

WSR 23-13-005

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed June 8, 2023, 8:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-08-071.

Title of Rule and Other Identifying Information: WAC 182-521-0200 Coverage after the public health emergency ends.

Hearing Location(s): On July 25, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_QiArFJaqRvCj_rekiEBqoA. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: Not sooner than July 26, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 25, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by July 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Federal Consolidated Appropriations Act of 2023 amended section 6008 of the Families First Coronavirus Response Act to change the end date of medicaid continuous coverage from the end date of the public health emergency to March 31, 2023. The agency filed an emergency rule (WSR 23-08-051), effective April 1, 2023, so that WAC 182-521-0200 conforms to federal law. This proposed rule will make those changes permanent. The proposed rule also includes express language regarding permanent resource exclusion for pandemic-related disaster assistance.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; 42 U.S.C. § 1396d note.

Rule is necessary because of a federal law, 42 U.S.C. § 1396d note (Section 5131 of the Consolidated Appropriations Act, 2023 (P.L. 117-328), amending Section 6008 of the Families First Coronavirus Response Act).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; Implementation and Enforcement: Mark Westenhaver, P.O. Box 42722, Olympia, WA 98504-2722, 360-725-1324.

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

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule pertains to client program eligibility and does not impose any costs on businesses.

Scope of exemption for rule proposal:
Is fully exempt.

June 8, 2023
Wendy Barcus
Rules Coordinator

OTS-4474.3

AMENDATORY SECTION (Amending WSR 22-12-004, filed 5/19/22, effective 7/1/22)

WAC 182-521-0200 Coverage after the public health emergency

(PHE) ends. (1) In response to the coronavirus (COVID-19) public health emergency (PHE) declared by the Secretary of the U.S. Department of Health and Human Services (HHS) and in response to Section 6008 of the Families First Coronavirus Response Act (Public Law 116-127), the medicaid agency:

(a) Continues your Washington apple health coverage (~~until the end of the PHE~~) unless your eligibility determination was made incorrectly, or you:

(i) Are deceased;

(ii) Move out-of-state;

(iii) Request termination of your coverage; or

(iv) No longer meet citizenship or immigration requirements as described in WAC 182-503-0535.

(b) Waives and suspends the collection of premiums through the last day of the calendar quarter in which the PHE ends for:

(i) Apple health for kids with premiums (CHIP), as described in WAC 182-505-0215; and

(ii) Health care for workers with disabilities (HWD) program, as described in WAC 182-511-1250.

(c) As required by Social Security Administration guidance, excludes permanently from resources federal, state, and local pandemic-related disaster assistance that has been retained.

(d) Excludes, for the duration of the PHE and a period of 12 months after the PHE ends, any resources not permanently excluded under (c) of this subsection and which accumulated from participation that did not increase in response to Section 6008(b) of the Families First Coronavirus Response Act (FFCRA), as described in WAC 182-512-0550(24).

(2) Based on Section 5131 of the Consolidated Appropriations Act, 2023 (Public Law 117-328), effective April 1, 2023, if you receive continued apple health due to the suspension of certain eligibility rules during the PHE, the agency will, after (~~the PHE ends~~) April 1, 2023:

(a) Redetermine(~~s~~) your eligibility for ongoing coverage using the process and timelines described in WAC 182-504-0035 and (~~notifies~~) notify you as required under chapter 182-518 WAC. You may update any information needed to complete a redetermination of eligibility, as described in WAC 182-504-0035.

(i) If you are no longer eligible for apple health, or you do not respond to our renewal request notice, you will receive at least 10

calendar days' advance notice before your coverage is terminated, as described in WAC 182-518-0025.

(ii) If your modified adjusted gross income (MAGI)-based coverage ends because you did not renew it, you have 90 calendar days from the termination date to complete your renewal. If you are still eligible for apple health, your benefits will be restored without a gap in coverage.

(iii) If your coverage is terminated, you have a right to an administrative hearing, as described in chapter 182-526 WAC.

(b) Begin((s)) collecting premiums for CHIP and HWD clients prospectively, beginning with the month following the quarter in which the PHE ends, based upon reported circumstances, and without collecting arrears.

(c) Resume((s)) eligibility verification based on the factors described in WAC 182-503-0050.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 22-12-004, § 182-521-0200, filed 5/19/22, effective 7/1/22.]

WSR 23-13-027

WITHDRAWAL OF PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed June 9, 2023, 4:44 p.m.]

The department of licensing requests the withdrawal of the proposed rule making for WAC 308-61-195, 308-61-197, 308-61-203, and 308-61-215, filed as WSR 23-10-094 on May 3, 2023.

Ellis Starrett
Rules Coordinator

WSR 23-13-038
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed June 12, 2023, 1:28 p.m.]

Continuance of WSR 23-07-123.

Preproposal statement of inquiry was filed as WSR 21-17-135.

Title of Rule and Other Identifying Information: Outdoor ambient heat exposures in all industries under WAC 296-62-095 through 296-62-09560, General occupational health standards—Outdoor heat exposure, and WAC 296-307-097 through 296-307-09760, Safety standards for agriculture—Outdoor heat exposure.

Hearing Location(s): On May 9, 2023, at 10:00 a.m., at Holiday Inn Express, 802 East Yakima Avenue, Yakima, WA 98901.

Date of Intended Adoption: June 15, 2023.

Submit Written Comments to: Carmyn Shute, Administrative Regulations Analyst, Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email Carmyn.Shute@lni.wa.gov, fax 360-902-5619, by 5:00 p.m., May 11, 2023.

Assistance for Persons with Disabilities: Contact Carmyn Shute, administrative regulations analyst, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@lni.wa.gov, by 5:00 p.m., April 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this continuance is to provide another public hearing for WAC 296-62-095 through 296-62-09560, General occupational health standards—Outdoor heat exposure, and WAC 296-307-097 through 296-307-09760, Safety standards for agriculture—Outdoor heat exposure. In addition to the virtual public hearing held May 4, 2023, in-person public hearings were held in Bellingham, Tukwila, Spokane, Kennewick, Vancouver, and Yakima in order to ensure opportunity for stakeholder comments from all regions of Washington state. Information about the Yakima hearing was sent to stakeholders via the DOSH rules electronic email distribution list on April 25, 2023. The proposed rule information on the L&I web page was also updated to include the Yakima hearing.

On June 28, 2021, L&I received a petition for rule making requesting changes to L&I's rules to include more specific requirements to prevent heat-related illness and injury. The petition for rule making was accepted recognizing the need to reexamine the current rules, especially in light of information suggesting the occurrence of heat illnesses below the current trigger temperatures and the increasing temperatures experienced in our state since the rule was first established in 2008.

WAC 296-62-09510 and 296-307-09710 Outdoor heat exposure. Sets scope of the rule to apply to all outdoor work environments year-round rather than May through September. Removed redundant WAC citations.

WAC 296-62-09520 and 296-307-09720 Definitions. All definitions were numerated to aid in cross referencing.

- Broadened definition of "acclimatization" to include period of time required to become acclimatized and when acclimatization can be lost.
- Added definition for "buddy system."

- Removed definition for "double-layer woven clothing" as it is no longer a key in trigger temperature table.
- Clarified definition of "drinking water" to be suitably cool in temperature.
- Clarified definition of "engineering controls" to be devices used to reduce heat exposure.
- Removed definition for "Environmental factors for heat-related illness."
- Removed sentence in "Outdoor environment" definition regarding construction activity that may be contradictory.
- Added definition for "Risk factors for heat-related illness."
- Added definition for "Shade."
- In "Vapor barrier clothing" definition replaced "nonbreathing" with "nonbreathable."

WAC 296-62-09530 and 296-307-09730 Employer and employee responsibility. Adds prescriptive requirements for the Outdoor Heat Exposure Safety Plan. Adds requirement for preventative cool-down rest periods when employees begin to feel overheated. Adds Table 1 with trigger temperatures of 52°F and 80°F depending on clothing worn and personal protective equipment used. Specifies that employees must be allowed and encouraged to take a preventative cool-down rest in the shade or use another means provided by the employer to reduce body temperature when they feel the need to do so to protect themselves from overheating. Finally, adds employee requirement to take preventative cool-down rest periods when they begin to feel overheated.

New WAC 296-62-09535 and 296-307-09735 Access to shade. Adds requirement to provide one or more areas of shade for employees that are large enough to accommodate all employees during a meal or rest period. The provided shade must also be as close to areas where employees are working [as possible]. The rule also provides alternatives employers may use in lieu of shade.

New WAC 296-62-09540 and 296-307-09740 Drinking water. Adds clarification that drinking water must be suitably cool in temperature which has been standard under DOSH Directive 10.15.

New WAC 296-62-09545 and 296-307-09745 Acclimatization. Adds requirement for observation for up to 14 days for newly assigned employees to ensure employees become accustomed to working at various temperatures. Adds definition of "heat wave" and adds requirement for close observation during the heat wave. Provides a "Note" that employers may consider additional acclimatization procedures recommended by National Institute for Occupational Safety and Health.

New WAC 296-62-09547 and 296-307-09747 High heat procedures. Adds requirement for rest periods when temperatures exceed 90°F or 100°F according to new Table 2. Adds requirement to closely observe employees for signs and symptoms of heat-related illness at and above 90°F.

WAC 296-62-09550 and 296-307-09750 Responding to signs and symptoms of heat-related illness. Adds requirement for employers to ensure there is means for effective communication between employees and supervisors.

WAC 296-62-09560 and 296-307-09760 Information and training. Adds requirement for training to be effective and performed prior to outdoor work when occupational exposure to heat might occur. Adds defined environmental factors and other work conditions that may contribute to heat-related illness. Adds physical fitness, previous heat-related illness, and pregnancy as conditions that may contribute to heat-rela-

ted illness. Removed caffeine use and nicotine use as contributors to heat-related illness.

Adds the importance of acclimatization and considerations for cool-down rest periods, gradual increase of work in the heat and importance that employees are unable to build tolerance to working in the heat. Adds the importance of taking preventative cool-down rest periods, and mandatory rest periods when temperatures exceed 90°F. Adds training requirement for procedures for shade or other means to reduce body temperature, and employer's procedures for close observation of employees. Finally, adds the importance of considering the use of engineering or administrative controls to reduce exposure.

Reasons Supporting Proposal: L&I filed emergency rules related to outdoor ambient heat in the summer of 2021 and 2022 to protect outdoor workers from heat-related illnesses due to outdoor heat exposure. The current rules do not affirmatively address preventative measures to avoid overheating other than access to drinking water. The hazards of heat are well documented and research suggests the occurrence of heat-related illnesses below the current trigger temperatures. Research also documents increased temperatures in Washington since the rule was first established. L&I has determined that rule making is necessary for the preservation of worker health and safety.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Tumwater, Washington, 509-237-2372; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Carmyn Shute, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@lni.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: This information can be found on the original notice filed as WSR 23-07-123.

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

Small Business Economic Impact Statement

This information can be found on the original notice filed as WSR 23-07-123.

A copy of the statement may be obtained by contacting Carmyn Shute, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-870-4525, fax 360-902-5619, email Carmyn.Shute@Lni.wa.gov.

June 12, 2023
 Joel Sacks
 Director

OTS-4162.4

AMENDATORY SECTION (Amending WSR 19-01-094, filed 12/18/18, effective 1/18/19)

WAC 296-62-09510 Scope and purpose. ~~((+1))~~ WAC 296-62-095 through 296-62-09560:

(1) Applies to all employers with employees performing work in an outdoor environment.

(2) ~~((The requirements of WAC 296-62-095 through 296-62-09560 apply))~~ Applies to outdoor work environments ~~((from May 1 through September 30, annually, only))~~ when employees are exposed to outdoor heat ~~((at or above an applicable temperature listed in Table 1)).~~

~~((Table 1~~

~~To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.~~

~~Outdoor Temperature Action Levels~~

All other clothing	89°
Double-layer woven clothes including coveralls, jackets and sweatshirts	77°
Nonbreathing clothes including vapor barrier clothing or PPE such as chemical resistant suits	52°

Note: ~~There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.)~~

(3) ~~((WAC 296-62-095 through 296-62-09560))~~ Does not apply to incidental exposure ~~((which exists when))~~. Incidental exposure means an employee is not required to perform a work activity outdoors for more than ~~((fifteen))~~ 15 minutes in any ~~((sixty-minute))~~ 60-minute period. This exception may be applied every hour during the work shift.

(4) ~~((WAC 296-62-095 through 296-62-09560))~~ Supplements all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer must comply with the requirements under these sections. Additional related requirements are found in chapter 296-305 WAC, Safety standards for firefighters and chapter 296-307 WAC, Safety standards for agriculture.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 19-01-094, § 296-62-09510, filed 12/18/18, effective 1/18/19; WSR 08-12-109, § 296-62-09510, filed 6/4/08, effective 7/5/08.]

AMENDATORY SECTION (Amending WSR 19-01-094, filed 12/18/18, effective 1/18/19)

WAC 296-62-09520 Definitions. (1) Acclimatization. The body's temporary adaptation to work in heat that occurs as a person is exposed to it over ~~((time-~~

~~Double-layer woven clothing.~~ Clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.) a period of seven to 14 days depending on the amount of recent work in the heat and the individual factors. Acclimatization can be lost after seven consecutive days away from working in the heat.

(2) Buddy system. A system where individuals are paired or teamed up into work groups so each employee can be observed by at least one other member of the group to monitor and report signs and symptoms of heat-related illness.

(3) Drinking water. Potable water that is suitable to drink ((-)) and suitably cool in temperature. Other acceptable beverages include drinking water packaged as a consumer product, and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain high amounts of sugar, caffeine ((are acceptable)), or both such as energy drinks.

(4) Engineering controls. The use of devices to reduce exposure and aid cooling ((i.e., air conditioning).

~~Environmental factors for heat-related illness.~~ Working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC 296-62-095). Examples of engineering controls include fans, misting stations, air-conditioning, etc.

(5) Heat-related illness. A medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

(6) Outdoor environment. An environment where work activities are conducted outside. Work environments such as inside vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment if the environmental factors affecting temperature are not managed by engineering controls. ((Construction activity is considered to be work in an indoor environment when performed inside a structure after the outside walls and roof are erected.))

(7) Risk factors for heat-related illness. Conditions that increase susceptibility for heat-related illness including:

(a) Environmental factors such as air temperature, relative humidity, air movement, radiant heat from the sun and other sources, conductive heat sources such as the ground;

(b) Workload (light, moderate, or heavy) and work duration;

(c) Personal protective equipment and clothing worn by employees;
and
(d) Personal factors such as age, medications, physical fitness, and pregnancy.

(8) **Shade.** A blockage of direct sunlight. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person sitting in it, unless the car is running with air-conditioning.

(9) **Vapor barrier clothing.** Clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of ((nonbreathing)) nonbreathable clothing.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 19-01-094, § 296-62-09520, filed 12/18/18, effective 1/18/19; WSR 08-12-109, § 296-62-09520, filed 6/4/08, effective 7/5/08.]

AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

WAC 296-62-09530 Employer and employee responsibility. (1) Employers of employees exposed to temperatures at or above (~~temperatures~~) those listed in ((WAC 296-62-09510(2))) Table 1 of this section must:

(a) Address their outdoor heat exposure safety program in their written accident prevention program (APP) (~~;~~ and ~~(b)~~), in a language that employees understand;

(b) Ensure the outdoor heat exposure safety program contains, at a minimum, the following elements:

(i) Procedures for providing sufficiently cool drinking water;

(ii) Procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(iii) Emergency response procedures for employees demonstrating signs or symptoms of heat-related illness;

(iv) Acclimatization methods and procedures;

(v) High heat procedures; and

(vi) The specific method used by the employer to closely observe for signs and symptoms of heat-related illness as required under WAC 296-62-09545 and 296-62-0947(2);

(c) Ensure a copy of the outdoor heat exposure safety program is made available to employees and their authorized representatives;

(d) Encourage employees to frequently consume water or other acceptable beverages to ensure hydration(~~(-)~~); and

(e) Encourage and allow employees to take a preventative cool-down rest period when they feel the need to do so to protect themselves from overheating using sufficient means to reduce body temperature such as shade or other equally or more effective means. The pre-

ventative cool-down rest period must be paid unless taken during a meal period. If an employee is showing signs and symptoms of heat-related illness during the cool-down rest period, the employer must comply with requirements under WAC 296-62-09550.

Table 1. To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

<u>Nonbreathable clothes including vapor barrier clothing or PPE such as chemical resistant suits</u>	52°F
<u>All other clothing</u>	80°F

Note: There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.

(2) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration, and taking preventive cool-down rest periods when they feel the need to do so to prevent from overheating.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09530, filed 6/4/08, effective 7/5/08.]

NEW SECTION

WAC 296-62-09535 Access to shade. Employers of employees exposed to temperatures at or above those listed in Table 1 of WAC 296-62-09530 must:

(1) Provide and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling, and not adjoining a radiant heat source such as machinery or a concrete structure. The shade must be located as close as practicable to the areas where employees are working.

(2) Ensure the amount of shade present is large enough to accommodate the number of employees on a meal or rest period, so they can sit in a normal posture fully in the shade.

(3) In lieu of shade, employers may use other means to reduce body temperature if they can demonstrate such means are equally or more effective than shade. Some alternatives to shade may include the provision of misting stations, cooling vests, or air-conditioned areas.

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AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

WAC 296-62-09540 Drinking water. (1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an

applicable temperature listed in WAC ((~~296-62-09510(2)~~) 296-62-09530
Table 1:

- (a) Employers must ensure that a sufficient quantity of suitably cool drinking water is readily accessible to employees at all times; and
- (b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.
- (2) Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established for replenishment during the shift.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09540, filed 6/4/08, effective 7/5/08.]

NEW SECTION

WAC 296-62-09545 Acclimatization. Employers must closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the close observation options under WAC 296-62-09547(2).

- (1) For 14 days when employees:
- (a) Are newly assigned to working at or above the applicable temperatures listed in Table 1 of WAC 296-62-09530;
- (b) Return to work at the applicable temperatures listed in Table 1 of WAC 296-62-09530 after an absence seven days or more;
- (2) During a heat wave. For purposes of this section only, "heat wave" means any day in which the predicted high temperature for the day will be at least the temperatures listed in Table 1 of WAC 296-62-09530 and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

Note: Employers may also consider additional acclimatization procedures recommended by NIOSH:
- NIOSH Heat Stress: Acclimatization. <https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/2017-124.pdf>
- NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>

[]

NEW SECTION

WAC 296-62-09547 High heat procedures. The employer must implement the following high heat procedures when the temperature is at or above 90 degrees Fahrenheit, unless engineering or administrative controls (such as air-conditioning or scheduling work at cooler times of the day) are used to lower employees' exposure below 90 degrees Fahrenheit.

- (1) Ensure that employees take at minimum the mandatory cool-down rest periods in Table 2. The cool-down rest period must be provided in the shade or using other equally or more effective means to reduce body temperature. The mandatory cool-down rest period may be provided concurrently with any meal or rest period required under WAC 296-126-092 and must be paid unless taken during a meal period.

Table 2

Air Temperature	Mandatory cool-down rest periods
At or above 90°F	10 minutes/2 hours
At or above 100°F	15 minutes/1 hour

Note: Employers may also consider implementing more additional protective rest periods per NIOSH or ACGIH methods:
 - NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH-PUB2016106>
 - American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) for Heat Stress and Strain: <https://www.acgih.org/heat-stress-and-strain-2/>
 The department will review work-rest periods within three years after the outdoor heat exposure rule goes into effect. We will review applicable data including, but not limited to, heat-related illness claims, inspections, other national and state regulations, peer-reviewed publications, and nationally recognized standards.

(2) Closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the following:

- (a) Regular communication with employees working alone, such as by radio or cellular phone;
- (b) A mandatory buddy system; or
- (c) Other effective means of observation.

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AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

WAC 296-62-09550 Responding to signs and symptoms of heat-related illness. (1) Employers must ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the work site and their supervisor can contact each other to report signs and symptoms of heat-related illness and get medical attention when necessary. An electronic device, such as a cellular phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

(2) Employees showing signs or demonstrating symptoms of heat-related illness must be relieved from duty and provided with a sufficient means to reduce body temperature.

((+2)) (3) Employees showing signs or demonstrating symptoms of heat-related illness must be monitored to determine whether medical attention is necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09550, filed 6/4/08, effective 7/5/08.]

AMENDATORY SECTION (Amending WSR 08-12-109, filed 6/4/08, effective 7/5/08)

WAC 296-62-09560 Information and training. (1) All ((training must be provided to)) employees and supervisors((7)) must be trained as required by this section prior to outdoor work where occupational exposure to heat might occur and at least annually after the initial training. Training must be provided in a language and manner the employee or supervisor understands((7, prior to outdoor work which ex-

ceeds a temperature listed in WAC ~~296-62-09510(2)~~ Table 1, and at least annually thereafter).

~~((1))~~ (2) Employee training. Effective training on the following topics must be provided to all employees who may be exposed to outdoor heat ((at or above the temperatures listed in WAC 296-62-09510(2) Table 1)):

(a) The environmental factors and other work conditions (i.e., workload, work duration, personal protective equipment, clothing) that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, physical fitness, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, ((caffeine use, nicotine use)) previous heat-related illness, pregnancy, and use of medications that affect the body's responses to heat. This information is for the employee's personal use;

(c) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks;

(d) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages;

(e) The ((importance of)) acclimatization((

~~(f))~~ requirements under WAC 296-62-09545, the concept of acclimatization, and the importance of the following considerations:

(i) Frequent cool-down rest periods;

(ii) Gradual increase of work duration in the heat; and

(iii) Employees are unable to build a tolerance to working in the heat during a heat wave;

(f) The importance of taking preventative cool-down rest periods when employees feel the need to do so in order to protect themselves from overheating;

(g) The mandatory cool-down rest periods under WAC 296-62-09547 when the outdoor temperature reaches or exceeds 90 degrees Fahrenheit;

(h) The employer's procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(i) The different types of heat-related illness, the common signs and symptoms of heat-related illness; ((and

~~(g))~~ (j) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in co-workers to the person in charge and the procedures the employee must follow including appropriate emergency response procedures((

~~(2))~~); and

(k) The employer's procedures for close observation of employees for signs and symptoms of heat-related illness.

(3) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC ((296-62-09510(2)) 296-62-09530(2) Table 1, supervisors must have training on the following topics:

(a) The information required to be provided to employees listed in subsection (1) of this section;

(b) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-62-095 through 296-62-09560;

(c) The importance of considering the use of engineering or administrative controls such as air-conditioning and scheduling work during the cooler hours of the day in order to reduce employees' exposure to heat;

(d) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate emergency response procedures; and

~~((d))~~ (e) Procedures for moving or transporting an employee(s) to a place where the employee(s) can be reached by an emergency medical service provider, if necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 08-12-109, § 296-62-09560, filed 6/4/08, effective 7/5/08.]

OTS-4164.3

AMENDATORY SECTION (Amending WSR 20-21-091, filed 10/20/20, effective 11/20/20)

WAC 296-307-09710 Scope and purpose. ~~((1) WAC 296-307-097))~~
WAC 296-307-09710 through 296-307-09760:

(1) Applies to all employers with employees performing work in an outdoor environment.

(2) ~~((The requirements of WAC 296-307-097 through 296-307-09760 apply))~~ Applies to outdoor work environments ~~((from May 1 through September 30, annually, only))~~ when employees are exposed to outdoor heat ~~((at or above an applicable temperature listed in Table 1)).~~

~~((Table 1~~

~~To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.~~

Outdoor Temperature Action Levels

All other clothing	89°
Double-layer woven clothes including coveralls, jackets and sweatshirts	77°
Nonbreathing clothes including vapor barrier clothing or PPE such as chemical resistant suits	52°

Note: There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.)

(3) ~~((WAC 296-307-097 through 296-307-09760))~~ Does not apply to incidental exposure ~~((which exists when))~~. Incidental exposure means an employee is not required to perform a work activity outdoors for more than ~~((fifteen))~~ 15 minutes in any ~~((sixty-minute))~~ 60-minute period. This exception may be applied every hour during the work shift.

(4) ~~((WAC 296-307-097 through 296-307-09760))~~ Supplements all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer must comply with the requirements under these sections. Additional related requirements are found in chapter 296-305 WAC, Safety standards for firefighters and chapter 296-307 WAC, Safety standards for agriculture.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 20-21-091, § 296-307-09710, filed 10/20/20, effective

11/20/20; WSR 09-07-098, § 296-307-09710, filed 3/18/09, effective 5/1/09.]

AMENDATORY SECTION (Amending WSR 20-21-091, filed 10/20/20, effective 11/20/20)

WAC 296-307-09720 Definitions. (1) Acclimatization. The body's temporary adaptation to work in heat that occurs as a person is exposed to it over ~~((time-~~

~~Double-layer woven clothing.~~ Clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.) a period of seven to 14 days depending on the amount of recent work in the heat and individual factors. Acclimatization can be lost after seven consecutive days away from working in the heat.

(2) Buddy system. A system where individuals are paired or teamed up into work groups so each employee can be observed by at least one other member of the group to monitor and report signs and symptoms of heat-related illness.

(3) Drinking water. Potable water that is suitable to drink((-) and suitably cool in temperature. Other acceptable beverages include drinking water packaged as a consumer product, and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain high amounts of sugar, caffeine ((are acceptable)), or both such as energy drinks.

(4) Engineering controls. The use of devices to reduce exposure and aid cooling ((i.e., air conditioning).

Environmental factors for heat-related illness. Working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC 296-307-097)). Examples of engineering controls include fans, misting stations, air-conditioning, etc.

(5) Heat-related illness. A medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

(6) Outdoor environment. An environment where work activities are conducted outside. Work environments such as inside vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment if the environmental factors affecting temperature are not managed by engineering controls. ((Construction activity is considered to be work in an indoor environment when performed inside a structure after the outside walls and roof are erected.))

(7) Risk factors for heat-related illness. Conditions that increase susceptibility for heat-related illness including:

(a) Environmental factors such as air temperature, relative humidity, air movement, radiant heat from the sun and other sources, conductive heat sources such as the ground;

(b) Workload (light, moderate, or heavy) and work duration;

(c) Personal protective equipment and clothing worn by employees;
and

(d) Personal factors such as age, medications, physical fitness, and pregnancy.

(8) **Shade.** A blockage of direct sunlight. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person sitting in it, unless the car is running with air-conditioning.

(9) **Vapor barrier clothing.** Clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of (~~nonbreathing~~) nonbreathable clothing.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 20-21-091, § 296-307-09720, filed 10/20/20, effective 11/20/20; WSR 09-07-098, § 296-307-09720, filed 3/18/09, effective 5/1/09.]

AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-09730 Employer and employee responsibility. (1) Employers of employees exposed to temperatures at or above (~~temperatures~~) those listed in ((WAC 296-307-09710(2)) Table 1 of this section must:

(a) Address their outdoor heat exposure safety program in their written accident prevention program (APP) (~~and~~ (~~b~~)), in a language that employees understand;

(b) Ensure the outdoor heat exposure safety program contains, at a minimum, the following elements:

(i) Procedures for providing sufficiently cool drinking water;

(ii) Procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(iii) Emergency response procedures for employees demonstrating signs or symptoms of heat-related illness;

(iv) Acclimatization methods and procedures;

(v) High heat procedures; and

(vi) The specific method used by the employer to closely observe employees for signs and symptoms of heat-related illness as required under WAC 296-307-09745 and 296-307-09747(2);

(c) Ensure a copy of the outdoor heat exposure safety program is made available to employees and their authorized representatives;

(d) Encourage employees to frequently consume water or other acceptable beverages to ensure hydration(~~and~~); and

(e) Encourage and allow employees to take a preventative cool-down rest period when they feel the need to do so to protect themselves from overheating using sufficient means to reduce body temperature such as shade or other equally or more effective means. The preventative cool-down rest period must be paid unless taken during a meal period. If an employee is showing signs or symptoms of heat-related illness during the cool-down rest period, the employer must comply with the requirements under WAC 296-307-09750.

Table 1. To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

<u>Nonbreathable clothes including vapor barrier clothing or PPE such as chemical resistant suits</u>	52°F
<u>All other clothing</u>	80°F

Note: There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states.

(2) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration, and taking preventive cool-down rest periods when they feel the need to do so to prevent from overheating.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09730, filed 3/18/09, effective 5/1/09.]

NEW SECTION

WAC 296-307-09735 Access to shade. Employers of employees exposed at or above temperatures listed in Table 1 of WAC 296-307-09730 must:

(1) Provide and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling, and not adjoining a radiant heat source such as machinery or a concrete structure. The shade must be located as close as practicable to the areas where employees are working.

(2) Ensure the amount of shade present is large enough to accommodate the number of employees on a meal or rest period, so they can sit in a normal posture fully in the shade.

(3) In lieu of shade, employers may use other means to reduce body temperature if they can demonstrate such means are equally or more effective than shade. Some alternatives to shade may include the provision of misting stations, cooling vests, or air-conditioned areas.

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AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-09740 Drinking water. (1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an applicable temperature listed in WAC ((~~296-307-09710(2)~~)) 296-307-09730 Table 1:

(a) Employers must ensure that a sufficient quantity of suitably cool drinking water is readily accessible to employees at all times; and

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(2) Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established for replenishment during the shift.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09740, filed 3/18/09, effective 5/1/09.]

NEW SECTION

WAC 296-307-09745 Acclimatization. Employers must closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the close observation options under WAC 296-307-09747(2).

(1) For 14 days when employees:

(a) Are newly assigned to working at or above the applicable temperatures listed in Table 1 of WAC 296-307-09730;

(b) Return to work at the applicable temperatures listed in Table 1 of WAC 296-307-09730 after an absence of seven days or more;

(2) During a heat wave. For purposes of this section only, "heat wave" means any day in which the predicted high temperature for the day will be at least the temperatures listed in Table 1 of WAC 296-307-09730 and at least 10 degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

Note:

Employers may also consider additional acclimatization procedures recommended by NIOSH:

- NIOSH Heat Stress: Acclimatization. <https://www.cdc.gov/niosh/mining/userfiles/works/pdfs/2017-124.pdf>

- NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH PUB2016106>

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NEW SECTION

WAC 296-307-09747 High heat procedures. The employer must implement the following high heat procedures when the temperature is at or above 90 degrees Fahrenheit, unless engineering or administrative controls (such as air-conditioning or scheduling work at cooler times of the day) are used to lower employees' exposure below 90 degrees Fahrenheit.

(1) Ensure that employees take at a minimum the mandatory cool-down rest periods in Table 2. The cool-down rest period must be provided in the shade or using other equally or more effective means to reduce body temperature. The mandatory cool-down rest period may be provided concurrently with any meal or rest period required under WAC 296-131-020 and must be paid unless taken during a meal period.

Table 2

Air Temperature	Mandatory cool-down rest periods
At or above 90°F	10 minutes/2 hours
At or above 100°F	15 minutes/1 hour

Note: Employers may also consider implementing more additional protective rest periods per NIOSH or ACGIH methods:
 - NIOSH Criteria for a Recommended Standard for Occupational Exposure to Heat and Hot Environments: <https://www.cdc.gov/niosh/docs/2016-106/pdfs/2016-106.pdf?id=10.26616/NIOSH-PUB2016106>
 - American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) for Heat Stress and Strain: <https://www.acgih.org/heat-stress-and-strain-2/>
 The department will review work-rest periods within three years after the outdoor heat exposure rule goes into effect. We will review applicable data including, but not limited to, heat-related illness claims, inspections, other national and state regulations, peer-reviewed publications, and nationally recognized standards.

(2) Closely observe employees for signs and symptoms of heat-related illness by implementing one or more of the following:

- (a) Regular communication with employees working alone, such as by radio or cellular phone;
- (b) A mandatory buddy system; or
- (c) Other effective means of observation.

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AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-09750 Responding to signs and symptoms of heat-related illness. (1) Employers must ensure that effective communication by voice, observation, or electronic means is maintained so that employees at the work site and their supervisor can contact each other to report signs and symptoms of heat-related illness and get medical attention when necessary. An electronic device, such as a cellular phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

(2) Employees showing signs or demonstrating symptoms of heat-related illness must be relieved from duty and provided with a sufficient means to reduce body temperature.

~~((2))~~ (3) Employees showing signs or demonstrating symptoms of heat-related illness must be monitored to determine whether medical attention is necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09750, filed 3/18/09, effective 5/1/09.]

AMENDATORY SECTION (Amending WSR 09-07-098, filed 3/18/09, effective 5/1/09)

WAC 296-307-09760 Information and training. (1) All ~~((training must be provided to))~~ employees and supervisors ~~((7))~~ must be trained as required by this section prior to outdoor work where occupational exposure to heat might occur and at least annually after the initial training. Training must be provided in a language and manner the employee or supervisor understands ~~((7, prior to outdoor work which exceeds a temperature listed in WAC 296-307-09710(2) Table 1, and at least annually thereafter))~~.

~~((1))~~ (2) Employee training. Effective training on the following topics must be provided to all employees who may be exposed to outdoor heat ((at or above the temperatures listed in WAC 296-307-09710(2) Table 1)):

(a) The environmental factors and other work conditions (i.e., workload, work duration, personal protective equipment, clothing) that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, physical fitness, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, ((caffeine use, nicotine use)) previous heat-related illness, pregnancy, and use of medications that affect the body's responses to heat. This information is for the employee's personal use;

(c) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks;

(d) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages;

(e) The importance of acclimatization~~((f))~~ requirements under WAC 296-307-09745, the concept of acclimatization, and the importance of the following considerations:

(i) Frequent cool-down rest periods;

(ii) Gradual increase of work duration in the heat; and

(iii) Employees are unable to build a tolerance to working in the heat during a heat wave;

(f) The importance of taking preventative cool-down rest periods when employees feel the need to do so in order to protect themselves from overheating;

(g) The mandatory cool-down rest periods under WAC 296-307-09747 when the outdoor temperature reaches or exceeds 90 degrees Fahrenheit;

(h) The employer's procedures for providing shade or other sufficient means to reduce body temperature, including the location of such means and how employees can access them;

(i) The different types of heat-related illness, the common signs and symptoms of heat-related illness; ~~((and~~

~~((g))~~ (j) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in co-workers to the person in charge and the procedures the employee must follow including appropriate emergency response procedures~~((~~

~~((2))~~); and

(k) The employer's procedures for close observation of employees for signs and symptoms of heat-related illness.

(3) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC ~~((296-307-09710(2))~~ 296-307-09730(2) Table 1, supervisors must have training on the following topics:

(a) The information required to be provided to employees listed in subsection (1) of this section;

(b) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-307-097 through 296-307-09760;

(c) The importance of considering the use of engineering or administrative controls such as air-conditioning and scheduling work during the cooler hours of the day in order to reduce employees' exposure to heat;

(d) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate emergency response procedures; and

~~((d))~~ (e) Procedures for moving or transporting an employee(s) to a place where the employee(s) can be reached by an emergency medical service provider, if necessary.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060. WSR 09-07-098, § 296-307-09760, filed 3/18/09, effective 5/1/09.]

WSR 23-13-069
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed June 14, 2023, 12:45 p.m.]

Continuance of WSR 23-11-029.

Preproposal statement of inquiry was filed as WSR 20-21-093.

Title of Rule and Other Identifying Information: Wildfire smoke; chapter 296-820 WAC and chapter 296-307 WAC, Part G-1.

Hearing Location(s): On July 31, 2023, at 6:30 p.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/88952312151?pwd=alhaY29hTkpKYXF1Zk5rZEJueG1wZz09>, Password (if prompted) 731#WildF; join by phone (audio only) 253-215-8782 or 253-205-0468, Meeting ID 889 5231 2151, Passcode 812052858. A prehearing overview will occur one hour prior to the start of each public hearing. The hearings will begin at the indicated times and will continue until all oral comments are received.

Date of Intended Adoption: August 18, 2023.

Submit Written Comments to: Cynthia Ireland, Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email Cynthia.Ireland@lni.wa.gov, fax 360-902-5619, by August 4, 2023, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Cynthia Ireland, phone 360-791-5048, fax 360-902-5619, email Cynthia.Ireland@lni.wa.gov, by 5:00 p.m., July 5, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this continuance is to provide another public hearing for chapter 296-820 WAC and chapter 296-307 WAC, Part G-1, Wildfire smoke. Six in-person hearings are scheduled for Spokane, Kennewick, Bellingham, Vancouver, Tukwila, and Yakima between July 18 through July 27, 2023, and one virtual public hearing is scheduled for July 28, 2023. This continuance adds an additional virtual hearing scheduled on July 31, 2023, beginning at 6:30 p.m., with a prehearing overview starting at 5:30 p.m.

Purpose of proposal: In September 2020, L&I received a petition for rule making requesting immediate rule making to address the hazards associated with wildfire smoke. Wildfire smoke presents hazards that employers and workers in affected regions must understand. Smoke from wildfires contains chemicals, gases, and fine particles that can harm health. Proper protective equipment, exposure controls, and training are needed for employees working in wildfire regions.

L&I issued emergency rules in the summer of 2021 and 2022, and began the permanent rule-making process. Prior to the issuance of the emergency rule in summer 2021, there were no regulations to address the hazard of wildfire smoke inhalation among outdoor workers in Washington state.

Create new chapter 296-820 WAC, Wildfire smoke, and duplicate these new requirements into chapter 296-307 WAC, Part G-1, Safety standards for agriculture:

WAC 296-820-805 and 296-307-09805 Purpose and scope. This section sets the scope of the rule, including exemptions.

WAC 296-820-810 and 296-307-09810 Definitions.

- Add applicable definitions relating to wildfire smoke. These include: Adverse symptoms requiring medical attention, air quality index (AQI), current particulate matter 2.5 micrometers (PM_{2.5}),

emergency response, high-efficiency particulate air (HEPA) filter, NIOSH, NowCast, wildfire smoke, wildlands.

- Add a note relating to the recent proposed revisions to the AQI from the Environmental Protection Agency (EPA) and a link to the specific Federal Register.

WAC 296-820-815 and 296-307-09815 Identification of harmful exposures. Create this section to address methods that can be used by the employer to determine employee exposures to PM_{2.5}.

WAC 296-820-820 and 296-307-09820 Hazard communication. Create this section requiring employers to establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

WAC 296-820-825 and 296-307-09825 Information and training. Create this section requiring employers to provide all workers with effective information and training regarding wildfire smoke before work that exposes the worker to a PM_{2.5} concentration of 20.5 µg/m³ (AQI 69) or more. In addition, this training must be provided annually. Additional information is located in Appendix A.

