium mill tailings pile or impoundment is being used for the continued placement of by-product material or is in standby status for such placement. A pile or impoundment is in operation from the day that by-product material is first placed in the pile or impoundment until the day final closure begins.

(18) **"Point of compliance"** is the site specific location in the uppermost aquifer where the groundwater protection standard must be met.

(19) **"Reclamation plan,"** for the purposes of Criterion 6A, means the plan detailing activities to accomplish reclamation of the tailings or waste disposal area in accordance with the technical criteria of WAC 246-252-030. The reclamation plan must include a schedule for reclamation milestones that are key to the completion of the final radon barrier including as appropriate, but not limited to, wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and final radon barrier construction. (Reclamation of tailings must also be addressed in the closure plan; the detailed reclamation plan may be incorporated into the closure plan.)

(20) **"Surface impoundment"** means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well.

(21) **"Uppermost aquifer"** means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

AMENDATORY SECTION (Amending WSR 02-17-005, filed 8/8/02, effective 9/8/02)

WAC 246-252-030 Criteria related to disposition of uranium mill tailings or wastes. As used in this section, the term "~~((as low as reasonably achievable" has the same meaning as in WAC 246-220-007. The term))~~ by-product material" means the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

As required by WAC 246-235-110(6), each applicant for a license to possess and use source material in conjunction with uranium or thorium milling, or by-product material at sites formerly associated with such milling, is required to include in a license application proposed specifications relating to the milling operation and the disposition of tailings or waste resulting from such milling activities. This section establishes criteria relating to the siting, operation, decontamination, decommissioning, and reclamation of mills and tailings or waste systems and sites at which such mills and systems are located and site and by-product material ownership. Applications must clearly demonstrate how these criteria have been addressed. The specifications shall be developed considering the expected full capacity of tailings or waste systems and the lifetime of mill operations. Where later expansions of systems or operations may be likely, the amenability of the disposal system to accommodate increased capacities without degradation in long-term stability and other performance factors shall be evaluated.

Licenses or applicants may propose alternatives to the specific requirements in these criteria. The alternative proposals may take into account local or regional conditions, including geology, topography, hydrology, and meteorology. The department may find that the proposed alternatives meet the department's requirements if the alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with the sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by the requirements of the standards promulgated by the United States Environmental Protection Agency in 40 C.F.R. 192, Subparts D and E.

(1) Criterion 1 - In selecting among alternative tailings disposal sites or judging the adequacy of existing tailings sites, the following site features which would contribute to meeting the broad objective of permanent isolation of the tailings and associated contaminants from man and the environment for one thousand years to the extent reasonably achievable, and in any case, for at least two hundred years without ongoing active maintenance shall be considered:

- (a) Remoteness from populated areas;
- (b) Hydrogeologic and other environmental conditions conducive to continued immobilization and isolation of contaminants from groundwater sources; and
- (c) Potential for minimizing erosion, disturbance, and dispersion by natural forces over the long term.

The site selection process must be an optimization to the maximum extent reasonably achievable in terms of these features.

In the selection of disposal sites, primary emphasis shall be given to isolation of tailings or wastes, a matter having long-term impacts, as opposed to consideration only of short-term convenience or benefits, such as minimization of transportation or land acquisition costs. While isolation of tailings will be a function of both site characteristics and engineering design, overriding consideration shall be given to siting features given the long-term nature of the tailings hazards.

Tailings shall be disposed in a manner such that no active maintenance is required to preserve the condition of the site.

(2) Criterion 2 - To avoid proliferation of small waste disposal sites, by-product material from in-situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations shall be disposed at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity and the costs and environmental impacts of transporting the wastes to a large disposal site, such off-site disposal is demonstrated to be impracticable or the advantage of on-site burial clearly outweighs the benefits of reducing the perpetual surveillance obligations.

(3) Criterion 3 - The "prime option" for disposal of tailings is placement below grade, either in mines or specially excavated pits (that is, where the need for any specially constructed retention structure is eliminated).

The evaluation of alternative sites and disposal methods performed by mill operators in support of their proposed tailings disposal program (provided in applicants' environmental reports) shall reflect serious consideration of this disposal mode. In some instances, below grade disposal may not be the most environmentally sound approach, such as might be the case if a groundwater formation is relatively close to the surface or not very well isolated by overlying soils and rock. Also, geologic and topographic conditions might make full, below grade burial impracticable; for example, near-surface bedrock could create prominent excavation costs while more suitable alternate sites may be available. Where full below grade burial is not practicable, the size of the retention structures, and the size and steepness of slopes of associated exposed embankments, shall be minimized by excavation to the maximum extent reasonably achievable or appropriate, given the geologic and hydrogeologic conditions at a site. In these cases, it must be demonstrated that an above-grade disposal program will provide reasonably equivalent isolation of the tailings from natural erosional forces.

(4) Criterion 4 - The following site and design criteria shall be adhered to whether tailings or wastes are disposed of above or below grade:

(a) Upstream rainfall catchment areas must be minimized to decrease erosion potential and the size of the probable maximum flood which could erode or wash out sections of the tailings disposal area.

(b) Topographic features shall provide good wind protection.

(c) Embankment and cover slopes shall be relatively flat after final stabilization to minimize erosion potential and to provide conservative factors of safety assuring long-term stability. The broad objective should be to contour final slopes

to grades which are as close as possible to those which would be provided if tailings were disposed of below grade; this could, for example, lead to slopes of about ten horizontal to one vertical (10h:1v) or less steep. In general, slopes should not be steeper than about 5h:1v. Where steeper slopes are proposed, reasons why a slope less steep than 5h:1v would be impracticable should be provided, and compensating factors and conditions which make such slopes acceptable should be identified.

(d) A fully self-sustaining vegetative cover shall be established or rock cover employed to reduce wind and water erosion to negligible levels.

Where a full vegetative cover is not likely to be self-sustaining due to climatic conditions, such as in semi-arid and arid regions, rock cover shall be employed on slopes of the impoundment system. The NRC will consider relaxing this requirement for extremely gentle slopes such as those which may exist on the top of the pile.

The following factors shall be considered in establishing the final rock cover design to avoid displacement of rock particles by human and animal traffic or by natural processes, and to preclude undercutting and piping:

(i) Shape, size, composition, gradation of rock particles (excepting bedding material, average particle size shall be at least cobble size or greater);

(ii) Rock cover thickness and zoning of particles by size; and

(iii) Steepness of underlying slopes.

(e) Individual rock fragments shall be dense, sound, and resistant to abrasion, and free from defects that would tend to unduly increase their destruction by water and frost actions. Weak, friable, or laminated aggregate shall not be used. Shale, rock laminated with shale, and cherts shall not be used.

Rock covering of slopes may not be required where top covers are on the order of ten meters or greater; impoundment slopes are on the order of 10h:1v or less; bulk cover materials have inherently favorable erosion resistance characteristics; and there is negligible drainage catchment area upstream of the pile, and there is good wind protection as described in (a) and (b) of this subsection.

(f) Impoundment surfaces shall be contoured to avoid areas of concentrated surface runoff or abrupt or sharp changes in slope gradient. In addition to rock cover on slopes, areas toward which surface runoff might be directed shall be well protected with substantial rock cover (riprap). In addition to providing for stability of the impoundment systems itself, the overall stability, erosion potential, and geomorphology of surrounding terrain shall be evaluated to assure that there are no processes, such as gully erosion, which would lead to impoundment instability.

(g) The impoundment shall not be located near a capable fault that could cause a maximum credible earthquake larger than that which the impoundment could reasonably be expected to withstand. As used in this criterion, the term "capable fault" has the same meaning as defined in Section III (g) of Appendix A of 10 C.F.R. Part 100. The term "maximum credible earthquake" means that earthquake which would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the

regional and local geology and seismology and specific characteristics of local subsurface material.

(h) The impoundment, where feasible, should be designed to incorporate features which will promote deposition of suspended particles. For example, design features which promote deposition of sediment suspended in any runoff which flows into the impoundment area might be utilized; the object of such a design feature would be to enhance the thickness of cover over time.

(5) Criterion 5 - Criteria 5(a) through 5(g) and new Criterion 13 incorporate the basic groundwater protection standards imposed by the United States Environmental Protection Agency in 40 C.F.R. Part 192, Subparts D and E (48 FR 45926; October 7, 1983) which apply during operations and prior to the end of closure. Groundwater monitoring to comply with these standards is required by Criterion 7.

(a) The primary groundwater protection standard is a design standard for surface impoundments used to manage uranium and thorium by-product material. Surface impoundments (except for an existing portion) must have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil, groundwater, or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil, groundwater, or surface water) during the active life of the facility, provided that impoundment closure includes removal or decontamination of all waste residues, contaminated containment system components (liners(~~, etc.~~)), contaminated subsoils, and structures and equipment contaminated with waste and leachate. For impoundments that will be closed with the liner material left in place, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility.

(b) The liner required by (a) of this subsection must be:

(i) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(ii) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(iii) Installed to cover all surrounding earth likely to be in contact with the wastes or leachate.

(c) The applicant or licensee will be exempted from the requirements of (a) of this subsection if the department finds, based on a demonstration by the applicant or licensee, that alternate design and operating practices, including the closure plan, together with site characteristics will prevent the migration of any hazardous constituents into groundwater or surface water at any future time. In deciding whether to grant an exemption, the department will consider:

(i) The nature and quantity of the wastes;

(ii) The proposed alternate design and operation;

(iii) The hydrogeologic setting of the facility, including the ~~((attenuative))~~ attenuation capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(iv) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(d) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave actions; rainfall; run-on; from malfunctions of level controllers, alarms, and other equipment; and human error.

(e) When dikes are used to form the surface impoundment, the dikes must be designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the impoundment.

(f) Uranium and thorium by-product materials must be managed to conform to the following secondary groundwater protection standard: Hazardous constituents entering the groundwater from a licensed site must not exceed the specified concentration limits in the uppermost aquifer beyond the point of compliance during the compliance period. Hazardous constituents are those constituents identified by the department pursuant to (g) of this subsection. Specified concentration limits are those limits established by the department as indicated in (j) of this subsection. The department will also establish the point of compliance and compliance period on a site specific basis through license conditions and orders. The objective in selecting the point of compliance is to provide the earliest practicable warning that the impoundment is releasing hazardous constituents to the groundwater. The point of compliance must be selected to provide prompt indication of groundwater contamination on the hydraulically downgradient edge of the disposal area. The department must identify hazardous constituents, establish concentration limits, set the compliance period, and adjust the point of compliance, if needed, when the detection monitoring established under criterion 7 indicates leakage of hazardous constituents from the disposal area.

(g) A constituent becomes a hazardous constituent subject to (j) of this subsection when the constituent:

(i) Is reasonably expected to be in or derived from the by-product material in the disposal area;

(ii) Has been detected in the groundwater in the uppermost aquifer; and

(iii) Is listed in WAC 246-252-050 Appendix A.