WAC 296-820-830 and 296-307-09830 Exposure symptom response. Create this section requiring employers to:

- Monitor employees displaying symptoms of wildfire smoke exposure.
- Allow employees to seek medical treatment.
- Have effective provisions made in advance for prompt medical treatment of employees who display adverse symptoms of wildfire smoke exposure.
- Ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air.

WAC 296-820-835 and 296-307-09835 Exposure controls. Create this section requiring employers to implement exposure controls. This includes:

- Encouraging employers to implement exposure controls where the current PM_{2.5} is 20.5 µg/m³ (AQI 69) or more.
- Requiring employers to implement exposure controls where the current PM_{2.5} is 35.5 µg/m³ (AQI 101) or more.

WAC 296-820-840 and 296-307-09840 Respiratory protection. Create this section requiring employers to provide respiratory protection. This includes:

- Encouraging employers to provide respirators at no cost to employees upon request where the current PM_{2.5} is 20.5 µg/m³ (AQI 69) to 35.4 µg/m³ (AQI 100).
- Requiring employers to provide N95 filtering-facepiece respirators at no cost to all exposed employees where the current PM_{2.5} is 35.5 µg/m³ (AQI 101) to 250.4 µg/m³ (AQI 300).
- Requiring employers to distribute N95 filtering-facepiece directly to each exposed employee where the current PM_{2.5} is 250.5 µg/m³ (AQI 301) to 500.3 µg/m³ (AQI 499).
- Requiring employers to have employees enrolled in a complete respiratory program in accordance with chapter 296-842 WAC, Respira-

tors, where the current $PM_{2.5}$ is $500.4 \mu\text{g}/\text{m}^3$ (AQI 500) to $554.9 \mu\text{g}/\text{m}^3$ (beyond the AQI).

- Requiring employers to have employees enrolled in a complete respiratory program in accordance with chapter 296-842 WAC, Respirators. The employer must provide and require to be worn a respirator equipped with P100 filters where the current $PM_{2.5}$ is $555 \mu\text{g}/\text{m}^3$ (beyond the AQI) or more.
- Requiring respirators to be NIOSH-approved devices.
- Requiring respirators to be cleaned, stored, maintained, and replaced and in good working order.

WAC 296-820-845 and 296-307-09845 Measuring $PM_{2.5}$ levels at the worksite. Create this section allowing employers to use a direct-reading particulate monitor to identify harmful exposures as an alternative to WAC 296-820-815 and 296-307-09815 Identification of harmful exposures.

- If used, the monitor must comply with this section and the monitor cannot underestimate employee exposures to wildfire smoke; or the employer has obtained information on a possible error of the monitor and has manufacturer or published literature to account for the possible error.
- The monitor must be designed and manufactured to measure the concentration of airborne particle sizes.
- The monitor must be calibrated, maintained, and used in accordance with the manufacturer's instructions.
- The person supervising, directing, or evaluating workplace monitoring must have the training or experience necessary to ensure the correct use of the monitor and can interpret the results.

WAC 296-820-850 and 296-307-09850 Appendix A: Protection from wildfire smoke information and training (mandatory). Create this section to include:

- The health effects and adverse symptoms of wildfire smoke.
- The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure.
- The right to obtain medical treatment without fear of reprisal.
- A table summarizing the key requirements of the proposed rule.
- How employees can obtain the current $PM_{2.5}$, and the employer's methods to communicate the current $PM_{2.5}$.
- The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures.
- The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke.
- The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation.
- How to properly put on, use, and maintain the respirators provided by the employer.

WAC 296-820-855 and 296-307-09855 Appendix B: Selecting direct-reading particulate monitors (mandatory). Create this section to provide guidance when selecting a direct-reading particulate monitor and determining compliance with WAC 296-820-855 and 296-307-09855.

WAC 296-820-860 and 296-307-09860 Appendix C: Calculating the air quality index for PM_{2.5} (nonmandatory). Create this section to provide a calculation relating to the AQI for PM_{2.5}.

Reasons Supporting Proposal: Wildfire smoke is composed of harmful chemicals and tiny particles suspended in the air that present a significant health hazard for workers exposed to it. These particles can irritate the lungs and cause serious or even fatal health effects, such as reduced lung function, bronchitis, worsening of asthma, and heart failure. Compared with the general public, workers have additional risk factors in that they may spend more time outdoors in the smoke, and have more physical exertion, which increases the amount of smoke that they breathe into their lungs. Individuals considered sensitive to wildfire smoke exposure, such as those with asthma and those who work outdoors, are part of the workforce.

A major component of wildfire smoke is particulate matter with an aerodynamic diameter less than PM_{2.5}; inhalation of PM_{2.5} can cause cardiovascular health effects and increases the risk of death. PM_{2.5} is elevated during wildfire smoke events, causing a risk to workers. Wildfire smoke can cause mild symptoms like coughing, stinging eyes, runny nose, and scratchy throat. Wildfire smoke can also cause serious and sometimes fatal health effects, including chest pain and heart failure, asthma attacks, trouble breathing and reduced lung function.

EPA's AQI is an informational tool for reporting air quality and is based, in part, on particulate matter (PM_{2.5}) measurements. Under the Clean Air Act, the EPA sets and reviews national air quality standards for several air pollutants, including PM_{2.5}. AQI is a level of one to 500 divided into six color-coded categories that correspond to different levels of health concerns (good, moderate, unhealthy for sensitive groups, unhealthy, very unhealthy, and hazardous). The EPA categorizes the AQI level of 101 as "unhealthy for sensitive groups" and corresponds to PM_{2.5} concentrations of 35.5 µg/m³.

California and Oregon are currently the only other states with rules for occupational exposure to wildfire smoke. California's rule requires employers take preventative measures at a PM_{2.5} of 55.5 µg/m³ (AQI 151), and Oregon requires preventative measures at a PM_{2.5} of 35.5 µg/m³ (AQI 101). California's rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at a PM_{2.5} of 55.5 µg/m³ (AQI 151). Mandatory respirator use is required when the PM_{2.5} is 500.4 µg/m³ (AQI 501) or greater with an assigned protection factor (APF) such that the PM_{2.5} levels inside the respirator are less than 55.5 µg/m³ which would require respirators that are more protective than N95s at 55.5 µg/m³ (beyond the AQI). When respirators are required, compliance with California's respiratory program rules, including fit testing and medical evaluations, are also required. Oregon's rule requires employers to implement engineering and administrative controls and make respirators available for voluntary use at a PM_{2.5} of 35.5 µg/m³ (AQI 101). Oregon's rule also requires N95 use at 200.9 µg/m³ (AQI 251) without fit-testing or medical evaluations, and when the PM_{2.5} is 500.4 µg/m³ (AQI 501) or greater, a full respiratory protection program is required, including fit-testing and medical evaluations.

For the past several summers, L&I's DOSH received inquiries about wildfire smoke hazards, especially for outdoor workers. DOSH has put

out guidance and information on best practices but recognizes there has been a gap under previous rules to adequately protect workers from this hazard and to ensure employers and workers understand what is required. After the unprecedented wildfire smoke events in 2020, L&I reviewed the need for rules and received a petition requesting rule making. L&I determined that rule making was needed to address the hazard and initiated permanent rule making on October 20, 2020, WSR 20-21-093. L&I subsequently filed two separate emergency rule makings, one for summer 2021 filed July 16, 2021, WSR 21-15-067 and the second on June 1, 2022, WSR 22-12-094. Between January 2021 and October 2022, L&I held 10 virtual stakeholder meetings and three in-person stakeholder meetings across the state.

Washington state L&I recognizes that employers and employees need regulations that are clear, actionable, and protective. Consistent with the mandate under the Washington Industrial Safety and Health Act, L&I looked at the best available evidence and determined that there are feasible measures to address the health hazards wildfire smoke presents for workers. The proposed rules:

- Address the current ambiguity regarding allowable exposures to wildfire smoke by specifying threshold-based interventions for PM_{2.5} exposure.
- Provide protections for outdoor workers, who have the highest exposures.

To assist employers with implementation, L&I plans on providing user-friendly tools and templates including training slide decks and templates for the employer's wildfire smoke response plan.

Regulatory Fairness Act and Small Business Economic Impact Statement: Note: This information can be found on the original notice filed as WSR 23-11-029.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Kat Gregersen, Tumwater, Washington, 360-902-5530; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Cynthia Ireland, Administrative Regulations Analyst, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-791-5048, fax 360-902-5619, email Cynthia.Ireland@Lni.wa.gov.

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

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This information can be found on the original notice filed as WSR 23-11-029.

June 14, 2023
Joel Sacks
Director

OTS-4362.3

NEW SECTION**WAC 296-307-098 Wildfire smoke.**

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NEW SECTION

WAC 296-307-09805 Purpose and scope. WAC 296-307-09805 through 296-307-09860 applies to all workplaces, including those with agricultural activity according to RCW 49.17.020, with the exception of the following:

(1) Enclosed buildings or structures in which the employer ensures that windows, doors, bays, and other exterior openings are kept closed, except when it is necessary to briefly open doors to enter and exit.

(2) Enclosed vehicles in which the air is filtered by a properly maintained cabin air filter and the employer ensures that windows, doors, and other openings are kept closed except when it is necessary to briefly open doors to enter or exit. Buses, light rail, and other enclosed vehicles used for transit systems where doors are frequently opened to board and deboard passengers are not included under this exemption.

(3) Work within the scope of chapter 296-305 WAC, Safety standards for firefighters.

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NEW SECTION

WAC 296-307-09810 Definitions. (1) **Adverse symptoms requiring medical attention.** Adverse symptoms to wildfire smoke exposure requiring medical attention include, but are not limited to: Difficulty breathing or shortness of breath, particularly when accompanied by greater use of accessory muscles; chest pain; nausea; or dizziness.

(2) **Air Quality Index (AQI).** A unitless index used by the U.S. Environmental Protection Agency (EPA) to communicate air quality for several pollutants, including PM_{2.5}. References to the AQI used throughout this chapter means the "NowCast AQI for PM_{2.5}."

Note: The EPA has proposed revisions to the AQI.¹ DOSH will revisit chapter 296-820 WAC Wildfire smoke, and chapter 296-307 WAC Part G-1 if the proposed changes are adopted.

(3) **Current PM_{2.5}.** The concentration of PM_{2.5} for the most current hour available, calculated using an hourly average of PM_{2.5} data.

Note: The NowCast as provided by the Washington state department of ecology, local clean air agency, or U.S. EPA is also acceptable to approximate current PM_{2.5}.

(4) **Emergency response.** Rescue, evacuation, utilities, communications, transportation, and medical operations; when such operations are directly aiding firefighting; protecting public health and safety;

or actively protecting, restoring, or maintaining the safe and reliable operation of critical infrastructure at risk.

(5) **High-efficiency particulate air (HEPA) filter.** A filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometers mean aerodynamic diameter or larger.

(6) **NIOSH.** The National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention. NIOSH tests and approves respirators for use in the workplace.

(7) **NowCast.** The method used by the U.S. Environmental Protection Agency (EPA), and the Washington state department of ecology to approximate the air quality for the most current hour available by using a calculation that involves multiple hours of past data. The NowCast uses longer averages during periods of stable air quality and shorter averages when air quality is changing rapidly, such as during a wildfire. The NowCast is generally updated every hour.

(8) **PM_{2.5}.** Solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller. Measured in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$).

(9) **Wildfire smoke.** PM_{2.5} which includes emissions from planned or unplanned fires in wildlands, wildland urban interface, agricultural operations, or adjacent developed areas. Wildfire smoke contains a complex mixture of gasses and particulates. Fine particulates such as PM_{2.5} are the primary pollutant in wildfire smoke.

(10) **Wildlands.** Sparsely populated geographical areas covered primarily by grass, brush, trees, crops, or combination thereof.

¹ Federal Register Vol. 88, No. 18, Page 5558, January 2023: <https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2023-00269.pdf>.

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NEW SECTION

WAC 296-307-09815 Identification of harmful exposures. The employer must determine employee exposure to PM_{2.5} for worksites covered by WAC 296-307-09805 through 296-307-09860 periodically as needed. The employer may use any of the following methods to determine employee exposures such that they are able to comply with the requirements in WAC 296-307-09805 through 296-307-09860 Wildfire smoke:

(1) Check PM_{2.5} forecasts and the current PM_{2.5} from any of the following:

- (a) Washington department of ecology website;
- (b) Air Quality WA mobile app;
- (c) Washington smoke information website;
- (d) U.S. EPA AirNow Fire and Smoke Map;
- (e) U.S. EPA AirNow website;
- (f) U.S. EPA AirNow mobile app;
- (g) U.S. Forest Service AirFire website; or
- (h) Local clean air agency website.

(2) Obtain PM_{2.5} forecasts and the current PM_{2.5} directly from the Washington state department of ecology, U.S. EPA, U.S. EPA EnviroFlash.info, or local clean air agency by telephone, email, text, or other effective method; or

(3) Measure current PM_{2.5} levels at the work location in accordance with WAC 296-307-09845 Measuring PM_{2.5} levels at the worksite.

If an index such as the AQI is relied upon, use the following table to find the equivalent PM_{2.5}.

PM _{2.5} IN MICROGRAMS PER CUBIC METER (µg/m ³)	AIR QUALITY INDEX FOR PM _{2.5} (AQI)
20.5 µg/m ³	69
35.5 µg/m ³	101
250.5 µg/m ³	301
500.4 µg/m ³	500
555 µg/m ³	Beyond the AQI

- Notes:
- The current PM_{2.5} is updated hourly.
 - Employers are not responsible for tracking employee exposures outside of working hours.

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NEW SECTION

WAC 296-307-09820 Hazard communication. For any worksite covered by WAC 296-307-09805 through 296-307-09860 Wildfire smoke, the employer must establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

The system shall include effective procedures for:

(1) Informing employees when the current PM_{2.5} as identified in WAC 296-307-09815 Identification of harmful exposures, exceeds the following thresholds, and the protective measures available to employees to reduce their wildfire smoke exposures:

(a) When at least two consecutive current PM_{2.5} readings are 20.5 µg/m³ (AQI 69) or more;

(b) 35.5 µg/m³ (AQI 101) or more;

(c) 250.5 µg/m³ (AQI 301) or more;

(d) 500.4 µg/m³ (AQI 500) or more; and

(e) 555 µg/m³ (beyond the AQI) or more.

(2) Enabling and encouraging employees to inform the employer of:

(a) Worsening air quality;

(b) Availability issues of appropriate exposure control measures and respiratory protection required by WAC 296-307-09805 through 296-307-09860 Wildfire smoke; and

(c) Any adverse symptoms that may be the result of wildfire smoke exposure such as, but not limited to, asthma attacks, difficulty breathing, and chest pain.

(3) A wildfire smoke response plan must be included in the written accident prevention program before work that exposes the worker to a PM_{2.5} concentration of 20.5 µg/m³ (AQI 69) or more. The wildfire smoke response plan must be tailored to the workplace and include at least the following elements:

- (a) The health effects and adverse symptoms of wildfire smoke exposure;
- (b) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure;
- (c) The right to obtain medical treatment without fear of reprisal;
- (d) The requirements of WAC 296-307-09805 through 296-307-09860 Wildfire smoke;
- (e) How employees can obtain the current PM_{2.5}, and the employers methods to communicate the current PM_{2.5};
- (f) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;
- (g) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;
- (h) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and
- (i) How to properly put on, use, and maintain the respirators provided by the employer.

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NEW SECTION

WAC 296-307-09825 Information and training. The employer must provide all workers with effective information and training regarding wildfire smoke before work that exposes the worker to a PM_{2.5} concentration of 20.5 µg/m³ (AQI 69) or more, and at least annually thereafter.

- (1) Information and training must be provided in a manner and language readily understood by the workers.
- (2) At a minimum, the training must include the following information found in WAC 296-307-09850 Appendix A:
 - (a) The health effects and adverse symptoms of wildfire smoke exposure;
 - (b) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure;
 - (c) The right to obtain medical treatment without fear of reprisal;
 - (d) The requirements of WAC 296-307-09805 through 296-307-09860 Wildfire smoke;
 - (e) How employees can obtain the current PM_{2.5}, and the employers methods to communicate the current PM_{2.5};
 - (f) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;
 - (g) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;
 - (h) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and
 - (i) How to properly put on, use, and maintain the respirators provided by the employer.

(3) Supervisor training. Prior to supervising employees performing work that exposes the worker to PM_{2.5} levels that are 20.5 µg/m³ (AQI 69) or more, supervisors must have training on the information in subsection (2) of this section, and the following topics:

(a) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-307-09805 through 296-307-09860 Wildfire smoke;

(b) The procedures the supervisor must follow if an employee exhibits adverse symptoms of wildfire smoke exposure; and

(c) Procedures for moving or transporting employees to an emergency medical service provider, if necessary.

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NEW SECTION

WAC 296-307-09830 Exposure symptom response. (1) The employer must monitor employees displaying symptoms of wildfire smoke exposure to determine whether medical attention is necessary.

(2) Employers must allow employees who display symptoms of wildfire smoke exposure to seek medical treatment, and may not retaliate against affected employees for seeking such treatment.

(3) Employers must have effective provisions made in advance for prompt medical treatment of employees who display adverse symptoms of wildfire smoke exposure.

(4) Where the current PM_{2.5} is 250.5 µg/m³ (AQI 301) or more, employers must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air such as:

(a) Providing a location where the current PM_{2.5} is less than 20.5 µg/m³; or

(b) Providing an enclosed building, structure, or vehicle with HEPA filtration sufficient for the volume of the space.

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NEW SECTION

WAC 296-307-09835 Exposure controls. (1) Where the current PM_{2.5} is 20.5 µg/m³ (AQI 69) or more, the employer is encouraged to implement exposure controls.

(2) Where the current PM_{2.5} is 35.5 µg/m³ (AQI 101) or more, the employer must implement effective exposure controls whenever feasible.

(3) Such controls include, but are not limited to:

(a) Providing enclosed buildings, structures, or vehicles where the air is adequately filtered;

(b) Providing portable HEPA filters in enclosed areas;

(c) Relocating work to a location with a lower ambient air concentration of PM_{2.5};

(d) Changing work schedules to a time with a lower ambient air concentration of PM_{2.5};

(e) Avoiding, or reducing work that creates additional dust, fumes, or smoke;

(f) Reducing work intensity; and

(g) Providing additional rest periods.

(4) WAC 296-307-09835 Exposure controls, is not required during emergency response.

Note: Exposure controls may be implemented to the extent that the work is no longer covered by the scope of this rule as listed in WAC 296-307-09805 (1) or (2), Purpose and scope.

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NEW SECTION

WAC 296-307-09840 Respiratory protection. (1) Where the current $PM_{2.5}$ is $20.5 \mu\text{g}/\text{m}^3$ (AQI 69) to $35.4 \mu\text{g}/\text{m}^3$ (AQI 100), the employer is encouraged to provide respirators at no cost to employees upon request. Employees may provide and wear their own respiratory protection as long as voluntary use of these respirators does not introduce hazards to the work environment.

(2) Where the current $PM_{2.5}$ is $35.5 \mu\text{g}/\text{m}^3$ (AQI 101) to $250.4 \mu\text{g}/\text{m}^3$ (AQI 300), the employer must provide N95 filtering-facepiece respirators at no cost to all exposed employees, and must encourage respirator use. Employers must provide respirators by either of the following methods:

(a) Directly distribute to each exposed employee; or

(b) Maintain a sufficient supply for all exposed employees at each work location where exposure occurs. Such respirator supply availability and locations must be made known, and be readily accessible, to all exposed employees in a manner that does not restrict or hinder employee access to obtain and replace respirators when needed.

(3) Where the current $PM_{2.5}$ is $250.5 \mu\text{g}/\text{m}^3$ (AQI 301) to $500.3 \mu\text{g}/\text{m}^3$ (AQI 499), the employer must distribute N95 filtering-facepiece respirators directly to each exposed employee, and must encourage respirator use.

(4) Where the current $PM_{2.5}$ is $500.4 \mu\text{g}/\text{m}^3$ (AQI 500) to $554.9 \mu\text{g}/\text{m}^3$ (beyond the AQI), employees must be enrolled in a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622 Respirators, of this chapter. The employer must provide and require to be worn one of the following respirators:

(a) N95 filtering-facepiece respirator;

(b) Half-facepiece air purifying respirator equipped with P100 filters; or

(c) Other respirators equipped with P100 filters, with an assigned protection factor of 10 or greater as listed in WAC 296-307-60205 Respirators.

Note: Employees exposed to $PM_{2.5}$ for a total of 15 minutes or less during a 24-hour period are exempt from the requirements in WAC 296-307-09840(4).

(5) Where the current $PM_{2.5}$ is $555 \mu\text{g}/\text{m}^3$ (beyond the AQI) or more, employees must be enrolled in a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622 Respirators, of this chapter. The employer must provide and require to be worn one of the following respirators equipped with P100 filters:

(a) Loose-fitting powered air purifying respirator;
 (b) Full-facepiece air purifying respirator;
 (c) Full-facepiece powered air purifying respirator; or
 (d) Other respirators with an assigned protection factor of 25 or more as listed in WAC 296-307-60205 Respirators, such that the PM_{2.5} levels inside the respirator are less than 55.5 µg/m³ (AQI 151).

(6) Respirators must be NIOSH-approved devices that effectively protect the wearers from inhalation of wildfire smoke.

(7) The employer must use WAC 296-307-09825 Information and training in lieu of the advisory information in Table 2 of WAC 296-307-59805 Respirators, for training regarding voluntary use of respirators for wildfire smoke.

(8) Respirators must be cleaned, stored, maintained, and replaced so that they are in good working order, and do not present a health hazard to users. Replace or repair any respirator that is not functioning properly, and do not permit their use. Filtering facepiece respirators must not be cleaned, repaired, or shared. Dispose, and replace any filtering facepiece respirator that is dirty, damaged, or difficult to breathe through. Elastomeric respirators must be properly cleaned and disinfected before being worn by another employee.

- Notes:
- Respirator use is not considered voluntary when an employer requires respirators to be used. A complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622 Respirators, is required if the employer chooses to require respirator use.
 - For voluntary use of filtering facepiece respirators, such as N95 respirators, some of the requirements of WAC 296-307-594 through 296-307-622 Respirators, of this chapter, do not apply, such as fit testing and medical evaluations. Elastomeric respirators equipped with P100 filters may be used in place of N95 filtering facepiece respirators. If elastomeric respirators are used voluntarily, additional requirements apply from WAC 296-307-594 through 296-307-622 Respirators, of this chapter, such as medical evaluations and establishing a respiratory protection program.
 - For voluntary or required use of loose-fitting powered air purifying respirators, some of the requirements of WAC 296-307-594 through 296-307-622 Respirators, of this chapter, do not apply, such as fit testing and requiring workers to be clean shaven.
 - During emergency response, required use of respirators must be implemented to the extent feasible.

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NEW SECTION

WAC 296-307-09845 Measuring PM_{2.5} levels at the worksite. (1) An employer may use a direct-reading particulate monitor to identify harmful exposures as required by WAC 296-307-09815 Identification of harmful exposures, if the employer can demonstrate that it has complied with this section and selected a monitor that:

(a) Does not underestimate employee exposures to wildfire smoke;
 or

(b) May underestimate wildfire smoke exposures, but the employer has obtained information on the possible error of the monitor from the manufacturer or other published literature and has accounted for the error of the monitor when determining exposures to PM_{2.5} to ensure that employee exposure levels not be underestimated.

(2) The monitor must be designed and manufactured to measure the concentration of airborne particle sizes ranging from an aerodynamic diameter of 0.3 micrometers or less, up to and including 2.5 micrometers (≤0.3 µg/m³ to 2.5 µg/m³). The employer may use a monitor that measures a particle size range beyond these limits, if the employer treats the results as the PM_{2.5} levels.

(3) The employer must ensure that the monitor it selects be calibrated, maintained, and used, including the use of necessary accesso-

ries, in accordance with the manufacturer's instructions for accurately measuring PM_{2.5} concentrations.

(4) The person supervising, directing, or evaluating workplace monitoring for PM_{2.5} must have the training or experience necessary to apply this section and to ensure the correct use of the monitor and the interpretation of the results, so that exposures are not underestimated.

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NEW SECTION

WAC 296-307-09850 Appendix A: Protection from wildfire smoke information and training (mandatory). (1) **The health effects and adverse symptoms of wildfire smoke:**

Symptoms:

Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air.

Particulate matter can irritate the eyes and lungs, causing eye irritation, phlegm, and persistent coughing. Particulate matter can also cause difficulty breathing, reduced lung function, bronchitis, worsening of asthma, heart failure, and early death.

Particulate matter is a health risk whether you are exposed over a short period of time or a long period of time. The United States Environmental Protection Agency has determined that particulate matter does cause, or likely causes cardiovascular disease, respiratory disease, cancer, and harm to the nervous system.

Wildfire smoke can harm your health, even if you cannot smell the smoke or do not feel any symptoms. Even healthy people can be harmed by wildfire smoke. The wildfire smoke rule is designed to limit the harm from wildfire smoke, and it is important to consider taking action to reduce your exposure to smoke whenever the rule's protections are in effect.

Watch for symptoms as an additional sign to reduce exposure to smoke, and reduce work intensity.

It is especially important to move to an area with clean air and seek medical attention according to your health care provider's advice, or if you experience any of these symptoms:

- Difficulty breathing;
- Shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Chest pain;
- Nausea; or
- Dizziness.

You have the right to seek medical treatment for any symptoms you may be experiencing related to wildfire smoke exposure, regardless of their severity, and your employer may not retaliate against you for seeking such treatment. This includes, but is not limited to, the symptoms described above.

Sensitive groups:

The Washington state department of health classifies¹ outdoor workers as a sensitive group with increased risk.

Sensitive groups include people who are at higher risk of experiencing adverse health effects as a result of exposure to wildfire smoke, including those with preexisting health conditions; those with increased duration of exposure; and those whose work results in an increased breathing rate, including outdoor workers¹. Although everyone is impacted by wildfire smoke exposure, sensitive groups are among those most likely to experience health problems from exposure to wildfire smoke. Examples of sensitive groups include:

- Outdoor workers;
- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;
- People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, flu, or those with, or recovering from COVID-19;
- People with existing heart or circulatory problems, such as irregular heart beat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;
- Children under 18 years old, and adults over age 65;
- People who are pregnant;
- People with diabetes;
- People with other medical or health conditions that can be exacerbated by exposure to wildfire smoke as determined by a physician;
- Tribal and indigenous people;
- People with low income.

¹ Washington Department of Health. April 2022, accessed April 2023. Washington Air Quality Guide for Particle Pollution: https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf?uid=64384c71c8715

(2) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure:

Watch for symptoms of wildfire smoke exposure, even at lower levels of PM_{2.5}, as a sign to reduce exposure.

It is important to notify your employer when you are experiencing symptoms of wildfire smoke exposure, so your employer can respond appropriately.

Your employer will have provisions made in advance for prompt medical treatment for employees who are experiencing adverse symptoms of wildfire smoke exposure.

Do not ignore your symptoms: Wildfire smoke can be hazardous even when you cannot smell it. Your employer cannot retaliate against you for reporting symptoms, or for seeking medical treatment. This is true whenever the wildfire smoke rule's protections are in effect.

Wildfire smoke is a serious work-related hazard for outdoor workers, and you have the right to file a workers' compensation claim to have your symptoms evaluated. You may file a workers' compensation claim whether or not you have personal health insurance. Your employer cannot prevent you from or retaliate against you for filing a workers' compensation claim.

In most cases, L&I will pay for your initial medical evaluation, even if your claim is denied. If your claim is allowed, the workers' compensation system will cover medical bills directly related to your condition and partial wage replacement benefits if you cannot work.

When the PM_{2.5} is 250.5 µg/m³ or more, your employer must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air.

(3) The right to obtain medical treatment without fear of reprisal:

Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical treatment, and may not retaliate against affected employees for seeking such treatment.

Employers must also have effective provisions made in advance for prompt medical treatment of employees in the event of serious injury or illness caused by wildfire smoke exposure.

Additionally, when the PM_{2.5} is 250.5 µg/m³ or more, employers must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air.

For more information on your workplace safety and health rights, discrimination protections, and to file a discrimination complaint; visit www.Lni.wa.gov/WorkplaceDiscrimination.

(4) The requirements of WAC 296-307-09805 through 296-307-09860, Wildfire smoke rule:

The following table summarizes the key requirements of the rule. This is not an exhaustive list, and additional details are found in WAC 296-307-09805 through 296-307-09860.

Rule summary at each PM_{2.5} breakpoint:

PM _{2.5} BREAKPOINTS	AQI EQUIVALENT	REQUIREMENTS AT CURRENT PM _{2.5} LEVEL
0.0-20.4	0-68	<ul style="list-style-type: none"> • Prepare response plan. • Provide training to employees. • Watch the PM_{2.5} conditions and forecasts. • Implement a two-way communication system. • Make provisions for prompt medical treatment, and permit that treatment without retaliation.
20.5-35.4	69-100	All of the above and: <ul style="list-style-type: none"> • Notify employees of PM_{2.5} conditions. • Ensure only trained employees work outdoors. • Consider implementing exposure controls. • Consider providing voluntary use respirators.
35.5-250.4	101-300	All of the above and: <ul style="list-style-type: none"> • Implement exposure controls. • Make N95 respirators available for voluntary use.
250.5-500.3	301-499	All of the above and: <ul style="list-style-type: none"> • Ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air. • Directly distribute N95 respirators to employees for voluntary use.
500.4-554.9	500-beyond the AQI	All of the above and: <ul style="list-style-type: none"> • Implement a complete required use respiratory protection program, including fit-testing, medical evaluations, requiring employees to be clean-shaven, and requiring the use of particulate respirators.
	Beyond the AQI	All of the above and: <ul style="list-style-type: none"> • Require respirators with an assigned protection factor (APF) of 25 or more.

(5) How employees can obtain the current PM_{2.5}, and the employer's methods to communicate the current PM_{2.5}:

Various government agencies monitor the air at locations throughout Washington and report the current PM_{2.5} for those places. The Air Quality Index (AQI) uses the air quality data from these regulatory monitors.

Although the government monitoring stations may measure several pollutants, this chapter only uses PM_{2.5}. One way to find the current and forecasted PM_{2.5} is to go to enviwa.ecology.wa.gov and find the nearest sensor on the map, or fire.airnow.gov and enter the zip code of the location where you will be working. The current PM_{2.5} is also available from the Air Quality WA mobile app, or the AirNow mobile app.

Employees who do not have access to the internet can contact their employer for the current PM_{2.5}. The U.S. EPA website www.enviroflash.info can transmit daily and forecasted air quality by email for your city or zip code.

If you choose to use an index such as the AQI, use the following table to find the equivalent AQI for PM_{2.5}.

PM _{2.5} IN MICROGRAMS PER CUBIC METER (µg/m ³)	AIR QUALITY INDEX FOR PM _{2.5} (AQI)
20.5 µg/m ³	69
35.5 µg/m ³	101
250.5 µg/m ³	301
500.4 µg/m ³	500
555 µg/m ³	Beyond the AQI

Your employer will establish a two-way communication system to communicate changing wildfire smoke conditions to you, and allowing you to communicate information to your employer such as; worsening air quality, availability issues of exposure control measures and respirators, and any adverse symptoms of wildfire smoke exposure. Your employer cannot retaliate or discriminate against you for raising safety concerns, or reporting symptoms.

The employer's communication system is: _____

(6) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures:

Your employer will provide training on the specific methods they will implement to protect you as part of their wildfire smoke response plan, and their procedures to respond when employees experience symptoms of wildfire smoke exposure.

The employer's methods to protect employees are: _____

The employer's exposure symptom response procedures are: _____

(7) The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke:

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the PM_{2.5} is less than 35.5 µg/m³.

A respirator needs to be used properly and kept clean. The following precautions must be taken:

(a) Employers must select respirators certified for protection against the specific air contaminants at the workplace. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will list what the respirator is designed for (particulates, for example).

Surgical masks or items worn over the nose and mouth such as scarves, t-shirts, and bandannas will not provide protection against wildfire smoke. A NIOSH-approved N95 filtering facepiece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(b) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations.

The manufacturer's instructions for medical evaluations, fit testing, and shaving must also be followed to ensure the best protection against wildfire smoke. If your respirator is not fit-tested, it cannot be relied upon to protect you from wildfire smoke exposure, and you should take action to reduce your exposure to wildfire smoke in the other ways described in the wildfire smoke rule and in section nine of this appendix; ask your employer to voluntarily arrange for respirator fit-testing; or both.

(c) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect you against gases or vapors, and it will not supply oxygen. Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.

(d) Respirator use is not voluntary, and a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622 Respirators, of this chapter is required in any of the following situations:

- The employer chooses to require respirator use;
- A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present. To evaluate respiratory hazards in your workplace, see Part Y-6 of this chapter, Respiratory hazards.

(e) You need to keep track of your respirator, so you do not mistakenly use someone else's respirator.

(f) If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor, particularly if you have a heart or lung condition, or if you have other medical conditions.

(8) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation:

Respirators such as N95s must form a tight seal to the face to work properly. This is especially important for people at increased risk for severe disease. Wearing a respirator can make it harder to breathe. If you have heart or lung problems, talk to your doctor before using a respirator.

A fit-test is conducted to verify that a respirator is both comfortable and provides the wearer with the expected protection. Voluntary use of respirators, such as those provided by your employer be-

tween PM_{2.5} 35.5 and 500.3 µg/m³ for wildfire smoke, does not require a fit-test if your employer does not require you wear the respirator. Without a fit-test, a respirator cannot be expected to provide reliable protection. Unfitted respirators may not properly seal, allowing wildfire smoke to enter the respirator. You can take steps to improve the respirator seal, and reduce your exposure to wildfire smoke by following the steps in section nine of this appendix.

A medical evaluation is conducted as part of evaluating respirator selection and use to ensure that the wearer is healthy enough to perform work while wearing a respirator. Voluntary use of respirators does not require a medical evaluation. If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor. This is particularly important if you have a heart or lung condition (including asthma), or if you have other medical conditions of concern.

Follow your health care provider's advice if you have medical conditions that can be worsened by wildfire smoke exposure. And if you have symptoms such as difficulty breathing, shortness of breath, chest pain, nausea, or dizziness, go to an area with clean air, take off the respirator, and get medical help.

(9) How to properly put on, use, and maintain the respirators provided by the employer:

A tight-fitting respirator such as an N95 will not be able to seal to your face if facial hair interferes with the seal. Ensuring that you are clean-shaven will allow a better seal and more reliable protection. Loose-fitting powered air purifying respirators may be worn by people with facial hair, since they do not have seals that are affected by facial hair.

The proper way to put on a respirator depends on the type and model of the respirator. Always inspect your respirator before use, and follow the manufacturer's instructions. Replace respirators that are damaged, dirty, or wet.

For those who use a filtering facepiece respirator such as an N95 that is made of filter material:

(a) With clean, dry hands, place the mask over the nose and under the chin, with one strap placed below the ears and one strap above. Be sure that the nosepiece bar or foam is on top.

(b) Pinch the nosepiece of the respirator over the top of the nose, so it fits securely.

(c) Perform a seal check:

(i) Cover the respirator with both hands and exhale. If air leaks where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should bulge from the face and not leak around the seal.

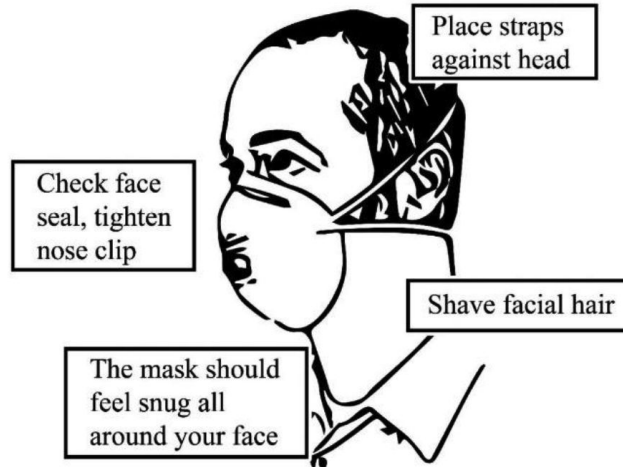
(ii) Cover the respirator with both hands and inhale. If air leaks where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should collapse slightly and not leak around the seal.

For a respirator that relies on a tight seal to the face, check how well it seals by following the manufacturer's instructions for user seal checks. Adjust the respirator if air leaks between the seal and the face. The more air leaks under the seal, the less protection the user receives.

Respirator filters need to be replaced if they get damaged, deformed, dirty, or difficult to breathe through. Filtering facepiece respirators are disposable respirators that cannot be cleaned or dis-

infected. A best practice is to replace filtering facepiece respirators at the beginning of each shift.

If you have symptoms such as difficulty breathing, shortness of breath, chest pain, nausea, or dizziness, go to an area with clean air, take off the respirator, and get medical help.



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NEW SECTION

WAC 296-307-09855 Appendix B: Selecting direct-reading particulate monitors (mandatory). The information in this section provides guidance when selecting a direct-reading particulate monitor and determining compliance with the specifications required by WAC 296-307-09845 Measuring PM_{2.5} levels at the worksite:

(1) The South Coast Air Quality Management District's air quality sensor performance evaluation center (AQ-SPEC) www.aqmd.gov/aq-spec publishes field and lab evaluations of many direct-read PM_{2.5} monitors.

(2) The monitor's field R-squared (R²) value must be greater than 0.7 when measuring one-hour average PM_{2.5}.

(3) If the monitor's field R² is 0.7 or less, the employer may use the monitor alongside other data sources listed in WAC 296-307-09815 Identification of harmful exposures, and so long as the employer uses whichever value is higher.

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NEW SECTION

WAC 296-307-09860 Appendix C: Calculating the Air Quality Index for PM_{2.5} (nonmandatory). The Air Quality Index (AQI) for PM_{2.5} is calculated as follows:

$$I_{PM_{2.5}} = \frac{I_{Hi} - I_{Lo}}{BP_{Hi} - BP_{Lo}} (C_p - BP_{Lo}) + I_{Lo}$$

Where:

$I_{PM_{2.5}}$ is the Air Quality Index value for $PM_{2.5}$

C_p is the concentration of $PM_{2.5}$ in $\mu g/m^3$ truncated to 1 decimal place

BP_{Hi} is the concentration breakpoint that is greater than or equal to C_p

BP_{Lo} is the concentration breakpoint that is less than or equal to C_p

I_{Hi} is the AQI value corresponding to BP_{Hi}

I_{Lo} is the AQI value corresponding to BP_{Lo}

PM _{2.5} BREAKPOINTS ¹	AQI EQUIVALENT ¹	AQI CATEGORY ¹	WA DOH HEALTH MESSAGING ²
0.0-12.0	0-50	Good	It is a great day to be active outside and a good time to make a plan if worse air quality is in the forecast.
12.1-35.4	51-100	Moderate	Some people are especially sensitive to lower levels of particle pollution and should reduce exposure. For example, limit time outside and avoid strenuous outdoor activity. All sensitive groups should watch for symptoms.
35.5-55.4	101-150	Unhealthy for sensitive groups	Sensitive groups should take steps to reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air. Everyone should watch for symptoms as a sign to reduce exposure.
55.5-150.4	151-200	Unhealthy	Everyone should reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air.
150.5-250.4	201-300	Very unhealthy	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
250.5-350.4	301-400	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
350.5-500.4	401-500	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
> 500.4	Beyond the AQI	Hazardous (beyond the AQI)	

¹ U.S. EPA. September 2018. Technical Assistance Document for the Reporting of Daily Air Quality – The Air Quality Index (AQI). EPA 454/B-18-007. Research Triangle Park, North Carolina.

² Washington Department of Health. April 2022, accessed April 2023. Washington Air Quality Guide for Particle Pollution: <https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic%5fEnglish.pdf?uid=64384c71c8715>

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OTS-4363.3

**Chapter 296-820 WAC
WILDFIRE SMOKE**

NEW SECTION

WAC 296-820-805 Purpose and scope. WAC 296-820-805 through 296-820-860 applies to all workplaces, including those with agricultural activity according to RCW 49.17.020, with the exception of the following:

(1) Enclosed buildings or structures in which the employer ensures that windows, doors, bays, and other exterior openings are kept closed, except when it is necessary to briefly open doors to enter and exit.

(2) Enclosed vehicles in which the air is filtered by a properly maintained cabin air filter and the employer ensures that windows, doors, and other openings are kept closed except when it is necessary to briefly open doors to enter or exit. Buses, light rail, and other enclosed vehicles used for transit systems where doors are frequently opened to board and deboard passengers are not included under this exemption.

(3) Work within the scope of chapter 296-305 WAC, Safety standards for firefighters.

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NEW SECTION

WAC 296-820-810 Definitions. (1) **Adverse symptoms requiring medical attention.** Adverse symptoms to wildfire smoke exposure requiring medical attention include, but are not limited to: Difficulty breathing or shortness of breath, particularly when accompanied by greater use of accessory muscles; chest pain; nausea; or dizziness.

(2) **Air Quality Index (AQI).** A unitless index used by the U.S. Environmental Protection Agency (EPA) to communicate air quality for several pollutants, including PM_{2.5}. References to the AQI used throughout this chapter means the "NowCast AQI for PM_{2.5}."

Note: The EPA has proposed revisions to the AQI.¹ DOSH will revisit chapter 296-820 WAC Wildfire smoke, and chapter 296-307 WAC Part G-1 if the proposed changes are adopted.

(3) **Current PM_{2.5}.** The concentration of PM_{2.5} for the most current hour available, calculated using an hourly average of PM_{2.5} data.

Note: The NowCast as provided by the Washington state department of ecology, local clean air agency, or U.S. EPA is also acceptable to approximate current PM_{2.5}.

(4) **Emergency response.** Rescue, evacuation, utilities, communications, transportation, and medical operations; when such operations are directly aiding firefighting; protecting public health and safety; or actively protecting, restoring, or maintaining the safe and reliable operation of critical infrastructure at risk.

(5) **High-efficiency particulate air (HEPA) filter.** A filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometers mean aerodynamic diameter or larger.

(6) **NIOSH.** The National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention. NIOSH tests and approves respirators for use in the workplace.

(7) **NowCast.** The method used by the U.S. Environmental Protection Agency (EPA), and the Washington state department of ecology to approximate the air quality for the most current hour available by using

a calculation that involves multiple hours of past data. The NowCast uses longer averages during periods of stable air quality and shorter averages when air quality is changing rapidly, such as during a wildfire. The NowCast is generally updated every hour.

(8) **PM_{2.5}**. Solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller. Measured in micrograms per cubic meter ($\mu\text{g}/\text{m}^3$).

(9) **Wildfire smoke**. PM_{2.5} which includes emissions from planned or unplanned fires in wildlands, wildland urban interface, agricultural operations, or adjacent developed areas. Wildfire smoke contains a complex mixture of gases and particulates. Fine particulates such as PM_{2.5} are the primary pollutant in wildfire smoke.

(10) **Wildlands**. Sparsely populated geographical areas covered primarily by grass, brush, trees, crops, or combination thereof.

¹ Federal Register Vol. 88, No. 18, Page 5558, January 2023: <https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2023-00269.pdf>.

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NEW SECTION

WAC 296-820-815 Identification of harmful exposures. The employer must determine employee exposure to PM_{2.5} for worksites covered by WAC 296-820-805 through 296-820-860 periodically as needed. The employer may use any of the following methods to determine employee exposures such that they are able to comply with the requirements in WAC 296-820-805 through 296-820-860 Wildfire smoke:

(1) Check PM_{2.5} forecasts and the current PM_{2.5} from any of the following:

- (a) Washington department of ecology website;
- (b) Air Quality WA mobile app;
- (c) Washington smoke information website;
- (d) U.S. EPA AirNow Fire and Smoke Map;
- (e) U.S. EPA AirNow website;
- (f) U.S. EPA AirNow mobile app;
- (g) U.S. Forest Service AirFire website; or
- (h) Local clean air agency website.

(2) Obtain PM_{2.5} forecasts and the current PM_{2.5} directly from the Washington state department of ecology, U.S. EPA, U.S. EPA EnviroFlash.info, or local clean air agency by telephone, email, text, or other effective method; or

(3) Measure current PM_{2.5} levels at the work location in accordance with WAC 296-820-845 Measuring PM_{2.5} levels at the worksite.

If an index such as the AQI is relied upon, use the following table to find the equivalent PM_{2.5}.

PM _{2.5} IN MICROGRAMS PER CUBIC METER ($\mu\text{g}/\text{m}^3$)	AIR QUALITY INDEX FOR PM _{2.5} (AQI)
20.5 $\mu\text{g}/\text{m}^3$	69
35.5 $\mu\text{g}/\text{m}^3$	101
250.5 $\mu\text{g}/\text{m}^3$	301
500.4 $\mu\text{g}/\text{m}^3$	500

PM _{2.5} IN MICROGRAMS PER CUBIC METER (µg/m ³)	AIR QUALITY INDEX FOR PM _{2.5} (AQI)
555 µg/m ³	Beyond the AQI

- Notes:
- The current PM_{2.5} is updated hourly.
 - Employers are not responsible for tracking employee exposures outside of working hours.

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NEW SECTION

WAC 296-820-820 Hazard communication. For any worksite covered by WAC 296-820-805 through 296-820-860 Wildfire smoke, the employer must establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

The system shall include effective procedures for:

(1) Informing employees when the current PM_{2.5} as identified in WAC 296-820-815 Identification of harmful exposures, exceeds the following thresholds, and the protective measures available to employees to reduce their wildfire smoke exposures:

(a) When at least two consecutive current PM_{2.5} readings are 20.5 µg/m³ (AQI 69) or more;

(b) 35.5 µg/m³ (AQI 101) or more;

(c) 250.5 µg/m³ (AQI 301) or more;

(d) 500.4 µg/m³ (AQI 500) or more; and

(e) 555 µg/m³ (beyond the AQI) or more.

(2) Enabling and encouraging employees to inform the employer of:

(a) Worsening air quality;

(b) Availability issues of appropriate exposure control measures and respiratory protection required by WAC 296-820-805 through 296-820-860 Wildfire smoke; and

(c) Any adverse symptoms that may be the result of wildfire smoke exposure such as, but not limited to, asthma attacks, difficulty breathing, and chest pain.

(3) A wildfire smoke response plan must be included in the written accident prevention program before work that exposes the worker to a PM_{2.5} concentration of 20.5 µg/m³ (AQI 69) or more. The wildfire smoke response plan must be tailored to the workplace and include at least the following elements:

(a) The health effects and adverse symptoms of wildfire smoke exposure;

(b) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure;

(c) The right to obtain medical treatment without fear of reprisal;

(d) The requirements of WAC 296-820-805 through 296-820-860 Wildfire smoke;

(e) How employees can obtain the current PM_{2.5}, and the employers methods to communicate the current PM_{2.5};

(f) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;

(g) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;

(h) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and

(i) How to properly put on, use, and maintain the respirators provided by the employer.

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NEW SECTION

WAC 296-820-825 Information and training. The employer must provide all workers with effective information and training regarding wildfire smoke before work that exposes the worker to a PM_{2.5} concentration of 20.5 µg/m³ (AQI 69) or more, and at least annually thereafter.

(1) Information and training must be provided in a manner and language readily understood by the workers.

(2) At a minimum, the training must include the following information found in WAC 296-820-850 Appendix A:

(a) The health effects and adverse symptoms of wildfire smoke exposure;

(b) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure;

(c) The right to obtain medical treatment without fear of reprisal;

(d) The requirements of WAC 296-820-805 through 296-820-860 Wildfire smoke;

(e) How employees can obtain the current PM_{2.5}, and the employers methods to communicate the current PM_{2.5};

(f) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;

(g) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;

(h) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and

(i) How to properly put on, use, and maintain the respirators provided by the employer.

(3) Supervisor training. Prior to supervising employees performing work that exposes the worker to PM_{2.5} levels that are 20.5 µg/m³ (AQI 69) or more, supervisors must have training on the information in subsection (2) of this section, and the following topics:

(a) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-820-805 through 296-820-860 Wildfire smoke;

(b) The procedures the supervisor must follow if an employee exhibits adverse symptoms of wildfire smoke exposure; and

(c) Procedures for moving or transporting employees to an emergency medical service provider, if necessary.

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NEW SECTION

WAC 296-820-830 Exposure symptom response. (1) The employer must monitor employees displaying symptoms of wildfire smoke exposure to determine whether medical attention is necessary.

(2) Employers must allow employees who display symptoms of wildfire smoke exposure to seek medical treatment, and may not retaliate against affected employees for seeking such treatment.

(3) Employers must have effective provisions made in advance for prompt medical treatment of employees who display adverse symptoms of wildfire smoke exposure.

(4) Where the current PM_{2.5} is 250.5 µg/m³ (AQI 301) or more, employers must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air such as:

(a) Providing a location where the current PM_{2.5} is less than 20.5 µg/m³; or

(b) Providing an enclosed building, structure, or vehicle with HEPA filtration sufficient for the volume of the space.

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NEW SECTION

WAC 296-820-835 Exposure controls. (1) Where the current PM_{2.5} is 20.5 µg/m³ (AQI 69) or more, the employer is encouraged to implement exposure controls.

(2) Where the current PM_{2.5} is 35.5 µg/m³ (AQI 101) or more, the employer must implement effective exposure controls whenever feasible.

(3) Such controls include, but are not limited to:

(a) Providing enclosed buildings, structures, or vehicles where the air is adequately filtered;

(b) Providing portable HEPA filters in enclosed areas;

(c) Relocating work to a location with a lower ambient air concentration of PM_{2.5};

(d) Changing work schedules to a time with a lower ambient air concentration of PM_{2.5};

(e) Avoiding, or reducing work that creates additional dust, fumes, or smoke;

(f) Reducing work intensity; and

(g) Providing additional rest periods.

(4) WAC 296-820-835 Exposure controls, is not required during emergency response.

Note: Exposure controls may be implemented to the extent that the work is no longer covered by the scope of this rule as listed in WAC 296-820-805 (1) or (2), Purpose and scope.

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NEW SECTION

WAC 296-820-840 Respiratory protection. (1) Where the current $PM_{2.5}$ is $20.5 \mu\text{g}/\text{m}^3$ (AQI 69) to $35.4 \mu\text{g}/\text{m}^3$ (AQI 100), the employer is encouraged to provide respirators at no cost to employees upon request. Employees may provide and wear their own respiratory protection as long as voluntary use of these respirators does not introduce hazards to the work environment.

(2) Where the current $PM_{2.5}$ is $35.5 \mu\text{g}/\text{m}^3$ (AQI 101) to $250.4 \mu\text{g}/\text{m}^3$ (AQI 300), the employer must provide N95 filtering-facepiece respirators at no cost to all exposed employees, and must encourage respirator use. Employers must provide respirators by either of the following methods:

(a) Directly distribute to each exposed employee; or

(b) Maintain a sufficient supply for all exposed employees at each work location where exposure occurs. Such respirator supply availability and locations must be made known, and be readily accessible, to all exposed employees in a manner that does not restrict or hinder employee access to obtain and replace respirators when needed.

(3) Where the current $PM_{2.5}$ is $250.5 \mu\text{g}/\text{m}^3$ (AQI 301) to $500.3 \mu\text{g}/\text{m}^3$ (AQI 499), the employer must distribute N95 filtering-facepiece respirators directly to each exposed employee, and must encourage respirator use.

(4) Where the current $PM_{2.5}$ is $500.4 \mu\text{g}/\text{m}^3$ (AQI 500) to $554.9 \mu\text{g}/\text{m}^3$ (beyond the AQI), employees must be enrolled in a complete respiratory protection program in accordance with chapter 296-842 WAC Respirators. The employer must provide and require to be worn one of the following respirators:

(a) N95 filtering-facepiece respirator;

(b) Half-facepiece air purifying respirator equipped with P100 filters; or

(c) Other respirators equipped with P100 filters, with an assigned protection factor of 10 or greater as listed in WAC 296-842-13005 Respirators.

Note: Employees exposed to $PM_{2.5}$ for a total of 15 minutes or less during a 24-hour period are exempt from the requirements in WAC 296-820-840(4).

(5) Where the current $PM_{2.5}$ is $555 \mu\text{g}/\text{m}^3$ (beyond the AQI) or more, employees must be enrolled in a complete respiratory protection program in accordance with chapter 296-842 WAC. The employer must provide and require to be worn one of the following respirators equipped with P100 filters:

(a) Loose-fitting powered air purifying respirator;

(b) Full-facepiece air purifying respirator;

(c) Full-facepiece powered air purifying respirator; or

(d) Other respirators with an assigned protection factor of 25 or more as listed in WAC 296-842-13005 Respirators, such that the $PM_{2.5}$ levels inside the respirator are less than $55.5 \mu\text{g}/\text{m}^3$ (AQI 151).

(6) Respirators must be NIOSH-approved devices that effectively protect the wearers from inhalation of wildfire smoke.

(7) The employer must use WAC 296-820-825 Information and training, in lieu of the advisory information in Table 2 of WAC 296-842-11005 Respirators, for training regarding voluntary use of respirators for wildfire smoke.

(8) Respirators must be cleaned, stored, maintained, and replaced so that they are in good working order, and do not present a health hazard to users. Replace or repair any respirator that is not functioning properly, and do not permit their use. Filtering facepiece respirators must not be cleaned, repaired, or shared. Dispose, and replace any filtering facepiece respirator that is dirty, damaged, or difficult to breathe through. Elastomeric respirators must be properly cleaned and disinfected before being worn by another employee.

- Notes:
- Respirator use is not considered voluntary when an employer requires respirators to be used. A complete respiratory protection program in accordance with chapter 296-842 WAC Respirators, is required if the employer chooses to require respirator use.
 - For voluntary use of filtering facepiece respirators, such as N95 respirators, some of the requirements of chapter 296-842 WAC Respirators, do not apply, such as fit testing and medical evaluations. Elastomeric respirators equipped with P100 filters may be used in place of N95 filtering facepiece respirators. If elastomeric respirators are used voluntarily, additional requirements apply from chapter 296-842 WAC Respirators, such as medical evaluations and establishing a respiratory protection program.
 - For voluntary or required use of loose-fitting powered air purifying respirators, some of the requirements of chapter 296-842 WAC Respirators, do not apply, such as fit testing and requiring workers to be clean shaven.
 - During emergency response, required use of respirators must be implemented to the extent feasible.

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NEW SECTION

WAC 296-820-845 Measuring PM_{2.5} levels at the worksite. (1) An employer may use a direct-reading particulate monitor to identify harmful exposures as required by WAC 296-820-815 Identification of harmful exposures, if the employer can demonstrate that it has complied with this section and selected a monitor that:

(a) Does not underestimate employee exposures to wildfire smoke;
or

(b) May underestimate wildfire smoke exposures, but the employer has obtained information on the possible error of the monitor from the manufacturer or other published literature and has accounted for the error of the monitor when determining exposures to PM_{2.5} to ensure that employee exposure levels not be underestimated.

(2) The monitor must be designed and manufactured to measure the concentration of airborne particle sizes ranging from an aerodynamic diameter of 0.3 micrometers or less, up to and including 2.5 micrometers ($\leq 0.3 \mu\text{g}/\text{m}^3$ to $2.5 \mu\text{g}/\text{m}^3$). The employer may use a monitor that measures a particle size range beyond these limits, if the employer treats the results as the PM_{2.5} levels.

(3) The employer must ensure that the monitor it selects be calibrated, maintained, and used, including the use of necessary accessories, in accordance with the manufacturer's instructions for accurately measuring PM_{2.5} concentrations.

(4) The person supervising, directing, or evaluating workplace monitoring for PM_{2.5} must have the training or experience necessary to apply this section and to ensure the correct use of the monitor and the interpretation of the results, so that exposures are not underestimated.

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NEW SECTION**WAC 296-820-850 Appendix A: Protection from wildfire smoke information and training (mandatory). (1) The health effects and adverse symptoms of wildfire smoke:****Symptoms:**

Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air.

Particulate matter can irritate the eyes and lungs, causing eye irritation, phlegm, and persistent coughing. Particulate matter can also cause difficulty breathing, reduced lung function, bronchitis, worsening of asthma, heart failure, and early death.

Particulate matter is a health risk whether you are exposed over a short period of time or a long period of time. The United States Environmental Protection Agency has determined that particulate matter does cause, or likely causes cardiovascular disease, respiratory disease, cancer, and harm to the nervous system.

Wildfire smoke can harm your health, even if you cannot smell the smoke or do not feel any symptoms. Even healthy people can be harmed by wildfire smoke. The wildfire smoke rule is designed to limit the harm from wildfire smoke, and it is important to consider taking action to reduce your exposure to smoke whenever the rule's protections are in effect.

Watch for symptoms as an additional sign to reduce exposure to smoke, and reduce work intensity.

It is especially important to move to an area with clean air and seek medical attention according to your health care provider's advice, or if you experience any of these symptoms:

- Difficulty breathing;
- Shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Chest pain;
- Nausea; or
- Dizziness.

You have the right to seek medical treatment for any symptoms you may be experiencing related to wildfire smoke exposure, regardless of their severity, and your employer may not retaliate against you for seeking such treatment. This includes, but is not limited to, the symptoms described above.

Sensitive groups:

The Washington state department of health classifies¹ outdoor workers as a sensitive group with increased risk.

Sensitive groups include people who are at higher risk of experiencing adverse health effects as a result of exposure to wildfire smoke, including those with preexisting health conditions; those with increased duration of exposure; and those whose work results in an increased breathing rate, including outdoor workers¹. Although everyone is impacted by wildfire smoke exposure, sensitive groups are among those most likely to experience health problems from exposure to wildfire smoke. Examples of sensitive groups include:

- Outdoor workers;
- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;

- People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, flu, or those with, or recovering from COVID-19;
- People with existing heart or circulatory problems, such as irregular heart beat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;
- Children under 18 years old, and adults over age 65;
- People who are pregnant;
- People with diabetes;
- People with other medical or health conditions that can be exacerbated by exposure to wildfire smoke as determined by a physician;
- Tribal and indigenous people;
- People with low income.

¹ Washington Department of Health. April 2022, accessed April 2023. Washington Air Quality Guide for Particle Pollution: https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf?uid=64384c71c8715

(2) The importance of informing the employer when the employee is experiencing adverse symptoms of wildfire smoke exposure:

Watch for symptoms of wildfire smoke exposure, even at lower levels of PM_{2.5}, as a sign to reduce exposure.

It is important to notify your employer when you are experiencing symptoms of wildfire smoke exposure, so your employer can respond appropriately.

Your employer will have provisions made in advance for prompt medical treatment for employees who are experiencing adverse symptoms of wildfire smoke exposure.

Do not ignore your symptoms: Wildfire smoke can be hazardous even when you cannot smell it. Your employer cannot retaliate against you for reporting symptoms, or for seeking medical treatment. This is true whenever the wildfire smoke rule's protections are in effect.

Wildfire smoke is a serious work-related hazard for outdoor workers, and you have the right to file a workers' compensation claim to have your symptoms evaluated. You may file a workers' compensation claim whether or not you have personal health insurance. Your employer cannot prevent you from or retaliate against you for filing a workers' compensation claim.

In most cases, L&I will pay for your initial medical evaluation, even if your claim is denied. If your claim is allowed, the workers' compensation system will cover medical bills directly related to your condition and partial wage replacement benefits if you cannot work.

When the PM_{2.5} is 250.5 µg/m³ or more, your employer must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air.

(3) The right to obtain medical treatment without fear of reprisal:

Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical treatment, and may not retaliate against affected employees for seeking such treatment.

Employers must also have effective provisions made in advance for prompt medical treatment of employees in the event of serious injury or illness caused by wildfire smoke exposure.

Additionally, when the PM_{2.5} is 250.5 µg/m³ or more, employers must ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air.

For more information on your workplace safety and health rights, discrimination protections, and to file a discrimination complaint; visit www.Lni.wa.gov/WorkplaceDiscrimination.

(4) The requirements of WAC 296-820-805 through 296-820-860 Wild-fire smoke rule:

The following table summarizes the key requirements of the rule. This is not an exhaustive list, and additional details are found in WAC 296-820-805 through 296-820-860.

Rule summary at each PM_{2.5} breakpoint:

PM _{2.5} BREAKPOINTS	AQI EQUIVALENT	REQUIREMENTS AT CURRENT PM _{2.5} LEVEL
0.0-20.4	0-68	<ul style="list-style-type: none"> • Prepare response plan. • Provide training to employees. • Watch the PM_{2.5} conditions and forecasts. • Implement a two-way communication system. • Make provisions for prompt medical treatment, and permit that treatment without retaliation.
20.5-35.4	69-100	All of the above and: <ul style="list-style-type: none"> • Notify employees of PM_{2.5} conditions. • Ensure only trained employees work outdoors. • Consider implementing exposure controls. • Consider providing voluntary use respirators.
35.5-250.4	101-300	All of the above and: <ul style="list-style-type: none"> • Implement exposure controls. • Make N95 respirators available for voluntary use.
250.5-500.3	301-499	All of the above and: <ul style="list-style-type: none"> • Ensure workers experiencing adverse symptoms requiring medical attention be moved to a location that ensures sufficient clean air. • Directly distribute N95 respirators to employees for voluntary use.
500.4-554.9	500-beyond the AQI	All of the above and: <ul style="list-style-type: none"> • Implement a complete required use respiratory protection program, including fit-testing, medical evaluations, requiring employees to be clean-shaven, and requiring the use of particulate respirators.
	Beyond the AQI	All of the above and: <ul style="list-style-type: none"> • Require respirators with an assigned protection factor (APF) of 25 or more.

(5) How employees can obtain the current PM_{2.5}, and the employer's methods to communicate the current PM_{2.5}:

Various government agencies monitor the air at locations throughout Washington and report the current PM_{2.5} for those places. The Air Quality Index (AQI) uses the air quality data from these regulatory monitors.

Although the government monitoring stations may measure several pollutants, this chapter only uses PM_{2.5}. One way to find the current and forecasted PM_{2.5} is to go to enviwa.ecology.wa.gov and find the nearest sensor on the map, or fire.airnow.gov and enter the zip code of the location where you will be working. The current PM_{2.5} is also available from the Air Quality WA mobile app, or the AirNow mobile app.

Employees who do not have access to the internet can contact their employer for the current PM_{2.5}. The U.S. EPA website www.enviroflash.info can transmit daily and forecasted air quality by email for your city or zip code.

If you choose to use an index such as the AQI, use the following table to find the equivalent AQI for PM_{2.5}.

PM _{2.5} IN MICROGRAMS PER CUBIC METER (µg/m ³)	AIR QUALITY INDEX FOR PM _{2.5} (AQI)
20.5 µg/m ³	69
35.5 µg/m ³	101
250.5 µg/m ³	301
500.4 µg/m ³	500
555 µg/m ³	Beyond the AQI

Your employer will establish a two-way communication system to communicate changing wildfire smoke conditions to you, and allowing you to communicate information to your employer such as; worsening air quality, availability issues of exposure control measures and respirators, and any adverse symptoms of wildfire smoke exposure. Your employer cannot retaliate or discriminate against you for raising safety concerns, or reporting symptoms.

The employer's communication system is: _____

(6) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures:

Your employer will provide training on the specific methods they will implement to protect you as part of their wildfire smoke response plan, and their procedures to respond when employees experience symptoms of wildfire smoke exposure.

The employer's methods to protect employees are: _____

The employer's exposure symptom response procedures are: _____

(7) The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke:

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the PM_{2.5} is less than 35.5 µg/m³.

A respirator needs to be used properly and kept clean. The following precautions must be taken:

(a) Employers must select respirators certified for protection against the specific air contaminants at the workplace. NIOSH, the National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention, certifies respirators. A label or statement of certification should appear on the respirator or respirator packaging. It will list what the respirator is designed for (particulates, for example).

Surgical masks or items worn over the nose and mouth such as scarves, t-shirts, and bandannas will not provide protection against wildfire smoke. A NIOSH-approved N95 filtering facepiece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(b) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations.

The manufacturer's instructions for medical evaluations, fit testing, and shaving must also be followed to ensure the best protection against wildfire smoke. If your respirator is not fit-tested, it cannot be relied upon to protect you from wildfire smoke exposure, and you should take action to reduce your exposure to wildfire smoke in the other ways described in the wildfire smoke rule and in section nine of this appendix; ask your employer to voluntarily arrange for respirator fit-testing; or both.

(c) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect you against gases or vapors, and it will not supply oxygen. Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.

(d) Respirator use is not voluntary, and a complete respiratory protection program in accordance with chapter 296-842 WAC Respirators, is required in any of the following situations:

- The employer chooses to require respirator use;
- A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present. To evaluate respiratory hazards in your workplace, see chapter 296-841 WAC, Airborne contaminants.

(e) You need to keep track of your respirator, so you do not mistakenly use someone else's respirator.

(f) If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor, particularly if you have a heart or lung condition, or if you have other medical conditions.

(8) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation:

Respirators such as N95s must form a tight seal to the face to work properly. This is especially important for people at increased risk for severe disease. Wearing a respirator can make it harder to breathe. If you have heart or lung problems, talk to your doctor before using a respirator.

A fit-test is conducted to verify that a respirator is both comfortable and provides the wearer with the expected protection. Voluntary use of respirators, such as those provided by your employer between $PM_{2.5}$ 35.5 and 500.3 $\mu\text{g}/\text{m}^3$ for wildfire smoke, does not require a fit-test if your employer does not require you wear the respirator. Without a fit-test, a respirator cannot be expected to provide reliable protection. Unfitted respirators may not properly seal, allowing wildfire smoke to enter the respirator. You can take steps to improve the respirator seal, and reduce your exposure to wildfire smoke, by following the steps in section nine of this appendix.

A medical evaluation is conducted as part of evaluating respirator selection and use to ensure that the wearer is healthy enough to perform work while wearing a respirator. Voluntary use of respirators does not require a medical evaluation. If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor. This is particularly important if you have a heart or

lung condition (including asthma), or if you have other medical conditions of concern.

Follow your health care provider's advice if you have medical conditions that can be worsened by wildfire smoke exposure. And if you have symptoms such as difficulty breathing, shortness of breath, chest pain, nausea, or dizziness, go to an area with clean air, take off the respirator, and get medical help.

(9) How to properly put on, use, and maintain the respirators provided by the employer:

A tight-fitting respirator such as an N95 will not be able to seal to your face if facial hair interferes with the seal. Ensuring that you are clean-shaven will allow a better seal and more reliable protection. Loose-fitting powered air purifying respirators may be worn by people with facial hair, since they do not have seals that are affected by facial hair.

The proper way to put on a respirator depends on the type and model of the respirator. Always inspect your respirator before use, and follow the manufacturer's instructions. Replace respirators that are damaged, dirty, or wet.

For those who use a filtering facepiece respirator such as an N95 that is made of filter material:

(a) With clean, dry hands, place the mask over the nose and under the chin, with one strap placed below the ears and one strap above. Be sure that the nosepiece bar or foam is on top.

(b) Pinch the nosepiece of the respirator over the top of the nose, so it fits securely.

(c) Perform a seal check:

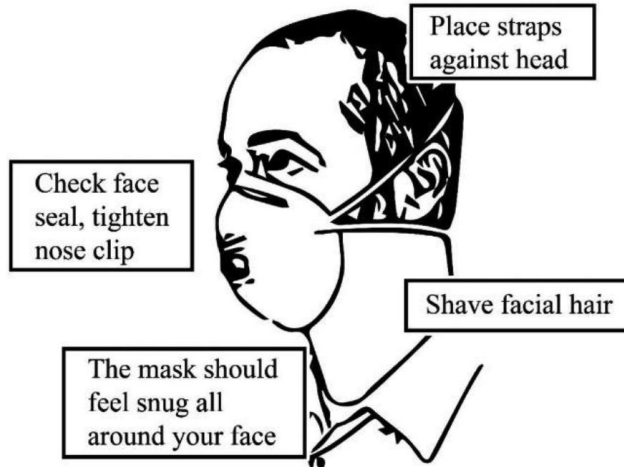
(i) Cover the respirator with both hands and exhale. If air leaks where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should bulge from the face and not leak around the seal.

(ii) Cover the respirator with both hands and inhale. If air leaks where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should collapse slightly and not leak around the seal.

For a respirator that relies on a tight seal to the face, check how well it seals by following the manufacturer's instructions for user seal checks. Adjust the respirator if air leaks between the seal and the face. The more air leaks under the seal, the less protection the user receives.

Respirator filters need to be replaced if they get damaged, deformed, dirty, or difficult to breathe through. Filtering facepiece respirators are disposable respirators that cannot be cleaned or disinfected. A best practice is to replace filtering facepiece respirators at the beginning of each shift.

If you have symptoms such as difficulty breathing, shortness of breath, chest pain, nausea, or dizziness, go to an area with clean air, take off the respirator, and get medical help.



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NEW SECTION

WAC 296-820-855 Appendix B: Selecting direct-reading particulate monitors (mandatory). The information in this section provides guidance when selecting a direct-reading particulate monitor and determining compliance with the specifications required by WAC 296-820-845 Measuring PM_{2.5} levels at the worksite:

(1) The South Coast Air Quality Management District's air quality sensor performance evaluation center (AQ-SPEC) www.aqmd.gov/aq-spec publishes field and lab evaluations of many direct-read PM_{2.5} monitors.

(2) The monitor's field R-squared (R²) value must be greater than 0.7 when measuring one-hour average PM_{2.5}.

(3) If the monitor's field R² is 0.7 or less, the employer may use the monitor alongside other data sources listed in WAC 296-820-815 Identification of harmful exposures, and so long as the employer uses whichever value is higher.

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NEW SECTION

WAC 296-820-860 Appendix C: Calculating the Air Quality Index for PM_{2.5} (nonmandatory). The Air Quality Index (AQI) for PM_{2.5} is calculated as follows:

$$I_{PM_{2.5}} = \frac{I_{Hi} - I_{Lo}}{BP_{Hi} - BP_{Lo}} (C_p - BP_{Lo}) + I_{Lo}$$

Where:

$I_{PM_{2.5}}$ is the Air Quality Index value for PM_{2.5}

C_p is the concentration of PM_{2.5} in µg/m³ truncated to 1 decimal place

BP_{Hi} is the concentration breakpoint that is greater than or equal to C_p

BP_{Lo} is the concentration breakpoint that is less than or equal to C_p

I_{Hi} is the AQI value corresponding to BP_{Hi}

I_{Lo} is the AQI value corresponding to BP_{Lo}

PM _{2.5} BREAKPOINTS ¹	AQI EQUIVALENT ¹	AQI CATEGORY ¹	WA DOH HEALTH MESSAGING ²
0.0-12.0	0-50	Good	It is a great day to be active outside and a good time to make a plan if worse air quality is in the forecast.
12.1-35.4	51-100	Moderate	Some people are especially sensitive to lower levels of particle pollution and should reduce exposure. For example, limit time outside and avoid strenuous outdoor activity. All sensitive groups should watch for symptoms.
35.5-55.4	101-150	Unhealthy for sensitive groups	Sensitive groups should take steps to reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air. Everyone should watch for symptoms as a sign to reduce exposure.
55.5-150.4	151-200	Unhealthy	Everyone should reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air.
150.5-250.4	201-300	Very unhealthy	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
250.5-350.4	301-400	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
350.5-500.4	401-500	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
> 500.4	Beyond the AQI	Hazardous (beyond the AQI)	

¹ U.S. EPA. September 2018. Technical Assistance Document for the Reporting of Daily Air Quality – The Air Quality Index (AQI). EPA 454/B-18-007. Research Triangle Park, North Carolina.

² Washington Department of Health. April 2022, accessed April 2023. Washington Air Quality Guide for Particle Pollution: <https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic%5fEnglish.pdf?uid=64384c71c8715>

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WSR 23-13-083

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed June 15, 2023, 2:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-048.

Title of Rule and Other Identifying Information: WAC 182-531-1850
Payment methodology for physician-related services—General and billing modifiers.

Hearing Location(s): On July 25, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_QiArFJaqRvCj_rekiEBqoA. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: No sooner than July 26, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 25, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by July 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to explain how HCA updates the state-only composite rate, correct or remove outdated information, and clarify language throughout.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Wendy Steffens, P.O. Box 45500, Olympia, WA 98504-5500, 360-725-5145.

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

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

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

Is not exempt.

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

June 15, 2023
Wendy Barcus
Rules Coordinator

OTS-4623.1

AMENDATORY SECTION (Amending WSR 21-23-050, filed 11/10/21, effective 12/11/21)

WAC 182-531-1850 Payment methodology for physician-related services—General and billing modifiers.

GENERAL PAYMENT METHODOLOGY

(1) The medicaid agency bases the payment methodology for most physician-related services on medicare's resource-based relative value scale (RBRVS). The agency obtains information used to update the agency's RBRVS from the ~~((MPFSPS))~~ centers for medicare and medicaid services (CMS) relative value unit (RVU) file.

(2) The agency updates and revises the ~~((following))~~ RBRVS ~~((areas each January prior to))~~ calculations during the agency's annual update.

(3) The agency determines a budget-neutral conversion factor (CF) for each RBRVS update, by doing the following:

(a) First, determining the units of service and expenditures for a base period ~~((Then))~~;

(b) Second, applying the latest medicare RVU obtained from the medicare physician fee schedule database (MPFSDB), as published in the ~~((MPFSPS))~~ CMS RVU file, and blended Washington (WA) geographic practice cost indices (GCPI) ~~((changes))~~ to obtain projected units of service for the new period ~~((Then))~~;

(c) Third, multiplying the projected units of service by conversion factors to obtain estimated expenditures ~~((Then))~~;

(d) Fourth, comparing expenditures obtained in (c) of this subsection with base period expenditure levels ~~((Then))~~; and

(e) Fifth, adjusting the dollar amount for the conversion factor until the product of the conversion factor and the projected units of service at the new RVUs equals the base period amount.

(4) The agency calculates maximum allowable fees (MAFs) in the following ways:

(a) For procedure codes that have applicable medicare RVUs, the ~~((three components (practice, malpractice, and work) of the RVU are))~~ agency determines RBRVS RVUs by:

(i) ~~((Each multiplied))~~ First, multiplying the medicare RVU by the blended statewide geographic practice cost index (GPCI) ~~((Then))~~; and

(ii) Second, multiplying the sum of these products ~~((is multiplied))~~ by the applicable conversion factor. ~~((The resulting RVUs are known as RBRVS RVUs.))~~

(b) ~~((For procedure codes that have no applicable medicare RVUs, RSC RVUs are established in the following way:~~

~~((i) When there are three RSC RVU components (practice, malpractice, and work):~~

~~((A) Each component is multiplied by the statewide GPCI. Then,~~

~~((B) The sum of these products is multiplied by the applicable conversion factor.~~

~~((ii) When the RSC RVUs have just one component, the RVU is not GPCI adjusted and the RVU is multiplied by the applicable conversion factor.~~

~~(e)~~) For procedure codes with no RBRVS (~~(or RSC)~~) RVUs, the agency establishes maximum allowable fees, also known as "flat" fees.

(i) The agency does not use the conversion factor for these codes.

(ii) The agency updates flat fee reimbursement (~~(only)~~) based on market research or when the legislature authorizes a vendor rate increase, except for the following categories which are revised annually during the update:

(A) (~~(Immunization)~~) The agency reimburses for professional administered drug codes (are reimbursed) at the medicare Part B drug file price or using point-of-sale (POS) (AAC) pricing methodology, described in WAC 182-530-7000, when there is no Part B rate. (~~(See WAC 182-530-1050 for explanation of POS AAC.)~~) When the provider receives immunization materials from the department of health, the agency pays only a flat administrative fee for (~~(administering the immunization)~~) storage.

(B) (~~(A cast material maximum allowable fee is set using an average of wholesale or distributor prices for cast materials)~~) The agency uses established medicare contractor rates.

(iii) For information regarding the agency's reimbursement of other supplies (are reimbursed at physicians' acquisition cost, based on manufacturers' price sheets. Reimbursement applies only to supplies that are not considered part of the routine cost of providing care (e.g., intrauterine devices (IUDs))), see WAC 182-543-9000.

~~((d))~~ (c) For procedure codes with no RVU or maximum allowable fee, the agency reimburses "by report." The agency reimburses for by report codes (are reimbursed) at a percentage of the amount billed for the service.

~~((e) For supplies that are dispensed in a physician's office and reimbursed separately, the provider's acquisition cost when flat fees are not established.~~

~~(f) The agency reimburses at acquisition cost those HCPCS J and Q codes that do not have flat fees established)~~ (d) The agency adjusts composite rates annually when the codes that make up the composite rates are updated.

(5) The (~~(technical advisory group)~~) agency reviews RBRVS changes.

(6) The agency also makes fee schedule changes when:

(a) The legislature grants a vendor rate increase (and the effective date of that increase is not the same as) outside of the agency's annual update;

(b) There are coverage changes due to policy updates; or

(c) CMS adds or deletes procedure codes.

(7) If the legislatively authorized vendor rate increase, or other increase, becomes effective at the same time as the annual update, the agency applies the increase after calculating budget-neutral fees. The agency pays providers a higher reimbursement rate for primary health care evaluation and management (E&M) services that are provided to children age 20 and (~~(under))~~ younger.