(h) The department may exclude a detected constituent from the set of hazardous constituents on a site specific basis if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to exclude constituents, the department will consider the following:

(i) Potential adverse effect on groundwater quality, considering ((—));

(A) The physical and chemical characteristics of the waste in the licensed site, including its potential for migration;

(B) The hydrogeological characteristics of the facility and surrounding land;

(C) The quantity of groundwater and the direction of groundwater flow;

(D) The proximity and withdrawal rates of groundwater users;

(E) The current and future uses of groundwater in the area;

(F) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(G) The potential for health risks caused by human exposure to waste constituents;

(H) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(I) The persistence and permanence of the potential adverse effects.

(ii) Potential adverse effects on hydraulically-connected surface water quality, considering ((—));

(A) The volume and physical and chemical characteristics of the waste in the licensed site;

(B) The hydrogeological characteristics of the facility and surrounding land;

(C) The quantity and quality of groundwater, and the direction of groundwater flow;

(D) The patterns of rainfall in the region;

(E) The proximity of the licensed site to surface waters;

(F) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(G) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(H) The potential for health risks caused by human exposure to waste constituents;

(I) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(J) The persistence and permanence of the potential adverse effects.

(i) In making any determinations under (h) and (k) of this subsection about the use of groundwater in the area around the facility, the department will consider any identification of underground sources of drinking water and exempted aquifers made by the United States Environmental Protection Agency.

(j) At the point of compliance, the concentration of a hazardous constituent must not exceed ((—));

(i) The department approved background concentration of that constituent in the groundwater;

(ii) The respective value given in the table in subsection (5)(l) of this section if the constituent is listed in the table and if the background level of the constituent is below the value listed; or

(iii) An alternate concentration limit established by the department.

(k) Conceptually, background concentrations pose no incremental hazards and the drinking water limits in (j)(i) of this subsection state acceptable hazards but these two options

may not be practically achievable at a specific site. Alternate concentration limits that present no significant hazard may be proposed by licensees for department consideration. Licensees must provide the basis for any proposed limits including consideration of practicable corrective actions, that limits are as low as reasonably achievable, and information on the factors the department must consider.

The department will establish a site specific alternate concentration limit for a hazardous constituent as provided in (j) of this subsection if it finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the department will apply its as low as reasonably achievable criterion in this chapter. The department will also consider the following factors:

(i) Potential adverse effects on groundwater quality, considering ((—));

(A) The physical and chemical characteristics of the waste in the licensed site including its potential for migration;

(B) The hydrogeological characteristics of the facility and surrounding land;

(C) The quantity of groundwater and the direction of groundwater flow;

(D) The proximity and withdrawal rates of groundwater users;

(E) The current and future uses of groundwater in the area;

(F) The existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(G) The potential for health risks caused by human exposure to waste constituents;

(H) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(I) The persistence and permanence of the potential adverse effects.

(ii) Potential adverse effects on hydraulically-connected surface water quality, considering ((—));

(A) The volume and physical and chemical characteristics of the waste in the licensed site;

(B) The hydrogeological characteristics of the facility and surrounding land;

(C) The quantity and quality of groundwater, and the direction of groundwater flow;

(D) The patterns of rainfall in the region;

(E) The proximity of the licensed site to surface waters;

(F) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(G) The existing quality of surface water including other sources of contamination and the cumulative impact on surface water quality;

(H) The potential for health risks caused by human exposure to waste constituents;

(I) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(J) The persistence and permanence of the potential adverse effects.

(I) MAXIMUM VALUES FOR GROUNDWATER PROTECTION:

Constituent or Property	Maximum Concentration
	Milligrams per liter
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1,7 -exoxy-1,4,4a,5,6,7,8,9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-Trichloro-2,2-bis(p-methoxyphenylethane)	0.1
Toxaphene (C ₁₀ H ₁₀ Cl ₆ , Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01
	Picocuries per liter
Combined radium - 226 and radium - 228	5
Gross alpha - particle activity (excluding radon and uranium when producing uranium by-product material or thorium when producing thorium by-product material)	15

(m) If the groundwater protection standards established under (f) of this subsection are exceeded at a licensed site, a corrective action program must be put into operation as soon as is practicable, and in no event later than eighteen months after the department finds that the standards have been exceeded. The licensee shall submit the proposed corrective action program and supporting rationale for department approval prior to putting the program into operation, unless otherwise directed by the department. The objective of the program is to return hazardous constituent concentration levels in groundwater to the concentration limits set as standards. The licensee's proposed program must address removing the hazardous constituents that have entered the groundwater at the point of compliance or treating them in place. The program must also address removing or treating in place any hazardous constituents that exceed concentration limits in groundwater between the point of compliance and the downgradient facility property boundary. The licensee shall continue corrective action measures to the extent necessary to achieve and maintain compliance with the groundwater protection standard. The department will determine when the licensee may terminate corrective action measures based on

data from the groundwater monitoring program and other information that provide reasonable assurance that the groundwater protection standard will not be exceeded.

(n) In developing and conducting groundwater protection programs, applicants and licensees shall also consider the following:

(i) Installation of bottom liners (where synthetic liners are used, a leakage detection system must be installed immediately below the liner to ensure major failures are detected if they occur. This is in addition to the groundwater monitoring program conducted as provided in Criterion 7. Where clay liners are proposed or relatively thin, in-situ clay soils are to be relied upon for seepage control, tests must be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continuous exposure of clay to tailings solutions. Tests must be run for a sufficient period of time to reveal any effects if they are going to occur (in some cases deterioration has been observed to occur rather rapidly after about nine months of exposure)).

(ii) Mill process designs which provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the tailings impoundment.

(iii) Dewatering of tailings by process devices (~~(and/or)~~) or in-situ drainage systems (at new sites, tailings must be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head of seepage, unless tests show tailings are not amenable to such a system. Where in-situ dewatering is to be conducted, the impoundment bottom must be graded to assure that the drains are at a low point. The drains must be protected by suitable filter materials to assure that drains remain free running. The drainage system must also be adequately sized to assure good drainage).

(iv) Neutralization to promote immobilization of hazardous constituents.

(o) Where groundwater impacts are occurring at an existing site due to seepage, action must be taken to alleviate conditions that lead to excessive seepage impacts and restore groundwater quality. The specific seepage control and groundwater protection method, or combination of methods, to be used must be worked out on a site-specific basis. Technical specifications must be prepared to control installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, must be established to assure the specifications are met.

(p) In support of a tailings disposal system proposal, the applicant/operator shall supply information concerning the following:

(i) The chemical and radioactive characteristics of the waste solutions.

(ii) The characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This includes detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations must be determined. This information must be gathered from borings and field survey methods taken within the proposed impoundment area

and in surrounding areas where contaminants might migrate to groundwater. The information gathered on boreholes must include both geologic and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability may not be determined on the basis of laboratory analysis of samples alone; a sufficient amount of field testing (e.g., pump tests) must be conducted to assure actual field properties are adequately understood. Testing must be conducted to allow estimating chemi-sorption attenuation properties of underlying soil and rock.

(ii) Location, extent, quality, capacity and current uses of any groundwater at and near the site.

(q) Steps must be taken during stockpiling of ore to minimize penetration of radionuclides into underlying soils; suitable methods include lining (~~(and/or)~~) or compaction of ore storage areas.

(6) Criterion 6 - (a) In disposing of waste by-product material, licensees shall place an earthen cover (or approved alternative) over tailings or wastes at the end of milling operations and shall close the waste disposal area in accordance with a design¹ which provides reasonable assurance of control of radiological hazards to:

(i) Be effective for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years; and

(ii) Limit releases of Radon-222 from uranium by-product materials, and Radon-220 from thorium by-product materials, to the atmosphere so as not to exceed an average² release rate of 20 picocuries per square meter per second (pCi/m²s) to the extent practicable throughout the effective design life determined pursuant to (a)(i) of this subsection (this criterion). In computing required tailings cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances may not be considered. Direct gamma exposure from the tailings or wastes should be reduced to background levels. The effects of any thin synthetic layer may not be taken into account in determining the calculated radon exhalation level. If nonsoil materials are proposed as cover materials, it must be demonstrated that these materials will not crack or degrade by differential settlement, weathering, or other mechanism, over long-term intervals.

(b) As soon as reasonably achievable after emplacement of the final cover to limit releases of Radon-222 from uranium by-product material and prior to placement of erosion protection barriers or other features necessary for long-term control of the tailings, the licensees shall verify through appropriate testing and analysis that the design and construction of the final radon barrier is effective in limiting releases of Radon-222 to a level not exceeding 20 pCi/m²s averaged over the entire pile or impoundment using the procedures described in 40 C.F.R. part 61, appendix B, Method 115, or another method of verification approved by (~~the Nuclear Regulatory Commission~~) NRC as being at least as effective in demonstrating the effectiveness of the final radon barrier.

(c) When phased emplacement of the final radon barrier is included in the applicable reclamation plan, the verification

of Radon-222 release rates required in (b) of this subsection (this criterion) must be conducted for each portion of the pile or impoundment as the final radon barrier for that portion is emplaced.

(d) Within ninety days of the completion of all testing and analysis relevant to the required verification in (b) and (c) of this subsection (this criterion), the uranium mill licensee shall report to the department the results detailing the actions taken to verify that levels of release of Radon-222 do not exceed 20 pCi/m²s when averaged over the entire pile or impoundment. The licensee shall maintain records until termination of the license documenting the source of input parameters including the results of all measurements on which they are based, the calculations ~~((and/or))~~ or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. These records shall be kept in a form suitable for transfer to the custodial agency at the time of transfer of the site to DOE or a state for long-term care if requested.

(e) Near surface cover materials (i.e., within the top three meters) may not include waste or rock that contains elevated levels of radium; soils used for near surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

(f) The design requirements in this criterion for longevity and control of radon releases apply to any portion of a licensed ~~((and/or))~~ or disposal site unless such portion contains a concentration of radium in land, averaged over areas of 100 square meters, which, as a result of by-product material, does not exceed the background level by more than:

(i) 5 picocuries per gram (pCi/g) of radium-226, or, in the case of thorium by-product material, radium-228, averaged over the first 15 centimeters (cm) below the surface; and

(ii) 15 pCi/g of radium-226, or, in the case of thorium by-product material, radium-228, averaged over 15-cm thick layers more than 15 cm below the surface.

(g) By-product material containing concentrations of radionuclides other than radium in soil, and surface activity on remaining structures, must not result in a total effective dose equivalent (TEDE) exceeding the dose from cleanup of radium contaminated soil to the standard (benchmark dose) contained in (f) of this subsection, and must be at levels which are as low as is reasonably achievable (ALARA). If more than one residual radionuclide is present in the same 100 square meter area, the sum of the ratios for each radionuclide of concentration present to the concentration limit will not exceed "1" (unity). A calculation of the potential peak annual TEDE within 1000 years to the average member of the critical group that would result from applying the radium standard, not including radon, on the site must be submitted for approval. The use of decommissioning plans with benchmark doses which exceed 100 mrem/yr, before application of ALARA, requires the approval of the department. This requirement for dose criteria does not apply to sites that have decommissioning plans for soil and structures approved before June 11, 1999.

(h) The licensee shall also address the nonradiological hazards associated with the wastes in planning and imple-

menting closure. The licensee shall ensure that disposal areas are closed in a manner that minimizes the need for further maintenance. To the extent necessary to prevent threats to human health and the environment, the licensee shall control, minimize, or eliminate post-closure escape of nonradiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to the ground or surface waters or to the atmosphere.

¹ In the case of thorium by-product materials, the standard applies only to design. Monitoring for radon emissions from thorium by-product materials after installation of an appropriately designed cover is not required.

² This average applies to the entire surface of each disposal area over a period of at least one year, but a period short compared to 100 years. Radon will come from both by-product materials and from covering materials. Radon emissions from covering materials should be estimated as part of developing a closure plan for each site. The standard, however, applies only to emissions from by-product materials to the atmosphere.

Criterion 6A - (a) For impoundments containing uranium by-product materials, the final radon barrier must be completed as expeditiously as practicable considering technological feasibility after the pile or impoundment ceases operation in accordance with a written, department-approved reclamation plan. (The term as expeditiously as practicable considering technological feasibility as specifically defined in WAC 246-252-010 includes factors beyond the control of the licensee.) Deadlines for completion of the final radon barrier and, if applicable, the following interim milestones must be established as a condition of the individual license: Wind-blown tailings retrieval and placement on the pile and interim stabilization (including dewatering or the removal of free-standing liquids and recontouring). The placement of erosion protection barriers or other features necessary for long-term control of the tailings must also be completed in a timely manner in accordance with a written, approved reclamation plan.

(b) The department may approve a licensee's request to extend the time for performance of milestones related to emplacement of the final radon barrier if, after providing an opportunity for public participation, the department finds that the licensee has adequately demonstrated in the manner required in subsection (6)(b) of this section (Criterion 6) that releases of Radon-222 do not exceed an average of 20 pCi/m²s. If the delay is approved on the basis that the radon releases do not exceed 20 pCi/m²s, a verification of radon levels, as required by subsection (6)(b) of this section (Criterion 6), must be made annually during the period of delay. In addition, once the department has established the date in the reclamation plan for the milestone for completion of the final radon barrier, the department may extend that date based on cost if, after providing an opportunity for public participation, the department finds that the licensee is making good faith efforts to emplace the final radon barrier, the delay is consistent with the definitions of available technology, and the radon releases caused by the delay will not result in a significant incremental risk to the public health.

(c) The department may authorize by license amendment, upon licensee request, a portion of the impoundment to accept uranium by-product material or such materials that are similar in physical, chemical, and radiological characteristics to the uranium mill tailings and associated wastes already in

the pile or impoundment from other sources, during the closure process. No such authorization will be made if it results in a delay or impediment to emplacement of the final radon barrier over the remainder of the impoundment in a manner that will achieve levels of Radon-222 releases not exceeding 20 pCi/m²s averaged over the entire impoundment. The verification required in subsection (6)(b) of this section (Criterion 6) may be completed with a portion of the impoundment being used for further disposal if the department makes a final finding that the impoundment will continue to achieve a level of Radon-222 releases not exceeding 20 pCi/m²s averaged over the entire impoundment. In this case, after the final radon barrier is complete except for the continuing disposal area:

- (i) Only by-product material will be authorized for disposal;
- (ii) The disposal will be limited to the specified existing disposal area; and
- (iii) This authorization will only be made after providing opportunity for public participation.

Reclamation of the disposal area, as appropriate, must be completed in a timely manner after disposal operations cease in accordance with subsection (6)(a) of this section (Criterion 6); however, these actions are not required to be complete as part of meeting the deadline for final radon barrier construction.

(7) Criterion 7 - At least one full year prior to any major site construction, a preoperational monitoring program must be conducted to provide complete baseline data on a milling site and its environs. Throughout the construction and operating phases of the mill, an operational monitoring program must be conducted to complete the following:

- (a) To measure or evaluate compliance with applicable standards and regulations;
- (b) To evaluate performance of control systems and procedures;
- (c) To evaluate environmental impacts of operation; and
- (d) To detect potential long-term effects.

The licensee shall establish a detection monitoring program needed for the department to set the site-specific groundwater protection standards in Criterion 5 of this section. For all monitoring under this paragraph, the licensee or applicant will propose for department approval as license conditions, which constituents are to be monitored on a site-specific basis. A detection monitoring program has two purposes. The initial purpose of the program is to detect leakage of hazardous constituents from the disposal area so that the need to set groundwater protection standards is monitored. If leakage is detected, the second purpose of the program is to generate data and information needed for the department to establish the standards under Criterion 5. The data and information must provide a sufficient basis to identify those hazardous constituents which require concentration limit standards and to enable the department to set the limits for those constituents and the compliance period. They may also need to provide the basis for adjustments to the point of compliance. For licenses in effect September 30, 1983, the detection monitoring programs must have been in place by October 1, 1984. For licenses issued after September 30, 1983, the detection monitoring programs must be in place when speci-

fied by the department in orders or license conditions. Once groundwater protection standards have been established pursuant to Criterion 5, the licensee shall establish and implement a compliance monitoring program. The purpose of the compliance monitoring program is to determine that the hazardous constituent concentrations in groundwater continue to comply with the standards set by the department. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program. The purpose of the corrective action monitoring program is to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

(8) Criterion 8 - Milling operations shall be conducted so that all airborne effluent releases are reduced to as low as is reasonably achievable. The primary means of accomplishing this shall be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that off-site exposure limits are met, but only after all practicable measures have been taken to control emissions at the source. Notwithstanding the existence of individual dose standards, strict control of emissions is necessary to assure that population exposures are reduced to the maximum extent reasonably achievable and to avoid site contamination. The greatest potential sources of off-site radiation exposure (aside from radon exposure) are dusting from dry surfaces of the tailings disposal area not covered by tailings solution and emissions from yellowcake drying and packaging operations. During operations and prior to closure, radiation doses from radon emissions from surface impoundments shall be kept as low as is reasonably achievable. Checks shall be made and logged hourly of all parameters (e.g., differential pressure and scrubber water flow rate) which determine the efficiency of yellowcake stack emission control equipment operation. It shall be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency; corrective action shall be taken when performance is outside of prescribed ranges. Effluent control devices shall be operative at all times during drying and packaging operations and whenever air is exhausting from the yellowcake stack.

Drying and packaging operations shall terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions shall be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations shall cease as soon as practicable.

Operations may not be restarted after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All such cessations, corrective actions, and restarts shall be reported to the department in writing, within ten days of the subsequent restart.

To control dusting from tailings, that portion not covered by standing liquids shall be wetted or chemically stabilized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if tailings are effectively sheltered from wind, such as

may be the case where they are disposed of below grade and the tailings surface is not exposed to wind. Consideration shall be given in planning tailings disposal programs to methods which would allow phased covering and reclamation of tailings impoundments since this will help in controlling particulate and radon emissions during operation. To control dustings from diffuse sources, such as tailings and ore pads where automatic controls do not apply, operators shall develop written operating procedures specifying the methods of control which will be utilized.

Milling operations producing or involving thorium by-product material shall be conducted in such a manner as to provide reasonable assurance that the annual dose equivalent does not exceed twenty-five millirems to the whole body, seventy-five millirems to the thyroid, and twenty-five millirems to any other organ of any member of the public as a result of exposures to the planned discharge of radioactive materials, Radon-220 and its daughters excepted, to the general environment.

Uranium and thorium by-product materials shall be managed so as to conform to the applicable provisions of Title 40 of the Code of Federal Regulations, Part 440, Ore Mining and Dressing Point Source Category: Effluent Limitations Guidelines and New Source Performance Standards, Subpart C, Uranium, Radium, and Vanadium Ores Subcategory, as codified on January 1, 1983.

The licensee shall establish a detection monitoring program needed to establish the groundwater protection standards in subsection (5)(f) of this section. A detection monitoring program has two purposes. The initial purpose of the program is to detect leakage of hazardous constituents from the disposal area so that the need to set groundwater protection standards is monitored. If leakage is detected, the second purpose of the program is to generate data and information needed for the department to establish the standards under subsection (5)(f) of this section. The data and information must provide a sufficient basis to identify those hazardous constituents which require concentration limit standards and to enable the department to set the limits for those constituents and the compliance period. They may also need to provide the basis for adjustments to the point of compliance. For licenses in effect September 30, 1983, the detection monitoring programs must have been in place by October 1, 1984. For licenses issued after September 30, 1983, the detection monitoring programs must be in place when specified by the department in orders or license conditions. Once groundwater protection standards have been established pursuant to subsection (5)(f) of this section, the licensee shall establish and implement a compliance monitoring program. The purpose of the compliance monitoring program is to determine that the hazardous constituent concentrations in groundwater continue to comply with the standards set by the department. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program. The purpose of the corrective action monitoring program is to demonstrate the effectiveness of the corrective actions. Any monitoring program required by this paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

Daily inspections of tailings or waste retention systems must be conducted by a qualified engineer or scientist and documented. The department must be immediately notified of any failure in a tailings or waste retention system which results in a release of tailings or waste into unrestricted areas, ~~((and/or))~~ or of any unusual conditions (conditions not contemplated in the design of the retention system) which if not corrected could indicate the potential or lead to failure of the system and result in a release of tailings or waste into unrestricted areas.

(9) Criterion 9 - (a) Pursuant to chapter 70.121 RCW, and except as otherwise provided, financial surety arrangements ~~((for site reclamation and long term surveillance and control which may consist of surety bonds, cash deposits, certificates of deposit, deposits of government securities, irrevocable letters or lines of credit, or any combination of the above, or other arrangements approved by the department, milling operations shall be established for source material 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 of the act and these regulations:~~

(i) The amount of funds to be ensured by such surety arrangements shall be based on department approved cost estimates:

(ii) Self insurance, or any arrangement which essentially constitutes self insurance (e.g., a contract with a state or federal agency), will not satisfy the surety requirement, since this provides no additional assurance other than that which already exists through license requirements.

(b) The arrangements required in (a) of this subsection shall be established prior to commencement of operations to assure that sufficient funds will be available to carry out decontamination and decommissioning of the facility.