(8) The agency may adjust rates to maintain or increase access to health care services as directed by the legislature.

(9) The agency does not allow separate reimbursement for CMS bundled services. (~~(However, the agency allows separate reimbursement for items considered prosthetics when those items are used for a permanent condition and are furnished in a provider's office.)~~)

(10) Variations of payment methodology which are specific to particular services, and which differ from the general payment methodolo-

gy described in this section, are included in the sections dealing with those particular services.

~~((CPT/HCFA)) CURRENT PROCEDURAL TERMINOLOGY (CPT)/HEALTHCARE FINANCING ADMINISTRATION (HCFA) MODIFIERS~~

~~(11) ((A modifier is a code a provider uses on a claim in addition to a billing code for a standard procedure. Modifiers eliminate the need to list separate procedures that describe the circumstance that modified the standard procedure. A modifier may also be used for information purposes.~~

~~(12))~~ Certain services and procedures require modifiers ~~((in order))~~ for the agency to reimburse the provider. This information is included in the sections dealing with those particular services and procedures, as well as the fee schedule.

[Statutory Authority: RCW 41.05.021 and 41.05.160. WSR 21-23-050, § 182-531-1850, filed 11/10/21, effective 12/11/21; WSR 17-21-040, § 182-531-1850, filed 10/12/17, effective 11/12/17; WSR 17-04-039, § 182-531-1850, filed 1/25/17, effective 2/25/17. WSR 11-14-075, recodified as § 182-531-1850, filed 6/30/11, effective 7/1/11. Statutory Authority: RCW 74.08.090. WSR 10-19-057, § 388-531-1850, filed 9/14/10, effective 10/15/10. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 01-01-012, § 388-531-1850, filed 12/6/00, effective 1/6/01.]

WSR 23-13-084

PROPOSED RULES

DEPARTMENT OF AGRICULTURE

[Filed June 15, 2023, 2:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-115.

Title of Rule and Other Identifying Information: Chapters 16-325 WAC, Seed potato isolation district and 16-482 WAC, Seed potato quarantine. In response to a petition received from the Washington seed potato commission, the department is proposing changes to the seed potato rules in order to strengthen protections for the seed potato isolation district (isolation district) located in a portion of Whatcom County.

In consideration of the petition, the department is proposing amending the two identified chapters to:

- Expand the definition of "seed potatoes";
- Clarify that the requirement to be enrolled in the certification program includes all plantings for commercial use and adds the option for certified seed to be used for each growing season in commercial potato plantings of one acre or less instead of enrollment in the certification program;
- Add a requirement that all lots of potatoes entering the isolation district for planting or further sale, except for those intended for immediate human consumption (example: Potatoes sold in grocery stores), must be tested and found negative for bacterial ring rot (BRR) by an approved laboratory at origin;
- Add a requirement that shipments entering or transiting the isolation district must be covered in a manner that safeguards pathogen dispersal;
- Establish a prior notification requirement for seed potatoes entering the isolation district;
- Require shipments of potatoes be held for 24 hours after delivery to allow the department time to contact the receiver for inspection;
- Add a violation section regarding the disposition of potatoes in the isolation district found to be in violation of this chapter;
- Clarify in the seed potato quarantine rule (WAC 16-482-010) that all lots of potatoes entering the seed potato isolation district, except for those intended for immediate human consumption, are also subject to the requirements under chapter 16-325 WAC.

Hearing Location(s): On August 1, 2023, at 10:30 a.m., Microsoft Teams conference call. Join on your computer, mobile app, or room device [Certified on 7/3/2023](https://gcc02.safelinks.protection.outlook.com/ap/t-59584e83/?url=https%3A%2F%2Fteams.microsoft.com%2F1%2Fmeetup-join%2F19%253ameeting_YmU1YjI0YmYtN2U1Ny00YzAyLWFmYTUtMmY2NDEzZjIyZDBi%2540thread.v2%2F0%3Fcontext%3D%257b%2522Tid%2522%253a%252211d0e217-264e-400a-8ba0-57dcc127d72d%2522%252c%2522Oid%2522%253a%2522838c55c7-c187-44ae-8de0-2be684ce5d4a%2522%257d&data=05%7C01%7CAClow%40agr.wa.gov%7C16a456aba8704705b30708db68637189%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638218548538968426%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6IjkiLCJhcWwiLCJXVCi6Mn0%3D%7C3000%7C%7C%7C&sd%20ata=CzdTEONbzAgvxdhjVh82kzf0CYbgGqMij9Sj2E8mkD8%3D&reserved=0, Meeting ID 283 776 906 374, Passcode rapv8N; or call in (audio only) +1 564-999-2000,,134043400# United States, Olympia, Phone Conference ID</p>
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134 043 400#. Attendees may join the public hearing through the Microsoft Teams conference link provided.

Date of Intended Adoption: August 8, 2023.

Submit Written Comments to: Gloriann Robinson, Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email wsdarulescomments@agr.wa.gov, fax 360-902-2092, by 5:00 p.m., August 1, 2023.

Assistance for Persons with Disabilities: Contact Deanna Painter, phone 360-902-2061, TTY 800-833-6388, email deanna.painter@agr.wa.gov, by July 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The production of high-quality seed potatoes within Washington requires conditions that are as free as possible from insect pests and plant diseases. When the production of other potatoes (plants or plant parts of *Solanum tuberosum*) is intermixed with or in close proximity to a seed potato production area, there is an increased risk of introducing pests and diseases. To mitigate this risk, the seed potato isolation district was established in Whatcom County in 1998 and requires commercial potato production and all potato plantings in excess of one acre (including for personal use) within its boundaries to be enrolled in the seed potato certification program.

For many years, the Washington state seed potato industry has worked to manage the spread of viruses. They have done this by: (1) The creation of an isolation district that prohibits the production of commercial potatoes and protects the area's ideal geographic isolation; (2) using only limited generation clean seed verified with post-harvest testing; (3) working with researchers to develop a best management plan to control the primary vectors of viruses; (4) sponsoring a Washington State University extension specialist to monitor for the presence of aphids; (5) partnering with the Washington state potato commission to sponsor research to reduce disease; and (6) working closely with the department to develop regulations that ensure high quality seed and an inspection program that provides verification of the above.

These rule amendments are being proposed to bolster protections for the seed potato isolation district by adding testing requirements for BRR by an approved laboratory and prior notification to the department of all potatoes entering the isolation district, clarifying that chapter 16-325 WAC applies to all commercial potato production within the isolation district even if it is on less than one acre, providing an opportunity for verification and enforcement, as well as proper disposition of material shipped into the isolation district in violation of this chapter.

Reasons Supporting Proposal: The department received a petition to amend the seed potato rules from the Washington seed potato commission, to strengthen protections for the isolation district. Proposed changes will incorporate practices of the industry not previously covered in rule, reduce the likelihood that neighboring fields in the isolation district are a source of inoculum, reduce the risk of BRR transmission, reduce the risk of contaminated lots entering the isolation district, enable the department to remove or dispose of potatoes that are in violation, and prevent the comingling of potatoes that could harbor diseases. All these changes would protect Washington state's seed potato industry from pests and disease, safeguarding over 100 varieties of specialty potatoes that are sold across the nation.

Statutory Authority for Adoption: RCW 15.14.015, 15.15.010, 17.24.011, and 17.24.041.

Statute Being Implemented: Chapters 15.14, 15.15, and 17.24 RCW.

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

Name of Proponent: Washington seed potato commission and Washington state department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Scott Brooks, 1111 Washington Street S.E., Olympia, WA 98504, 360-485-1235.

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

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5) (a) (i).

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of exemptions: All potatoes entering the seed potato isolation district are subject to the requirements of chapter 16-325 WAC. Adding language to chapter 16-482 WAC stating this clarifies what is expected of the industry and does not create any additional requirements or impose any additional costs on businesses and is exempt from small business economic impact statement (SBEIS) requirements under RCW 19.85.025(3)/34.05.310 (4) (d).

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: All potatoes entering the seed potato isolation district are subject to the requirements of chapter 16-325 WAC. Adding language to chapter 16-482 WAC stating this clarifies what is expected of the industry and does not create any additional requirements or impose any additional costs on businesses and is exempt from SBEIS requirements under RCW 19.85.025(3)/34.05.310 (4) (d).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Of the 74 businesses that the department surveyed from multiple industries, 21 responded. None of the businesses analyzed are likely to experience costs exceeding the minor cost threshold.

The primary businesses that will be impacted by the proposed rule are those community-supported agriculture (CSA) and small farming operations that grow one acre or less of potatoes. If we assume that these small operations grow a total of five varieties of potatoes in a one-acre lot, the maximum estimated costs for these businesses to comply with the requirement to plant with certified seed potatoes are \$1,000 for certified seed potato purchases, and \$109 per year for certified seed potato program enrollment and inspection fees and \$20 for each additional variety grown.

The maximum estimated costs for businesses to comply with the proposed requirement that all potatoes entering the isolation district be tested for BRR is \$10 for BRR tests for each variety grown (\$50 total for five varieties).

The maximum estimated costs for businesses to comply with the proposed requirement to provide the department with prior notification before seed potatoes are shipped into the isolation district are \$180 per year in administrative expenses.

Other administrative and labor costs associated are estimated to be \$158 per year.

The total maximum estimated cost for a CSA grower to plant one acre of potatoes and comply with all the proposed rule changes is \$1,497 in year one. For the next five subsequent years, the only costs for compliance would be \$497 for certification program participation, testing, and recordkeeping.

The total estimated costs for dairies and nurseries are not expected to exceed \$180 per year to comply with the reporting and notification requirements associated with shipping potatoes into the isolation district.

According to the minor cost threshold table below for industries that will be impacted by the proposed rule, these costs will not exceed the minor cost threshold for any industry.

NAICS Code	1% average annual payroll*	0.3% average annual gross income**	Minor Cost Threshold***
111211 Potato Farming	\$8,909.99	\$3,719.74	\$8,909.99
111219 Other Vegetable (except potato) and Melon Farming	\$3,503.04	\$11,395.89	\$11,395.89
111419 Other Food Crops Grown Under Cover	\$3,263.61	\$3,047.66	\$3,263.61
111998 All Other Miscellaneous Crop Farming	\$11,782.08	\$3,518.45	\$11,782.08
112120 Dairy Cattle and Milk Production	\$6,187.97	\$21,237.13	\$21,237.13
424430 Dairy Product (except Dried or Canned) Merchant Wholesalers	\$5,595.06	\$51,876.55	\$51,876.55
424480 Fresh Fruit and Vegetable Merchant Wholesalers	\$15,570.97	\$47,928.58	\$47,928.58
424910 Farm Supplies Merchant Wholesalers	\$10,501.05	\$35,044.58	\$35,044.58
424930 Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers	\$4,165.54	\$6,155.64	\$6,155.64
444220 Nursery, Garden Center, and Farm Supply Stores	\$4,675.20	\$3,798.35	\$4,675.20
445230 Fruit and Vegetable Markets	\$2,435.71	\$2,220.48	\$2,435.71

* Data source: 2020 Employment security department or United States Bureau of Labor Statistics.

** Data source: 2020 Department of Revenue.

*** The minor cost threshold is the larger amount of the two previous columns.

There are no costs for compliance associated with creating a violation section.

June 9, 2023
Greg Haubrich
Acting Assistant Director

OTS-4630.1

AMENDATORY SECTION (Amending WSR 07-11-013, filed 5/3/07, effective 6/3/07)

WAC 16-482-010 Regulations—Certified seed requirement. (1) Except as provided in WAC 16-482-015, all seed potatoes planted within the state for commercial or for seed production shall be certified seed, produced as a part of a certified seed potato program in the state or country of origin that meets the requirements of Article 4 of the State National Harmonization Program for seed potatoes. All potatoes entering the seed potato isolation district must comply with the requirements of chapter 16-325 WAC including, but not limited to, the requirement that all potatoes entering the district, except those intended for immediate human consumption, must be tested and found negative for bacterial ring rot by an approved laboratory at origin.

(2) The department may sample and test any lot of seed potatoes or conduct field inspections for the purpose of testing and verification of compliance with this chapter.

[Statutory Authority: Chapters 17.24 and 34.05 RCW. WSR 07-11-013, § 16-482-010, filed 5/3/07, effective 6/3/07. Statutory Authority: Chapter 17.24 RCW. WSR 91-07-016 (Order 2075), § 16-482-010, filed 3/13/91, effective 4/13/91; Order 1126, § 16-482-010, filed 10/9/69, effective 11/10/69.]

OTS-4629.2

AMENDATORY SECTION (Amending WSR 98-09-071, filed 4/20/98, effective 5/21/98)

WAC 16-325-010 Definitions. The definitions in this section shall apply throughout this chapter.

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department of agriculture or a duly appointed representative.

(3) "Potato" means plants or plant parts of *Solanum tuberosum*.

(4) "Seed potatoes" means vegetatively propagated tubers of *Solanum tuberosum* used for propagation, research, breeding, or production.

(5) "Seed potato certification program" means the program in which certified seed potatoes are produced, as set forth in chapter 16-324 WAC.

[Statutory Authority: Chapter 15.15 RCW. WSR 98-09-071, § 16-325-010, filed 4/20/98, effective 5/21/98.]

AMENDATORY SECTION (Amending WSR 98-09-071, filed 4/20/98, effective 5/21/98)

WAC 16-325-020 Regulations for potato production within the seed potato isolation district. All potato plantings in excess of one acre

must be enrolled in the seed potato certification program described in chapter 16-324 WAC. All commercial potato plantings of one acre or less must either be enrolled in the seed potato certification program or planted exclusively with certified seed potatoes. Affected growers shall be responsible for all associated fees as required in chapter 16-324 WAC. All potatoes entering the isolation district for planting, processing or further sale, except for those intended for immediate human consumption, must be derived from tested mother lots and found negative for bacterial ring rot by an approved laboratory at origin. This requirement does not apply to shipments merely transiting through the district where the potatoes will not be planted, processed, or sold within the district. Shipments entering or transiting through the isolation district must be covered in a manner that safeguards pathogen dispersal.

The receiver must give prior notification to the department of all lots of seed potatoes entering the isolation district and hold all shipments for 24 hours after delivery, to allow the department to contact the receiver for inspection. Notification may be by email or facsimile to:

- Email: PlantServices@agr.wa.gov; or
- Facsimile: 360-902-2094.

Documentation must include bacterial ring rot test results from a laboratory approved by the director and a bill of lading showing address of shipper and receiver.

[Statutory Authority: Chapter 15.15 RCW. WSR 98-09-071, § 16-325-020, filed 4/20/98, effective 5/21/98.]

NEW SECTION

WAC 16-325-030 Violations. (1) At the option and expense of the owner or owners or their responsible agents, potatoes shipped into or planted in the isolation district in violation of this chapter may be returned to the point of origin or destroyed. Destruction will be done in a manner that safeguards pathogen dispersal as approved by the department and shall be monitored by the department.

(2) Anyone violating the terms of this chapter or chapter 16-482 WAC may be subject to civil and/or criminal penalties as provided in law.

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WSR 23-13-094
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed June 20, 2023, 9:36 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-09-085.

Title of Rule and Other Identifying Information: Retrospective rating insurance tables update. Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance; and chapter 296-17B WAC, Retrospective rating for workers' compensation insurance.

Hearing Location(s): On July 25, 2023, at 10:00 a.m. Join Zoom meeting <https://lni-wa-gov.zoom.us/j/84664379869?pwd=NWl0VUVkSkMwWU1DU2U2YTRRbVRzdz09>, Meeting ID 846 6437 9869, Passcode Retrol23!; or join by phone, Meeting ID 846 6437 9869, Passcode 768921525. Find your local number: <https://lni-wa-gov.zoom.us/j/k4P4Mu5Ep>. The hearing will begin at 10:00 a.m. and will continue until all oral comments are received.

Date of Intended Adoption: August 22, 2023.

Submit Written Comments to: Jessica Nau, Department of Labor and Industries (L&I), Retrospective Rating Program, P.O. Box 44180, Olympia, WA 98504-4180, email Jessica.Nau@lni.wa.gov, fax 360-902-4258, other 360-902-5694, by July 25, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jessica Nau, phone 360-902-6594, fax 360-902-4258, TTY 360-902-6594, email Jessica.Nau@lni.wa.gov, other 360-902-5694, by July 20, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will update the Retrospective Rating Insurance Tables. The proposed changes will maintain equity and fairness in the retrospective rating program.

Proposing to amend WAC 296-17-901 Risk classification hazard group table, 296-17B-420 Premium administration expense charge, 296-17B-430 Incurred loss and expense charge, 296-17B-560 Determining your hazard group and size group, and 296-17B-910 through 296-17B-990, insurance charge tables and insurance savings tables by hazard group and size group.

Reasons Supporting Proposal: When WAC 296-17B-010 was updated in 2017, L&I made a commitment to *"repeat the studies that resulted in the hazard group assignments and changes to retrospective plan tables that are shown in WAC 296-17-901, 296-17B-420, 296-17B-430, 296-17B-560, and 296-17B-910 through 296-17B-990. The repeated studies will determine whether the results are consistent with the expectation of improved fairness in the distribution of the retrospective rating refunds among participants. These repeated studies will be done by April 1, 2020. The department will evaluate and if necessary update the tables beginning at WAC 296-17B-910 every five (5) years"* (WSR 17-12-020).

Statutory Authority for Adoption: RCW 51.18.005, 51.16.035, and 51.18.010(2).

Statute Being Implemented: RCW 51.18.005, 51.16.035, and 51.18.010(2).

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

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Jessica Nau, Tumwater, Washington, 360-902-5694; Implementation: Brenda Heilman, Tumwater, Washington, 360-902-6369; and Enforcement: Mike Ratko, Tumwater, Washington, 360-902-4997.

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

A cost-benefit analysis is not required under RCW 34.05.328. L&I is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi), as this rule making sets or adjusts fees or rates pursuant to legislative standards.

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Scope of exemption for rule proposal:

Is fully exempt.

June 20, 2023
Joel Sacks
Director

WSR 23-13-100
PROPOSED RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed June 20, 2023, 10:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-09-072.

Title of Rule and Other Identifying Information: Medical insurance premium reimbursement—Law enforcement officers' and firefighters' (LEOFF) Plan 2 members.

Hearing Location(s): On July 28, 2023, at 10:00 a.m. The hearing will be conducted through Microsoft Teams. See <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings> for details. Teams link is available on <https://www.drs.wa.gov/sitemap/rules/#proposed-rule-hearings>, Meeting ID 292 794 483 379, Passcode CPUWkF; or phone 833-322-1218, code 913 979 208#.

Date of Intended Adoption: August 4, 2023.

Submit Written Comments to: Bianca Stoner, Department of Retirement Systems (DRS), P.O. Box 48380, Olympia, WA 98504-8380, email drs.rules@drs.wa.gov, by July 24, 2023.

Assistance for Persons with Disabilities: Contact Bianca Stoner, phone 360-664-7291, TTY 711, email drs.rules@drs.wa.gov, by July 24, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To provide clarification regarding reimbursement of medical premiums for LEOFF Plan 2 members who are catastrophically disabled in the line of duty.

Statutory Authority for Adoption: RCW 41.26.470.

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

Name of Proponent: DRS, governmental.

Name of Agency Personnel Responsible for Implementation: Candice Myrum, DRS, P.O. Box 48380, Olympia, WA 98504-8380, 360-664-7124.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(a)(i) does not apply to this proposed rule and DRS is not voluntarily making it applicable to the agency.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: Rules from DRS only affect members and beneficiaries of the state retirement systems and participating public employers. As a result, the rules do not affect small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

June 20, 2023
Bianca Stoner
Rules Coordinator

OTS-4613.2

AMENDATORY SECTION (Amending WSR 22-08-008, filed 3/23/22, effective 4/23/22)

WAC 415-104-480 Does my disability qualify me for a LEOFF Plan 2 catastrophic duty disability benefit? (1) If the department determines you are disabled and you became disabled in the line of duty, you qualify for a catastrophic duty disability if:

(a) The disability or disabilities that qualified you for a LEOFF Plan 2 duty disability benefit are so severe that considering your age, education, work experience, and transferable skills, you cannot engage in any other kind of substantial gainful activity in the labor market; and

(b) Your disability or disabilities have lasted or are expected to last at least 12 months, or are expected to result in your death.

(2) A person with multiple injuries/conditions, some duty-related and some not, could qualify for a catastrophic duty disability but only if the duty injury or injuries, standing on their own, are catastrophically disabling.

Examples:

- Totally disabled, but not from duty injury - Not eligible for catastrophic disability benefit.

A LEOFF Plan 2 member suffers a knee injury on duty, leaving the member disabled from LEOFF employment. The knee injury, by itself, is not totally disabling. The member also suffers from amyotrophic lateral sclerosis (ALS) or Lou Gehrig's disease, a progressive neurodegenerative disease that ultimately leaves the member totally disabled. Pursuant to the ALS diagnosis the member is granted a full disability from the Social Security Administration. In this case the member would qualify for a duty disability, but not for a catastrophic disability because the fully disabling condition, ALS, is not duty related.

- Totally disabled, duty injury totally disabling - Eligible for catastrophic disability benefits.

A LEOFF Plan 2 member suffers a knee injury while fishing. The knee injury, by itself, is neither duty related nor catastrophically disabling. The member also suffers severe burns while fighting a fire, leaving the member fully disabled. The Social Security Administration grants the member a full disability based on the member's total condition. The member qualifies for a LEOFF plan 2 catastrophic disability benefit because the burn injuries, by themselves, render the member totally disabled.

(3) Medical insurance premium reimbursement is an additional benefit for a member who is catastrophically disabled in the line of duty (RCW 41.26.470). However, if you choose to withdraw 150 percent of your accumulated contributions pursuant to RCW 41.26.470(6) you are not entitled to the medical insurance premium reimbursement. For more information, see WAC 415-104-4801.

(4) If you receive catastrophic duty disability benefits, the department will periodically review your income and medical status for continued eligibility. This review is not a reassessment of your initial determination, but an assessment of whether there has been any change in your condition. If it is determined that there has been a change in your condition and you are no longer eligible under subsection (1) of this section, or if you fail to provide required documentation or cooperate with the review, your catastrophic duty disability benefit may be discontinued or converted to a different retirement status. DRS will notify you of your review at least 30 days before the beginning of your review.

(a) **Income review:** At least annually, you must submit documentation to verify that your income from earnings is below the defined income threshold as defined in subsection (5)(c) of this section. You must also notify the department within 30 calendar days of any changes in your income that could impact your eligibility including, but not limited to, wages and earnings from self-employment. (See subsection (5)(c), (d) and (f) of this section.) If DRS is not notified on time, you may be responsible for any resulting overpayment.

Documentation you may need to provide includes a federal or state income tax return from the most recent year, (~~a copy of savings, checking or other bank accounts for the most recent two months~~) employment security records for the last four quarters, self-employment documents or 1099, or other documentation as requested by the department.

(b) **Medical review:** The department will conduct a continuing disability review (CDR) at least once every three years if at the time of your last determination your condition is expected to improve, or every six years if your condition is not expected to improve, until you reach age 65. The department may increase the frequency of your CDRs and reserves the right to require a CDR at any time if notified of a change in your condition, but not more than once every 12 months. The department may also waive the CDR if your disability is determined to be permanent or terminal.

(i) DRS will first review any updated medical information available from any labor and industries claims related to your line of duty injury to determine if additional medical information is needed from you and your primary care provider.

(ii) If needed, the department will provide you with a Disability Review form, which asks for information about whether your medical condition has improved since your last eligibility determination. You will have at least 30 days to complete and return this form to the department or notify the department that you need additional time. Once received, the department will have 90 days to review this information and either notify you of your continued eligibility or the need for additional information. Before making a change to your disability retirement status, the department will consult with a contracted vendor for the purpose of providing an independent medical review.

(5) **Definitions.** As used in this section:

(a) **Catastrophically disabled** means the same as "totally disabled" as defined under RCW 41.26.470(9).

(b) **Continuing disability review (CDR)** means an assessment of your current medical condition to determine if it continues to be catastrophically disabling. The department's medical professional will review recent documentation, with supplemental assessment by external medical experts at the department's discretion.

(c) **Defined income threshold** means any substantial gainful activity that produces average earnings, as defined in (d) of this subsection, in excess of the federal Social Security disability standards, adjusted annually for inflation. Wages count toward earnings when they are earned, not when you receive them. Self-employment income counts when you receive it, not when you earn it.

(d) **Earnings** are any income or wages received, which are reportable as wages or self-employment income to the IRS.

(e) **Labor market** is the geographic area within reasonable commuting distance of where you were last gainfully employed or where you currently live, whichever provides the greatest opportunity for gainful employment.

(f) **Substantial gainful activity** describes a level of work activity and earnings. Substantial gainful activity is work activity that is both substantial and gainful, and it may be, but is not required to be, from work or self-employment. Earnings as defined in this section includes compensated work activity that meets or exceeds the defined income threshold:

(i) Work activity is substantial if it involves doing significant physical or mental activities. Your work activity may be substantial even if it is done on a part-time basis or if you do less, or get paid less, or have less responsibility than when you worked in your LEOFF position.

(ii) Work activity is gainful if it is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.

(iii) Generally, activities like taking care of yourself, household tasks, profits from rental income, hobbies, therapy, school attendance, club activities, or social programs are not substantial gainful activity.

(g) **Transferable skills** are any combination of learned or demonstrated behavior, education, training, work traits, and skills that you can readily apply. They are skills that are interchangeable among different jobs and workplaces.

[Statutory Authority: RCW 41.50.050. WSR 22-08-008, § 415-104-480, filed 3/23/22, effective 4/23/22; WSR 21-01-209, § 415-104-480, filed 12/23/20, effective 1/23/21; WSR 18-13-078, § 415-104-480, filed 6/15/18, effective 7/16/18. Statutory Authority: RCW 41.50.050(5). WSR 13-18-034, § 415-104-480, filed 8/28/13, effective 10/1/13. Statutory Authority: RCW 41.50.050(5) and 41.26.470 (6) and (7). WSR 06-18-007, § 415-104-480, filed 8/24/06, effective 9/24/06. Statutory Authority: RCW 41.50.050(5) and 41.26.470. WSR 04-22-074, § 415-104-480, filed 11/1/04, effective 12/2/04.]

NEW SECTION

WAC 415-104-4801 Medical reimbursement for LEOFF 2 catastrophically disabled members. (1) **What type of medical premiums are available for reimbursement for a LEOFF Plan 2 member who is catastrophically disabled in the line of duty?**

(a) LEOFF Plan 2 members who are catastrophically disabled in the line of duty are eligible for reimbursement of medical premiums of:

(i) Employer-provided medical insurance.

(ii) Medical insurance offered under the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

(iii) Other medical premiums, not to exceed the COBRA amount.

(iv) Medicare Part B.

(b) LEOFF Plan 2 members who are catastrophically disabled are eligible for reimbursement for medical insurance premiums paid after June 30, 2013. DRS will not reimburse for any supplemental health plans.

(2) **What if I am eligible for medicare coverage?** If you or your spouse become eligible for medicare coverage, you must notify DRS when you become eligible. To remain eligible for the reimbursement payment, you must enroll in and maintain enrollment in medicare Part B. At that point, DRS will only reimburse for medicare Part B and vision and den-

tal coverage for that individual. DRS will not reimburse for any medicare supplemental or prescription plans.

(3) **How do I apply for medical premium reimbursements?** To receive medical premium reimbursements, you must first complete a request for medical reimbursement form and provide proof of medical insurance coverage and premium payment to DRS.

(4) **What is acceptable as proof of insurance coverage?** DRS will accept these documents as proof of insurance coverage:

- (a) Invoice from insurance provider.
- (b) Certificate from insurance provider.
- (c) Invoice from medicare.
- (d) Social Security Form SSA-1099.

(5) **What is acceptable as proof of premium payment?** DRS will accept these documents as proof of payment:

- (a) Letter from the Social Security Administration showing your medicare deduction from your monthly benefit;
- (b) Bank or credit card statement showing insurance payment that is supported by other documentation showing this is for medical insurance;
- (c) Receipt from insurance provider;
- (d) Copies of both sides of cashed checks; or
- (e) Letter from the Social Security Administration showing deduction amount.

(6) **What if my premiums are deducted from my DRS benefit or my spouse's payroll checks?** DRS will accept these documents as proof of both insurance coverage and premium payment:

- (a) Premium deduction authorization from your insurance provider, if premium payments are being paid directly from DRS.
- (b) Copy of spouse's or partner's pay stub showing insurance deduction amount.

(7) **When is documentation required?**

(a) You must provide proof of insurance coverage and premium payments at the time you apply for reimbursement. After you are enrolled in the reimbursement program, you must submit this form each June and December along with requested documentation.

(b) DRS will reach out to each retiree receiving medical reimbursement payments, and retirees will have 90 days from the date of the letter to provide proof of premium payment. DRS will provide notifications of the 90-day window to ensure that retirees are aware of the requirement to reapply and supply proof.

(c) After 90 days, DRS will suspend reimbursement until receiving proof of insurance coverage and premium payments. After DRS receives this information, DRS will reinstate reimbursement payments.

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WSR 23-13-103

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed June 20, 2023, 11:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-08-060.

Title of Rule and Other Identifying Information: WAC 182-531-2040
Enhanced reimbursement—Medication assisted treatment for opioid use disorder.

Hearing Location(s): On July 25, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_QiArFJaqRvCj_rekiEBqoA. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: No sooner than July 26, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 25, 2023, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.Larson@hca.wa.gov, by July 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is removing any mention of the DATA 2000 waiver in WAC 182-531-2040.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160; Section 1262 of the Consolidated Appropriations Act of 2023 (omnibus bill).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Crabbe, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-9563; Implementation and Enforcement: Karin Inderbitzin, P.O. Box 45506, Olympia, WA 98504-5506, 360-725-9805.

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

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

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Section 1262 of the Consolidated Appropriations Act of 2023 (omnibus bill).

June 20, 2023

Wendy Barcus

OTS-4618.1

AMENDATORY SECTION (Amending WSR 19-09-052, filed 4/12/19, effective 5/13/19)

WAC 182-531-2040 Enhanced reimbursement—Medication assisted treatment for opioid use disorder. (1) The medicaid agency pays an enhanced reimbursement using the medicare rate when medication assisted treatment (MAT) is part of the visit for selected evaluation and management (E/M) codes and the provider meets the criteria in this section.

(2) The purpose of this enhanced reimbursement is ~~((to encourage providers to obtain and use a Drug Addiction Treatment Act of 2000 waiver (DATA 2000 waiver)))~~ to increase client access to evidence-based treatment using medications for opioid use disorder.

(3) To receive the enhanced reimbursement for MAT, a provider must:

(a) Bill using the agency's expedited prior authorization process;

(b) ~~((Currently use a DATA 2000 waiver to prescribe MAT to clients with opioid use disorder;~~

~~(e)))~~ Bill for treating a client with a qualifying diagnosis for opioid use disorder; and

~~((d)))~~ (c) Provide opioid-related counseling during the visit.

(4) The agency payment for MAT under this section is limited to one enhanced reimbursement, per client, per day.

(5) The agency does not pay an enhanced reimbursement for services a client receives for opioid use disorder through an opioid treatment program facility licensed by the department of health.

[Statutory Authority: RCW 41.05.021, 41.05.160, and 2018 c 299. WSR 19-09-052, § 182-531-2040, filed 4/12/19, effective 5/13/19.]

WSR 23-13-112

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed June 21, 2023, 7:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 19-16-115.

Title of Rule and Other Identifying Information: Chapter 246-926 WAC, Radiological technologists; the department of health (department) is proposing amendments to clarify, streamline, and modernize the regulations for cardiovascular invasive specialists (CVIS), diagnostic radiologic technologists, therapeutic radiologic technologists, nuclear medicine technologists, radiologist assistants, and X-ray technicians. This includes repealing and adding new sections of rules, clarifying competency requirements, identifying authorized duties, and renaming the chapter to radiologic imaging professionals to better reflect all types of professions credentialed under the chapter.

Hearing Location(s): On August 4, 2023, at 1:00 p.m. The department will be holding a virtual-only meeting. Register in advance for this webinar https://us02web.zoom.us/webinar/register/WN_iSw5So0HS6aeKK_A2cX6w. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: August 11, 2023.

Submit Written Comments to: Kim-Boi Shadduck, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2901, by August 4, 2023.

Assistance for Persons with Disabilities: Contact Kim-Boi Shadduck, phone 360-236-2912, fax 360-236-2901, TTY 711, email kimboi.shadduck@doh.wa.gov, by July 25, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: After completing a periodic rule review as required by RCW 43.70.041, the department determined that chapter 246-926 WAC may require general updates and clarifications. This would include removing outdated provisions, updating outdated terms and citations, clarifying credentialing requirements, and clarifying allowable duties for radiological technologists and X-ray technicians.

The department also received two petitions for rule making specific to WAC 246-926-300 and 246-926-400. Supervision for certain tasks were requested to be moved from personal supervision to direct supervision under WAC 246-926-300. The second request asked to prohibit certain tasks for CVIS. The proposed rules incorporate some tasks moved from personal to direct supervision, based on education and training of radiologist assistants. No change was made to CVIS tasks because RCW 18.84.020 defines CVIS to include parenteral procedures.

This proposal entails the repeal of a total of 10 rule sections, with several sections renumbered into a new section to group requirements more effectively. Three of the new sections have been added to describe the certification requirements and scope of practice more clearly for diagnostic radiologic, therapeutic radiologic and nuclear medicine technologists, CVIS, and X-ray technicians. Amendments to the existing rules protects the public by promoting high standards of professional performance, requiring professional accountability, credentialing those persons who seek to provide radiological technology under the title of radiologic technologists, and by creating standards for all practitioners who have achieved a particular level of competency.

Reasons Supporting Proposal: The department is proposing amendments which amend, repeal, and add new sections of rules that will clarify, streamline, and modernize the regulations for CVIS, diagnostic radiologic technologists, therapeutic radiologic technologists, nuclear medicine technologists, radiologist assistants, and X-ray technicians. These amendments are necessary to achieve the statute's goals and objectives by providing updated requirements that are clear, concise, and necessary to ensure patient safety. The proposed rules establish enforceable licensing requirements and safety mechanisms for patients receiving imaging services.

Statutory Authority for Adoption: RCW 18.84.040.

Statute Being Implemented: Chapter 18.84 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim-Boi Shadduck, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2912.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kim-Boi Shadduck, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2912, fax 360-236-2901, TTY 711, email kimboi.shadduck@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

June 21, 2023
 Kristin Peterson, JD
 Chief of Policy
 for Umair A. Shah, MD, MPH
 Secretary

OTS-3755.6

Chapter 246-926 WAC
((~~RADIOLOGICAL TECHNOLOGISTS~~)) RADIOLOGIC IMAGING PROFESSIONALS

AMENDATORY SECTION (Amending WSR 12-10-094, filed 5/2/12, effective 5/3/12)

WAC 246-926-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "ARRT" means the American Registry of Radiologic Technologists.

(2) "Cardiovascular invasive specialist" means a person certified under chapter 18.84 RCW to assist in cardiac or vascular catheterization procedures.

(3) "Computed tomography" or "CT" means technology that uses computer-processed X-rays to produce tomographic images or virtual slices of specific areas of the patient's body or scanned object.

~~(4) "Department" means the department of health.~~

~~((4))~~ (5) "Direct supervision" means the appropriate licensed practitioner is on the premises and is quickly and easily available.

(a) For a diagnostic radiologic, therapeutic radiologic, or nuclear medicine (~~radiologic~~) technologist, the appropriate licensed practitioner is a physician licensed under chapter 18.71 or 18.57 RCW.

(b) For a radiologist assistant, the appropriate licensed practitioner is a radiologist.

~~((5))~~ (6) "General supervision" for a radiologist assistant means the procedure is furnished under the supervising radiologist's overall direction and control. The supervising radiologist must be on-call or be available for consultation.

~~((6) "Hospital" means any health care institution licensed pursuant to chapter 70.41 RCW.~~

~~(7) "Nursing home" means any health care institution which comes under chapter 18.51 RCW.~~

~~((8))~~ (7) "Indirect supervision" means the supervising physician is on site no less than half-time.

(8) "Licensed practitioner" means a licensed health care practitioner performing the services within the person's authorized scope of practice.

(9) "NMTCB" means the nuclear medicine technology certification board.

(10) "Peripherally inserted central catheter" or "PICC line" means a form of intravenous access for administration of substances.

(11) "Personal supervision" means the supervising physician must be in the room during the performance of the procedure.

(a) For a cardiovascular invasive specialist, the supervising physician is a physician licensed under chapter 18.71 or 18.57 RCW.

(b) For a radiologist assistant, the supervising physician is a radiologist.

~~((9) "Radiological")~~ (12) "Radiologic technologist" means a person certified under chapter 18.84 RCW.

~~((10))~~ (13) "Radiologist" means a licensed physician licensed under chapter 18.71 or 18.57 RCW and certified by the American Board of Radiology or the American Osteopathic Board of Radiology.

~~((11))~~ (14) "Radiologist assistant" means an advanced-level diagnostic radiologic technologist certified under chapter 18.84 RCW.

~~((12))~~ (15) "Registered X-ray technician" means a person who is registered with the department, and who applies ionizing radiation at the direction of a licensed practitioner.

~~((13) "Unprofessional conduct" as used in this chapter means the conduct described in RCW 18.130.180.)~~ (16) "Secretary" means the secretary of the department of health.

(17) "Venipuncture" means a procedure to puncture a vein to withdraw blood or to start intravenous infusion related to radiologic technology but does not include the insertion of PICC lines.

[Statutory Authority: RCW 18.84.040 and 43.70.250. WSR 12-10-094, § 246-926-020, filed 5/2/12, effective 5/3/12. Statutory Authority: RCW 18.84.040. WSR 10-10-043, § 246-926-020, filed 4/27/10, effective

5/28/10; WSR 06-01-104, § 246-926-020, filed 12/21/05, effective 1/21/06. Statutory Authority: RCW 18.84.040 and 18.130.070. WSR 92-05-010 (Order 237), § 246-926-020, filed 2/7/92, effective 2/19/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-926-020, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.130.070. WSR 89-14-092 (Order PM 842), § 308-183-010, filed 6/30/89.]

AMENDATORY SECTION (Amending WSR 92-05-010, filed 2/7/92, effective 2/19/92)

WAC 246-926-030 Mandatory reporting. (~~((1) All reports required by this chapter shall be submitted to the department as soon as possible, but no later than twenty days after a determination is made.~~

~~(2) A report should contain the following information if known:~~

~~(a) The name, profession, address, and telephone number of the person making the report.~~

~~(b) The name and address and telephone numbers of the radiological technologist or X-ray technician being reported.~~

~~(c) The case number of any client whose treatment is a subject of the report.~~

~~(d) A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences.~~

~~(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.~~

~~(f) Any further information which would aid in the evaluation of the report.~~

~~(3) Mandatory reports shall be exempt from public inspection and copying to the extent permitted under RCW 42.17.310 or to the extent that public inspection or copying of the report or any portion of the report would invade or violate a person's right to privacy as set forth in RCW 42.17.255.~~

~~(4) A person is immune from civil liability, whether direct or derivative, for providing information to the department pursuant to RCW 18.130.070.) Any person including, but not limited to, a cardiovascular invasive specialist, radiologic technologist, radiologist assistant, X-ray technician, health care facility, or governmental agency must report to the department in compliance with the uniform mandatory reporting requirements in WAC 246-16-200 through 246-16-270.~~

[Statutory Authority: RCW 18.84.040 and 18.130.070. WSR 92-05-010 (Order 237), § 246-926-030, filed 2/7/92, effective 2/19/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-926-030, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.130.070. WSR 89-14-092 (Order PM 842), § 308-183-020, filed 6/30/89.]

NEW SECTION

WAC 246-926-095 Diagnostic radiologic, therapeutic radiologic, and nuclear medicine technologists—Certification. (1) To obtain cer-

tification as a diagnostic radiologic technologist, an applicant must submit:

- (a) A completed application on forms provided by the secretary;
 - (b) Proof of successfully passing an examination in radiography listed in WAC 246-926-135;
 - (c) Proof of completed education in one of the following:
 - (i) A course of instruction from a school that has received accreditation by the Joint Review Committee on Education in Radiologic Technology or the former American Medical Association Committee on Allied Health Education and Accreditation;
 - (ii) Military education, training, and experience listed in WAC 246-926-155; or
 - (iii) Alternative training listed in WAC 246-926-100 and 246-926-110;
 - (d) Written verification of any licenses held, submitted directly from that licensing entity;
 - (e) Applicable fees defined in WAC 246-926-990; and
 - (f) Any other information determined by the secretary.
- (2) To obtain certification as a therapeutic radiologic technologist, an applicant must submit:
- (a) A completed application on forms provided by the secretary;
 - (b) Proof of successfully passing an examination in radiation therapy technology listed in WAC 246-926-135;
 - (c) Proof of completed education in one of the following:
 - (i) A course of instruction from a school that has received accreditation by the Joint Review Committee on Education in Radiologic Technology or the former American Medical Association Committee on Allied Health Education and Accreditation;
 - (ii) Military education, training, and experience listed in WAC 246-926-155; or
 - (iii) Alternative training listed in WAC 246-926-100 and 246-926-120;
 - (d) Written verification of any licenses held, submitted directly from that licensing entity;
 - (e) Applicable fees defined in WAC 246-926-990; and
 - (f) Any other information determined by the secretary.
- (3) To obtain certification as a nuclear medicine technologist, an applicant must submit:
- (a) A completed application on forms provided by the secretary;
 - (b) Proof of successfully passing an examination in nuclear medicine listed in WAC 246-926-135 or by the NMTCB;
 - (c) Proof of completed education in one of the following:
 - (i) A course of instruction from a school that has received accreditation by the Joint Review Committee for Educational Programs in Nuclear Medicine Technology or the former American Medical Association Committee on Allied Health Education and Accreditation; or
 - (ii) Military education, training, and experience listed in WAC 246-926-155; or
 - (iii) Alternative training listed in WAC 246-926-100 and 246-926-130;
 - (d) Written verification of any licenses held, submitted directly from that licensing entity;
 - (e) Applicable fees defined in WAC 246-926-990; and
 - (f) Any other information determined by the secretary.

[]

AMENDATORY SECTION (Amending WSR 06-01-103, filed 12/21/05, effective 1/21/06)

WAC 246-926-100 (~~(Definitions—Alternative training radiologic technologists.)~~) **Alternative training—Definitions, supervision requirements.** (1) (~~(Definitions.)~~) For the purposes of certifying diagnostic radiologic, therapeutic radiologic, and nuclear medicine technologists by alternative training methods the following definitions apply:

- ~~(a) "One quarter credit hour" equals eleven "contact hours";~~
- ~~(b) "One semester credit hour" equals sixteen contact hours;~~
- ~~(c) "One contact hour" is considered to be fifty minutes lecture time or one hundred minutes laboratory time;~~
- ~~(d) "One clinical year" is considered to be 1900 contact hours.~~
- ~~(e) "Direct supervision" means the supervisory clinical evaluator is on the premises and is quickly and easily available.~~
- ~~(f) "Indirect supervision" means the supervising physician is on site no less than half-time.~~
- ~~(g) "Allied health care profession" means an occupation for which programs are accredited by the Joint Review Committee on Education in Radiologic Technology, the Joint Review Committee for Educational Programs in Nuclear Medicine Technology or the former American Medical Association Committee on Allied Health Education and Accreditation.~~
- ~~(h) "Formal education" means education obtained from postsecondary vocational/technical schools and institutions, community or junior colleges, and senior colleges and universities accredited by regional accrediting associations or by other recognized accrediting agencies or programs approved by the Joint Review Committee on Education in Radiologic Technology, the Joint Review Committee for Educational Programs in Nuclear Medicine Technology or the former American Medical Association Committee on Allied Health Education and Accreditation.)~~

(a) "Allied health care profession" means an occupation for which programs are accredited by the Joint Review Committee on Education in Radiologic Technology, the Joint Review Committee for Educational Programs in Nuclear Medicine Technology or the former American Medical Association Committee on Allied Health Education and Accreditation;

(b) "Formal education" means education obtained from postsecondary vocational/technical schools and institutions, community or junior colleges, and senior colleges and universities accredited by regional accrediting associations or by other recognized accrediting agencies or programs approved by the Joint Review Committee on Education in Radiologic Technology, the Joint Review Committee for Educational Programs in Nuclear Medicine Technology or the former American Medical Association Committee on Allied Health Education and Accreditation.

(c) "One contact hour" is considered to be 50 minutes lecture time or 100 minutes laboratory time;

(d) "One clinical year" is considered to be 1,900 contact hours;

(e) "One quarter credit hour" equals 11 contact hours; and

(f) "One semester credit hour" equals 16 contact hours.

(2) Clinical practice experience shall be supervised and verified by the approved clinical evaluators who must be:

(a) A radiologic technologist who provides direct supervision and is certified by the department in the specialty area for which the in-

dividual in the alternative training program is requesting certification; and

(b) A physician who provides indirect supervision. The physician supervisor shall routinely critique the films and evaluate the quality of the trainees' work(~~(~~+~~-~~or~~)~~).

~~((~~e~~))~~ (3) The physician who is providing indirect supervision may also provide direct supervision, when a certified nuclear medicine technologist is not available, for individuals requesting to become certified as a nuclear medicine technologist.

[Statutory Authority: RCW 18.84.040. WSR 06-01-103, § 246-926-100, filed 12/21/05, effective 1/21/06; WSR 03-10-100, § 246-926-100, filed 5/7/03, effective 6/7/03. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-926-100, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.84.040. WSR 89-01-015 (Order PM 802), § 308-183-090, filed 12/9/88.]

AMENDATORY SECTION (Amending WSR 06-01-103, filed 12/21/05, effective 1/21/06)

WAC 246-926-110 Diagnostic radiologic technologist—Alternative training. (~~An individual shall have the following alternative training qualifications to be certified as~~) (1) Alternative training for a diagnostic radiologic technologist(~~(~~-~~~~

~~(1) Have obtained~~) may be obtained with the following:

(a) (i) A high school diploma or GED equivalent(~~(~~-~~a minimum of three clinical years supervised practice experience in radiography, and completed the course content areas outlined in subsection (2) of this section; or have obtained an associate or higher degree in an allied health care profession or meets the requirements for certification as a therapeutic radiologic technologist or nuclear medicine technologist, have obtained a minimum of two clinical years supervised practice experience in radiography, and completed course content areas outlined in subsection (2) of this section.~~

~~(2) The following course content areas of training may be obtained directly by supervised clinical practice experience~~);

(ii) Three clinical years supervised practice experience in radiography as provided in subsection (2) of this section; and

(iii) Completed course content as provided in subsection (3) of this section; or

(b) (i) An associate or higher degree in an allied health care profession; and

(ii) Two clinical years supervised practice experience in radiography as provided in subsection (2) of this section; and

(iii) Completed course content as provided in subsection (3) of this section; or

(c) (i) Meet the requirements of this chapter for certification as a therapeutic radiologic technologist or nuclear medicine technologist; and

(ii) Two clinical years supervised practice experience in radiography as provided in subsection (2) of this section; and

(iii) Completed course content as provided in subsection (3) of this section.

(2) Verified supervised clinical practice experience must include the following:

- (a) Introduction to radiography((~~τ~~))_i
- (b) Medical ethics and law((~~τ~~))_i
- (c) Medical terminology((~~τ~~))_i
- (d) Methods of patient care((~~τ~~))_i
- (e) Radiographic procedures((~~τ~~))_i
- (f) Radiographic film processing((~~τ~~))_i
- (g) Evaluation of radiographs((~~τ~~))_i
- (h) Radiographic pathology((~~τ~~))_i
- (i) Introduction to quality assurance((~~τ~~))_i and
- (j) Introduction to computer literacy. ((Clinical practice experience must be verified by the approved clinical evaluators.

~~The following course content areas of training must be obtained through))~~

(3) Verified formal education must include the following:

- (a) Human anatomy and physiology - 100 contact hours;
- (b) Principles of radiographic exposure - 45 contact hours;
- (c) Imaging equipment - 40 contact hours;
- (d) Radiation physics, principles of radiation protection, and principles of radiation biology - 40 contact hours; and
- (e) Sectional anatomy - 33 contact hours.

~~((3))~~ (4) Individuals participating in the diagnostic radiologic technologist alternative training program must annually report to the department ((of health radiologic technologist program)) the progress of their supervised clinical hours. Notification must be made in writing and must include the street and mailing address of their training program and the names of the individual's direct and indirect supervisors.

~~((4) Must pass an examination approved or administered by the secretary with a minimum scaled score of 75.~~

~~(5) Individuals who are registered as a diagnostic radiologic technologist with the American Registry of Radiologic Technologists shall be considered to have met the alternative education and training requirements.~~

~~((6))~~ (5) Individuals educated ((and/or)) or credentialed to practice as a diagnostic radiologic technologist in another country must provide official documentation of their education and training proving that they meet or exceed alternative training requirements. ((They must also pass an examination approved or administered by the secretary with a minimum scaled score of 75.))

(6) To meet the ARRT or NMTCB clinical experience requirements to sit for a computed tomography examination, a diagnostic radiologic technologist shall meet the following:

(a) Hold a current diagnostic radiologic technology certification issued by the secretary;

(b) Notify the department in writing of their intent to begin a training program for the purposes of meeting the clinical experience requirements for either the ARRT or NMTCB computed tomography examination, which must include:

- (i) The street and mailing address of the training program;
- (ii) The names of the designated training program supervisor or supervisors; and

(iii) The designated time frame within which the individual is working to qualify for a computed tomography examination;

(c) Report annually to the department the progress of their training including the number of clinical hours dedicated to computed

tomography training and the number of computed tomography procedures performed and reported to either the ARRT or NMTCB; and

(d) Complete the clinical experience requirements within the time period set by the ARRT or NMTCB as reported under (b)(iii) of this subsection. If the individual does not meet the clinical experience requirements within the designated time period, the training program is no longer valid and the individual must initiate a new training program.

[Statutory Authority: RCW 18.84.040. WSR 06-01-103, § 246-926-110, filed 12/21/05, effective 1/21/06. Statutory Authority: RCW 18.84.040 and 18.84.080. WSR 92-05-010 (Order 237), § 246-926-110, filed 2/7/92, effective 2/19/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-926-110, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.84.040. WSR 89-01-015 (Order PM 802), § 308-183-100, filed 12/9/88.]

AMENDATORY SECTION (Amending WSR 06-01-103, filed 12/21/05, effective 1/21/06)

WAC 246-926-120 Therapeutic radiologic technologist—Alternative training. ~~((An individual shall have the following alternative training qualifications to be certified as))~~ (1) Alternative training for a therapeutic radiologic technologist~~((~~

~~(1) Have obtained))~~ may be obtained with the following:

(a) (i) A baccalaureate or associate degree in one of the physical, biological sciences, or allied health care professions~~((~~meets))~~);~~

(ii) Three clinical years supervised practice experience in therapeutic radiologic technology as provided in subsection (2) of this section; and

(iii) Completed course content as provided in subsection (3) of this section; or

(b) (i) Meet the requirements of this chapter for certification as a diagnostic radiologic technologist or nuclear medicine technologist; ~~((have obtained a minimum of three clinical years supervised practice experience in therapeutic radiologic technology; and completed course content areas outlined in subsection (2) of this section.~~

~~(2) The following course content areas of training may be obtained by))~~

(ii) Three clinical years supervised practice experience in therapeutic radiologic technology as provided in subsection (3) of this section; and

(iii) Completed course content as provided in subsection (2) of this section.

(2) Verified supervised clinical practice experience, with at least 50 percent of the clinical practice experience in operating a linear accelerator, in the following:

(a) Orientation to radiation therapy technology~~((~~))~~);~~

(b) Medical ethics and law~~((~~))~~);~~

(c) Methods of patient care~~((~~))~~);~~

(d) Computer applications~~((~~))~~);~~ and

(e) Medical terminology. ~~((At least fifty percent of the clinical practice experience must have been in operating a linear accelerator.~~

~~Clinical practice experience must be verified by the approved clinical evaluators.~~

~~The following course content areas of training must be obtained through))~~

~~(3) Verified formal education in the following:~~

~~(a) Human anatomy and physiology - 100 contact hours;~~

~~(b) Oncologic pathology - 22 contact hours;~~

~~(c) Radiation oncology - 22 contact hours;~~

~~(d) Radiobiology, radiation protection, and radiographic imaging - 73 contact hours;~~

~~(e) Mathematics (college level algebra or above) - 55 contact hours;~~

~~(f) Radiation physics - 66 contact hours;~~

~~(g) Radiation oncology technique - 77 contact hours;~~

~~(h) Clinical dosimetry - 150 contact hours;~~

~~(i) Quality assurance - 12 contact hours;~~

~~(j) Hyperthermia - 4 contact hours; and~~

~~(k) Sectional anatomy - 22 contact hours.~~

~~((3)) (4) Individuals participating in the therapeutic radiologic technologist alternative training program must annually report to the department ((of health radiologic technologist program)) the progress of their supervised clinical hours. Notification must be made in writing and must include the street and mailing address of their training program and the names of the individual's direct and indirect supervisors.~~

~~((4) Must pass an examination approved or administered by the secretary with a minimum scaled score of 75.~~

~~(5) Individuals who are registered as a therapeutic radiologic technologist by the American Registry of Radiologic Technologists shall be considered to have met the alternative education and training requirements.~~

~~((6)) (5) Individuals educated ((and/or)) or credentialed to practice as a therapeutic radiologic technologist in another country must provide official documentation of their education and training proving that they meet or exceed alternative training requirements. ((They must also pass an examination approved or administered by the secretary with a minimum scaled score of 75.))~~

~~(6) To meet the ARRT or NMTCB clinical experience requirements to sit for a computed tomography examination, a therapeutic radiologic technologist shall meet the following:~~

~~(a) Hold a current therapeutic radiologic technology certification issued by the secretary;~~

~~(b) Notify the department in writing of their intent to begin a training program for the purposes of meeting the clinical experience requirements for either the ARRT or NMTCB computed tomography examination, which must include:~~

~~(i) The street and mailing address of the training program;~~

~~(ii) The names of the designated training program supervisor or supervisors; and~~

~~(iii) The designated time frame within which the individual is working to qualify for a computed tomography examination;~~

~~(c) Report annually to the department the progress of their training including the number of clinical hours dedicated to computed tomography training and the number of computed tomography procedures performed and reported to either the ARRT or NMTCB; and~~

~~(d) Complete the clinical experience requirements within the time period set by the ARRT or NMTCB as reported under (b) (iii) of this~~

subsection. If the individual does not meet the clinical experience requirements within the designated time period, the training program is no longer valid and the individual must initiate a new training program.

[Statutory Authority: RCW 18.84.040. WSR 06-01-103, § 246-926-120, filed 12/21/05, effective 1/21/06. Statutory Authority: RCW 18.84.040 and 18.84.080. WSR 92-05-010 (Order 237), § 246-926-120, filed 2/7/92, effective 2/19/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-926-120, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.84.040. WSR 89-01-015 (Order PM 802), § 308-183-110, filed 12/9/88.]

AMENDATORY SECTION (Amending WSR 06-01-103, filed 12/21/05, effective 1/21/06)

WAC 246-926-130 Nuclear medicine technologist—Alternative training. (~~An individual shall have the following alternative training qualifications to be certified as~~) (1) Alternative training for a nuclear medicine technologist (~~(-~~

~~(1) Have obtained~~) may be obtained with the following:

(a) (i) A baccalaureate or associate degree in one of the physical, biological sciences, or allied health care professions (~~(-~~ ~~or~~ ~~meets~~)) ;

(ii) Two clinical years supervised practice experience in nuclear medicine technology as provided in subsection (2) of this section; and

(iii) Completed course content as provided in subsection (3) of this section; or

(b) (i) Meet the requirements of this chapter for certification as a diagnostic radiologic technologist or a therapeutic radiologic technologist; (have obtained a minimum of two clinical years supervised practice experience in nuclear medicine technology; and completed course content areas outlined in subsection (2) of this section.

~~(2) The following course content areas of training may be obtained by)~~

(ii) Two clinical years supervised practice experience in nuclear medicine technology as provided in subsection (2) of this section; and

(iii) Completed course content as provided in subsection (3) of this section.

(2) Verified supervised clinical practice experience in the following:

(a) Methods of patient care (~~(-~~ ~~)~~ ;

(b) Computer applications (~~(-~~ ~~)~~ ;

(c) Department organization and function (~~(-~~ ~~)~~ ;

(d) Nuclear medicine in vivo and in vitro procedures (~~(-~~ ~~)~~ ; and

(e) Radionuclide therapy.

~~((Clinical practice experience must be verified by the approved clinical evaluators.~~

~~The following course content areas of training must be obtained through))~~

(3) Verified formal education in the following:

(a) Radiation safety and protection - 10 contact hours;

(b) Radiation biology - 10 contact hours;

(c) Nuclear medicine physics and radiation physics - 80 contact hours;

(d) Nuclear medicine instrumentation - 22 contact hours;

(e) Statistics - 10 contact hours; and

(f) Radionuclide chemistry and radiopharmacology - 22 contact hours.

~~((3))~~ (4) Individuals participating in the nuclear medicine technologist alternative training program must annually report to the department (~~of health radiologic technologist program~~) the progress of their supervised clinical hours. Notification must be made in writing and must include the street and mailing address of their training program and the names of the individual's direct and indirect supervisors.

~~((4) Must pass an examination approved or administered by the secretary with a minimum scaled score of 75.~~

~~(5) Individuals who are registered as a nuclear medicine technologist with the American Registry of Radiologic Technologists or with the Nuclear Medicine Technology Certification Board shall be considered to have met the alternative education and training requirements.~~

~~(6))~~ (5) Individuals educated (~~and/or~~) or credentialed to practice as a nuclear medicine technologist in another country must provide official documentation of their education and training proving that they meet or exceed alternative training requirements (~~. They must also pass an examination approved or administered by the secretary with a minimum scaled score of 75~~) in this section.

(6) To meet the ARRT or NMTCB clinical experience requirements to sit for a computed tomography examination, a nuclear medicine technologist shall meet the following:

(a) Hold a current nuclear medicine technologist certification issued by the secretary;

(b) Notify the department in writing of their intent to begin a training program for the purposes of meeting the clinical experience requirements for either the ARRT or NMTCB computed tomography examination, which must include:

(i) The street and mailing address of the training program;

(ii) The names of the designated training program supervisor or supervisors; and

(iii) The designated time frame within which the individual is working to qualify for a computed tomography examination;

(c) Report annually to the department the progress of their training including the number of clinical hours dedicated to computed tomography training and the number of computed tomography procedures performed and reported to either the ARRT or NMTCB; and

(d) Complete the clinical experience requirements within the time period set by the ARRT or NMTCB as reported under (b) (iii) of this subsection. If the individual does not meet the clinical experience requirements within the designated time period, the training program is no longer valid and the individual must initiate a new training program.

[Statutory Authority: RCW 18.84.040. WSR 06-01-103, § 246-926-130, filed 12/21/05, effective 1/21/06. Statutory Authority: RCW 18.84.040 and 18.84.080. WSR 92-05-010 (Order 237), § 246-926-130, filed 2/7/92, effective 2/19/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-926-130, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.84.040. WSR 89-01-015 (Order PM 802), § 308-183-120, filed 12/9/88.]

NEW SECTION

WAC 246-926-135 Radiologic technologist—State examination/examination application deadline. (1) The ARRT certification examinations for radiography, radiation therapy technology, and nuclear medicine technology are the state examinations for certification as a radiologic technologist.

(2) The examination shall be conducted in accordance with the ARRT security measures and contract.

(3) Applicants taking the state examination must submit the application, supporting documents, and fees to the department for approval prior to being scheduled to take the examination.

(4) Examination candidates shall be advised of the results of their examination in writing by the department.

(5) The examination candidate must have a minimum scaled score of 75 to pass the examination.

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AMENDATORY SECTION (Amending WSR 10-10-043, filed 4/27/10, effective 5/28/10)

WAC 246-926-150 (~~Certification designation for diagnostic, therapeutic, or nuclear medicine radiologic technologists.~~) Diagnostic radiologic, therapeutic radiologic, and nuclear medicine technologists—Certification designation. A certificate shall be designated in a particular field of radiologic technology by:

(1) The educational program completed; diagnostic radiologic technologist - radiography program; therapeutic radiologic technologist - radiation therapy technology program; and nuclear medicine technologist - nuclear medicine technology program; or

(2) By meeting the alternative training requirements established in WAC 246-926-100 and 246-926-110, 246-926-120, or 246-926-130.

[Statutory Authority: RCW 18.84.040. WSR 10-10-043, § 246-926-150, filed 4/27/10, effective 5/28/10. Statutory Authority: RCW 18.84.040 and 18.84.080. WSR 92-05-010 (Order 237), § 246-926-150, filed 2/7/92, effective 2/19/92. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-926-150, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 18.84.040. WSR 89-01-015 (Order PM 802), § 308-183-140, filed 12/9/88.]

NEW SECTION

WAC 246-926-155 Diagnostic radiologic, therapeutic radiologic, and nuclear medicine technologists—Clarification of scope of practice.

The scope of practice for diagnostic, therapeutic, and nuclear medicine includes routine tasks such as patient positioning, providing instruction to patients about the imaging procedure, verifying informed consent, and documenting the imaging procedure and radiographic image in the patient's medical record. Radiographic images produced

may be in physical form, such as an X-ray film, or in digital format. The clarification of scope of practice for each type of radiologic technologist is as follows:

(1) Diagnostic. The procedures a diagnostic radiologic technologist performs include, but are not limited to:

- (a) Standard radiographs or basic or conventional X-rays;
- (b) Bone densitometry scans or dual-energy X-ray absorptiometry or DEXA scans;
- (c) Mammography;
- (d) Fluoroscopic procedures;
- (e) Computed tomography or CT;
- (f) Cardiovascular-interventional radiography; or
- (g) Other imaging studies involving parenteral procedures, excluding those advanced imaging procedures identified in WAC 246-926-300.

Nothing in subsection (1) of this section shall be construed to require that a diagnostic radiologic technologist obtain national certification for computed tomography.

(2) Therapeutic. A therapeutic radiologic technologist is part of an interdisciplinary radiation therapy treatment team which may include, but is not limited to, radiologists, radiation oncologists, medical physicists, and nurses. A therapeutic radiologic technologist implements medical dosimetry treatment plans that include, but are not limited to:

- (a) The use of imaging technologies for simulation and treatment planning;
- (b) The use of standard radiographs or CT to confirm or reconfirm position targets for precise treatment delivery;
- (c) The fabrication, and use, of individualized immobilization devices that assist in precision treatment delivery;
- (d) External beam radiation therapy or teletherapy, using methods such as:
 - (i) 3-dimensional conformal radiation therapy;
 - (ii) Intensity-modulated radiation therapy;
 - (iii) Image-guided radiation therapy;
 - (iv) Tomotherapy;
 - (v) Proton therapy; or
 - (vi) Other charged particle beams;
- (e) Participation in the delivery of internal radiation therapy or brachytherapy, under the supervision of a radiation oncologist. However, a therapeutic radiologic technologist cannot perform invasive, surgical procedures;
- (f) Systemic radiation therapy, which uses radioactive substances such as radioactive iodine;
- (g) Palliative radiation therapy, which is used to treat pain from bone metastases;
- (h) Dosimetry, under the supervision of a medical physicist to design, calculate, and generate effective radiation dose distributions; or
- (i) Diagnostic CT, provided the therapeutic radiologic technologist has successfully passed a national certification examination in computed tomography administered by the ARRT or NMTCB.

(3) Nuclear medicine. A nuclear medicine technologist prepares, stores, administers, and disposes of radiopharmaceuticals, which includes sealed and unsealed radioactive materials, for diagnostic, treatment, and research purposes in compliance with radioactive mate-

rials laws and rules. The procedures performed at the direction of a licensed practitioner include, but are not limited to:

- (a) Nuclear imaging tests such as:
 - (i) Positron-emission tomography or PET;
 - (ii) Single photon emission computed tomography or SPECT;
 - (iii) Fusion, hybrid, or simultaneous scanning that combines positron-emission tomography with:
 - (A) Computed tomography, or PET/CT; or
 - (B) Magnetic resonance imaging, or PET/MRI;
 - (iv) Fusion, hybrid, or simultaneous scanning that combines single photon emission computed tomography with:
 - (A) Computed tomography or SPECT/CT; or
 - (B) Magnetic resonance imaging or SPECT/MRI;
 - (v) Planar imaging or dynamic imaging procedures;
- (b) Assists in exercise and pharmacologic cardiac testing procedures;
- (c) Assists in the preparation, management, and application of radionuclide therapy treatment;
- (d) Collection and labeling of tissue or body fluid samples;
- (e) Managing and proper disposal of biohazardous, chemical, or radioactive waste materials following applicable federal and state laws;
- (f) Diagnostic computed tomography, provided the nuclear medicine technologist has successfully passed a national certification examination in computed tomography administered by the NMTCB or ARRT.

[]

NEW SECTION

WAC 246-926-165 Radiologic technologist—Military equivalency of certification requirements. (1) The department accepts military education, training, or experience as described in subsections (4) through (8) of this section as meeting the corresponding education, training, or experience requirements.

(2) For the purposes of this section, these terms shall have the following meaning:

- (a) "CAAHEP" means the Commission on Accreditation of Allied Health Education Programs and includes its prior organization, the Committee on Allied Health Education and Accreditation (CAHEA).
- (b) "JRCCVT" means the Joint Review Committee on Education in Cardiovascular Technology.
- (c) "JRCERT" means the Joint Review Committee on Education in Radiologic Technology.
- (d) "JRCNMT" means the Joint Review Committee on Educational Programs in Nuclear Medicine Technology.
- (e) "METC" means the Department of Defense, Defense Health Agency, Medical Education and Training Campus.

(3) Acceptable documentation to verify radiologic technology education, training, and experience for current or former U.S. Military service members includes:

- (a) A copy of the service member's Certificate of Release or Discharge from Active Duty (DD Form 214, Member-4 copy; or NGB-22 for National Guard);

(b) Joint Service Transcript or JST/Sailor-Marine American Council on Education Registry Transcript or SMART;

(c) Army American Council of Education, or ACE, Registry Transcript System or AARTS;

(d) Application for the Evaluation of Learning Experiences During Military Service (DD Form 295) certified by the service member's service branch; or

(e) Any other military transcripts and forms that document the service member's military training and experience, such as the Community College of the Air Force or CCAF.

(4) For diagnostic radiologic technologists, the following are the acceptable military education, training, or experience:

(a)(i) The METC Tri Service Radiology program has been JRCERT accredited since 2011 and meets the school approval requirement in WAC 246-926-095;

(ii) Formal pre-METC U.S. Army, Navy, or Air Force radiologic technologist diagnostic-radiographer education programs have been determined by the department to meet the requirements in WAC 246-926-110;

(iii) Informal U.S. Army, Navy, or Air Force radiologic technologist diagnostic-radiographer education programs, such as U.S. Navy on-the-job training commonly referred to as "fast track," must meet all the requirements in WAC 246-926-110; or

(iv) The secretary will review U.S. Coast Guard education, training, and experience on a case-by-case basis to determine if training and scope of practice meets the requirements in WAC 246-926-110.

(b) All applicants applying under (a) of this subsection must provide proof of successful passage of the ARRT radiographer radiologic technologist examination or the Washington state examination identified in WAC 246-926-135, with the exception of those applicants who completed a pre-METC program that was accredited by the JRCERT at the time the applicant completed it.

(5) For therapeutic radiologic technologists, the following are the acceptable military education, training, or experience:

(a)(i) As of the effective date of this rule, METC does not offer a therapeutic radiologic technologist education program. Formal pre-METC U.S. Army, Navy, or Air Force therapeutic radiologic technologist education programs have been determined by the department to meet the requirements in WAC 246-926-120;

(ii) Informal U.S. Army, Navy, or Air Force therapeutic radiologic technologist education programs must meet all the requirements in WAC 246-926-120; or

(iii) The department will review U.S. Coast Guard education, training, and experience on a case-by-case basis to determine if training and scope of practice meets the requirements in WAC 246-926-120.

(b) All applicants applying under (a) of this subsection must provide proof of successful passage of the ARRT therapeutic radiologic technologist examination or the Washington state examination identified in WAC 246-926-135.

(6) For nuclear medicine technologists, the following are the acceptable military education, training, or experience:

(a)(i) As of the effective date of this rule, METC does not offer a JRCNMT accredited nuclear medicine technologist education program. Formal pre-METC U.S. Army, Navy, or Air Force radiologic technologist nuclear medicine programs completed from June 1, 1972, through August 31, 2012, meets the school approval requirement in WAC 246-926-095;

(ii) The METC nuclear medicine technologist education program is accredited by the ARRT. The department has determined this program meets the requirements in WAC 246-926-130;

(iii) Nonaccredited formal nuclear medicine education programs not identified in subsection (4)(a) of this section has been determined by the department to meet the requirements in WAC 246-926-130;

(iv) Informal U.S. Army, Navy, or Air Force radiologic technologist nuclear medicine education programs must meet all the requirements in WAC 246-926-130; or

(v) The department will review U.S. Coast Guard education, training, and experience on a case-by-case basis to determine if training and scope of practice meets the requirements in WAC 246-926-130.

(b) All applicants applying under (a) of this subsection must provide proof of successful passage of the NMTCB examination, the ARRT nuclear medicine technology examination, or the Washington state examination identified in WAC 246-926-135.

(7) For cardiovascular invasive specialists, the following are acceptable military education, training, or experience:

(a)(i) The METC cardiovascular technologist education program is CAAHEP accredited, which includes JRCCVT accreditation, and meets the school approval requirement in WAC 246-926-410. Formal pre-METC U.S. Army, Navy, or Air Force cardiovascular technologist education programs that were accredited by CAAHEP, which includes its prior organization CAHEA, also meet the school approval requirement in WAC 246-926-410;

(ii) Formal pre-METC U.S. Army, Navy, or Air Force cardiovascular technologist education programs that were not accredited by CAAHEP or CAHEA have been determined by the department to meet the requirements in WAC 246-926-410 (1)(a);

(iii) Informal U.S. Army, Navy, or Air Force cardiovascular technologist education programs, such as on-the-job U.S. Navy training commonly referred to as "fast track," must meet all the requirements in WAC 246-926-410 (1)(a) and (b); or

(b) The department will review U.S. Coast Guard education, training, and experience on a case-by-case basis to determine if training and scope of practice meets the requirements in WAC 246-926-410.

(c) All applicants applying under (a) of this subsection must provide proof of successful passage of an examination identified in WAC 246-926-410 (1)(b) or (2).

(8) Radiologist assistant. There is currently no radiologist assistant-equivalent occupation in the U.S. Army, Navy, Air Force, or Coast Guard. The department will review an individual's military training and experience record on a case-by-case basis; however, individuals who have obtained a passing score on the ARRT registered radiologist assistant examination shall be considered to have met the education and training requirements for certification as a radiologist assistant.

[]

AMENDATORY SECTION (Amending WSR 15-24-093, filed 11/30/15, effective 12/31/15)

WAC 246-926-180 Parenteral procedures. (1) For the purposes of this section, these terms shall have the following meaning:

~~(a) ("Diagnostic agent" means a substance used in radiologic technology to reveal, pinpoint, and define the localization of a pathological process, such as contrast preparations, radioactive isotopes, and dyes.~~

~~(b)) "Parenteral administration" means introducing a substance or medication into the body in a manner other than through the digestive canal or by topical application.~~

~~((e)) (b) "Therapeutic agent" means a medication or substance intended for medical treatment in the radiologic technology domain.~~

~~((d) "Venipuncture" means a procedure to puncture a vein to withdraw blood or to start intravenous infusion related to radiologic technology, but does not include the insertion of peripherally inserted central catheter (PICC) lines.)~~

(2) A certified ~~((diagnostic or therapeutic))~~ radiologic technologist may administer diagnostic and therapeutic agents consistent with their specific scope of practice via intravenous, intramuscular, or subcutaneous injection, under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW. This includes accessing PICC lines and ports for manual or power injections for procedures related to radiologic technology. PICC lines and injection ports must be of a type approved by the federal Food and Drug Administration for administering diagnostic or therapeutic agents in radiologic technology. This does not include intraosseous infusion or intrathecal administration.

(3) Before the radiologic technologist may administer diagnostic and therapeutic agents, the following must be met:

(a) The radiologic technologist has had the prerequisite training and thorough knowledge of the particular procedure to be performed;

(b) Appropriate facilities are available for coping with any complication of the procedure as well as for emergency treatment of severe reactions to the diagnostic or therapeutic agent itself, including readily available appropriate resuscitative drugs, equipment, and personnel; and

(c) After parenteral administration of a diagnostic or therapeutic agent, competent personnel and emergency facilities must be available to the patient for at least ~~((thirty))~~ 30 minutes in case of a delayed reaction.

(4) A cardiovascular invasive specialist may administer parenteral diagnostic and therapeutic agents during cardiac or vascular catheterization procedures under the personal supervision of a physician licensed under chapter 18.71 or 18.57 RCW. Parenteral administration includes, but is not limited to, catheterization procedures involving arteries and veins.

(5) A certified radiologic technologist or cardiovascular invasive specialist may perform venipuncture under the direct supervision of a physician licensed under chapter 18.71 or 18.57 RCW.

[Statutory Authority: RCW 18.84.040. WSR 15-24-093, § 246-926-180, filed 11/30/15, effective 12/31/15. Statutory Authority: RCW 18.84.040 and 43.70.250. WSR 12-10-094, § 246-926-180, filed 5/2/12, effective 5/3/12. Statutory Authority: RCW 18.84.040. WSR 10-10-043, § 246-926-180, filed 4/27/10, effective 5/28/10; WSR 06-01-104, § 246-926-180, filed 12/21/05, effective 1/21/06. Statutory Authority: RCW 43.70.040. WSR 92-19-060 (Order 302), § 246-926-180, filed 9/11/92, effective 10/12/92; WSR 91-02-049 (Order 121), recodified as § 246-926-180, filed 12/27/90, effective 1/31/91. Statutory Authority:

RCW 18.84.040. WSR 89-01-015 (Order PM 802), § 308-183-170, filed 12/9/88.]

AMENDATORY SECTION (Amending WSR 10-10-043, filed 4/27/10, effective 5/28/10)

WAC 246-926-300 Radiologist assistant scope of practice. (1)

For the purposes of this section, "diagnostic agent" means a substance used in radiologic technology to reveal, pinpoint, and define the localization of a pathological process, such as contrast preparations, radioactive isotopes, and dyes.

(2) In addition to diagnostic radiologic technologist tasks in WAC 246-926-165, a radiologist assistant may perform advanced diagnostic imaging procedures under the direction of a supervising radiologist. Those procedures include, but are not limited to:

- (a) Enteral and parenteral procedures;
- (b) Injecting diagnostic agents to sites other than intravenous;
- (c) Diagnostic aspirations and localizations; and
- (d) Assisting radiologists with other invasive procedures.