~~(c) Amendments to licenses in effect on the effective date of this regulation may be issued, providing that the required surety arrangements are established within ninety days after the effective date of this subsection.~~

~~(d) For source material milling operations, the amount of funds to be ensured by such surety arrangements shall be based on department approved cost estimates in an approved plan for (i) decontamination and decommissioning of mill buildings and the milling site to levels which would allow unrestricted use of these areas upon decommissioning, and (ii) the reclamation of tailings and/or waste disposal areas in accordance with the technical criteria delineated in this section. The licensee shall submit this plan in conjunction with an environmental report that addresses the expected environmental impacts of the milling operation, decommissioning and tailings reclamation, and evaluates alternatives for mitigating these impacts. In addition, the surety shall cover the payment of the charge for long term surveillance and control required by the department. In establishing specific surety arrangements, the licensee's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning and reclamation work. In order to avoid unnecessary duplication and expense, the department may accept financial sureties that have been consolidated with financial or surety arrangements established to meet requirements of other federal or~~

state agencies and/or local governing bodies for such decommissioning, decontamination, reclamation, and long-term site surveillance, provided such arrangements are considered adequate to satisfy these requirements and that portion of the surety which covers the decommissioning and reclamation of the mill, mill tailings site and associated areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities. The licensee's surety mechanism will be reviewed annually by the department to assure that sufficient funds will be available for completion of the reclamation plan if the work had to be performed by an independent contractor. The amount of surety liability should be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs. Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of surety liability shall be retained until final compliance with the reclamation plan is determined. This will yield a surety that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the surety mechanism must be open ended, unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance could be provided with a surety instrument which is written for a specific period of time (e.g., five years), yet which must be automatically renewed unless the surety notifies the beneficiary (the state regulatory agency) and the principal (the licensee) some reasonable time (e.g., ninety days) prior to the renewal date of their intention not to renew. In such a situation, the surety requirement still exists and the licensee would be required to submit an acceptable replacement surety within a brief period of time to allow at least sixty days for the department to collect.

Proof of forfeiture must not be necessary to collect the surety so that in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any surety instrument which is not open-ended and must be agreed to by all parties.

Long-term care requirements. Pursuant to chapter 70.121 RCW, and as otherwise provided in WAC 246-235-086(4), a long-term care trust fund shall be established by source material milling licensees prior to the issuance of the license.) must be established by each mill operator before the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas. The amount of funds to be ensured by such surety arrangements must be based on department-approved cost estimates in a department-approved plan, or a proposed revision to the plan submitted to the department for approval, if the proposed revision contains a higher cost estimate for:

(i) Decontamination and decommissioning of mill buildings and the milling site to levels which allow unrestricted use of these areas upon decommissioning; and

(ii) The reclamation of tailings or waste areas in accordance with technical criteria delineated in this section.

(b) Each cost estimate must contain:

(i) A detailed cost estimate for decontamination, decommissioning, and reclamation, in an amount reflecting:

(A) The cost of an independent contractor to perform the decontamination, decommissioning, and reclamation activities; and

(B) An adequate contingency factor.

(ii) An estimate of the amount of radioactive contamination in on-site subsurface material;

(iii) Identification of and justification for using the key assumptions contained in the decommissioning cost estimate; and

(iv) A description of the method of assuring funds for decontamination, decommissioning, and reclamation.

(c) The licensee shall submit this plan in conjunction with an environmental report that addresses the expected environmental impacts of the milling operation, decommissioning and tailings reclamation, and evaluates alternatives for mitigating these impacts. The plan must include a signed original of the financial instrument obtained to satisfy the surety arrangement requirements of this criterion (unless a previously submitted and approved financial instrument continues to cover the cost estimate for decommissioning). The surety arrangement must also cover the cost estimate and the payment of the charge for long-term surveillance and control required by subsection (10) of this section.

(d) To avoid unnecessary duplication and expense, the department may accept financial sureties that have been consolidated with financial or surety arrangements established to meet requirements of other federal or state agencies or local governing bodies for decommissioning, decontamination, reclamation, and long-term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the surety which covers the decommissioning and reclamation of the mill, mill tailings site and associated areas, and the long-term funding charge is clearly identified and committed for use in accomplishing these activities.

(e) The licensee's surety mechanism will be reviewed annually by the department to assure that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor.

(f) The amount of surety liability should be adjusted to recognize any increases or decreases resulting from:

(i) Inflation;

(ii) Changes in engineering plans;

(iii) Activities performed;

(iv) Spills, leakage or migration of radioactive material producing additional contamination in on-site subsurface material that must be remediated to meet applicable remediation criteria;

(v) Waste inventory increasing above the amount previously estimated;

(vi) Waste disposal costs increasing above the amount previously estimated;

(vii) Facility modifications;

(viii) Changes in authorized possession limits;

(ix) Actual remediation costs that exceed the previous cost estimate;

(x) On-site disposal; and

(xi) Any other conditions affecting costs.

(g) Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of surety liability must be retained until final compliance with the reclamation plan is determined.

(h) The appropriate portion of surety liability retained until final compliance with the reclamation plan is determined will be at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the surety mechanism must be open ended, unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance would be provided with a surety instrument which is written for a specified time (for example five years) and which must be automatically renewed unless the surety notifies the department and the licensee with reasonable time (for example ninety days) before the renewal date of their intention not to renew. In such a situation the surety requirement still exists and the licensee would be required to submit an acceptable replacement surety within a brief time to allow at least sixty days for the department to collect.

(i) Proof of forfeiture must not be necessary to collect the surety. In the event that the licensee cannot provide an acceptable replacement surety within the required time, the surety shall be automatically collected before its expiration. The surety instrument must provide for collection of the full face amount immediately on demand without reduction for any reason, except for trustee fees and expenses provided for in a trust agreement, and that the surety will not refuse to make full payment. The conditions described previously would have to be clearly stated on any surety instrument which is not open-ended, and must be agreed to by all parties. Financial surety arrangements generally acceptable to the department are:

(i) Trust funds;

(ii) Surety bonds;

(iii) Irrevocable letters of credit; and

(iv) Combinations of the financial surety arrangements or other types of arrangements as may be approved by the department. If a trust is not used, then a standby trust must be set up to receive funds in the event the department exercises its right to collect the surety. The surety arrangement and the surety or trustee, as applicable, must be acceptable to the department. Self-insurance, or any arrangement which essentially constitutes self-insurance (for example, a contract with a state or federal agency), will not satisfy the surety requirement because this provides no additional assurance other than that which already exists through license requirements.

(10) Criterion 10 - (a) A minimum charge of two hundred fifty thousand dollars (1978 United States dollars) accrued as specified in WAC 246-235-086(4) to cover the costs of long-term surveillance shall be paid by each mill operator to the agency prior to the termination of a uranium or thorium mill license. If site surveillance or control requirements at a particular site are determined, on the basis of a

site-specific evaluation, to be significantly greater than those specified in (a) of this subsection (e.g., if fencing is determined to be necessary), variance in funding requirements may be specified by the department. The total charge to cover the costs of long-term surveillance shall be such that, with an assumed one percent annual real interest rate, the collected funds will yield interest in an amount sufficient to cover the annual costs of site surveillance. The charge will be adjusted annually prior to actual payments to recognize inflation. The inflation rate to be used is that indicated by the change in the consumer price index published by the United States Department of Labor, Bureau of Labor Statistics. Contributions by a licensee to the long-term care trust fund pursuant to chapter 70.121 RCW shall be transferred to cover the costs assessed under this criterion.

(11) Criterion 11 - These criteria relating to ownership of tailings and their disposal sites become effective on November 8, 1981, and apply to all licenses terminated, issued, or renewed after that date.

Any uranium or thorium milling license or tailings license shall contain such terms and conditions as ~~((the United States Nuclear Regulatory Commission))~~ NRC determines necessary to assure that prior to termination of the license, the licensee will comply with ownership requirements of this criterion for sites used for tailings disposal.

Title to the by-product material licensed pursuant to WAC 246-252-030 and land, including any interests therein (other than land owned by the United States or by the state of Washington) which is used for the disposal of any such by-product material, or is essential to ensure the long-term stability of such disposal site, shall be transferred to the United States or the state of Washington. In view of the fact that physical isolation must be the primary means of long-term control, and government land ownership is a desirable supplementary measure, ownership of certain severable subsurface interests (for example, mineral rights) may be determined to be unnecessary to protect the public health and safety and the environment. In any case, the applicant/operator must demonstrate a serious effort to obtain such subsurface rights, and must, in the event that certain rights cannot be obtained, provide notification in local public land records of the fact that the land is being used for the disposal of radioactive material and is subject to either a ~~((United States Nuclear Regulatory Commission))~~ NRC general or specific license prohibiting the disruption and disturbance of the tailings. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses issued before November 8, 1981, ~~((the United States Nuclear Regulatory Commission))~~ NRC may take into account the status of the ownership of such land, and interests therein, and the ability of a licensee to transfer title and custody thereof to the United States or the state. If ~~((the United States Nuclear Regulatory Commission))~~ NRC, subsequent to title transfer, determines that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a state will not endanger the public health, safety, welfare or environment, ~~((the United States Nuclear Regulatory Commission))~~ NRC may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent

with the provisions provided in these criteria. If ~~((the United States Nuclear Regulatory Commission))~~ NRC permits such use of such land, it will provide the person who transferred such land with the right of first refusal with respect to such use of such land.

Material and land transferred to the United States or a state in accordance with this criterion must be transferred without cost to the United States or a state other than administrative and legal costs incurred in carrying out such transfer.

The provisions of this part, respecting transfer of title and custody to land and tailings and wastes, do not apply in the case of lands held in trust by the United States for any Indian tribe, or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of by-product material, as defined in this section, the licensee shall enter into arrangements with ~~((the United States Nuclear Regulatory Commission))~~ NRC as may be appropriate to assure the long-term surveillance of such lands by the United States.

(12) Criterion 12 - The final disposition of tailings or wastes at milling sites should be such that ongoing active maintenance is not necessary to preserve isolation. As a minimum, annual site inspections must be conducted by the government agency retaining ultimate custody of the site where tailings or wastes are stored, to confirm the integrity of the stabilized tailings or waste systems, and to determine the need, if any, for maintenance ~~((and/or))~~ or monitoring. Results of the inspection must be reported to ~~((the United States Nuclear Regulatory Commission))~~ NRC within sixty days following each inspection. ~~((The United States Nuclear Regulatory Commission))~~ NRC may require more frequent site inspections if, on the basis of a site-specific evaluation, such a need appears necessary, due to the features of a particular tailings or waste disposal system.

(13) Criterion 13 - Secondary groundwater protection standards required by Criterion 5 of this section are concentration limits for individual hazardous constituents. The list of constituents found in Appendix A of this chapter, chapter 246-252 WAC, identifies the constituents for which standards must be set and complied with if the specific constituent is reasonably expected to be in or derived from the by-product material and has been detected in groundwater. For purposes of this criterion, the property of gross alpha activity will be treated as if it is a hazardous constituent. Thus, when setting standards under subsection (5)(j) of this section, the department will also set a limit for gross alpha activity.

WSR 15-01-139

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed December 19, 2014, 4:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-22-087 filed November 3, 2014.