~~((2))~~ (3) The tasks a radiologist assistant may perform include the following:

- (a) Preimaging procedures.
 - (i) Procedures that may be performed under general supervision:
 - (A) Review of medical records to verify patient and procedure; obtain medical history and vital signs; perform physical examination, evaluate medical record, history, and physical examination for contraindications for the procedure (~~((e.g.,))~~) for compliance with preparation instructions for the procedure, pregnancy, medications(~~((+))~~). Discrepancies (~~(and/or)~~) and contraindications must be reviewed with the supervising radiologist;
 - (B) Discuss (~~((examination/procedure))~~) examination and procedure details, (~~((+))~~) including risks, benefits, and follow-up instructions(~~((+))~~) with patient or patient representative;
 - (C) Obtain informed consent, (~~((+))~~) patients must be able to communicate with the radiologist for questions or further information as needed(~~((+))~~);
 - (D) Apply electrocardiography (~~((ECG))~~) or leads and recognize life threatening abnormalities;
 - (E) Routine urinary catheterization;
 - (F) Venipuncture;
 - (G) Administer oxygen as prescribed; and
 - (H) Position patients to perform required procedure, using immobilization devices and modifying technique as necessary.
 - (ii) Procedures that may be performed under direct supervision:
 - Nonroutine catheterization (~~((+))~~) for known anatomic anomalies, recent surgeries(~~((+))~~).
- (b) Pharmaceuticals.
 - (i) Imaging agent procedures that may be performed under general supervision:
 - (A) Monitor intravenous (~~((+))~~) IV(~~((+))~~) or flow rate; and
 - (B) Monitor patients for side effects or complications and report findings to the supervising radiologist as appropriate.
 - (ii) Imaging contrast agent under direct supervision:
 - (A) Administer contrast agents (~~(and/or)~~) and radiopharmaceuticals as prescribed by the radiologist; and

- (B) Provide information to patients on the effects and potential side effects of the pharmaceutical required for the examination.
- (iii) Oral medications, excluding imaging agents, always require direct supervision.
- (iv) Parenteral medication administration procedures, excluding imaging agents, requiring direct supervision:
- (A) Monitor IV flow rate; and
- (B) Monitor patients for side effects or complications and report findings to the supervising radiologist as appropriate.
- (v) Parenteral medication administration procedures, excluding imaging agents, requiring personal supervision:
- (A) Administer general medications as prescribed by the radiologist;
- (B) Administer conscious sedation medications as prescribed by the radiologist; and
- (C) Provide information to patients on the effects and potential side effects of the pharmaceutical required for the examination.
- (c) Imaging procedures.
- (i) Procedures that may be performed under general supervision:
- (A) Operate a (~~fixed/mobile~~) fixed or mobile fluoroscopic unit;
- (B) Document fluoroscopy time; and
- (C) Assess patient's vital signs and level of anxiety (~~and/or~~) and pain, (~~and~~) inform the radiologist when appropriate.
- (ii) Fluoroscopic examinations and procedures that require direct supervision:
- (A) Upper GI;
- (B) Esophagus;
- (C) Small bowel studies;
- (D) Barium enema;
- (E) Cystogram, including voiding cystourethrogram or VCUG;
- (F) T-tube cholangiogram;
- (G) Hysterosalpingogram ((+)) for imaging only((+)) if OB/GYN is present in the room;
- (H) Retrograde urethrogram;
- (I) Nasoenteric and oroenteric feeding tube placement;
- (J) Port injection;
- (K) Fistulogram/sonogram;
- (L) Loopogram; and
- (M) Swallowing study.
- (iii) Fluoroscopic examinations and procedures that require personal supervision: Hysterosalpingogram ((+)) for imaging only((+)) if OB/GYN is not present in the room.
- (iv) Contrast media administration and needle or catheter placement.
- (A) Procedures that may be performed under general supervision: Basic (~~peripherally inserted central catheter (-)~~) PICC((+)) placement.
- (B) Procedures that may be performed under direct supervision:
- (I) Joint injection and aspiration;
- (II) Arthrogram ((+)) for conventional, (~~computed tomography (-CT)) CT~~, and magnetic resonance (~~(-MR))~~);
- (III) Complex (~~peripherally inserted central catheter (-)~~) PICC((+)) placement;
- (IV) Thoracentesis and paracentesis with appropriate image guidance; (~~and~~)
- (V) Lower extremity venography;
- (VI) Lumbar puncture under fluoroscopic guidance; and
- (VII) Lumbar, thoracic, and cervical myelogram.

(C) Procedures that may be performed under personal supervision:

(I) ~~((Lumbar puncture under fluoroscopic guidance;~~

~~(II) Lumbar, thoracic, and cervical myelogram;~~

~~(III))~~ Nontunneled venous central line placement;

~~((IV))~~ (II) Venous catheter placement for dialysis;

~~((V))~~ (III) Breast needle localization; and

~~((VI))~~ (IV) Ductogram (galactogram).

(d) Image review, requires general supervision:

(i) Evaluate images for completeness and diagnostic quality;

(ii) Recommend additional images in the same modality as required

((+)) for general radiography, CT, ~~((MR))~~ or magnetic resonance;

(iii) Evaluate images for diagnostic utility and report clinical observations to the radiologist;

(iv) Review imaging procedures, make initial observations, and communicate observations only to the radiologist; and

(v) Perform post-processing procedures:

(A) Routine CT ~~((e.g., r))~~ for 3D reconstruction, modifications to field of vision ~~((FOV))~~, slice spacing, or algorithm((+));

(B) Specialized CT ~~((e.g., r))~~ for cardiac scoring((r)) or shunt graft measurements((+)); and

(C) ~~((MR))~~ Magnetic resonance data analysis ~~((e.g., r))~~ for 3D reconstructions, maximum intensity projection ~~((MIP))~~, 3D surface rendering, or volume rendering((+)).

(e) Postprocedures, requires general supervision:

(i) Record previously communicated initial observations of imaging procedures according to approved protocols;

(ii) Communicate radiologist's report to referring physician;

(iii) Provide radiologist-prescribed post care instructions to patients;

(iv) Perform follow-up patient evaluation and communicate findings to the radiologist;

(v) Document procedure in appropriate record and document exceptions from established protocol or procedure; and

(vi) Write patient discharge summary for review and cosignature by radiologist.

(f) Other procedures.

(i) Procedures that may be performed under general supervision:

(A) Participate in quality improvement activities within radiology practice ~~((e.g., r))~~ for quality of care, patient flow, reject-repeat analysis, or patient satisfaction((+)); and

(B) Assist with data collection and review for clinical trials or other research.

(ii) Procedures that may be performed under personal supervision: Additional procedures deemed appropriate by the radiologist.

(g) When performing any task or procedure, the radiologist assistant must be able to recognize and respond to medical emergencies ~~((e.g., r))~~ for drug reactions, cardiac arrest, or hypoglycemia((+)); and activate emergency response systems, including notification of the radiologist.

~~((3))~~ (4) Initial findings and observations made by a radiologist assistant communicated solely to the supervising radiologist do not constitute diagnoses or interpretations.

~~((4))~~ (5) At the direction of the supervising radiologist, a radiologist assistant may administer imaging agents and prescribed medications; however, nothing in this chapter allows a radiologist assistant to prescribe medications.

[Statutory Authority: RCW 18.84.040. WSR 10-10-043, § 246-926-300, filed 4/27/10, effective 5/28/10.]

AMENDATORY SECTION (Amending WSR 17-18-100, filed 9/6/17, effective 10/7/17)

WAC 246-926-310 (~~(What are the requirements to be certified as a radiologist assistant?)~~) **Radiologist assistant—Certification.** (~~((1) Individuals wanting to be certified)~~) To obtain certification as a radiologist assistant, an applicant must submit:

- ~~((a) Graduate from an educational program recognized by the ARRT;~~
- ~~(b) Obtain a passing score on the national ARRT registered radiologist assistant examination; and~~
- ~~(c) Submit the application, supporting documents, and fees to the department of health.~~
- ~~(2) An individual certified as a radiologist practitioner assistant through the certification board of radiology practitioner assistants who takes and passes the national ARRT registered radiologist assistant examination by December 31, 2011, shall be considered to have met the education and examination requirements for certification as a radiologist assistant.~~
- ~~(3) Military education, training, and experience may meet certification requirements as outlined in WAC 246-926-145))~~ (1) A completed application on forms provided by the secretary;
- (2) Proof of successfully passing an examination in radiologist assistant administered by ARRT;
- (3) Proof of completed education in one of the following:
 - (a) Graduate from an education program recognized by ARRT;
 - (b) Military education, training, and experience listed in WAC 246-926-155; or
 - (c) Hold a radiologist practitioner assistant certification with the certification board of radiology practitioner assistants by passing the national ARRT registered radiologist assistant examination;
- (4) Written verification of any licenses held, submitted directly from that licensing entity;
- (5) Applicable fees defined in WAC 246-926-990; and
- (6) Any other information determined by the secretary.

[Statutory Authority: RCW 18.84.080(3), 18.84.090, and 43.70.280. WSR 17-18-100, § 246-926-310, filed 9/6/17, effective 10/7/17. Statutory Authority: RCW 18.84.040. WSR 10-10-043, § 246-926-310, filed 4/27/10, effective 5/28/10.]

AMENDATORY SECTION (Amending WSR 12-10-094, filed 5/2/12, effective 5/3/12)

WAC 246-926-400 Cardiovascular invasive specialist scope of practice. (1) A cardiovascular invasive specialist assists in cardiac or vascular catheterization procedures in the role of either:

(a) A monitoring technologist, who documents every action during a catheterization procedure and monitors the patient's status, reporting any irregularities to the surgical team;

(b) A circulating technologist, who provides assistance to the surgical team from outside the sterile field; or

(c) A sterile/scrub technologist, who directly assists the physician during the catheterization procedure.

Except as provided in subsection (8) of this section, no cardiovascular invasive specialist shall perform the tasks of more than one role during any individual procedure. All intraprocedure tasks in any role must be performed under personal supervision.

(2) The preprocedure tasks a cardiovascular invasive specialist may perform in any role include:

(a) Prepare sterile table and necessary supplies;

(b) Verify patient identification;

(c) Verify or facilitate patient consent;

(d) Verify history and physical information to include:

(i) Chief complaint;

(ii) History of present illness;

(iii) Current medications;

(iv) Laboratory results;

(v) Test reports, as necessary, such as X-rays (~~(and/or)~~) and electrocardiograms (~~(ECG)~~);

(vi) Past medical history;

(vii) Family and social history; and

(e) Obtain blood samples as allowed under WAC 246-926-180(3).

(3) The intraprocedure and post-procedure tasks a cardiovascular invasive specialist may perform in the role of a monitoring technologist include:

(a) Operate physiologic monitoring and recording equipment;

(b) Capture and input data for procedural calculations;

(c) Monitor, identify, measure, and record information from electrocardiograms (~~(+)~~) or ECG(~~(+)~~), intracardiac electrograms, and pressure waveforms;

(d) Document each step and action during a procedure; and

(e) Inform the physician and team members of noted abnormalities.

(4) The intraprocedure tasks a cardiovascular invasive specialist may perform in the role of a (~~(sterile/scrub)~~) sterile or scrub technologist include:

(a) Administer local anesthetic as allowed under WAC 246-926-180;

(b) Gain (~~(arterial/venous)~~) arterial or venous access;

(c) Insert and flush vascular sheath;

(d) Assist with insertion and manipulation of guidewires, catheters, and pacing leads;

(e) Assist with implantation of leads and devices for implantable devices, such as pacemakers or implantable cardioverter-defibrillators (~~(+)~~) or ICDs(~~(+)~~);

(f) Close implantable device pockets;

(g) Assist in ablation of intracardiac lesions;

(h) Assist with performing intracardiac mapping;

(i) Assist with performing intracardiac lead extraction;

(j) Assist with obtaining invasive hemodynamic data, cardiac outputs, and blood samples;

(k) Inject contrast as allowed under WAC 246-926-180 for visualizing cardiovascular anatomical structures either manually or with the aid of a mechanical contrast device;

(l) Administer medications related to cardiac or vascular catheterization as directed by the physician;

(m) Assist with obtaining tissue samples for biopsy; and

(n) Operate intravascular (~~(ultrasound/intracardiac)~~) ultrasound or intracardiac echocardiography ((IVUS/ICE)), fluoroscopy, and other imaging modalities excluding computed tomography as defined in WAC 246-226-010(1).

(5) The intraprocedure tasks a cardiovascular invasive specialist may perform in the role of a circulating technologist include:

(a) Maintain sterile field and equipment supply;

(b) Set-up and operate ancillary equipment to include:

(i) Contrast injectors;

(ii) IVUS/ICE;

(iii) Fractional flow reserve/coronary flow reserve (FFR/CFR);

(iv) Atherectomy/thrombectomy devices and consoles;

(v) Intra-aortic balloon pump;

(vi) Percutaneous ventricular assist devices;

(vii) Pacemakers, automated implantable cardioverter defibrillators (AICD), and temporary pacemakers;

(viii) Pacemaker and AICD programmers;

(ix) Ablation devices;

(x) Intracardiac mapping devices;

(xi) Lead extraction devices;

(xii) Electrophysiologic stimulators;

(xiii) Other diagnostic, interventional, and mechanical support devices;

(xiv) Activated coagulation time (ACT) and other coagulation studies;

(xv) Whole blood oximetry; and

(xvi) Arterial blood gas (ABG).

(6) The post-procedure access site tasks a cardiovascular invasive specialist may perform in the role of either circulating technologist or sterile/scrub technologist include the following:

(a) Manually remove vascular sheath/catheter;

(b) Secure retained sheath/catheter;

(c) Use compression devices;

(d) Use vascular closure devices; and

(e) Instruct patient on care of site.

(7) The post-procedure patient care tasks a cardiovascular invasive specialist may perform in any role include the following:

(a) Monitor and assess patient (~~(ECG, vital signs)~~) heart rate, blood pressure, respiratory rate, oxygen saturation, and level of consciousness;

(b) Identify, monitor, and compress rebleeds (~~(and/or)~~) and hematomas;

(c) Assess distal pulses; and

(d) Document patient chart as appropriate.

(8) On an individual case basis and at the sole discretion of the physician, a cardiovascular invasive specialist may assume the dual role of monitoring and circulating technologist during an individual procedure. Such dual role approval shall be documented in the patient chart.

(9) Nothing in this chapter shall be interpreted to alter the scope of practice of any other credentialed health profession or to limit the ability of any other credentialed health professional to assist in cardiac or vascular catheterization if such assistance is within the profession's scope of practice.

[Statutory Authority: RCW 18.84.040 and 43.70.250. WSR 12-10-094, § 246-926-400, filed 5/2/12, effective 5/3/12.]

AMENDATORY SECTION (Amending WSR 17-18-100, filed 9/6/17, effective 10/7/17)

WAC 246-926-410 ((Requirements for)) Cardiovascular invasive specialist certification. ~~((1) Applicants for))~~ To obtain certification as a cardiovascular invasive specialist, the applicant must ((meet the following requirements)) submit:

~~((a) Graduate))~~ (1) A completed application on forms provided by the secretary;

(2) Proof of completed education in one of the following:

(a) Graduation from an educational program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) utilizing the standards and criteria established by the Joint Review Committee on Education in Cardiovascular Technology (JRC-CVT); ~~((and~~

~~(b) Obtain a passing score on the national Registered Cardiovascular Invasive Specialist (RCIS) examination administered by Cardiovascular Credentialing International (CCI).~~

~~(2) Individuals who have been certified or registered))~~ or

(b) Military education, training, and experience listed in WAC 246-926-155; or

(c) Hold certification or registration with one of the following national organizations ((shall be considered to have met the education and training requirements)):

~~((a) CCI))~~ (i) Cardiovascular Credentialing International through the ((RCIS)) Registered Cardiovascular Invasive Specialist examination, formerly the Registered Cardiovascular Technologist examination or the Certified Cardiovascular Technologist examination; or

~~((b) CCI))~~ (ii) Cardiovascular Credentialing International through the Registered Cardiac Electrophysiology Specialist ((RCES)) examination; or

~~((c))~~ (iii) Heart Rhythm Society ((HRS)) through the International Board of Heart Rhythm Examiners ((IBHRE)), formerly the North American Society of Pacing and Electrophysiology ((NASPE)) examination; or

~~((d))~~ (iv) ARRT through the Cardiac Interventional Radiographer ((RTR-CI)) post-primary examination, the Vascular Interventional Radiographer ((RTR-VI)) post-primary examination, or the Cardiovascular Interventional Radiographer ((RTR-CV)) post-primary examination((-));

~~(3) ((Military education, training, and experience may meet certification requirements as outlined in WAC 246-926-145.))~~ Proof of successfully passing the national Registered Cardiovascular Invasive Specialist examination administered by Cardiovascular Credentialing International;

(4) Written verification of any licenses held, submitted directly from that licensing entity;

(5) Applicable fees defined in WAC 246-926-990; and

(6) Any other information determined by the secretary.

[Statutory Authority: RCW 18.84.080(3), 18.84.090, and 43.70.280. WSR 17-18-100, § 246-926-410, filed 9/6/17, effective 10/7/17. Statutory

Authority: RCW 18.84.040 and 43.70.250. WSR 12-10-094, § 246-926-410, filed 5/2/12, effective 5/3/12.]

NEW SECTION

WAC 246-926-500 X-ray technician registration requirements. To obtain registration as an X-ray technician an applicant must submit:

- (1) An completed application on forms provided by the secretary;
- (2) Written verification of any licenses held, submitted directly from that licensing entity;
- (3) Applicable fees as defined in WAC 246-926-990; and
- (4) Any other information determined by the secretary.

[]

NEW SECTION

WAC 246-926-510 X-ray technician—Competency requirements and authorized duties. (1) A registered X-ray technician operating X-ray equipment shall meet the competency requirements in WAC 246-225-99920 to produce radiographic images in physical form, such as X-ray film.

(2) The authorized duties a registered X-ray technician may perform under the direction of a licensed practitioner are:

- (a) Standard radiographs or basic or conventional X-rays; and
- (b) Bone densitometry scans or dual-energy X-ray absorptiometry or DEXA scans.

(3) Procedures a registered X-ray technician cannot perform include, but are not limited to:

- (a) Any imaging procedure that involves parenteral procedures;
- (b) Any procedures identified in:
 - (i) WAC 246-926-300;
 - (ii) WAC 246-926-400;
 - (iii) WAC 246-926-165, other than those procedures identified in this section as being allowed; and
- (c) Mammography, in accordance with 21 C.F.R. Sec. 900.12(2).

[]

NEW SECTION

WAC 246-926-600 Expired certifications and registrations. (1) If the license has expired for three years or less, the practitioner must meet the requirements of WAC 246-12-040.

(2) If the license has expired for over three years, the practitioner must:

- (a) Demonstrate competence to the standards established by the secretary; and
- (b) Meet the requirements of WAC 246-12-040.

[]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 246-926-040	Health care institutions.
WAC 246-926-050	Radiological technologist associations or societies.
WAC 246-926-060	Professional liability carriers.
WAC 246-926-070	Courts.
WAC 246-926-080	State and federal agencies.
WAC 246-926-090	Cooperation with investigation.
WAC 246-926-140	Approved schools for diagnostic, therapeutic, or nuclear medicine radiologic technologists.
WAC 246-926-145	Military equivalency.
WAC 246-926-170	Expired license.
WAC 246-926-190	State examination/examination waiver/examination application deadline for diagnostic, therapeutic, or nuclear medicine radiologic technologists.

WSR 23-13-113

PROPOSED RULES

DEPARTMENT OF HEALTH

(Board of Physical Therapy)

[Filed June 21, 2023, 7:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-01-047.

Title of Rule and Other Identifying Information: Health equity continuing education (CE) for the physical therapy and physical therapy assistant profession, WAC 246-915-085. The board of physical therapy (board) is proposing an amendment in rule to establish health equity CE requirements to implement ESSB 5229.

Hearing Location(s): On August 21, 2023, at 10:15 a.m. The board will provide a virtual and a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. Hearing at Lacey Community Center, 6729 Pacific Avenue S.E., Lacey, WA 98502; or virtual. Please follow this link to register for the virtual hearing which will give you instructions to either join the meeting on a device, or to call in to the meeting on the phone, https://us02web.zoom.us/webinar/register/WN_aEfgV8UHSdy2kt2nrGjf6w.

Date of Intended Adoption: August 21, 2023.

Submit Written Comments to: Allyson McIver, Program Manager, P.O. Box 47877, Olympia, WA 98504-7877, email physical.therapy@doh.wa.gov, fax 360-236-2901, <https://fortress.wa.gov/doh/policyreview>, by August 14, 2023.

Assistance for Persons with Disabilities: Contact Allyson McIver, program manager, phone 360-236-2878, fax 360-236-2902, TTY 711, email physical.therapy@doh.wa.gov, by August 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.613 (3)(b) directs the rule-making authority for each health profession licensed under Title 18 RCW that is subject to CE to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directs the department of health (department) to create model rules establishing the minimum standards for health equity CE programs. The department filed model rules for health equity CE minimum standards on November 23, 2022, under WSR 22-23-167. Any rules developed for the board must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The board is proposing an amendment to WAC 246-915-085 to implement ESSB 5229. The proposal will adopt and exceed the health equity model rules, WAC 246-12-800 through 246-12-830, for the physical therapy and physical therapy assistant profession to comply with RCW 43.70.613, increasing the frequency of when the health equity education CE must be taken. The proposed rules add two hours of health equity education to be completed as part of the current CE requirements every two years. This exceeds the two hours of health equity education to be completed every four years required in the model rules. The proposed rule requires two hours in health equity CE every two years which can be counted under existing CE requirements for the profession. No additional topics are being added to the model rules requirements.

Reasons Supporting Proposal: The goal of health equity CE is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of health equity trainings include implicit bias trainings to identify strategies to

reduce bias during assessment and diagnosis in an effort to address structural factors, such as bias, racism, and poverty, that manifest as health inequities.

The board believes in the importance of health equity training and that increasing the required hours to two hours every two years allows individuals to develop a strong foundation in health equity with a more immediate positive impact on the professional's interaction with those receiving care. Health equity training enables health care professionals to care effectively for patients from diverse cultures, groups, and communities, varying race, ethnicity, gender identity, sexuality, religion, age, ability, socioeconomic status, and other categories of identity. The two hours of health equity CE credits every two years may be earned as part of the health professional's existing CE requirements, therefore not requiring completion of additional CE hours. No additional topics are being added to the model rules requirements.

Statutory Authority for Adoption: RCW 43.70.613, 18.74.023.

Statute Being Implemented: Chapter 18.74 RCW.

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

Name of Proponent: Department of health, board of physical therapy, governmental.

Name of Agency Personnel Responsible for Drafting: Davis Hylkema, Interim Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4633; Implementation and Enforcement: Allyson McIver, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2878.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Allyson McIver, P.O. Box 47877, Olympia, WA 98504-7877, phone 360-236-2901, fax 360-236-2901, email physical.therapy@doh.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

May 23, 2023

Kathryn Dale, PT, DSc, Chair
Board of Physical Therapy

OTS-4534.1

AMENDATORY SECTION (Amending WSR 21-20-009, filed 9/23/21, effective 10/24/21)

WAC 246-915-085 Continuing competency. (1) Every two years, a physical therapist shall complete (~~thirty-two~~) 32 hours of continuing education (CE) through any of the following means:

	CE Type	Maximum Hours Allowed	Documentation Requirements
a.	Participation in a course, live or online, including recorded.	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.
b.	Live or recorded instructional electronic media relating to the practice of physical therapy that does not include specific goals and objectives.	Four hours	Instead of course goals, objectives and certificate of completion, the PT shall write and submit to the department a minimum of two takeaways for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The PT shall write and submit to the department a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	Sixteen hours	The PT shall submit to the department a description and objectives of the presentation, date, and location of presentation.
e.	Written preparation and publication of original scholarly research or work published in a peer-review journal.	Ten hours	The PT shall submit to the department proof of publication which may include poster presentations.
f.	Clinical instruction of physical therapy students enrolled in a physical therapy educational program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	Ten hours	The PT shall obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. Each thirty-two hours of student mentorship equals one hour for purposes of CE credit.
g.	Courses required for professional certification such as to work in public schools.	Fifteen hours	The PT shall submit a copy of the completion certificate to the department.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PT's competence.	No limit	The PT shall submit a transcript to the department verifying courses taken. One quarter credit is equal to ten hours; one trimester is equal to twelve hours; and one semester credit is equal to fifteen hours.
i.	Attendance at science-based conferences.	No limit	Certificate of attendance.
j.	Preparing for and successfully taking and passing board certification exams through the American Board of Physical Therapy Specialties.	No limit	Certificate of certification.

(2) Every two years a physical therapist who holds a spinal manipulation endorsement shall complete at least (~~ten~~) 10 hours of continuing education directly related to spinal manipulation with at least five hours related to procedural techniques and application of spinal manipulation. For documentation, refer to the documentation required for the particular type of continuing education chosen. The hours spent completing spinal manipulation continuing education count toward meeting any applicable continuing competency requirements.

(3) Every two years, a physical therapist assistant shall complete (~~twenty-four~~) 24 hours of continuing education through any of the following means:

	CE Type	Hours Allowed	Documentation Requirements
a.	Participation in a course, live or online, including recorded.	No limit	Keep certificates of completion for each course, and, if not contained in the certificate of completion, information describing the course sponsors, the goals and objectives of the course, the credentials of the presenter as a recognized authority on the subject presented, dates of attendance, and total hours for all continuing education courses being reported.
b.	Live or recorded instructional electronic media relating to the practice of physical therapy that does not include specific goals and objectives.	Four hours	Instead of course goals, objectives and certificate of completion, the PTA shall submit to the department a minimum of two takeaways for each hour of running time.
c.	Books or articles reviewed.	Eight hours (reading time only)	The PTA shall write and submit a one-page synopsis in twelve-point font for each hour of reading time. The time spent writing a synopsis is not reportable.
d.	Preparation and presentation of professional physical therapy courses or lectures.	Sixteen hours	The PTA shall submit to the department a description and objectives of the presentation, date, and location of presentation.
e.	Written preparation and publication of original scholarly research or work published in a peer-review journal.	Ten hours	The PTA shall submit proof of publication which may include poster presentations.
f.	Clinical instruction of physical therapist assistant students enrolled in a physical therapy assistant program accredited by the American Physical Therapy Association's Commission on Accreditation in Physical Therapy Education (CAPTE) or clinical instruction in a postgraduate residency or fellowship through the American Board of Physical Therapy Residency and Fellowship Education (ABPTRFE).	Ten hours	The PTA shall obtain and submit to the department a letter or certificate from the student's academic institution verifying that the student has completed the course of clinical instruction. Each thirty-two hours of student mentorship equals one hour for purposes of CE credit.
g.	Courses required for professional certification such as to work in public schools.	Fifteen hours	The PTA shall submit a copy of the completion certificate.
h.	Courses provided by an accredited institution of higher education which may include, but are not limited to, courses leading to an advanced degree in physical therapy or other courses that advance the PTA's competence.	No limit	The PTA shall submit a transcript verifying courses taken. One quarter credit is equal to ten hours; one trimester credit is equal to twelve hours; and one semester credit is equal to fifteen hours.
i.	Attendance at science-based conferences.	No limit	Certificate of attendance.
j.	Preparing for and successfully taking and passing board certification exams through the American Board of Physical Therapy Specialties.	No limit	Certificate of certification.

(4) Every two years, each physical therapist and physical therapist assistant shall complete two hours of health equity continuing competency training as described in WAC 246-12-800 through 246-12-830. For documentation, refer to the documentation required for the particular type of continuing education chosen. The hours spent completing health equity training continuing education count toward meeting any applicable continuing competency requirements.

(5) Each physical therapist and physical therapist assistant shall complete a one-time, three hour suicide assessment training described in WAC 246-915-086.

~~((5))~~ (6) Every two years, each physical therapist and physical therapist assistant shall complete ~~((two hundred))~~ 200 hours involving the application of physical therapy knowledge and skills which may be obtained in the clinical practice of physical therapy or in the non-

clinical activities which include, but are not limited to, the following:

	Clinical Activities	Hours Allowed	Documentation
a.	Physical therapy clinical practice.	No limit	Documentation of physical therapy employment, the PT or PTA shall provide copies of employment records or other proof acceptable to the board of employment for the hours being reported.
	Nonclinical Activities	Hours Allowed (within the two hundred hours required)	Documentation
b.	Physical therapy teaching of: <ul style="list-style-type: none"> • Patient/client management, prevention and wellness. • Physical therapy ethics and standards of practice. • Professional advocacy/involvement. 	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
c.	Active service on boards or participation in professional or government organizations, or attendance at professional or government organizations meetings specifically related to the practice of physical therapy.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
d.	Developing course work in physical therapy schools or education programs or physical therapy continuing education courses.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
e.	Physical therapy research as a principal or associate researcher.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
f.	Physical therapy consulting.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
g.	Management of physical therapy services.	No limit	The PT or PTA shall provide documentation of such activities as acceptable to the board.
h.	Physical therapy volunteer hours or observation in physical therapy practice.	No limit	The PT or PTA shall provide documentation verifying volunteer or observation hours.

[Statutory Authority: RCW 18.74.023. WSR 21-20-009, § 246-915-085, filed 9/23/21, effective 10/24/21. Statutory Authority: RCW 18.74.023, chapter 18.74 RCW and 2018 c 222. WSR 20-06-029, § 246-915-085, filed 2/26/20, effective 3/28/20. Statutory Authority: RCW 18.74.023 and chapter 18.74 RCW, RCW 18.340.020. WSR 18-15-067, § 246-915-085, filed 7/17/18, effective 8/17/18. Statutory Authority: RCW 18.74.023 and 43.70.442. WSR 15-14-093, § 246-915-085, filed 6/29/15, effective 7/1/15. Statutory Authority: RCW 18.74.023. WSR 08-17-026, § 246-915-085, filed 8/13/08, effective 8/13/08. Statutory Authority: RCW 18.74.023(4). WSR 04-08-101, § 246-915-085, filed 4/6/04, effective 5/7/04. Statutory Authority: RCW 43.70.280. WSR 98-05-060, § 246-915-085, filed 2/13/98, effective 3/16/98. Statutory Authority: RCW 18.74.023. WSR 94-05-014 (Order 403B), § 246-915-085, filed 2/4/94, effective 3/7/94.]

WSR 23-13-118
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 21, 2023, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-06-055.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-458-0040 What happens if I ask for a fair hearing before the change happens?; and creation of WAC 388-494-0010 What is the diaper related payment?

Hearing Location(s): On July 25, 2023, at 10:00 a.m., virtually via Microsoft Teams or call in. Hearings are being held virtually. Please see the department of social and health services (DSHS) website for the most up-to-date information.

Date of Intended Adoption: Not earlier than July 26, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by July 25, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by July 11, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments will authorize issuance of diaper related payments to TANF and SFA households with a child under age three, in compliance with SSB 5838 (chapter 100, Laws of 2022).

Reasons Supporting Proposal: See above.

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

Statute Being Implemented: SSB 5838 (chapter 100, Laws of 2022).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kathryn Gussett, P.O. Box 45470, Olympia, WA 98504-5470, 509-290-8435.

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

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

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

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: The proposed amendments do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

June 20, 2023

Katherine I. Vasquez
Rules Coordinator

SHS-4983.3

AMENDATORY SECTION (Amending WSR 01-16-087, filed 7/25/01, effective 9/1/01)

WAC 388-458-0040 What happens if I ask for ((a-fair)) an administrative hearing before the change happens? (1) If you ask for ((a-fair)) an administrative hearing within the ((ten)) 10-day notice period, you may keep getting the amount of benefits you were getting before the change. This is called continued benefits.

(2) If the ((tenth)) 10th day falls on a weekend or holiday, you have until the next business day to ask for ((a-fair)) an administrative hearing and still be able to get continued benefits.

(3) If the ((tenth)) 10th day happens before the end of the month, you have until the end of the month to ask for ((a-fair)) an administrative hearing and still be able to get continued benefits.

(4) For food assistance, you cannot get continued benefits if your certification period is ending.

(5) For diaper related payments, you can get continued benefits if you meet the conditions of WAC 388-494-0010(3).

(6) If you get continued benefits, you keep getting them through the end of the month the ((fair)) administrative hearing decision is mailed unless:

(a) You:

(i) Tell us in writing that you do not want continued benefits;

(ii) Withdraw your ((fair)) administrative hearing request in writing; or

(iii) Do not follow through with the ((fair)) administrative hearing process.

(b) An administrative law judge (ALJ) tells us in writing to stop your continued benefits before the hearing.

(c) For food assistance, your certification period ends.

((+6)) (7) After the ((fair)) administrative hearing, you have to pay back continued benefits you get, as described in chapter 388-410 WAC, if the ALJ agrees with our decision.

[Statutory Authority: RCW 74.08.090 and 74.04.510. WSR 01-16-087, § 388-458-0040, filed 7/25/01, effective 9/1/01.]

NEW SECTION

WAC 388-494-0010 What is the diaper related payment? (1) What is the diaper related payment?

The diaper related payment is a cash assistance payment for certain clients receiving Temporary Assistance for Needy Families (TANF) or State Funded Assistance (SFA) with at least one qualifying child, to support them in meeting the basic needs for diapers and other related necessities essential for early development.

(2) The following definitions apply:

(a) "Assistance Unit" as defined in WAC 388-408-0005.

(b) "Qualifying child" means a child recipient under 3 years old.

(3) Who is eligible for the diaper related payment?

(a) You must have a qualifying child receiving TANF or SFA;

(b) The assistance unit (AU) is active and receiving TANF or SFA benefits for the month of issuance:

(i) AUs must be eligible for a TANF or SFA grant of at least \$10 to receive the payment.

(ii) The payment will not be pro-rated based on application date.

(4) How do I apply for the diaper related payment?

You do not need to apply for the diaper related payment. The department automatically reviews your eligibility for the diaper related payment each month of issuance.

(5) What benefits will I receive if I am eligible for the diaper related payment?

(a) The AU will receive a \$100 diaper related payment each month;

(b) We determine if your AU is eligible to receive the diaper related payment and automatically provide the benefit to you.

(c) The payment is a cash assistance payment issued in the same manner as your TANF or SFA grant.

(6) The diaper related payment benefit amount is set based on annual funding appropriated for the program and the projected total number of eligible households.

(7) The department may discontinue or reduce program benefit issuances during periods of time when funds provided for the diaper related payment are exhausted, projected to be overspent, or not appropriated.

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WSR 23-13-119

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed June 21, 2023, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-098.

Title of Rule and Other Identifying Information: Chapter 308-10A WAC, Data privacy.

Hearing Location(s): On July 31, 2023, at 10:00 a.m., Zoom meeting <https://dol-wa.zoom.us/j/89710106612?pwd=bDV4NldUT3U5ZnNtWm9MVEkrVUs5QT09>, Meeting ID 897 1010 6612, Passcode 119511; or One-tap mobile +12532050468,,89710106612#,,,,*119511# US, +12532158782,,89710106612#,,,,*119511# US (Tacoma); dial by your location +1 253 205 0468 US, +1 253 215 8782 US (Tacoma), +1 669 900 6833 US (San Jose), +1 719 359 4580 US, +1 346 248 7799 US (Houston), +1 408 638 0968 US (San Jose), +1 669 444 9171 US, +1 507 473 4847 US, +1 564 217 2000 US, +1 646 876 9923 US (New York), +1 646 931 3860 US, +1 689 278 1000 US, +1 301 715 8592 US (Washington DC), +1 305 224 1968 US, +1 309 205 3325 US, +1 312 626 6799 US (Chicago), +1 360 209 5623 US, +1 386 347 5053 US, Meeting ID 897 1010 6612, Passcode 119511. Find your local number <https://dol-wa.zoom.us/j/89710106612?pwd=bDV4NldUT3U5ZnNtWm9MVEkrVUs5QT09>. If you are having issues accessing the public hearing at the time of the scheduled hearing, please call 360-902-0131. There is an in-person option located at 1125 Washington Street S.E., Olympia, WA 98504. For parking information, please email rulescoordinator@dol.wa.gov.

Date of Intended Adoption: August 1, 2023.

Submit Written Comments to: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by July 30, 2023.

Assistance for Persons with Disabilities: Contact Kelsey Stone, phone 360-902-0131, email rulescoordinator@dol.wa.gov, by July 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Create rules to clarify the new law SSB 5152 from the 2021 legislative session, specifically its data sharing practices.

Reasons Supporting Proposal: On April 16, 2021, Governor Inslee signed SSB 5152, Enhancing data stewardship and privacy protections for vehicle and driver data.

Statutory Authority for Adoption: RCW 46.01.110.

Statute Being Implemented: SSB 5152; including RCW 46.12.630, 46.12.640, and 46.52.130; and related law RCW 46.52.120.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Agency Personnel Responsible for Drafting: Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-0131; Implementation and Enforcement: James Messer, 1125 Washington Street S.E., Olympia, WA 98504, jmesser@dol.wa.gov.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kelsey

Stone, 1125 Washington Street S.E., Olympia, WA 98504, phone 360-902-0131, email rulescoordinator@dol.wa.gov.

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

Is not exempt.

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

Small Business Economic Impact Statement

See attachment [no further information provided by agency].

A copy of the statement may be obtained by contacting Kelsey Stone, 1125 Washington Street S.E., Olympia, WA 98504, phone 360-902-0131, email rulescoordinator@dol.wa.gov.

June 21, 2023
Ellis Starrett
Rules and Policy Manager

OTS-3980.4

Chapter 308-10A WAC DATA SHARING

NEW SECTION

WAC 308-10A-100 Definitions. For the purposes of RCW 46.22.010, the following definitions apply:

(1) "Access period" is a duration of time under the term of this agreement when recipient is granted access and use of protected personal information.

(2) "Agent" means a representative, or representatives, of a requestor that is under contract with the recipient or subrecipient to request driving or vehicle records on the requestor's behalf. "Agent" includes insurance pools established under RCW 48.62.031 of which the authorized recipient is a member.

(3) "Attorney," for the purposes of RCW 46.12.630 and 46.12.635, means an attorney functioning in a legal capacity when obtaining or using vehicle or vessel owner information from a recipient or subrecipient.

(4) "Authorized legal representative" means someone legally authorized under federal or state law to make decisions for the individual. An authorized legal representative is someone who:

(a) Can provide documentation that they have power of attorney; legal guardianship or conservatorship for the individual; executor, etc.; or

(b) Is a custodial parent of an individual who is under the age of 18.

(5) "Authorized use" means a permissible use granted to a recipient in a fully executed data sharing agreement with the department.

(6) "Bona fide research organization" means an entity, such as a university, that conducts noncommercial research using established scientific methods. There must be an intention to publish the research findings for wider scientific and public benefit, without restrictions or delay. Bona fide research organizations do not use protected personal information for commercial purposes.

(7) "Course of business" or other similar term means activities that are performed within the ordinary and necessary operations of the business and that pertain to the use of protected personal information as authorized by the recipient's data sharing agreement with the department.

(8) "Customers" means those entities that the recipient is providing services to using protected personal information but is not receiving protected personal information from the recipient. "Customers" does not include those entities receiving statistical reports that do not include protected personal information.

(9) "Data" means digital information contained in the department's electronic systems that may be disclosed to a recipient under state or federal law.

(10) "Data sharing agreement" means the written agreement between the department and recipient, or the recipient and subrecipient, that defines the terms and conditions which must be followed in order for the recipient or subrecipient to receive data originating from the department.

(11) "Governmental entity" means a federal agency, a state agency, board, commission, unit of local government, or quasi-governmental entity.

(12) "Independent third party" means any entity other than a member of the recipient or any of its stockholders, or any entity controlled by or under common control with any of the stockholders or the company group.

(13) "Individual registered or legal vehicle or vessel owner" or "individual vehicle or vessel owner" means a single vehicle or vessel owner, for the purposes of RCW 46.12.630.

(14) "List" means multiple records containing protected personal information, regardless of the method recipient uses to request or obtain records.

(15) "Misuse" means the access, disclosure, or use of protected personal information without the express, written authorization from the department in a data sharing agreement. "Misuse" also includes a violation of any privacy and security requirement outlined in a data sharing agreement.

(16) "Offshoring" means the electronic or hard copy transmission, accessing, viewing, capturing images, storage, or processing of protected personal information outside the United States.

(17) "Permissible use" means authorized or required uses as outlined in federal or state law.

(18) "Private investigator," for the purposes of RCW 46.12.630 and 46.12.635, has the same meaning as RCW 18.165.010(11), or as licensed by other authority.