Title of Rule and Other Identifying Information: The department is considering the removal of Steller sea lions from the state's threatened species list (WAC 232-12-011). Delisting criteria are described in WAC 232-12-297 (4.1) and (4.2). The agency is initiating the delisting process in accordance with WAC 232-12-297(6.1.1).

Hearing Location(s): Natural Resource[s] Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, on February 6-7, 2015, at 8:30 a.m.

Date of Intended Adoption: On or after March 20, 2015.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by January 14, 2015.

Assistance for Persons with Disabilities: Contact Tami Lininger by January 21, 2015, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will remove sea lion from WAC 232-12-011, wildlife classified as protected shall not be hunted or fished, effectively removing Steller sea lions from the threatened species list in Washington.

Reasons Supporting Proposal: The department has reviewed all relevant data pertaining to the population status of Steller sea lions in Washington. These data show that the Washington population has strongly increased since the 1980s and is breeding in increasing numbers. This information indicates that the species is no longer in decline or at risk of becoming endangered. Thus, Steller sea lions should be removed from the state's threatened species list. The National Marine Fisheries Service federally delisted the eastern distinct population segment of Steller sea lions, which includes the Washington population, in 2013. The Washington department of fish and wildlife has conducted its own review of the status of Steller sea lions in Washington and finds that the species should be delisted at the state level as well.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nate Pamplin, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2515; and Enforcement: Steven Crown, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule change does not impact small business.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

December 19, 2014

Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-03-068, filed 1/14/08, effective 2/14/08)

WAC 232-12-011 Wildlife classified as protected shall not be hunted or fished. Protected wildlife are designated into three subcategories: Threatened, sensitive, and other.

(1) Threatened species are any wildlife species native to the state of Washington that are likely to become endangered within the foreseeable future throughout a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as threatened include:

Common Name	Scientific Name
western gray squirrel	<i>Sciurus griseus</i>
((Steller (northern) sea lion)	<i>Eumetopias jubatus</i>))
North American lynx	<i>Lynx canadensis</i>
ferruginous hawk	<i>Buteo regalis</i>
marbled murrelet	<i>Brachyramphus marmoratus</i>
green sea turtle	<i>Chelonia mydas</i>
loggerhead sea turtle	<i>Caretta caretta</i>
sage grouse	<i>Centrocercus urophasianus</i>
sharp-tailed grouse	<i>Phasianus columbianus</i>
Mazama pocket gopher	<i>Thomomys mazama</i>

(2) Sensitive species are any wildlife species native to the state of Washington that are vulnerable or declining and are likely to become endangered or threatened in a significant portion of their range within the state without cooperative management or removal of threats. Protected wildlife designated as sensitive include:

Common Name	Scientific Name
Gray whale	<i>Eschrichtius gibbosus</i>
Common Loon	<i>Gavia immer</i>
bald eagle	<i>Haliaeetus leucocephalus</i>
Peregrine Falcon	<i>Falco peregrinus</i>
Larch Mountain salamander	<i>Plethodon larselli</i>
Pygmy whitefish	<i>Prosopium coulteri</i>
Margined sculpin	<i>Cottus marginatus</i>
Olympic mudminnow	<i>Novumbra hubbsi</i>

(3) Other protected wildlife include:

Common Name	Scientific Name
cony or pika	<i>Ochotona princeps</i>
least chipmunk	<i>Tamias minimus</i>
yellow-pine chipmunk	<i>Tamias amoenus</i>
Townsend's chipmunk	<i>Tamias townsendii</i>
red-tailed chipmunk	<i>Tamias ruficaudus</i>

Common Name	Scientific Name
hoary marmot	<i>Marmota caligata</i>
Olympic marmot	<i>Marmota olympus</i>
Cascade golden-mantled ground squirrel	<i>Spermophilus saturatus</i>
golden-mantled ground squirrel	<i>Spermophilus lateralis</i>
Washington ground squirrel	<i>Spermophilus washingtoni</i>
red squirrel	<i>Tamiasciurus hudsonicus</i>
Douglas squirrel	<i>Tamiasciurus douglasii</i>
northern flying squirrel	<i>Glaucomys sabrinus</i>
wolverine	<i>Gulo gulo</i>
painted turtle	<i>Chrysemys picta</i>
California mountain kingsnake	<i>Lampropeltis zonata</i> ;

All birds not classified as game birds, predatory birds or endangered species, or designated as threatened species or sensitive species; all bats, except when found in or immediately adjacent to a dwelling or other occupied building; mammals of the order *Cetacea*, including whales, porpoises, and mammals of the order *Pinnipedia* not otherwise classified as endangered species, or designated as threatened species or sensitive species. This section shall not apply to hair seals and sea lions which are threatening to damage or are damaging commercial fishing gear being utilized in a lawful manner or when said mammals are damaging or threatening to damage commercial fish being lawfully taken with commercial gear.

WSR 15-01-140
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE
 [Filed December 19, 2014, 4:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-22-088 filed November 3, 2014.

Title of Rule and Other Identifying Information: The department is considering adding the tufted puffin to the state endangered species list in WAC 232-12-014. Listing criteria are described in WAC 232-12-297 (3.1) through (3.4). The agency is initiating the listing process in accordance with WAC 232-12-297(5.1.1).

Hearing Location(s): Natural Resource[s] Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98501, on February 6-7, 2015, at 8:00 a.m.

Date of Intended Adoption: On or after March 20, 2015.

Submit Written Comments to: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North,

Olympia, WA 98501, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2162, by January 14, 2015.

Assistance for Persons with Disabilities: Contact Tami Linger by January 21, 2015, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal will add tufted puffin to WAC 232-12-014 Wildlife classified as endangered species. Listing the tufted puffin as endangered in Washington will promote a healthy population in the future.

Reasons Supporting Proposal: The department has reviewed all relevant data pertaining to the population status of tufted puffins in Washington. These data show that the population has strongly declined in recent decades, both in numbers of birds present and in numbers of active breeding sites. This information indicates that if the current rate of decline continues, the species is at serious risk of extirpation in Washington over the next few decades. Thus, tufted puffins should be added to the state's endangered species list.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.055, 77.12.020, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Nate Pamplin, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2515; and Enforcement: Steven Crown, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal does not impact small business.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics.

December 19, 2014
Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-04-066, filed 1/30/06, effective 3/2/06)

WAC 232-12-014 Wildlife classified as endangered species. Endangered species include:

Common Name	Scientific Name
pygmy rabbit	<i>Brachylagus idahoensis</i>
fisher	<i>Martes pennanti</i>
gray wolf	<i>Canis lupus</i>
grizzly bear	<i>Ursus arctos</i>
sea otter	<i>Enhydra lutris</i>
killer whale	<i>Orcinus orca</i>
sei whale	<i>Balaenoptera borealis</i>
fin whale	<i>Balaenoptera physalus</i>

Common Name	Scientific Name
blue whale	<i>Balaenoptera musculus</i>
humpback whale	<i>Megaptera novaeangliae</i>
black right whale	<i>Balaena glacialis</i>
sperm whale	<i>Physeter macrocephalus</i>
Columbian white-tailed deer	<i>Odocoileus virginianus leucurus</i>
woodland caribou	<i>Rangifer tarandus caribou</i>
American white pelican	<i>Pelecanus erythrorhynchos</i>
brown pelican	<i>Pelecanus occidentalis</i>
sandhill crane	<i>Grus canadensis</i>
snowy plover	<i>charadrius alexandrinus</i>
upland sandpiper	<i>Bartramia longicauda</i>
spotted owl	<i>Strix occidentalis</i>
western pond turtle	<i>Clemmys marmorata</i>
leatherback sea turtle	<i>Dermochelys coriacea</i>
mardon skipper	<i>Polites mardon</i>
Oregon silverspot butterfly	<i>Speyeria zerene hippolyta</i>
Oregon spotted frog	<i>Rana pretiosa</i>
northern leopard frog	<i>Rana pipiens</i>
Taylor's checkerspot	<i>Euphydryas editha taylori</i>
Streaked horned lark	<i>Eremophila alpestris strigata</i>
<u>Tufted puffin</u>	<u><i>Fratercula cirrhata</i></u>

WSR 15-01-169

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed December 23, 2014, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-121.

Title of Rule and Other Identifying Information: Appeal process for students with special, unavoidable circumstances.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Policy Conference Room, 600 Washington Street, Olympia, WA 98504, on January 28, 2015, at 9:30 a.m.

Date of Intended Adoption: January 29, 2015.

Submit Written Comments to: Collette Mason, Old Capitol Building, 600 Washington Avenue S.E., Olympia, WA 98504, e-mail collette.mason@k12.wa.us, fax (360) 725-0424, by January 27, 2015.

Assistance for Persons with Disabilities: Contact Kristin Murphy by January 21, 2015, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The additional language for the WACs has been drafted to include situations whereby a student had special, unavoidable circumstances that prevented the student, during the student's eleventh grade year, from successfully demonstrating his or her skills and knowledge on the state high school assessment, on an objective alternate assessment authorized in RCW 28A.655.061 or 28A.655.065, or on a Washington alternate assessment available to student[s] eligible for special education services. For purposes of this subsection, a special, unavoidable circumstance is a major irregularity in the administration of the assessment that meets the following criteria:

- (i) The major irregularity was caused by school district personnel,
- (ii) The student was not at fault for the irregularity, and
- (iii) The school district has taken appropriate disciplinary action against the school district personnel.

We are also shifting the transfer date eligibility and making general language updates consistent with shifts in the overall testing program.

Reasons Supporting Proposal: To address special unavoidable circumstances that were a result of major irregularities in the administration of the assessment.

Statutory Authority for Adoption: RCW 28A.665.065 and 28A.665.061.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Michael Middleton, OSPI, (360) 725-6434; and Enforcement: Robin Munson, OSPI, (360) 725-6334.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

December 23, 2014
Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 10-01-053, filed 12/9/09, effective 1/9/10)

WAC 392-501-601 Eligibility and application requirements. (1) A student, or a student's parent or guardian may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student, during the student's twelfth grade year (eleventh grade year under a specific circumstance where an educator has caused a testing irregularity), from successfully demonstrating his or her skills and knowledge on the ~~((Washington))~~ state high school assessment ~~((of student learning (WASL)))~~, on ~~((an))~~ any of the objective alternative assessments authorized in RCW 28A.655.061 or 28A.655.065, or ~~((on a Washington alternate))~~ alternative assessments available to students eligible for special education services.

(2) Special, unavoidable circumstances shall include the following:

(a) Not being able to take or complete an assessment because of:

(i) The death of a parent, guardian, sibling or grandparent;

(ii) An unexpected and/or severe medical condition. The condition must be documented by a medical professional and included with the application, within the constraints of the Health Insurance Portability and Accountability Act (HIPAA); or

(iii) Another unavoidable event of a similarly compelling magnitude that ~~((reasonably))~~ district administrators determine prevented the student from sitting for or completing the assessment.

(b) A major irregularity in the administration of the assessment;

(c) Loss of the assessment material;

(d) Failure to receive an accommodation during administration of the assessment that was documented in the student's individualized education program that is required in the federal Individuals with Disabilities Education Act, as amended, or in a plan required under Section 504 of the Rehabilitation Act of 1973;

(e) For students enrolled in the state transitional bilingual instructional program, failure to receive an accommodation during the administration of the assessment that was scheduled to be provided by the school district; ~~((or))~~

(f) Students who transfer from an out-of-state ~~((or))~~ out-of-country, or nonpublic (including home-school environment) school to a Washington public school in the twelfth grade year after ~~((March 1))~~ December 31st.

(3) A school district superintendent may file an appeal to the superintendent of public instruction if the student has special, unavoidable circumstances that prevented the student during the student's eleventh grade year, from successfully demonstrating his or her skills and knowledge on the state high school assessment, on an objective alternative assessment authorized in RCW 28A.655.061 or 28A.655.065, or alternative assessments available to students eligible for special education services. For purposes of this subsection, a special, unavoidable circumstance is a major irregularity in the administration of the assessment that meets the following criteria:

(a) The major irregularity was caused by school district personnel;

(b) The student was not at fault for the irregularity; and

(c) The school district has taken documented disciplinary action against the school district personnel.

(4) To file an appeal, the student or the student's parent or guardian, with appropriate assistance from school staff, must complete and submit to the principal of the student's school an appeal application on a form developed by the superintendent of public instruction.

~~((4))~~ (5) The application shall require that the following be submitted: All available score reports from prior standardized assessments taken by the student during his or her high school years, the medical condition report (if applicable), IEP, 504 or transitional bilingual education program documentation pertinent to decisions about student access to

available assessment type and/or testing accommodations, enrollment/transfer information, and the student's transcript. The principal of the school shall review the application and accompanying material and certify that, to the best of his or her knowledge, the information in the application is accurate and complete.

~~((5))~~ (6) Once the principal certifies that the application and accompanying material is accurate and complete, the principal shall transmit the application to the school district's assessment coordinator who will conduct an independent review for completeness prior to transmitting the application to the state superintendent of public instruction.

~~((6))~~ (7) Applications must be received by the superintendent of public instruction on or before May 1st or October 1st.

AMENDATORY SECTION (Amending WSR 10-01-053, filed 12/9/09, effective 1/9/10)

WAC 392-501-602 Special, unavoidable circumstance appeal review board and approval criteria. (1) The special, unavoidable circumstance appeal review board shall be created to review and make recommendations to the superintendent of public instruction on all special, unavoidable circumstance appeal applications.

(2) The superintendent of public instruction shall appoint seven members total to the board, five voting members and two alternates (for cases of unanticipated absenteeism or potential conflict of interest on the part of a regular voting member). The board, where membership and panel experience allows, shall be chaired by a current or former high school principal and shall consist of current or former district administrators, teachers, school department heads, and/or school district assessment directors with experience and expertise ~~((in))~~ with the Washington ((essential academic learning requirements)) learning standards. Each member shall be appointed for a three-year term, provided that the initial terms may be staggered as the superintendent deems appropriate. As needed, the superintendent may elect to reappoint previous members if new candidates are not available to assume review board positions.

(3) The ~~((high school graduation certificate))~~ special, unavoidable circumstance appeals review board shall review applicable special, unavoidable circumstance appeal applications submitted to it by the superintendent of public instruction. The board shall:

(a) Review the written information submitted ~~((to the superintendent))~~ to determine whether sufficient evidence was presented that the student has the required knowledge and skills; and

(b) Make a recommendation to the superintendent, based on the criteria in subsection (6) of this section, regarding whether or not the appeal should be granted.

(4) Staff from the office of superintendent of public instruction (OSPI) shall coordinate and assist the work of the board. In this capacity, staff from ~~((the))~~ OSPI shall prepare a preliminary analysis of each application and accompanying information that evaluates the extent in which the criteria in subsection (6) of this section have been met.

(5) If the board determines that additional information on a particular student is needed in order to fulfill its duties, the chair of the board shall contact the OSPI staff to request the information.

(6) The board shall recommend to the superintendent of public instruction that the appeal be granted if it finds that:

(a) The student, due to special, unavoidable circumstances as defined in WAC 392-501-601(2), was not able to successfully demonstrate his or her skills on ~~((the WASL,))~~ a state high school assessment or on an objective alternative assessment~~((, or on a Washington alternate assessment available to students eligible for special education services));~~

(b) No other recourse or remedy exists to address the special, unavoidable circumstance prior to the student's expected graduation date;

~~((The student has met, or is on track to meet, all other state and local graduation requirements; and~~

~~((d))~~ After considering the criteria below, in the board's best judgment, the student more likely than not possesses the skills and knowledge required to meet the state standard. The board shall consider the following criteria:

(i) Trends indicated by prior ~~((WASL or alternate))~~ state high school assessment or alternative assessment results;

(ii) How near the student has been in achieving the standard;

(iii) Scores on other assessments, as available;

(iv) Participation and successful completion of remediation courses and other academic assistance opportunities;

(v) Cumulative grade point average;

(vi) Whether the student has taken advanced placement, honors, or other higher-level courses; and

(vii) Other available information deemed relevant by the board.

(7) Based upon the recommendation of the ~~((high school graduation))~~ special, unavoidable circumstance appeals board and any other information that the superintendent deems relevant, the superintendent of public instruction shall decide, based on the criteria established in subsection (6) of this section, whether to:

(a) Grant the appeal and waive the requirement that a student earn a certificate to graduate;

(b) Deny the appeal and not waive the certificate; or

(c) Remand the appeal back to the appeals board for further information or deliberation.

(8) The superintendent of public instruction shall act upon the student's application and notify the student, the student's school principal or designee, and the school district assessment coordinator whether the application was approved or denied within thirty days of ~~((the deadline for))~~ receiving the recommendation from the certificate appeals review board. ~~((This deadline))~~ The timeline for acting on the application recommendation may be extended if additional information is required from the student or the school district.

(9) If approved, the student's transcript shall indicate that the applicable ~~((certificate))~~ content area assessment was waived.

(10) School staff shall include a copy of the application, supporting information, and the superintendent's decision in the student's cumulative folder.

WSR 15-01-186
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed December 23, 2014, 5:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-19-037.

Title of Rule and Other Identifying Information: WAC 182-507-0120 Alien medical for dialysis and cancer treatment.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106B, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on January 27, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 28, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m., on January 27, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by January 19, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is updating language to include treatment for life threatening benign tumors.

The updated language reflects the original intent of the rule.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Lisa Humphrey, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

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.

December 23, 2014
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-24-038, filed 11/29/12, effective 12/30/12)

WAC 182-507-0120 Alien medical for dialysis and cancer treatment, and treatment of life-threatening benign tumors. In addition to the provisions for emergency care described in WAC 182-507-0115, the medicaid agency also considers the conditions in this section as an emergency, as defined in WAC 182-500-0030.

(1) A person nineteen years of age or older who is not pregnant and meets the eligibility criteria under WAC 182-507-0110 may be eligible for the scope of service categories under this program if the condition requires:

(a) Surgery, chemotherapy, and/or radiation therapy to treat cancer or life-threatening benign tumors;

(b) Dialysis to treat acute renal failure or end stage renal disease (ESRD); or

(c) Anti-rejection medication, if the person has had an organ transplant.

(2) When related to treating the qualifying medical condition, covered services include but are not limited to:

(a) Physician and ARNP services, except when providing a service that is not within the scope of this medical program (as described in subsection (7) of this section);

(b) Inpatient and outpatient hospital care;

(c) Dialysis;

(d) Surgical procedures and care;

(e) Office or clinic based care;

(f) Pharmacy services;

(g) Laboratory, X ray, or other diagnostic studies;

(h) Oxygen services;

(i) Respiratory and intravenous (IV) therapy;

(j) Anesthesia services;

(k) Hospice services;

(l) Home health services, limited to two visits;

(m) Durable and nondurable medical equipment;

(n) Nonemergency transportation; and

(o) Interpreter services.

(3) All hospice, home health, durable and nondurable medical equipment, oxygen and respiratory, IV therapy, and dialysis for acute renal disease services require prior authorization. Any prior authorization requirements applicable to the other services listed above must also be met according to specific program rules.

(4) To be qualified and eligible for coverage for cancer treatment or treatment of life-threatening benign tumors under this program, the diagnosis must be already established or confirmed. There is no coverage for cancer screening or diagnostics for a workup to establish the presence of cancer or life-threatening benign tumors.

(5) Coverage for dialysis under this program starts the date the person begins dialysis treatment, which includes fistula placement and other required access. There is no coverage for diagnostics or predialysis intervention, such as surgery for fistula placement anticipating the need for dialysis, or any services related to preparing for dialysis.

(6) Certification for eligibility will range between one to twelve months depending on the qualifying condition, the proposed treatment plan, and whether the client is required to meet a spenddown liability.

(7) The following are not within the scope of service categories for this program:

- (a) Cancer screening or work-ups to detect or diagnose the presence of cancer or life-threatening benign tumors;
- (b) Fistula placement while the person waits to see if dialysis will be required;
- (c) Services provided by any health care professional to treat a condition not related to, or medically necessary to, treat the qualifying condition;
- (d) Organ transplants, including preevaluations and post operative care;
- (e) Health department services;
- (f) School-based services;
- (g) Personal care services;
- (h) Physical, occupational, and speech therapy services;
- (i) Audiology services;
- (j) Neurodevelopmental services;
- (k) Waiver services;
- (l) Nursing facility services;
- (m) Home health services, more than two visits;
- (n) Vision services;
- (o) Hearing services;
- (p) Dental services, unless prior authorized and directly related to dialysis or cancer treatment;
- (q) Mental health services;
- (r) Podiatry services;
- (s) Substance abuse services; and
- (t) Smoking cessation services.

(8) The services listed in subsection (7) of this section are not within the scope of service categories for this program. The exception to rule process is not available.

(9) Providers must not bill the agency for visits or services that do not meet the qualifying criteria described in this section.

WSR 15-01-187
PROPOSED RULES
HEALTH CARE AUTHORITY
 [Filed December 23, 2014, 5:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-099.

Title of Rule and Other Identifying Information: WAC 182-548-1500 Federally qualified health centers—Change in scope of service.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106B, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on January 27, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 28, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m., on January 27, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by January 19, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is modifying when a change in a federally qualified health center's services constitutes a change in scope of services.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Madina Cavendish, P.O. Box 45500, Olympia, WA 98504-5500, (360) 725-1486.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rule and concludes that it does not impose more than minor costs for affected small businesses.

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.