(19) "Protected personal information" means collectively personal information and identity information originating from the department, as defined by RCW 46.04.209, 19.255.005, 42.56.590, and 18 U.S.C. Sec. 2725 (3)-(4).

(20) "Recipient" means an entity with a permissible use who is directly receiving data from the department through a data sharing agreement.

(21) "Requestor" means an entity with an authorized permissible use to receive protected personal information from the department. A requestor may be an agent, subrecipient, or a recipient.

(22) "Regulatory bodies," for the purposes of RCW 46.52.130, means a body established by federal or state law and is responsible for regulating compliance with adopted rules or laws.

(23) "Statement of compliance" means an annual statement signed by an executive of an organization.

(24) "Subrecipient" means any entity outside a recipient's immediate organization that receives or has access to protected personal information including, but not limited to, subsidiaries, subcontractors, requestors, or agents.

[]

NEW SECTION

WAC 308-10A-201 Recipient compliance requirements. (1) Audits -

For a recipient receiving protected personal information:

(a) A recipient receiving recurring lists of protected personal information must undergo data security and permissible use audits as outlined in the data sharing agreement.

(b) A recipient receiving a one-time list containing protected personal information must demonstrate security controls are in place to protect the information and may be required to undergo audits as outlined in the data sharing agreement.

(c) A recipient receiving individual records of protected personal information is subject to audits.

(d) The department may conduct random audits of any recipient it deems necessary.

(e) The department will determine the frequency of all audits.

(f) The cost of all audits, including actual costs incurred by the department to coordinate, schedule, conduct, draft, receive, review, and report the audit up to the point when the department issues the final audit review or report, is the responsibility of the recipient.

(g) The department may suspend or terminate a recipient's access to data if the recipient fails to provide or allow an acceptable audit by the due date established by the department.

(h) The department will only accept third-party audits that meet department audit standards and are performed by auditors that meet independent third-party auditor qualifications.

(2) Subrecipient lists - A recipient must provide the department with a list of:

(a) All subrecipients and secondary subrecipients that received protected personal information originating from the recipient in the time frame requested; and

(b) All customers.

[]

NEW SECTION

WAC 308-10A-202 Vetting of subrecipients. Before giving a subrecipient access to protected personal information, the recipient must validate that the subrecipient demonstrates the following minimum requirements:

- (1) The subrecipient has a permissible use under federal or Washington state laws, whichever is more restrictive.
- (2) The subrecipient is a qualified recipient under federal or Washington state laws.
- (3) The subrecipient has sufficient protections in place to secure the privacy of the protected personal information in accordance with the data sharing agreement.

[]

NEW SECTION

WAC 308-10A-203 Subrecipient disqualification. When the department notifies a recipient that its subrecipient is ineligible to receive protected personal information, the recipient must immediately:

- (1) Terminate the subrecipient's access to protected personal information; and
- (2) Require the subrecipient destroy all protected personal information it obtained through the recipient.

[]

NEW SECTION

WAC 308-10A-204 Subrecipient audit requirements. (1) A recipient must have procedures to audit subrecipients for compliance with the terms and conditions of its contract with the subrecipient.

- (2) The audit methodologies must be sufficient for a reasonable person to conclude a subrecipient is compliant with requirements in the data sharing agreement.

[]

NEW SECTION

WAC 308-10A-205 Required written consent audits. (1) Recipients who provide protected personal information to subrecipients when a person must sign a release form under RCW 46.52.130, must establish processes to hold all subrecipients accountable for:

- (a) Obtaining and maintaining the release form prior to requesting protected personal information;
- (b) Verifying the release form is properly executed before requesting the protected personal information; and
- (c) The consent is rightfully executed by the named individual or their authorized legal representative.

(2) The process for requesting driving records must include verifying the consent forms contain the required information in WAC 308-10A-901.

(3) The recipient must make records available to the department demonstrating the process for obtaining consent is in use and is effective. The department will establish minimum requirements for such processes in its data sharing agreement with the recipient.

[]

NEW SECTION

WAC 308-10A-301 Recipient-subrecipient data sharing agreement.

(1) A recipient must have a data sharing agreement with a subrecipient before giving the subrecipient access to protected personal information. The data sharing agreement terms need not be in a stand-alone document, but may be included in a general contract.

(2) The subrecipient data sharing agreement must include those requirements that the department has identified in the recipient's data sharing agreement as those to be passed on to subrecipient. A subrecipient data sharing agreement that does not contain all necessary requirements will not be considered adequate.

[]

NEW SECTION

WAC 308-10A-401 Standards for audits of recipients. When the department requires an audit under this section, it may accept an audit performed in the previous 12 months when it meets standards in the data sharing agreement and is performed by an auditor that meets independent third-party auditor qualifications.

For recipients receiving lists:

(1) Audit procedures must test for the presence of required policies and administrative, technical, or physical controls to reasonably conclude the controls are effective and in use by the recipient.

(2) Audit reports must provide documentation on the procedures, and the results of such procedures, used to determine whether controls align with requirements in the data sharing agreement.

For recipients receiving individual records of protected personal information, audit reports must demonstrate reasonable procedures were used to conclude each recipient is compliant with requirements in the data sharing agreement.

[]

NEW SECTION

WAC 308-10A-402 Selection of an auditor. If the department chooses not to perform an audit, the recipient must select a qualified independent third-party auditor to conduct the audit.

[]

NEW SECTION**WAC 308-10A-403 Independent third-party auditor qualifications.**

Independent third-party auditors conducting data security audits must, at a minimum, hold one of the following qualifications:

- (1) American Institute of Certified Public Accountants (AICPA);
- (2) Certified Information Security Auditor (CISA/ISACA);
- (3) ANSI-ASQ National Accreditation Board (ANAB); or
- (4) Other nationally recognized information technology auditing certification.
- (5) An internal audit organization that can attest it conforms with the international standards for the professional practice of internal auditing.

[]

NEW SECTION**WAC 308-10A-404 Statement of compliance.** The recipient will:

- (1) Perform an annual self-assessment to determine compliance with the requirements of the data sharing agreement.
- (2) Confirm in writing to the department annually that it complies with requirements in the data sharing agreement.
- (3) Document instances of noncompliance with the data sharing agreement and include a corrective action plan to correct all deficiencies.
- (4) Include a declaration with their statement of compliance that affirms protected personal information is only used as authorized.

[]

NEW SECTION**WAC 308-10A-405 Corrective action plans.** (1) When notifying the

department of any noncompliance with the data sharing agreement, the notification must include a corrective action plan for each deficiency.

(2) The corrective action plan must identify the anticipated date the recipient will complete each action to either bring the recipient into compliance or eliminate the deficiency.

(3) The department may accept the recipient's action, and close the action item, or may require additional action.

(4) The department may take any other action described in the recipient's data sharing agreement, this chapter, or state or federal law, without accepting corrective action plans as it deems necessary for the safety and welfare of the public.

[]

NEW SECTION**WAC 308-10A-500 Permissible uses pertaining to RCW 46.12.630.**

(1) For the purposes of RCW 46.12.630(1): The sharing of protected personal information will be in accordance with the following vehicle and vessel regulations as they existed on January 1, 2023:

(a) For vehicles:

(i) Titles I and IV of the Anti-Car Theft Act of 1992;

(ii) The Automobile Information Disclosure Act (15 U.S.C. Sec. 1231 et seq.);

(iii) The Clean Air Act (42 U.S.C. Sec. 7401 et seq.); and

(iv) 49 U.S.C. Secs. 30101-30183, 30501-30505, and 32101-33118;

(b) For vessels:

(i) 46 U.S.C. Sec. 4310; and

(ii) Any relevant section of the Code of Federal Regulations adopted by the United States Coast Guard.

(2) For the purposes of RCW 46.12.630(2):

(a) "Federal, state, or local agency," "local governmental entity," "governmental agency," and "government agency" have the same meaning as "governmental entity." (See WAC 308-10A-805.)

(b) For the purposes of section RCW 46.12.630 (2)(e), the permissible use is restricted only to a governmental agency or its agent, as authorized by the Driver Privacy Protection Act 18 U.S.C. Chapter 123.

(c) For purposes of section RCW 46.12.630 (2)(h), "other applicable authority" includes out-of-state or Canadian entities legally authorized to operate a toll facility.

[]

NEW SECTION

WAC 308-10A-700 Research. (1) The department may disclose protected personal information for research purposes to governmental entities and bona fide research organizations only when:

(a) The research cannot reasonably be conducted without the protected personal information, the recipient provides adequate information for the department to reasonably determine that the disclosure of protected personal information will not harm individuals, the benefits to be derived from the disclosure are clearly in the public interest, and the results are not of a commercial interest; or

(b) The research purpose has been approved in writing by an authorized official in the department, legislature, or governor's office.

(2) The department may disclose pseudonymized data for research purposes on the condition the recipient will make no attempt to re-identify individuals.

[]

NEW SECTION

WAC 308-10A-801 Agents. Where agents are permitted, a requestor may access protected personal information through a chain of agents.

For example, an employer (requestor) may use an employment agency (agent #1) to request records on its behalf. In turn, the employment agency may request the record through a recipient (agent #2).

[]

NEW SECTION

WAC 308-10A-802 Offshoring. Unless otherwise explicitly authorized in statute, or with prior written authorization from the department, recipients must:

(1) Only allow protected personal information to be transmitted, accessed, viewed, stored, or processed within the United States.

(2) Maintain the primary, backup, disaster recovery, and other sites for storage of protected personal information within the United States.

[]

NEW SECTION

WAC 308-10A-804 Notification of misuse or unauthorized disclosure. In the event of misuse or unauthorized disclosure of personal or identity information by either the recipient or its subrecipient the recipient must:

(1) Notify the department as outlined in its data sharing agreement with the department;

(2) Cooperate with all department requirements in responding to the event;

(3) Notify the department before notifying individuals or the public.

The subrecipient must notify the recipient of a misuse or unauthorized disclosure of personal or identity information.

[]

NEW SECTION

WAC 308-10A-805 Applications for data. (1) An application must be submitted to the department when requesting data.

(a) The department may reject incomplete applications.

(b) The department may close the application if the applicant does not provide sufficient information to complete the application process within 90 days of request.

(c) The department may close an approved application to receive data if the applicant does not execute the data sharing agreement within 30 days of department sending the agreement to the applicant for signature.

(2) In the event of a declared emergency, the department may allow a governmental entity to execute a data sharing agreement prior to submitting a formal application. The government entity must submit the

application by a date designated by the department. The department may waive the requirement for an application or a complete application.

[]

NEW SECTION

WAC 308-10A-806 Consent. For the purposes of disclosing protected personal information, an individual's authorized legal representative may authorize the disclosure.

[]

NEW SECTION

WAC 308-10A-901 Authorization to request a driving abstract.

(1) When the subject of a driver's abstract must authorize the release of the abstract under RCW 46.52.130, the party requesting the driver's abstract under the terms of a data sharing agreement may use the department's release form, or its own version of the release form provided it contains the information required by federal and state law, and the department. The party requesting the driver's abstract under the terms of a data sharing agreement must verify that its release form is consistent with federal and state law, and department requirements.

(2) If a recipient or subrecipient uses its own version of the release form, the form must not bear the department logo or otherwise indicate it is an official Washington state document.

(3) The release form may be signed in ink or electronically.

(4) A release form must:

(a) Include the name and signature of the person whose record is being requested, or the name and signature of their authorized legal representative.

(b) Include the date the signature was made.

(c) Be signed by the employer or volunteer organization, attesting to:

(i) For employment/prospective employment, driving is a condition of employment or otherwise at the direction of the employer, or the employee or prospective employee handles or will be handling heavy equipment or machinery.

(ii) For volunteering, the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization.

(iii) For employee/prospective employee releases.

(A) Include a statement that any information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee may not be used by the employer or prospective employer, or an agent authorized to obtain this information on their behalf, unless required by federal regulation or law; and

(B) Provide instructions for how someone can demonstrate that an adjudication contained in the abstract is subject to a court order sealing the juvenile record.

(I) The name(s) of the agent(s) authorized to obtain the information on the requestor's behalf.

(II) Include information on where to send the form after it is properly executed.

(5) When the subject of a driver's abstract must authorize the release of the abstract under RCW 46.52.130, the party requesting the driver's abstract under the terms of a data sharing agreement must retain the signed release form for at least six years.

(6) The signed release form may be used for employment or volunteering purposes during the period the subject of the driver's abstract is under continuous employment or volunteering. The employer or volunteering organization must process a new release form for the subject of the driver's abstract when there is a break in continuous employment or volunteering.

(7) For the purposes of prospective employment or volunteering, the release form and the driving record must be disposed of after six months from the date the record was obtained, or as otherwise required by law, if the subject of the driver's abstract is not placed into a position with the employer or volunteer organization that involves driving as a function of the position.

[]

NEW SECTION

WAC 308-10A-902 Data retention and destruction. (1) The recipient and its subrecipients must adopt data retention and destruction policies that are in keeping with state and federal law including, but not limited to, chapter 19.215 RCW.

(2) Except as otherwise required by law or as provided in a data sharing agreement, protected personal information may be retained only until the permissible use has been fulfilled or 10 years. After the required permissible use or retention period has been met, the protected personal information must be destroyed.

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WSR 23-13-127
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed June 21, 2023, 10:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-134.

Title of Rule and Other Identifying Information: Chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals.

Hearing Location(s): On August 10, 2023, at 10:00 a.m., at Four Points Sheraton, Fairhaven Room, 714 Lakeway Drive, Bellingham, WA 98229; on August 15, 2023, at 1:30 p.m., virtual and telephonic hearing. Join electronically <https://lni-wa-gov.zoom.us/j/87947049101?pwd=ejNaTy9VMWp4Qk9wR0lyc2xKS1ROUT09>, Password (if prompted) PSM@1230; join by phone (audio only) 253-215-8782 or 253-205-0468, Meeting ID 879 4704 9101, Passcode 43800387; and on August 17, 2023, at 10:00 a.m., at Four Points Sheraton, Fairhaven Room, 714 Lakeway Drive, Bellingham, WA 98229. A prehearing overview will occur one hour prior to the start of each public hearing. The hearings will begin at the indicated times and will continue until all oral comments are received.

Date of Intended Adoption: October 17, 2023.

Submit Written Comments to: Tari Enos, Department of Labor and Industries (L&I), Division of Occupational Safety and Health (DOSH), P.O. Box 44620, Olympia, WA 98504-4620, email Tari.Enos@Lni.wa.gov, fax 360-902-5619, by August 24, 2023, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact Tari Enos, phone 360-902-5541, fax 360-902-5619, email Tari.Enos@Lni.wa.gov, by July 27, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: L&I is proposing adding a new Part B to chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals, which pertains specifically to process safety management (PSM) in petroleum refineries. The new Part B includes existing PSM requirements applicable to refineries updated with new requirements based on the best available evidence learned since the PSM rule was first adopted in 1992. Please see below for an overview of the new chapter 296-67 WAC, Part B.

Amended Section:

WAC 296-67-001 Process safety management of highly hazardous chemicals.

- Updates the purpose and scope section of the current rule to identify WAC 296-67-001 through 296-67-293 as Part A of the chapter 296-67 WAC.
- Adds an exemption from Part A for petroleum refineries under Part B.

New Sections:

WAC 296-67-300 Purpose and scope—Part B.

- This section identifies WAC 296-67-300 through 296-67-387 as Part B of chapter 296-67 WAC that applies to petroleum refineries.
- Clarifies that Part B supersedes Part A of this chapter as it relates to petroleum refineries.

WAC 296-67-307 Definitions.

- Includes definitions for the following: Affected person, Change, Damage mechanism, Decontamination, Employee representative, Facility, Feasible, Flammable gas, Flammable liquid, Hierarchy of hazard controls, Highly hazardous chemical or material, Hot work, Human factors, Independent protection layers (IPLs), Inherent safety, Initiating cause, Isolate, Lagging indicators, Leading indicators, Major change, Must, Nonroutine, Process, Process equipment, Process safety culture, Process safety hazard, Process safety incident, Process safety management (PSM), Process safety performance indicators, Qualified operator, Reactive substance, Recognized and generally accepted good engineering practices, Replacement-in-kind, Safeguard, Safety instrumented system, Temporary pipe or equipment repair, Toxic substance, Turnaround, and Utility.

WAC 296-67-311 Process safety management program.

- Outlines the requirements employers must follow to develop and maintain an effective written PSM program that needs to be reviewed and updated at least once every three years.

WAC 296-67-315 Employee collaboration.

- Outlines the requirements employers must follow to develop and maintain a written plan to provide for employee collaboration throughout all PSM phases.

WAC 296-67-319 Process safety information.

- Outlines the requirements employers must follow to develop and maintain a compilation of written process safety information before performing any PSM phase.

WAC 296-67-323 Hazard analyses.

- Outlines the requirements employers must follow in order to document an effective process hazard analysis to identify and control hazards associated with each process.

WAC 296-67-327 Operating procedures.

- Outlines the requirements employers must follow to develop and maintain written operating procedures. This includes minimum standards, steps of each operating phase or mode or operation, operating limits, safety and health considerations and safety systems.

WAC 296-27-331 Training.

- Outlines requirements that each affected employee must be trained in an overview of the process and in applicable operating procedures, as well as being trained in an overview of the process in the hazards and safe work practices related to the process. Includes which training materials are applicable to the employee's job tasks.

WAC 296-67-335 Contractors.

- Outlines requirements regarding refinery employer responsibilities when selecting a contractor. They must evaluate the contract employer's safety performance, require any contractor to use a skilled and trained workforce and must ensure the contractor informs their employees of potential process safety hazards, as

well as applicable safety rules and applicable provisions of this chapter.

- Outlines requirements that the refinery employers must develop and maintain effective written procedures, periodically evaluate the performance of contractors, and document that the requirements of this section are being completed by the contractor. The refinery employer must also ensure a copy of the contractor's injury and illness log is available to DOSH upon request.
- Sets requirements that are the contractor's responsibility, including that a contractor must inform its employees of applicable refinery safety rules.

WAC 296-67-339 Pre-startup safety review.

- Outlines requirements that the employer must perform a pre-startup safety review (PSSR) for new or modified processes, for partial or unplanned shutdowns/outages and for all turnaround work performed on a process.
- Outlines requirements that a PSSR must contain all of the requirements prior to the introduction of highly hazardous chemicals or materials to a process.
- Outlines requirements that the employer must ensure experienced operating or maintenance employees that are affected by a change are included in the PSSR, and an operating employee currently working in the process must be designated as the employee representative.

WAC 296-67-343 Mechanical integrity.

- Outlines requirements that employers must ensure the mechanical integrity of process equipment by developing and maintaining effective written procedures, which must provide clear instructions for safely performing maintenance on process equipment. These documents developed under this section must be readily accessible to employees and employee representatives.

WAC 296-67-347 Damage mechanism review.

- Outlines requirements that the employer must perform a damage mechanism review (DMR) for each new and existing process, as well as determine the priority order for performing DMRs. These DMRs must be revalidated every five years, and if a major change occurs on a process that a DMR exists, it must be reviewed before the change is approved. The employer must retain all DMR reports for the life of the process.

WAC 296-67-351 Hot work.

- Outlines requirements that the employer must develop and maintain effective written procedures for the issuance of hot work permits, and the permit must be issued prior to the commencement of operations. The employer must also keep hot work permits on file for one year.

WAC 296-67-355 Management of change.

- Outlines requirements that a written management of change (MOC) must be developed and maintained by the employer to assess and manage change of process chemicals, technology, procedures, process equipment, and facilities. Qualified personnel and appropriate methods for all MOCs must be used by the employer based on hazard, complexity, and type of change. If any change that is

covered in this section changes the process safety information (PSI), information must be amended timely prior to implementation of the change.

WAC 296-67-359 Management of organizational change.

- Outlines that a team must be designated by the employer to perform a management of organizational change (MOOC) assessment prior to reducing staffing levels. The MOOC is needed for changes with a duration exceeding 90 calendar days affecting operations. A description of the change must be included in the written MOOC assessment, factors evaluated by the team, and the team's findings and recommendations.

WAC 296-67-363 Incident investigation—Root cause analysis.

- Outlines the written procedures that the employer must develop to investigate any incident that could end in a safety incident, and how to report on it promptly. The employer must also initiate the investigation no later than 48 hours after the incident occurs, and that the report must also include a method for performing a root cause analysis.

WAC 296-67-367 Emergency planning and response.

- Outlines that the employer must develop and maintain an effective emergency response plan for the entire plant in accordance with WAC 296-24-567 Employee emergency plans and fire prevention plans, and also chapter 296-824 WAC, Emergency response.
- Outlines that if the incident exceeds the capability of the internal emergency response team, the written plan must detail how an emergency response would be executed.
- Outlines that the employer must document any agreement with external emergency response teams that are expected to assist in an emergency.

WAC 296-67-371 Compliance audits.

- Outlines that the employer must perform an effective compliance audit every three years and must prepare a written report documenting the findings of the audit. The employer must consult with a person who has expertise and experience from each process audited and document the findings and recommendations from the consultations in the written report.
- Outlines that the employer must make the report available to employees and employee representatives, and if any written comments regarding the report are received by employees, the employer must respond in writing within 60 days. The employer must also keep the three most recent compliance audit reports.

WAC 296-67-375 Process safety culture assessment.

- Outlines that the employer must develop and maintain an effective process safety culture assessment (PSCA) program, and that within 18 months following the effective date of Part B of this chapter and at least every five years thereafter, the employer must perform an effective PSCA. A team with at least one person knowledgeable with refinery operations must develop and implement a PSCA, and the team must consult with at least one other individual with expertise assessing process safety culture.

- Outlines that the employer must prioritize recommendations and implement corrective actions, with the assistance of the PSCA team, within 24 months of completing the written report. The PSCA team must perform a written assessment of the implementation and effectiveness of each corrective action within three years of completing the PSCA report. If it is found that the corrective action is ineffective, the employer must implement changes.
- Outlines that PSCA reports and corrective action plans must be made available to all affected employees within 60 calendar days of completion. Any participating contractors must provide PSCA reports and corrective action plans to their employees and employee representatives within 14 days of receipt.

WAC 296-67-379 Human factors.

- Outlines that, within 18 months of the effective date of Part B of this chapter, the employer must develop and maintain an effective written human factors program. The employer must also include a written analysis of human factors which must contain a description of the selected methodologies and criteria for their use.
- Outlines that the employer must assess human factors in existing procedures and revise them accordingly. Fifty percent of assessments and revisions must be completed by the employer within three years of the effective date of Part B of this chapter, and 100 percent within five years.
- Outlines that the employer must include an assessment of human factors in new and revised procedures, and the employer must train affected operating and maintenance employees in the written human factors program. Also, upon request, the employer must make a copy of the written human factors report available to affected employees.

WAC 296-67-383 Corrective action program.

- Outlines that the employer must develop and maintain an effective written corrective action program that includes all of the process methods included in this section. The team performing the analysis must provide all findings and recommendations to the employer. The employer may reject the team's recommendation if the employer can demonstrate in writing that the recommendation meets the certain criteria.
- Outlines that, if the employer can demonstrate in writing that an alternative method would provide an equivalent or higher order of safety, the employer may change the team's recommendation. When a recommendation is rejected or changed, it must be communicated to on-site and off-site team members for comment. All comments received regarding a changed or rejected recommendation must be documented.
- Outlines that, the employer must complete all corrective actions and comply with all completion dates required by this section. All completion dates must be available upon request to any affected employees and employee representatives.
- Outlines, with a couple of exceptions, any corrective action that does not require a process shut down must be completed within 30 months after the analysis or review are completed unless an employer demonstrates in writing that this is not feasible.
- Outlines that, within 18 months of the audit being completed, each corrective action from the compliance audit must be comple-

ted, unless the employer demonstrates in writing that it is not feasible. Within 18 months of the investigation being completed, the corrective action of the incident investigation must be completed, unless the employer demonstrates in writing that it is not feasible.

- Outlines that, if a corrective action cannot be implemented within the required time limits of this section, the employer must ensure interim safeguards are sufficient in ensuring employee safety and health. The employer must document the decision and include all information required in the rule.

WAC 296-67-387 Trade secrets.

- Outlines that employers must ensure all information needed to comply with Part B of this chapter is available, pursuant to WAC 296-901-14018, Trade secrets.
- Outlines that nothing in this section precludes the employer from requiring the people to whom the information is made available under this section to enter into confidentiality agreements not to disclose the information.

Reasons Supporting Proposal: In 1992, L&I adopted OSHA's PSM standard to prevent or minimize the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals, referred to as highly hazardous chemicals. These releases may result in toxic, fire, or explosion hazards. PSM is a system for managing the use of highly hazardous chemicals during plant processes and activities to prevent risk of unintentional releases. The unexpected release of highly hazardous chemicals can be deadly, leaving profound and lasting impacts on families, businesses, and communities. The potential for such releases exists any time toxic, reactive, flammable, or explosive chemicals are not properly controlled. The current PSM rule applies to employers in industries who have processes that involve certain threshold quantities of highly hazardous chemicals. Petroleum refineries are one industry covered under the current PSM rules.

Catastrophic events at petroleum refineries across the United States have tragically claimed the lives of many workers, including 13 in Washington state since 1998. In 1998, six workers in Washington state died from an incident related to PSM at the then Equilon Refinery in Anacortes, and in 2010, seven more workers died at the then Tesoro Petroleum Refinery in Anacortes. These tragedies have led to significant discussion about what could have been done to prevent them.

The current rule, as applied to refineries, is outdated, not having been updated in over 20 years and not reflecting current industry practices.

In 2019, California adopted new rules for PSM specific for refineries based on recommendations from an interagency taskforce and other safety experts following a chemical release and fire at a California refinery in 2012. L&I reviewed the best available evidence including, but not limited to, the recommendations from the Chemical Safety Board's investigation of the 2010 Tesoro Explosion, the California rule, the California interagency report, information from federal OSHA and the Environmental Protection Agency on PSM modernization efforts, information from California OSHA on implementation of the new PSM refinery rule, as well as inspection information from L&I and OSHA. L&I worked with Washington refineries, labor organizations and advocates, community and environmental advocates, and other stakeholders to develop the proposed rule for PSM in petroleum refineries. The proposed

rule largely aligns with the California rule. These changes, incorporating the best available evidence to prevent catastrophic releases, are needed to ensure that employers and employees are safe while working in the refineries as processes and technology in the industry advance over time.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Acting Standards Program Manager, Tumwater, Washington, 360-902-6954; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Tari Enos, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-5541, fax 360-902-5619, email Tari.Enos@Lni.wa.gov.

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: All new requirements under this proposed rule apply to petroleum refineries. There are some requirements that are the responsibility of contractors, who may include small businesses; however, those are existing requirements under chapter 296-67 WAC.

Scope of exemption for rule proposal:

Is fully exempt.

June 21, 2023

Joel Sacks

Director

OTS-1344.9

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

WAC 296-67-001 (~~(Process safety management of highly hazardous chemicals.)~~) **Purpose and scope—Part A.** (1) Purpose. WAC 296-67-001 through 296-67-293 comprise Part A of this chapter. This section contains requirements for preventing or minimizing the consequences of catastrophic releases of toxic, reactive, flammable, or explosive chemicals. These releases may result in toxic, fire, or explosion hazards.

(2) Application.

(a) This part applies to the following:

(i) A process which involves a chemical at or above the specified threshold quantities listed in WAC 296-67-285, Appendix A;

(ii) A process which involves a Category 1 flammable gas (as defined in WAC 296-901-14006) or a flammable liquid with a flashpoint below 100°F (37.8°C) on site in one location, in a quantity of 10,000 pounds (4535.9 kg) or more except for:

(A) Hydrocarbon fuels used solely for workplace consumption as a fuel (e.g., propane used for comfort heating, gasoline for vehicle refueling), if such fuels are not a part of a process containing another highly hazardous chemical covered by this standard;

(B) Flammable liquids with a flashpoint below 100°F (37.8°C) stored in atmospheric tanks or transferred which are kept below their normal boiling point without benefit of chilling or refrigeration.

(b) This part does not apply to:

(i) Retail facilities;

(ii) Oil or gas well drilling or servicing operations; (~~(e)~~)

(iii) Normally unoccupied remote facilities; or

(iv) Petroleum refineries under Part B of this chapter.

[Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060 and 29 C.F.R. 1910 Subpart Z. WSR 14-07-086, § 296-67-001, filed 3/18/14, effective 5/1/14. Statutory Authority: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060. WSR 07-03-163, § 296-67-001, filed 1/24/07, effective 4/1/07. Statutory Authority: Chapter 49.17 RCW. WSR 92-17-022 (Order 92-06), § 296-67-001, filed 8/10/92, effective 9/10/92.]

PART B

NEW SECTION

WAC 296-67-300 Purpose and scope—Part B. WAC 296-67-300 through 296-67-387 comprise Part B of this chapter. This part contains requirements for petroleum refineries to reduce the risk of process safety incidents by eliminating or minimizing process safety hazards to which employees may be exposed. Part B supersedes the requirements in WAC 297-67-001 through 296-67-293, Part A, with respect to petroleum refineries.

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NEW SECTION

WAC 296-67-307 Definitions. (1) **Affected person.** Anyone who controls, manages, or performs process-related job tasks in or near a process.

(2) **Change.** Any alteration in process chemicals, technology, procedures, process equipment, facilities or organization that could affect a process. A change does not include replacement-in-kind.

(3) **Damage mechanism.** The mechanical, chemical, physical, microbiological, or other mechanism that results in equipment or material degradation.

(4) **Decontamination.** The application of chemical agents, inert gas, steam, or other material in vessels, piping, or other process equipment in order to eliminate the hazards that residual chemicals or materials present to workers who open process equipment.

(5) **Employee representative.** A union representative, where a union exists, or an employee-designated representative in the absence of a union. The employee representative must be qualified for the task. The term is to be construed broadly, and may include the local union, the international union, or a refinery or contract employee designated by these parties, such as the safety and health committee representative, where the person works on-site at the refinery. Employee representative may partner with an employee representative who does not work on-site when designated by the union, employees in the absence of the union, or when their participation is requested by the employee representative.

(6) **Facility.** The plants, units, buildings, containers or equipment that contain(s) or include(s) a process.

(7) **Feasible.** Capable of being accomplished in a successful manner within a reasonable period of time, taking into account health, safety, economic, environmental, legal, social, and technological factors.

(8) **Flammable gas.** As defined in WAC 296-901-14024 (B.2), Appendix B-Physical hazard criteria.

(9) **Flammable liquid.** As defined in WAC 296-901-14024 (B.6), Appendix B-Physical hazard criteria.

(10) **Hierarchy of hazard controls.** Hazard prevention and control measures, in priority order, to eliminate or minimize a hazard. Hazard prevention and control measures ranked from most effective to least effective are: First order inherent safety, second order inherent safety, and passive, active and procedural protection layers.

(11) **Highly hazardous chemical or material.** A flammable liquid or flammable gas, or a toxic or reactive substance.

(12) **Hot work.** Work involving electric or gas welding, cutting, brazing, or any similar heat, flame, or spark-producing procedures or operations.

(13) **Human factors.** The design of machines, operations and work environments such that they closely match human capabilities, limitations and needs. Human factors include:

(a) Working environment factors;

(b) Organizational and job factors;

(c) Human and individual characteristics such as fatigue that can affect job performance, process safety, and health and safety.

(14) **Independent protection layers (IPLs).** Safeguards that reduce the likelihood or consequences of a process safety incident through the application of devices, systems or actions. IPLs are independent of an initiating cause and independent of other IPLs. Independence ensures that an initiating cause does not affect the function of an IPL and that failure in any one layer does not affect the function of any other layer.

(15) **Inherent safety.** An approach to safety that focuses on eliminating or reducing the hazards associated with a set of conditions. A

process is inherently safer if it eliminates or reduces the hazards associated with materials or operations used in the process, and this elimination or reduction is permanent and inseparable from the material or operation. A process with eliminated or reduced hazards is described as inherently safer compared to a process with only passive, active and procedural safeguards. The process of identifying and implementing inherent safety in a specific context is known as inherently safer design:

(a) **First order inherent safety measure.** A measure that eliminates a hazard. Changes in the chemistry of a process that eliminate the hazards of a chemical are usually considered first order inherent safety measures; for example, by substituting a toxic chemical with an alternative chemical that can serve the same function but is nontoxic.

(b) **Second order inherent safety measure.** A measure that effectively reduces a risk by reducing the severity of a hazard or the likelihood of a release, without the use of add-on safety devices. Changes in process variables to minimize, moderate and simplify a process are usually considered second order inherent safety measures; for example, by redesigning a high-pressure, high-temperature system to operate at ambient temperatures and pressures.

(16) **Initiating cause.** An operational error, mechanical failure or other internal or external event that is the first event in an incident sequence, which marks the transition from a normal situation to an abnormal situation.

(17) **Isolate.** To cause equipment to be removed from service and completely protected from the inadvertent release or introduction of material or energy by such means as:

(a) Blanking or blinding;

(b) Misaligning or removing sections of lines, pipes, or ducts;

(c) Implementing a double block and bleed system; or

(d) Blocking or disconnecting all mechanical linkages.

(18) **Lagging indicators.** Retrospective metrics of equipment, written procedures, training, employee collaboration, or other practices identified as requiring corrective action.

(19) **Leading indicators.** Predictive metrics of equipment, written procedures, training, employee collaboration, or other best practices used to identify potential and recurring deficiencies.

(20) **Major change.** Any of the following:

(a) Introduction of a new process;

(b) Introduction of new process equipment, or new highly hazardous chemical or material that results in any operational change outside of established safe operating limits;

(c) Any alteration in a process, process condition, process equipment, or process chemistry that results in any operational change outside of established safe operating limits; or

(d) Introduction of a new process safety hazard or worsening of an existing process safety hazard.

(21) **Must.** Must means mandatory.

(22) **Nonroutine.** Any work done outside of steady state normal operations.

(23) **Process.** Any activity involving a highly hazardous chemical or material, including:

(a) Use;

(b) Storage;

(c) Manufacturing;

(d) Handling;

(e) Piping; or

(f) The on-site movement of such chemicals or materials, or combination of these activities.

Utilities and process equipment must be considered part of the process if in the event of a failure or malfunction they could potentially contribute to or fail to mitigate a process safety incident. For purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that an incident in one vessel could affect any other vessel, must be considered a single process. This definition includes processes under partial or unplanned shutdowns.

This definition excludes ancillary administrative and support functions, including office buildings, labs, warehouses, maintenance shops, and change rooms.

(24) **Process equipment.** Equipment including, but not limited to, pressure vessels, rotating equipment, piping, instrumentation, process control, or appurtenances, related to a process.

(25) **Process safety culture.** A combination of group values and behaviors that reflects whether there is a collective commitment by leaders and individuals to emphasize process safety over competing goals, in order to ensure the protection of people and the environment.

(26) **Process safety hazard.** A hazard of a process that has the potential for causing a process safety incident, or death or serious physical harm.

(27) **Process safety incident.** An event within or affecting a process that causes a fire, explosion or release of a highly hazardous chemical or material and has the potential to result in death or serious physical harm.

(28) **Process safety management (PSM).** The application of management systems to ensure the safety of petroleum refinery processes.

(29) **Process safety performance indicators.** Measurements of the refinery's activities and events that are used to evaluate the performance of process safety systems.

(30) **Qualified operator.** A person designated by the employer who, by fulfilling the requirements of the training program, has demonstrated the ability to safely perform all assigned duties.

(31) **Reactive substance.** A self-reactive chemical, as defined in WAC 296-901-14024 Appendix B—Physical hazard criteria.

(32) **Recognized and generally accepted good engineering practices (RAGAGEP).** Engineering, operation or maintenance practices and procedures established in codes, standards, technical reports or recommended practices, and published by recognized and generally accepted organizations such as, but not limited to, the American National Standards Institute (ANSI), American Petroleum Institute (API), American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE), American Society of Mechanical Engineers (ASME), American Society of Testing and Materials (ASTM), National Fire Protection Association (NFPA), and International Society of Automation (ISA). The employer should also consider informative sources of industry practices as appropriate. RAGAGEP does not include standards, guidelines or practices developed for internal use by the employer.

(33) **Replacement-in-kind.** A replacement that satisfies the design specifications of the item it is replacing.

(34) **Safeguard.** A device, system or action designed to interrupt the chain of events or mitigate the consequences following an initiating cause. Safeguards include:

(a) **Passive safeguards:** Process or equipment design features that minimize a hazard by reducing either its frequency or consequence, without the active functioning of any device; for example, a diked wall around a storage tank of flammable liquids.

(b) **Active safeguards:** Controls, alarms, safety instrumented systems and mitigation systems that are used to detect and respond to deviations from normal process operations; for example, a pump that is shut off by a high-level switch.

(c) **Procedural safeguards:** Policies, operating procedures, training, administrative checks, emergency response and other management approaches used to prevent incidents or to minimize the outcome of a process safety incident. Examples include hot work procedures and emergency response procedures.

(35) **Safety instrumented system.** Engineered systems designed to achieve or maintain safe operation of a process in response to an unsafe process condition.

(36) **Temporary pipe or equipment repair.** A temporary repair of an active or potential leak from process piping or equipment. This definition includes active or potential leaks in utility piping or utility equipment, and flange or valve packing leaks that may affect a process, and that could result in a process safety incident.

(37) **Toxic substance.** Acute toxicity, as defined in WAC 296-901-14022 Appendix A—Health hazard criteria.

(38) **Turnaround.** A planned total or partial shutdown/outage of a petroleum refinery process unit or plant to perform maintenance, overhaul or repair of a process and process equipment, and to inspect, test, and replace process materials and equipment. Turnaround does not include unplanned shutdowns/outages that occur due to emergencies or other unexpected maintenance matters in a process unit or plant. Turnaround also does not include routine maintenance, where routine maintenance consists of regular, periodic maintenance on one or more pieces of equipment at a refinery process unit or plant that may require shutdown of such equipment.

(39) **Utility.** A system that provides energy or other process-related services to enable the safe operation of a refinery process. This definition includes water, steam and asphyxiants, such as nitrogen and carbon dioxide, when used as part of a process.

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NEW SECTION

WAC 296-67-311 Process safety management program. (1) The employer must designate the refinery manager as the person with authority and responsibility for compliance with Part B of this chapter.

(2) The employer must develop, implement, and maintain an effective written process safety management (PSM) program, which must be reviewed and updated at least once every three years.

(3) The employer must develop, implement, and maintain an organizational chart that identifies management positions responsible for implementing the PSM program elements required by Part B of this chapter.

(4) The employer must develop, implement and maintain an effective program to track, document, and assess leading and lagging process safety performance indicators.