December 23, 2015 [2014]

Kevin M. Sullivan
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-548-1500 Federally qualified health centers—Change in scope of service rate adjustment. ~~((+)) For centers reimbursed under the prospective payment system (PPS), the department considers a federally qualified health center (FQHC) change in scope of service to be a change in the type, intensity, duration, and/or amount of services provided by the FQHC. Changes in scope of service apply only to covered medicaid services.~~

~~(2) When the department determines that a change in scope of service has occurred after the base year, the department adjusts the FQHC's encounter rate to reflect the change.~~

~~(3) FQHCs must:~~

~~(a) Notify the department's FQHC program manager in writing, at the address published in the department's federally qualified health centers billing instructions, of any changes in scope of service no later than sixty calendar days after the effective date of the change; and~~

~~(b) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.~~

~~(4) The department adjusts the encounter rate to reflect the change in scope of service using one or more of the following:~~

~~(a) A medicaid comprehensive desk review of the FQHC's cost report;~~

(b) Review of a medicare audit of the FQHC's cost report; or

(c) Other documentation relevant to the change in scope of service.

(5) The adjusted encounter rate will be effective on the date the change of scope of service is effective.

(6) For centers reimbursed under the alternative payment methodology (APM), the department considers an FQHC change in scope of service to be a change in the type of services provided by the FQHC. Changes in intensity, duration, and/or amount of services will be addressed in the next scheduled encounter rate rebase. Changes in scope of service apply only to covered medicaid services.

(7) When the department determines that a change in scope of service has occurred after the base year, the department adjusts the FQHC's encounter rate to reflect the change.

(8) FQHCs must:

(a) Notify the department's FQHC program manager in writing, at the address published in the department's FQHC billing instructions, of any changes in scope of service no later than sixty calendar days after the effective date of the change; and

(b) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.

(9) The department adjusts the encounter rate to reflect the change in scope of service using one or more of the following:

(a) A medicaid comprehensive desk review of the FQHC's cost report;

(b) Other documentation relevant to the change in scope of service.

(10) The adjusted encounter rate will be effective on the date the change of scope of service is effective.)) In accordance with 42 U.S.C. 1396a (bb)(3)(B), the agency will adjust its payment rate to a federally qualified health center (FQHC) to take into account any increase or decrease in the scope of the FQHC's services. The remainder of this rule describes the procedures and requirements for any such rate adjustment.

(1) Triggering events.

(a) An FQHC may file a change in scope of services rate adjustment application on its own initiative only when:

(i) The cost to the FQHC of providing covered health care services to eligible clients has increased due to one or more of the following:

(A) A change in the type of health care services the FQHC provides;

(B) A change in the intensity of health care services the FQHC provides. Intensity means the total quantity of labor and materials consumed by an individual client during an average encounter has increased;

(C) A change in the duration of health care services the FQHC provides. Duration means the length of an average encounter has increased;

(D) A change in the amount of health care services the FQHC provides in an average encounter;

(E) Any change comparable to (a)(i)(A) through (D) of this subsection in which the type, intensity, duration or

amount of services has decreased and the cost of an average encounter has decreased; and

(ii) The cost change equals or exceeds:

(A) An increase of one and three-quarters percent in the prospective payment system (PPS) rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate;

(B) A decrease of two and one-half percent in the PPS rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate; or

(C) A cumulative increase or decrease of five percent in the PPS rate per encounter as compared to the current year's cost per encounter; and

(iii) The costs reported to the agency to support the proposed change in scope rate adjustment are reasonable under OMB Circular A-122 or successor (the *Uniform Grants Guidance*) and other applicable state and federal law.

(b) At any time, the agency may instruct the FQHC to file a medicaid cost report with a statement of whether the FQHC asserts that its PPS rate should be increased or decreased due to a change in the scope of services (the FQHC "position statement").

(i) The FQHC must file a completed cost report and position statement no later than ninety calendar days after receiving the instruction from the agency to file same; provided, however, if the FQHC has recently completed its fiscal year at the time of the agency's request but has not received its annual audit by the time of the request, the FQHC may at its option wait and respond to the agency's request ninety days after the FQHC receives its annual audit or it may submit a cost report based on the prior year's audit.

(ii) The FQHC's cost report and position statement will be reviewed under the same criteria listed above for an application for a change in scope adjustment.

(iii) The agency will not request more than one change in scope in a calendar year.

(2) Filing requirements.

(a) In general, The FQHC may apply for a prospective change in scope of service rate adjustment, a retrospective change in scope of service rate adjustment, or both, in a single application.

(i) Unless instructed to file an application by the agency, the FQHC may file no more than one change in scope of service application per calendar year; however, more than one type of change in scope may be included in a single application.

(ii) The FQHC must file for a change in scope of service rate adjustment no later than ninety days after the end of the calendar year in which the FQHC believes the change in scope occurred or in which the FQHC learned based on its annual audit that the cost threshold in subsection (1)(a)(ii) of this section was met, whichever is later.

(b) Prospective change in scope.

(i) To file a prospective change in scope of service rate adjustment application, the FQHC must submit projected costs sufficient to establish an interim rate. A prospective change is a change the FQHC plans to implement in the future. The interim rate adjustment will go into effect after the change takes effect.

(ii) The interim rate is subject to the post change in scope review and rate adjustment process defined in subsection (5) of this section.

(iii) If the change in scope occurs fewer than ninety days after the FOHC submitted a complete application to the agency, the interim rate must take effect no later than ninety days after the complete application was submitted to the agency.

(iv) The change in scope occurs more than ninety days but fewer than one hundred eighty days after the FOHC submitted a complete application to the agency, the interim rate takes effect when the change in scope occurs.

(v) If the FOHC fails to implement a change in service identified in its prospective change in scope of service rate adjustment application within one hundred eighty days, the application is void and the FOHC may resubmit the application to the agency, notwithstanding (a)(i) of this subsection.

(c) Retrospective change in scope.

(i) A retrospective change in scope of service rate adjustment application must state each qualifying event listed in subsection (1)(a)(i) of this section that supports its application and include twelve months of data documenting the cost change caused by the qualifying event. A retrospective change in scope is a change that took place in the past and the FOHC is seeking to adjust its rate based on that change.

(ii) If approved, a retrospective rate adjustment takes effect on the date the FOHC filed the application with the agency.

(3) Supporting documentation.

(a) To apply for a change in scope of service rate adjustment, the FOHC must include the following documentation in the application:

(i) A narrative description of the proposed change in scope;

(ii) A description of each cost center on the cost report that was or will be affected by the change in scope;

(iii) The FOHC's most recent audited financial statements, if audit is required by federal law;

(iv) The implementation date for the proposed change in scope; and

(v) Any additional documentation requested by the agency.

(b) A prospective change in scope of service rate adjustment application must also include projected medicaid cost report or projected medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit for the twelve-month period following implementation of the change in scope.

(c) A retrospective change in scope of service rate adjustment application must also include the medicaid cost report or medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for twelve months or the fiscal year following implementation of the proposed change in scope.

(4) Review of the application.

(a) Application processing.

(i) The agency must review the application for completeness, accuracy, and compliance with program rules.

(ii) Within sixty days of receiving the application, the agency must notify the FOHC of any deficient documenta-

tion or request any additional information that is necessary to process the application.

(iii) Within ninety days of receiving a complete application, the agency must send the FOHC:

(A) A decision stating whether it will implement a PPS rate change; and

(B) A rate-setting statement.

(iv) Failure to act within ninety days will mean that the change is deemed denied by the agency and the FOHC may appeal the decision as provided for in subsection (6) of this section.

(b) Determining rate for change in scope.

(i) The agency must set an interim rate for prospective changes in scope by adjusting the FOHC's existing rate by the projected average cost per encounter of any approved change. The agency will review the costs to determine if they are reasonable, and set a new interim rate based on the determined cost per encounter.

(ii) The agency must set an adjusted encounter rate for retrospective changes in scope by adjusting the FOHC's existing rate by the documented average cost per encounter of the approved change. Projected costs per encounter may be used if there are insufficient historical data to establish the rate. The agency will review the costs to determine whether they are reasonable, and set a new rate based on the determined cost per encounter.

(c) If the FOHC is paid under an alternative payment methodology (APM), any change in scope of service rate adjustment requested by the FOHC will modify the PPS rate in addition to the APM.

(d) The agency may delegate the duties related to application processing and rate setting to a third party. The agency retains final authority for making decisions related to changes in scope.

(5) Post change in scope of services rate adjustment review.

(a) If the change in scope application was retrospective (i.e., based on a year or more of actual encounter data), the agency may conduct a post change in scope rate adjustment review.

(b) If the change in scope application was prospective (i.e., based on less than a full year of actual encounter data), the FOHC must submit the following information to the agency within eighteen months of the effective date of the rate adjustment:

(i) Medicaid cost report or medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for twelve consecutive months of experience following implementation of the change in scope; and

(ii) Any additional documentation requested by the agency.

(c) The agency will conduct the post change in scope review within ninety days of receiving the cost report and encounter data from the FOHC.

(d) If necessary, the agency will adjust the encounter rate within ninety days to ensure that the rate reflects the reasonable cost of the change in scope of services.

(e) A rate adjustment based on a post change in scope review will take effect on the date the agency issues its adjustment. The new rate will be prospective.

(f) If the FOHC fails to submit the post change in scope cost report or related encounter data, the agency must provide written notice to the center or clinic of the deficiency within thirty days.

(g) If the FOHC fails to submit required documentation within five months of this deficiency notice, the agency may reinstate the prechange in scope encounter rate going forward from the date the interim rate was established. Any overpayment to the FOHC may be recouped by the agency.

(6) Appeals. Appeals of agency action under this section are governed by WAC 182-502-0220, except that any rate change begins on the date the agency received the change in scope of services rate adjustment application.

WSR 15-01-188

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed December 23, 2014, 5:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-08-100.

Title of Rule and Other Identifying Information: WAC 182-549-1500 Rural health clinics—Change in scope of service.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106B, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on January 27, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than January 28, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m., on January 27, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by January 19, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is modifying when a change in a rural health clinic's services constitutes a change in scope of services.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1348; Implementation and Enforcement: Madina Cavendish, P.O. Box 45500, Olympia, WA 98504-5500, (360) 725-1486.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rule and concludes that it does not impose more than minor costs for affected small businesses.

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.

December 23, 2015 [2014]

Kevin M. Sullivan

Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-549-1500 Rural health clinics—Change in scope of service rate adjustment. ~~((1) For clinics reimbursed under the prospective payment system (PPS), the department considers a rural health clinic's (RHC) change in scope of service to be a change in the type, intensity, duration, and/or amount of services provided by the RHC. Changes in scope of service apply only to covered medicaid services.~~

~~(a) When the department determines that a change in scope of service has occurred after the base year, the department will adjust the RHC's encounter rate to reflect the change.~~

~~(b) RHCs must:~~

~~(i) Notify the department's RHC program manager in writing, at the address published in the department's rural health clinic billing instructions, of any changes in scope of service no later than sixty days after the effective date of the change; and~~

~~(ii) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.~~

~~(c) The department adjusts the encounter rate to reflect the change in scope of service using one or more of the following:~~

~~(i) A medicaid comprehensive desk review of the RHC's cost report;~~

~~(ii) Review of a medicare audit of the RHC's cost report;~~
~~or~~

~~(iii) Other documentation relevant to the change in scope of service.~~

~~(d) The adjusted encounter rate will be effective on the date the change of scope of service is effective.~~

(2) For clinics reimbursed under the alternative payment methodology (APM), the department considers an RHC change in scope of service to be a change in the type of services provided by the RHC. The department addresses changes in intensity, duration, and/or amount of services in the next scheduled encounter rate rebase. Changes in scope of service apply only to covered medicaid services.

~~(a) When the department determines that a change in scope of service has occurred after the base year, the department adjusts the RHC's encounter rate to reflect the change.~~

~~(b) RHCs must:~~

~~(i) Notify the department's RHC program manager in writing, at the address published in the department's rural health clinic billing instructions, of any changes in scope of service no later than sixty calendar days after the effective date of the change; and~~

~~(ii) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.~~

~~(c) The department adjusts the encounter rate to reflect the change in scope of service using one or more of the following:~~

~~(i) A medicaid comprehensive desk review of the RHC's cost report;~~

~~(ii) Review of a medicare audit of the RHC's cost report, if available; or~~

~~(iii) Other documentation relevant to the change in scope of service.~~

~~(d) The adjusted encounter rate will be effective on the date the change of scope of service is effective.) In accordance with 42 U.S.C. 1396a (bb)(3)(B), the agency will adjust its payment rate to a rural health clinic (RHC) to take into account any increase or decrease in the scope of the RHC's services. The remainder of this section describes the procedures and requirements for any such rate adjustment.~~

(1) Triggering events.

(a) An RHC may file a change in scope of services rate adjustment application on its own initiative only when:

(i) The cost to the RHC of providing covered health care services to eligible clients has increased due to one or more of the following:

(A) A change in the type of health care services the RHC provides;

(B) A change in the intensity of health care services the RHC provides. Intensity means the total quantity of labor and materials consumed by an individual client during an average encounter has increased;

(C) A change in the duration of health care services the RHC provides. Duration means the length of an average encounter has increased;

(D) A change in the amount of health care services the RHC provides in an average encounter;

(E) Any change comparable to (a)(i)(A) through (D) of this subsection in which the type, intensity, duration or amount of services has decreased and the cost of an average encounter has decreased; and

(ii) The cost change equals or exceeds:

(A) An increase of one and three-quarters percent in the prospective payment system (PPS) rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate;

(B) A decrease of two and one-half percent in the PPS rate per encounter over one year as measured by comparing the cost per encounter to the then current PPS rate; or

(C) A cumulative increase or decrease of five percent in the PPS rate per encounter as compared to the current year's cost per encounter; and

(ii) The costs reported to the agency to support the proposed change in scope rate adjustment are reasonable under state and federal law.

(b) At any time, the agency may instruct the RHC to file a cost report with a statement of whether the RHC asserts that its PPS rate should be increased or decreased due to a change in the scope of services (the RHC "position statement").

(i) The RHC must file a completed cost report and position statement no later than ninety calendar days after receiving the instruction from the agency to file an application;

(ii) The RHC's cost report and position statement will be reviewed under the same criteria listed above for an application for a change in scope adjustment;

(iii) The agency will not request more than one change in scope in a calendar year.

(2) Filing requirements.

(a) In general, The RHC may apply for a prospective change in scope of service rate adjustment, a retrospective change in scope of service rate adjustment, or both, in a single application.

(i) Unless instructed to file an application by the agency, the RHC may file no more than one change in scope of service application per calendar year; however, more than one type of change in scope may be included in a single application.

(ii) The RHC must file for a change in scope of service rate adjustment no later than ninety days after the end of the calendar year in which the RHC believes the change in scope occurred or in which the RHC learned that the cost threshold in subsection (1)(a)(ii) of this section was met, whichever is later.

(b) Prospective change in scope.

(i) To file a prospective change in scope of service rate adjustment application, the RHC must submit projected costs sufficient to establish an interim rate. A prospective change is a change the RHC plans to implement in the future. The interim rate adjustment will go into effect after the change takes effect.

(ii) The interim rate is subject to the post change in scope review and rate adjustment process defined in subsection (5) of this section.

(iii) If the change in scope occurs fewer than ninety days after the RHC submitted a complete application to the agency, the interim rate must take effect no later than ninety days after the complete application was submitted to the agency.

(iv) If the change in scope occurs more than ninety days but fewer than one hundred eighty days after the RHC submitted a complete application to the agency, the interim rate takes effect when the change in scope occurs.

(v) If the RHC fails to implement a change in service identified in its prospective change in scope of service rate adjustment application within one hundred eighty days, the application is void and the RHC may resubmit the application to the agency, notwithstanding (a)(i) of this subsection.

(c) Retrospective change in scope.

(i) A retrospective change in scope of service rate adjustment application must state each qualifying event listed in subsection (1)(a)(i) of this section that supports its application and include twelve months of data documenting the cost

change caused by the qualifying event. A retrospective change in scope is a change that took place in the past and the RHC is seeking to adjust its rate based on that change.

(ii) If approved, a retrospective rate adjustment takes effect on the date the RHC filed the application with the agency.

(3) Supporting documentation.

(a) To apply for a change in scope of service rate adjustment, the RHC must include the following documentation in the application:

(i) A narrative description of the proposed change in scope;

(ii) A description of each cost center on the cost report that was or will be affected by the change in scope;

(iii) The RHC's most recent audited financial statements, if audit is required by federal law;

(iv) The implementation date for the proposed change in scope; and

(v) Any additional documentation requested by the agency.

(b) A prospective change in scope of service rate adjustment application must also include projected medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit for the twelve-month period following implementation of the change in scope.

(c) A retrospective change in scope of service rate adjustment application must also include the medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for twelve months or the fiscal year following implementation of the proposed change in scope.

(4) Review of the application.

(a) Application processing.

(i) The agency must review the application for completeness, accuracy, and compliance with program rules.

(ii) Within sixty days of receiving the application, the agency must notify the RHC of any deficient documentation or request any additional information that is necessary to process the application.

(iii) Within ninety days of receiving a complete application, the agency must send the RHC:

(A) A decision stating whether it will implement a PPS rate change; and

(B) A rate-setting statement.

(iv) Failure to act within ninety days will mean that the change is deemed denied by the agency and the RHC may appeal the decision as provided for in subsection (6) of this section.

(b) Determining rate for change in scope.

(i) The agency must set an interim rate for prospective changes in scope by adjusting the RHC's existing rate by the projected average cost per encounter of any approved change. The agency will review the costs to determine if they are reasonable, and set a new interim rate based on the determined cost per encounter.

(ii) The agency must set an adjusted encounter rate for retrospective changes in scope by adjusting the RHC's existing rate by the documented average cost per encounter of the approved change. Projected costs per encounter may be used if there are insufficient historical data to establish the rate.

The agency will review the costs to determine whether they are reasonable, and set a new rate based on the determined cost per encounter.

(c) If the RHC is paid under an alternative payment methodology (APM), any change in scope of service rate adjustment requested by the RHC will modify the PPS rate in addition to the APM.

(d) The agency may delegate the duties related to application processing and rate setting to a third party. The agency retains final authority for making decisions related to changes in scope.

(5) Post change in scope of services rate adjustment review.

(a) If the change in scope application was based on a year or more of actual encounter data, the agency may conduct a post change in scope rate adjustment review.

(b) If the change in scope application was based on less than a full year of actual encounter data, the RHC must submit the following information to the agency within eighteen months of the effective date of the rate adjustment:

(i) Medicare cost report with supplemental schedules necessary to identify the medicaid cost per visit and encounter data for twelve consecutive months of experience following implementation of the change in scope; and

(ii) Any additional documentation requested by the agency.

(c) The agency will conduct the post change in scope review within ninety days of receiving the cost report and encounter data from the RHC.

(d) If necessary, the agency will adjust the encounter rate within ninety days to ensure that the rate reflects the reasonable cost of the change in scope of services.

(e) A rate adjustment based on a post change in scope review will take effect on the date the agency issues its adjustment. The new rate will be prospective.

(f) If the RHC fails to submit the post change in scope cost report or related encounter data, the agency must provide written notice to the clinic of the deficiency within thirty days.

(g) If the RHC fails to submit required documentation within five months of this deficiency notice, the agency may reinstate the prechange in scope encounter rate going forward from the date the interim rate was established. Any overpayment to the RHC may be recouped by the agency.

(6) Appeals. Appeals of agency action under this section are governed by WAC 182-502-0220, except that any rate change begins on the date the agency received the change in scope of services rate adjustment application.

WSR 15-01-196

PROPOSED RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Filed December 24, 2014, 10:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-22-111 on November 5, 2014.

Title of Rule and Other Identifying Information: Repealing WAC 220-52-01904 Commercial geoduck harvest—License application and issuance process for 2015 geoduck diver licenses.

December 24, 2014
Joanna M. Eide
Rules Coordinator

Hearing Location(s): Natural Resources Building, Room 175, 1111 Washington Street S.E., Olympia, WA 98504, on February 6-7, 2015, at 8:30 a.m.

Date of Intended Adoption: On or after February 20, 2015.

Submit Written Comments to: Joanna Eide, Washington Department of Fish and Wildlife (WDFW) Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by January 23, 2015.

Assistance for Persons with Disabilities: Contact Tami Lininger by January 28, 2015, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department proposes repealing WAC 220-52-01904 Commercial geoduck harvest—License application and issuance process for 2015 geoduck diver licenses.

Reasons Supporting Proposal: WAC 220-52-01904 was adopted to create an on-boarding process for WDFW to issue 2015 geoduck diver licenses at the end of 2014 due to recent changes to state law limiting the number of geoduck diver licenses WDFW may issue to seventy-seven beginning January 1, 2015. When WAC 220-52-01904 was adopted, WAC 220-52-01905 Commercial geoduck harvest—Geoduck diver license application and issuance process, was also adopted. WAC 220-52-01905, details the license issuance process WDFW will use after January 1, 2015, and will go into effect that date. For these reasons, WAC 220-52-01904 will no longer [be] necessary and should be repealed after January 1, 2015.

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

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2403; Implementation: Frank Hawley, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2453; and Enforcement: Steve Crown, 1111 Washington Street S.E., Olympia, WA 98501, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule proposal is technical only and will not impact small businesses as a similar rule to this will already be in effect for the issuance of geoduck diver licenses for 2016 licenses and those issued after that. WAC 220-52-01904 was simply an onboarding rule implementing a new license limitation for 2015 geoduck diver licenses required by changes to state law and will not be needed after January 1, 2015.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal does not involve hydraulics rules.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-01904 Commercial geoduck harvest—
License application and issuance process for 2015 geoduck diver licenses.