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NEW SECTION

WAC 296-67-315 Employee collaboration. (1) In consultation with employees and employee representatives, the employer must develop, implement, and maintain a written plan to effectively provide for employee collaboration throughout all PSM elements, including:

(a) Effective collaboration by affected operating and maintenance employees and employee representatives, throughout all phases, in performing:

- (i) Process hazard analyses (PHAs);
- (ii) Damage mechanism reviews (DMRs);
- (iii) Hierarchy of hazard controls analyses (HCAs);
- (iv) Management of change assessments (MOCs);
- (v) Management of organizational change assessments (MOOCs);
- (vi) Process safety culture assessments (PSCAs);
- (vii) Incident investigations;
- (viii) Development and maintenance of process safety information;
- (ix) Safeguard protection analyses (SPAs); and
- (x) Pre-startup safety reviews (PSSRs).

(b) Effective collaboration by affected operating and maintenance employees and employee representatives, throughout all phases, in the development, training, implementation, and maintenance of the PSM elements required by this part; and

(c) Access by employees and employee representatives to all documents or information developed or collected by the employer, including information that might be subject to protection as a trade secret.

(2) Authorized collective bargaining agents may select employee(s) to engage in overall PSM program development and implementation planning, and employee(s) to participate in PSM teams and other activities.

(3) Where employees are not represented by an authorized collective bargaining agent, the employer must establish effective procedures in consultation with affected employee(s) for the selection of employee representatives.

(4) Nothing in this section or others in chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals, Part B, must preclude the employer from requiring an employee or employee representative to whom information is made available to enter into a confidentiality agreement prohibiting them from disclosing such information, pursuant to WAC 296-901-14018 Trade secrets.

(5) Within 90 calendar days of the effective date of this part, the employer, in consultation with employees and employee representatives, must develop, implement, and maintain the following:

(a) Effective stop work procedures that ensure:

(i) The authority of all employees, including employees of contractors, to refuse or delay the performance of a task that they believe could reasonably result in serious physical harm or death;

(ii) The authority of all employees, including employees of contractors, to recommend to the qualified operator in charge of a unit that an operation or process be partially or completely shut down, based on a process safety hazard;

(iii) The authority of the qualified operator in charge of a unit to partially or completely shut down an operation or process, based on a process safety hazard; and

(iv) Employees who exercise stop work authority as described in this part are protected from intimidation, retaliation, or discrimination.

(b) Effective procedures to ensure the right of all employees, including employees of contractors, to anonymously report hazards. The employer must respond in writing within 30 calendar days to written hazard reports submitted by employees, employee representatives, contractors, employees of contractors and contractor employee representatives. The employer must prioritize and promptly respond to and correct hazards that present the potential for death and serious physical harm. If the employer determines that an anonymous report does not constitute a hazard, or that the hazard is being corrected by some other means, a written response must be prepared and made available that provides this information to affected employees.

(6) The employer must document the following:

(a) Recommendations to partially or completely shut down an operation or process;

(b) The partial or complete shutdown of an operation or process; and

(c) Written reports of hazards, and the employer's response.

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NEW SECTION

WAC 296-67-319 Process safety information. (1) The employer must develop, implement, and maintain a compilation of written process safety information (PSI) before performing any:

- (a) PHA;
- (b) HCA;
- (c) SPA; or
- (d) DMR.

(2) The compilation of written PSI must be sufficient to enable the employer and employee involved in operating or maintaining a process to identify and understand the hazards posed by the process.

(3) The PSI must include accurate, verified, and complete information pertaining to the following:

- (a) The hazards of highly hazardous chemicals and materials used in or produced by the process;
- (b) The technology of the process;
- (c) Process equipment used in the process; and
- (d) Results of previous DMRs.

(4) Information pertaining to the highly hazardous chemicals or materials used in, present in, or produced by the process, must include at least the following:

(a) Toxicity information, including acute and chronic health hazards;

(b) Permissible exposure limits pursuant to WAC 296-841-20025;

- (c) Physical data;
- (d) Damage mechanism data;
- (e) Thermal and chemical stability data;
- (f) Reactivity data; and
- (g) Hazardous effects of incompatible mixtures that could foreseeably occur.

Note: Safety data sheets meeting the requirements of WAC 296-901-14014 may be used to comply with this requirement to the extent they contain the information required by this section.

- (5) Information pertaining to the technology of the process must include at least the following:
 - (a) A block flow diagram or simplified process flow diagram;
 - (b) Process chemistry;
 - (c) Maximum intended inventory;
 - (d) Safe upper and lower limits of process variables, such as temperatures, pressures, flows, levels, and compositions; and
 - (e) The consequences of deviations, including chemical mixing and reactions that may affect the safety and health of employees.
- (6) Information pertaining to the equipment in the process must include at least the following:
 - (a) Materials of construction;
 - (b) Piping and instrumentation diagrams (P&IDs);
 - (c) Electrical classification;
 - (d) Relief system design and design basis;
 - (e) Ventilation system design;
 - (f) Design codes and standards employed, including design conditions and operating limits;
 - (g) Material and energy balances for processes built after September 1, 1992;
 - (h) Safety systems, such as interlocks and detection and suppression systems;
 - (i) Electrical supply and distribution systems; and
 - (j) Results of prior DMRs.
- (7) The employer must document that process equipment complies with recognized and generally accepted good engineering practices (RAGAGEP), where RAGAGEP has been established for that process equipment, or with more protective internal practices that ensure safe operation.
- (8) If the employer installs new process equipment for which no RAGAGEP exists, the employer must determine and document that the equipment is designed, constructed, installed, maintained, inspected, tested and operated in a safe manner.
- (9) If existing process equipment was designed and constructed in accordance with codes, standards or practices that are no longer in general use, the employer must determine and document that the process equipment is designed, constructed, installed, maintained, inspected, tested and operated in a safe manner for its intended purpose.
- (10) The employer must provide for employee collaboration, pursuant to WAC 296-67-315 Employee collaboration. The PSI must be made available to all employees, and relevant PSI must be made available to employees of contractors. Information pertaining to the hazards of the process must be effectively communicated to all affected employees.

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NEW SECTION

WAC 296-67-323 Hazard analyses. (1) Process hazard analysis (PHA).

(a) The employer must perform and document an effective PHA appropriate to the complexity of each process, in order to identify, evaluate, and control hazards associated with each process. All initial PHAs for processes not previously covered by WAC 296-67-017 must be completed within three years of the effective date of Part B of this chapter. PHAs performed in accordance with the requirements of WAC 296-67-017 must satisfy the initial PHA requirements of Part B of this chapter. All modes of operation pursuant to WAC 296-67-327 Operating procedures, must be covered by the PHA.

(b) The employer must determine and document the priority order for performing PHAs based on the complexity, severity, and extent of process hazards, the number of potentially affected employees, the age of the process and the process operating history. The employer must use at least one of the following methodologies:

- (i) What-if;
 - (ii) Checklist;
 - (iii) What-if/checklist;
 - (iv) Hazard and operability study (HAZOP);
 - (v) Failure mode and effects analysis (FMEA);
 - (vi) Fault tree analysis; or
 - (vii) Other PHA methods recognized by engineering organizations or governmental agencies.
- (c) The PHA must address:
- (i) The hazards of the process;
 - (ii) Previous publicly documented process safety incidents in the petroleum refinery and petrochemical industry sectors that are relevant to the process;
 - (iii) DMR reports that are applicable to the process;
 - (iv) HCA reports that are applicable to the process;
 - (v) Potential consequences of failures of process equipment;
 - (vi) Facility siting, including the placement of processes, equipment, buildings, employee occupancies and work stations, in order to effectively protect employees from process safety hazards;
 - (vii) Human factors;
 - (viii) A qualitative evaluation of the types, severity and likelihood of possible incidents that could result from a failure of the process or of process equipment;
 - (ix) The potential effects of external events, including seismic events, if applicable;
 - (x) The findings of incident investigations relevant to the process;
 - (xi) A review of applicable management of change (MOC) documents completed since the last PHA; and
 - (xii) Engineering and administrative controls associated with the process.

(d) The PHA must be performed by a team with expertise in engineering and process operations, and must include at least one refinery operating employee who currently works in, or provides training about the process, and who has experience and knowledge specific to the process being evaluated. The team must also include one member with expertise in the specific PHA methodology being used. As necessary, the team must consult with individuals with expertise in damage mecha-

nisms, process chemistry, safeguard protection analysis, and control systems.

(e) The team must document its findings and recommendations in a PHA report, which must be available to affected employees whose work assignments are in the petroleum refinery and who may be affected by the findings and recommendations.

(f) The PHA report must include:

(i) The methodologies, analyses and factors considered by the PHA team;

(ii) The findings of the PHA team; and

(iii) The PHA team's recommendations, including additional safeguards to address any deficiencies identified by the SPA.

(g) At least every five years, the written PHA must be updated and revalidated in accordance with the requirements of this section to ensure that the PHA is consistent with the current process.

(2) Safeguard protection analysis.

(a) For each scenario in the PHA that identifies the potential for a process safety incident, the employer must perform:

(i) An effective written safeguard protection analysis (SPA) to determine the effectiveness of existing individual safeguards;

(ii) The combined effectiveness of all existing safeguards for each failure scenario in the PHA;

(iii) The individual and combined effectiveness of safeguards recommended in the PHA; and

(iv) The individual and combined effectiveness of additional or alternative safeguards that may be needed.

(b) All independent protection layers for each failure scenario must be independent of each other and independent of initiating causes.

(c) The SPA must utilize a quantitative or semi-quantitative method, such as layer of protection analysis (LOPA), or an equally effective method to identify the most protective safeguards. The risk reduction attainable by each safeguard must be based on site-specific failure rate data, or in the absence of such data, industry failure rate data for each device, system, or human factor.

(d) The SPA must be performed by at least one individual with expertise in the specific SPA methodology being used. The SPA may be performed as part of the PHA or as a stand-alone analysis.

(e) The SPA must document the likelihood and severity of all potential initiating events, including equipment failures, human factors, loss of flow control, loss of pressure control, loss of temperature control, loss of level control, excess reaction, and other conditions that may lead to a loss of containment. The SPA must document the risk reduction achieved by each safeguard for all potential initiating events.

(f) The employer must complete all SPAs within six months of the completion or revalidation of the PHA.

(3) Hierarchy of hazard controls analysis.

(a) The employer must perform an HCA in a timely manner as follows:

(i) For all recommendations made by a PHA team for each scenario that identifies the potential for a process safety incident;

(ii) For all recommendations that result from the investigation of a process safety incident;

(iii) As part of managing changes, whenever a major change is proposed; and

(iv) During the design and review of new processes, new process units, new facilities, and their related process equipment.

(b) All HCAs for facility processes must be updated and revalidated as standalone analyses at least once every five years, and can be performed in conjunction with the PHA schedule.

(c) HCAs must be documented and performed by a team with expertise in engineering and process operations. The team must include one member knowledgeable in the HCA methodology being used, and at least one operating employee who currently operates the process and has expertise and experience in the process being evaluated. As necessary, the team must consult with individuals with expertise in damage mechanisms, process chemistry, and control systems.

(d) The HCA team must:

(i) Compile or develop all risk-relevant data for each process;

(ii) Identify, characterize, and prioritize risks posed by each process safety hazard;

(iii) Identify, analyze, and document all inherent safety measures and safeguards for each process safety hazard in the following sequence and priority order, from most preferred to least preferred:

(A) First order inherent safety measures;

(B) Second order inherent safety measures;

(C) Passive safeguards;

(D) Active safeguards; and

(E) Procedural safeguards.

(iv) For purposes of this section, first order inherent safety measures are considered to be most effective and procedural safeguards are considered to be least effective;

(v) Identify, analyze, and document relevant, publicly available information on inherent safety measures and safeguards. This information must include inherent safety measures and safeguards that have been:

(A) Achieved in practice by the petroleum refining industry and related industrial sectors; and

(B) Required or recommended for the petroleum refining industry by a federal or state agency or in a regulation or report.

(vi) For each process safety hazard identified, develop written recommendations in the following sequence and priority order:

(A) Eliminate hazards to the greatest extent feasible using first order inherent safety measures;

(B) Reduce any remaining hazards to the greatest extent feasible using second order inherent safety measures;

(C) Effectively reduce remaining risks using passive safeguards;

(D) Effectively reduce remaining risks using active safeguards;

and

(E) Effectively reduce remaining risks using procedural safeguards.

(e) The HCA team must complete an HCA report within 90 calendar days of developing the recommendations. The employer must append the HCA report to the PHA report. The report must include:

(i) A description of the composition and qualification of the team;

(ii) A description of the HCA methodology used by the team;

(iii) A description of each process safety hazard analyzed by the team;

(iv) A description of the inherent safety measures and safeguards analyzed by the team; and

(v) The rationale for the inherent safety measures and safeguards recommended by the team for each process safety hazard.

(4) The employer must implement all recommendations pursuant to WAC 296-67-383 Corrective action program.

(5) Employers must retain the initial, updated and revalidation of PHAs, SPAs, and HCAs for each process covered by this part, as well as the documented resolution of recommendations described in this section, for the life of the process.

(6) The employer must provide for employee collaboration in performing PHAs, SPAs, and HCAs, pursuant to WAC 296-67-315 Employee collaboration.

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NEW SECTION

WAC 296-67-327 Operating procedures. (1) The employer must develop, implement, and maintain effective written operating procedures. The operating procedures must provide clear instructions for safely performing activities involved in each process. The operating procedures must be consistent with the PSI and, at a minimum, must address the following:

(a) Steps for each operating phase or mode of operation:

(i) Start up;

(ii) Normal operations;

(iii) Temporary operations;

(iv) Emergency operations;

(v) Emergency shutdown, including the conditions under which emergency shutdown is required, provisions granting the authority of the qualified operator to partially or completely shut down the operation or process, and the assignment of responsibilities to qualified operators in order to ensure that emergency shutdown is executed in a safe and timely manner;

(vi) Normal shutdown;

(vii) Start up following a turnaround, or planned or unplanned shutdown, or after an emergency shutdown; and

(viii) Nonroutine work.

(b) Operating limits:

(i) Consequences of deviations; and

(ii) Steps to correct or avoid deviations.

(c) Safety and health considerations:

(i) Properties of, and hazards presented by, the chemicals and materials used in the process;

(ii) Precautions necessary to prevent exposure, including passive, active and procedural safeguards, personal protective equipment, engineering controls, and administrative controls;

(iii) Protective measures to be taken if physical contact or airborne exposure occurs;

(iv) Safety procedures for opening and decontaminating process equipment;

(v) Verification of the composition and properties of raw materials and control of highly hazardous chemical inventory levels; and

(vi) Any special or unique hazards.

(d) Safety systems and their functions.

(2) Operating procedures must be readily accessible to all affected employees, including the employees of contractors and maintenance employees who are performing work related to the procedure, and whose job tasks expose them to process safety hazards.

(3) Operating procedures must be reviewed and updated as often as necessary to ensure that they reflect current, safe operating practices. The operating procedures must include any changes that result from alterations in process chemicals, technology, personnel, process equipment or other changes to the facility. Changes to operating procedures must be managed pursuant to the requirements of WAC 296-67-355 Management of change.

(4) The employer must annually certify and document that written operating procedures are current and accurate.

(5) The operating procedures must include emergency procedures for each process, including any responses to the overpressurizing or overheating of equipment or piping, and the handling of leaks, spills, releases and discharges of highly hazardous chemicals or materials. These operating procedures must provide that only qualified operators may initiate these operations, and that prior to allowing employees in the vicinity of a leak, release or discharge, the employer must, at a minimum, do one of the following:

(a) Define the conditions for handling leaks, spills, or discharges of highly hazardous chemicals or materials that provide a level of protection that is functionally equivalent to, or safer than, shutting down or isolating the process;

(b) Isolate any vessel, piping, and equipment where a leak, spill, or discharge is occurring; or

(c) Shut down and depressurize all process operations where a leak, release, or discharge is occurring.

(6) The employer must develop, implement, and maintain effective written safe work practices applicable to all affected employees, including maintenance employees and the employees of contractors who are performing work related to the procedure, and whose job tasks expose them to process safety hazards. Safe work practices must be established for specific activities that include, but are not limited to:

(a) Opening and decontaminating process equipment or piping;

(b) Tasks requiring lock-out/tag-out procedures;

(c) Confined space entry;

(d) Handling, controlling and stopping leaks, spills, releases and discharges of highly hazardous chemicals or materials;

(e) Control over entry into hazardous work areas by maintenance, contractor, laboratory or other support personnel.

(7) The employer must provide for employee collaboration, pursuant to WAC 296-67-315 Employee collaboration.

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NEW SECTION

WAC 296-67-331 Training. (1) Initial training.

(a) Each affected employee involved in the operation of a process, and each affected employee prior to working in a newly assigned process, including employees of contractors, must be trained in an overview of the process and in the applicable operating procedures.

(b) Each affected employee involved in the maintenance of a process, and each affected employee prior to performing work within a newly assigned process, including employees of contractors, must be trained in an overview of the process and in the hazards and safe work practices related to the process.

(c) The training must include the following material applicable to the employee's job tasks:

- (i) Safety and health hazards;
 - (ii) Procedures, including emergency operations and shutdown; and
 - (iii) Safe work practices.
- (2) Refresher and supplemental training.

(a) At least every three years, and more often if necessary, the employer must provide effective refresher and supplemental training to each operating employee to ensure that each employee understands and adheres to current operating procedures.

(b) At least every three years, and more often if necessary, the employer must provide effective refresher and supplemental training to each maintenance employee to ensure that each employee understands and adheres to current maintenance procedures.

(c) The employer, in collaboration with the employees involved in operating or maintaining a process, must determine the appropriate frequency and content of refresher training.

(3) Training certification.

(a) The employer must ensure that each affected employee involved in operating or maintaining a process has received, understood and successfully completed training as specified by this section.

(b) The employer, after the initial or refresher training, must prepare a certification record containing the identity of the employee, the date(s) of training, the means used to verify that the employee understood the training, and the signature(s) of the person(s) who administered the training.

(4) The employer must develop, implement, and maintain an effective written program that includes the following:

(a) The requirements that an employee must meet in order to be designated as qualified; and

(b) Employee testing procedures to verify understanding and to ensure competency in job skill levels and work practices that protect employee safety and health.

(5) Within 24 months of the effective date of Part B of this chapter, the employer must develop, implement, and maintain an effective written training program to ensure that all affected employees are aware of and understand all PSM elements described in this part. Employees and employee representatives collaborating as part of a team pursuant to Part B of this chapter must be trained in the PSM elements relevant to that team.

(6) The employer must provide for employee collaboration in developing, implementing, and maintaining the training program pursuant to WAC 296-67-315 Employee collaboration.

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NEW SECTION

WAC 296-67-335 Contractors. (1) Application. This section applies to contractors performing maintenance, repair, supply services,

turnaround, major renovation, or specialty work on or adjacent to a process. It does not apply to contractors providing incidental services that do not affect process safety, such as janitorial work, food and drink services, laundry, delivery or other supply services.

(2) Refinery employer responsibilities.

(a) The refinery employer must require that its contractors and any subcontractors use a skilled and trained workforce pursuant to chapter 49.80 RCW, High hazard facilities—Workforce.

(b) When selecting a contractor, the refinery employer must obtain and evaluate information regarding the contract employer's safety performance, including programs used to prevent employee injuries and illnesses, and must require that its contractors and any subcontractors use a skilled and trained workforce.

(c) The refinery employer must inform the contractor and must ensure that the contractor has informed each of its employees of the following:

(i) Potential process safety hazards associated with the contractor's work;

(ii) Applicable refinery safety rules; and

(iii) Applicable provisions of this chapter, including the requirements of WAC 296-67-367 Emergency planning and response, and WAC 296-24-567 Employee emergency plans and fire prevention plans.

(d) The refinery employer must develop, implement, and maintain effective written procedures and safe work practices to ensure the safe entry, presence and exit of the contractor and employees of the contractor in process areas pursuant to WAC 296-67-327 Operating procedures.

(e) The refinery employer must periodically evaluate the performance of contractors in fulfilling their obligations as specified in this section. The refinery employer must ensure and document that the requirements of this section are performed and completed by the contractor.

(f) The refinery employer must obtain and make available to the division of occupational safety and health (DOSH) upon request, a copy of the contractor's injury and illness log related to the contractor's work in the process area.

(3) Contractor responsibilities.

(a) The contractor must ensure that all of its employees are effectively trained in the work practices necessary to safely perform their jobs, including:

(i) Potential process safety hazards related to their jobs;

(ii) Applicable refinery safety and health rules and procedures;

(iii) The specific actions to take in an emergency; and

(iv) Applicable provisions of this chapter, including the provisions of WAC 296-67-367 Emergency planning and response, and WAC 296-24-567 Employee emergency plans and fire prevention plans.

(b) The contractor must document that each contract employee has received and understood the training required by this section. The contractor must prepare a record that contains the identity of the contract employee, the date(s) and subject(s) of training, and the means used to verify that the employee understood the training.

(c) The contractor must ensure that each of its employees understands and follows the safety and health procedures of the refinery employer and the contractor.

(d) The contractor must advise the refinery employer of any specific hazards presented by the contractor's work, as well as any haz-

ards identified by the contractor while performing work for the refinery employer.

(4) Nothing in this section or others in chapter 296-67 WAC, Safety standards for process safety management of highly hazardous chemicals, Part B, must preclude the employer from requiring a contractor or an employee of a contractor to whom information is made available under this part to enter into a confidentiality agreement prohibiting them from disclosing such information, pursuant to WAC 296-901-14018 Trade secrets.

(5) The refinery employer and contract employer must provide for employee collaboration, pursuant to WAC 296-67-315 Employee collaboration.

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NEW SECTION

WAC 296-67-339 Pre-startup safety review. (1) The employer must perform a pre-startup safety review (PSSR) for new processes and for modified processes if the modification necessitates a change in the PSI, and for partial, planned, or unplanned shutdowns/outages, where activities exceed those covered under an existing procedure. The employer must also perform a PSSR for all turnaround work performed on a process.

(2) The pre-startup safety review must confirm all of the following prior to the introduction of highly hazardous chemicals or materials to a process:

(a) Construction, maintenance, and repair work has been performed in accordance with design specifications;

(b) Process equipment has been maintained, prepared for start up, and is operable in accordance with design specifications;

(c) Effective safety, operating, maintenance, and emergency procedures are in place;

(d) For new processes, a PHA, HCA, DMR, and SPA have each been performed, as applicable, and recommendations have been implemented or resolved before start up. For new or modified processes, all changes have been implemented pursuant to WAC 296-67-355 Management of change; and

(e) Training of each operating employee and maintenance employee affected by the change has been completed.

(3) The employer must involve affected operating and maintenance employees in the PSSR who have expertise and experience in the operations and engineering of the process being started. An operating employee who currently works in the process, and who has expertise and experience in the process being started, must be designated as the employee representative.

(4) The employer must provide for employee collaboration, pursuant to WAC 296-67-315 Employee collaboration.

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NEW SECTION**WAC 296-67-343 Mechanical integrity.** (1) Written procedures.

(a) The employer must develop, implement, and maintain effective written procedures to ensure the ongoing integrity of process equipment.

(b) The procedures must provide clear instructions for safely performing maintenance activities on process equipment, consistent with the PSI for the process.

(c) The procedures and inspection documents developed under this section must be readily accessible to employees and employee representatives, including employees of contractors who are performing work on process equipment, and whose job tasks expose them to process safety hazards.

(2) Inspection and testing.

(a) Inspections and tests must be performed on process equipment using procedures that meet or exceed RAGAGEP.

(b) The frequency of inspections and tests of process equipment must be consistent with:

(i) The applicable manufacturer's recommendations;

(ii) RAGAGEP; or

(iii) Internal practices that are more protective than (b) (i) or (ii) of this subsection.

(c) Inspections and tests must be performed more frequently if determined to be necessary by prior operating or equipment maintenance history.

(d) The employer must retain documentation for each inspection and test that has been performed on process equipment. The documentation must identify the date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other such identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

(3) Equipment deficiencies.

(a) The employer must correct deficiencies to ensure safe operation of process equipment. Repair methodologies and preventative maintenance must be consistent with RAGAGEP or more protective internal practices.

(b) The employer must take the necessary means to ensure that temporary repairs on process equipment do not fail and allow the safe operation of that equipment until a permanent repair is made.

(4) Quality assurance.

(a) The employer must ensure that all process equipment, at a minimum, complies with the criteria established by the PSI. The employer must ensure that all process equipment is:

(i) Suitable for the process application for which it is or will be used;

(ii) Fabricated from the proper materials of construction; and

(iii) Designed, constructed, installed, maintained, inspected, tested, operated, and replaced in compliance with manufacturer's and other design specifications and all applicable codes and standards.

(b) If the employer installs new process equipment or has existing process equipment for which no RAGAGEP exists, the employer must document and ensure that this equipment is designed, constructed, installed, maintained, inspected, tested and operated in a safe manner.

(c) The employer must perform regularly scheduled checks and inspections as necessary to ensure that the requirements of (a) of this subsection are met.

(d) The employer must ensure that maintenance materials, spare parts and equipment meet design specifications and applicable codes.

(e) The employer must establish a process for evaluating new or updated codes and standards and implementing changes as appropriate to ensure safe operation.

(f) Once an equipment deficiency or failure mechanism is identified, substantially similar equipment in similar service must be evaluated for the same deficiency or failure mechanism.

(g) The employer must provide for employee collaboration pursuant to WAC 296-67-315 Employee collaboration.

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NEW SECTION

WAC 296-67-347 Damage mechanism review. (1) The employer must complete a damage mechanism review (DMR) for each existing and new process for which a damage mechanism exists. Where no DMR is performed, the employer must document the rationale for determining that no damage mechanisms exist. The employer must determine and document the priority order for performing DMRs based on the process operating and maintenance history, the PHA schedule, and inspection records.

(2) The employer must complete no less than 50 percent of initial DMRs within three years and all remaining DMRs within five years of the effective date of Part B of this chapter. If the employer has performed and documented a DMR for a process up to five years prior to the effective date of Part B of this chapter, and that DMR includes the elements identified in subsection (8) of this section, that DMR may be used to satisfy the employer's obligation to complete an initial DMR under this section.

(3) A DMR must be revalidated at least once every five years.

(4) A DMR must be reviewed as part of a major change on a process for which a damage mechanism already exists, prior to approval of the change. If a major change may introduce a damage mechanism, a DMR must be performed prior to approval of the change.

(5) Where a damage mechanism is identified as a contributing factor in an incident investigation, the employer must review the most recent DMRs that are relevant to the investigation. If a DMR has not been performed on the processes that are relevant to the investigation, the incident investigation team must recommend that a DMR be performed and completed within a specified time frame.

(6) The DMR for a process must be available to the team performing a PHA for that process.

(7) The DMR must be performed by a team with expertise in engineering, equipment and pipe inspection, damage and failure mechanisms, and the operation of the process or processes under review. The team must include one member knowledgeable in the specific DMR methodology being used.

(8) The DMR for each process must include:

(a) Assessment of process flow diagrams;

(b) Identification of all potential damage mechanisms;

(c) Determination that the materials of construction are appropriate for their application and are resistant to potential damage mechanisms;

(d) Methods to prevent or mitigate damage; and

(e) Review of operating parameters to identify operating conditions that could accelerate or otherwise worsen damage, or that could minimize or eliminate damage.

(9) For purposes of this section, damage mechanisms include, but are not limited to:

(a) Mechanical loading failures, such as ductile fracture, brittle fracture, mechanical fatigue, and buckling;

(b) Erosion, such as abrasive wear, adhesive wear, and fretting;

(c) Corrosion, such as uniform corrosion, microbiologically induced corrosion, localized corrosion, and pitting;

(d) Thermal-related failures, such as creep, metallurgical transformation, and thermal fatigue;

(e) Cracking, such as stress-corrosion cracking; and

(f) Embrittlement, such as high-temperature hydrogen attack.

(10) DMRs must include an assessment of previous experience with the process, including the inspection history and all damage mechanism data, a review of industry-wide experience with the process, and all applicable standards, codes and practices.

(11) At the conclusion of the analysis, the team must prepare a written DMR report, which must include the following:

(a) The process and damage mechanisms analyzed;

(b) Results of all analyses performed;

(c) Recommendations for temporarily mitigating damage; and

(d) Recommendations for preventing damage.

(12) The report must be provided to and, upon request, reviewed with affected employees, including contractor employees, whose work assignments are within the scope of the process evaluated in the DMR.

(13) The employer must implement all recommendations pursuant to WAC 296-67-383 Corrective action program.

(14) The employer must provide for employee collaboration, pursuant to WAC 296-67-315 Employee collaboration.

(15) DMR reports must be retained for the life of the process.

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NEW SECTION

WAC 296-67-351 Hot work. (1) The employer must develop, implement and maintain effective written procedures for the issuance of hot work permits.

(2) The employer must issue a hot work permit prior to the commencement of hot work operations within or near the process.

(3) The permit must document that fire prevention and protection requirements found in WAC 296-24-695 have been implemented prior to beginning the hot work operations. The permit must:

(a) Indicate the date(s) and time(s) authorized for hot work, including the designated expiration of the permit;

(b) Identify the location and equipment (including the equipment identifier, if applicable) where hot work is to be performed; and

(c) Identify the name and employer of the person performing the hot work.

- (4) The employer must provide for employee collaboration, pursuant to WAC 296-67-315 Employee collaboration.
- (5) Hot work permits must be kept on file for one year.

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NEW SECTION

WAC 296-67-355 Management of change. (1) The employer must develop, implement, and maintain effective written management of change (MOC) procedures to assess and manage changes (except for replacements-in-kind) in process chemicals, technology, procedures, process equipment and facilities. The MOC procedure must include provisions for temporary repairs, including temporary pipe repairs.

(2) The MOC procedures must ensure that the following are addressed and documented prior to any change:

- (a) The technical basis for the proposed change;
- (b) Potential process safety impacts of the change including, but not limited to:
 - (i) New process safety hazards; or
 - (ii) Worsening an existing process safety hazard;
- (c) Modifications to operating and maintenance procedures, or development of new operating and maintenance procedures;
- (d) The time period required for the change; and
- (e) Authorization requirements for the proposed change.

(3) Prior to implementing a major change, the employer must review or perform a DMR and perform a HCA. The findings of the DMR and recommendations of the HCA must be included in the MOC documentation.

(4) The employer must use qualified personnel and appropriate methods for all MOCs, based upon hazard, complexity and type of change.

(5) Employees involved in the process, as well as maintenance workers whose job tasks will be affected by a change, must be informed of, and effectively trained in the change in a timely manner prior to the implementation of the change. For contractors and employees of contractors who are operating the process and whose job tasks will be affected by a change, the employer must make the MOC documentation available and require effective training in the change in a timely manner, prior to implementation of the change.

(6) If a change covered by this section results in a change to the PSI, such information must be amended and updated in a timely manner.

(7) If a change covered by this section results in a change to the operating procedures, the procedures must be amended and updated in a timely manner prior to implementation of the change.

(8) The employer must provide for employee collaboration pursuant to WAC 296-67-315 Employee collaboration.

[]

NEW SECTION

WAC 296-67-359 Management of organizational change. (1) The employer must develop, implement and maintain effective written procedures to manage organizational changes.

(2) The employer must designate a team to perform a management of organizational change (MOOC) assessment prior to reducing staffing levels, reducing classification levels of employees, changing shift duration, or increasing employee responsibilities at or above 15 percent. The MOOC assessment is required for changes with a duration exceeding 90 calendar days affecting operations, engineering, maintenance, health and safety, or emergency response. This requirement must also apply to employers using employees of contractors in permanent positions.

(3) The MOOC assessment must be in writing and must include a description of the change being proposed, the composition of the team responsible for assessing the proposed change, the factors evaluated by the team, and the team's findings and recommendations.

(4) Prior to performing the MOOC assessment, the employer must ensure that the job function descriptions are current and accurate for all positions potentially affected by the change.

(5) The refinery manager or designee must certify, based on information and belief formed after reasonable inquiry, that the MOOC assessment is accurate and that the proposed organizational change meets the requirements of this section.

(6) All MOOC assessments must include an analysis of human factors.

(7) Prior to implementing a change, the employer must inform all employees potentially affected by the change.

(8) The employer must provide for employee collaboration pursuant to WAC 296-67-315 Employee collaboration.

[]

NEW SECTION

WAC 296-67-363 Incident investigation—Root cause analysis. (1) The employer must develop, implement and maintain effective written procedures for promptly investigating and reporting any incident that results in, or could reasonably have resulted in, a process safety incident.

(2) The written procedures must include an effective method for performing a thorough root cause analysis.

(3) The employer must initiate the incident investigation as promptly as possible, but no later than 48 hours following the incident. As part of the incident investigation, the employer must perform a root cause analysis.

(4) The employer must establish an incident investigation team, which at a minimum must consist of a person with expertise and experience in the process involved, a person with expertise in the employer's root cause analysis method, and a person with expertise in overseeing the investigation and analysis. If the incident involved the work of a contractor, a representative of the contractor's employees must be included on the investigation team.

(5) The incident investigation team must implement the employer's root cause analysis method to determine the initiating and underlying causes of the incident. The analysis must include identification of management system failures, including organizational and safety culture deficiencies.

(6) The incident investigation team must develop recommendations to address the findings of the root cause analysis. The recommendations must include interim measures that will prevent a recurrence or similar incident until final corrective actions can be implemented.

(7) The team must prepare a written investigation report within 90 calendar days of the incident. If the team demonstrates in writing that additional time is needed due to the complexity of the investigation, the team must prepare a status report within 90 calendar days of the incident, and every 30 calendar days thereafter until the investigation is complete. The team must prepare a final investigation report within five months of the incident.

(8) Investigation reports must include:

(a) The date and time of the incident;

(b) The date and time the investigation began;

(c) A detailed description of the incident;

(d) The factors that caused or contributed to the incident, including direct causes, indirect causes and root causes, determined through the root cause analysis;

(e) A list of any DMR(s), PHA(s), SPA(s), and HCA(s) that were reviewed as part of the investigation;

(f) Documentation of relevant findings from the review of DMR(s), PHA(s), SPA(s), and HCA(s);

(g) The incident investigation team's recommendations; and

(h) Interim measures implemented by the employer.

(9) The employer must implement all recommendations pursuant to WAC 296-67-383 Corrective action program.

(10) The employer must complete an HCA in a timely manner for all recommendations that result from the investigation of a process safety incident. The employer must append the HCA report to the investigation report.

(11) Investigation reports must be provided to and upon request, reviewed with employees whose job tasks are affected by the incident. Investigation reports must also be made available to all operating, maintenance and other personnel, including employees of contractors where applicable, whose work assignments are within the facility where the incident occurred or whose job tasks are relevant to the incident findings. Investigation reports must be provided on request to employee representatives and, where applicable, contractor employee representatives.

(12) Any draft or finalized investigation report must be provided immediately to the labor and industries' division of occupational safety and health (DOSH) upon written request.

(13) The employer must provide for employee collaboration pursuant to WAC 296-67-315 Employee collaboration.

(14) Incident investigation reports must be retained for the life of the process.

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NEW SECTION

WAC 296-67-367 Emergency planning and response. (1) The employer must develop, implement and maintain an effective emergency response or emergency action plan for the entire plant, pursuant to the provisions of WAC 296-24-567 Employee emergency plans and fire prevention plans, and chapter 296-824 WAC, Emergency response. An emergency response plan must define and include procedures for handling all of the following:

(a) Large and small spills or releases;
(b) Fires;
(c) Explosions; and
(d) Any other emergency with a direct bearing on employee safety and health.

(2) The written plan must specify how an emergency response will be executed if it exceeds the capability of the employer's internal emergency response team.

(3) The employer must document any agreement with external emergency response organizations expected to assist in an emergency. The documentation must include schedules for planned drills.

(4) The employer must provide for employee collaboration pursuant to WAC 296-67-315 Employee collaboration.

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NEW SECTION

WAC 296-67-371 Compliance audits. (1) Every three years, the employer must perform an effective compliance audit. The employer must certify that it has evaluated and verified that the procedures and practices developed under Part B of this chapter are effective and being followed. The employer must prepare a written report documenting the findings of the compliance audit.

(2) The compliance audit must be performed by at least one person with expertise and experience in the requirements of the section under review. As part of the compliance audit, the employer must consult with operators with expertise and experience in each process audited, and must document the findings and recommendations from these consultations in the written report. The report must state the qualifications and identity of the persons performing the compliance audit.

(3) The employer must make the report available to employees and employee representatives. The employer must respond in writing within 60 days to any written comments submitted by an employee or employee representative regarding the report.

(4) The employer must implement all recommendations pursuant to WAC 296-67-383 Corrective action program.

(5) The employer must retain the three most recent compliance audit reports.

(6) The employer must provide for employee collaboration, pursuant to WAC 296-67-315 Employee collaboration.

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NEW SECTION

WAC 296-67-375 Process safety culture assessment. (1) The employer must develop, implement and maintain an effective process safety culture assessment (PSCA) program.

(2) The employer must perform an effective PSCA and produce a written report within 18 months following the effective date of Part B of this chapter, and at least every five years thereafter. If the employer has performed and documented a PSCA up to 18 months prior to the effective date of Part B of this chapter, and that PSCA includes the elements required in this section, that PSCA may be used to satisfy the employer's obligation to complete an initial PSCA.

(3) The PSCA must be developed and implemented by a team that must include at least one member knowledgeable in refinery operations and at least one employee representative. The team must consult with at least one employee or other individual(s) with expertise in assessing process safety culture in the petroleum refining industry.

(4) The PSCA must, at a minimum, include an evaluation of the effectiveness of the following elements of process safety leadership:

(a) The employer's hazard reporting program;

(b) The employer's response to reports of hazards;

(c) The employer's procedures to ensure that incentive programs do not discourage reporting of hazards; and

(d) The employer's procedures to ensure that process safety is prioritized during upset or emergency conditions.

(5) The team must develop a written report within 90 calendar days of completion of the PSCA, which must include:

(a) The method(s) used to perform the PSCA;

(b) The findings and conclusions of the PSCA; and

(c) The team's recommendations to address the findings of the PSCA.

(6) The employer, in consultation with the PSCA team, must prioritize recommendations and implement corrective actions within 24 months of completion of the written report.

(7) The PSCA team must perform a written interim assessment of the implementation and effectiveness of each PSCA corrective action within three years following the completion of a PSCA report. If a corrective action is found to be ineffective, the employer must implement changes necessary to ensure effectiveness within, but not to exceed, six months.

(8) The refinery manager or designee must serve as signatory to all PSCA reports, corrective action plans and interim assessments.

(9) PSCA reports, corrective action plans and interim assessments must be communicated and made available to all affected employees, their representatives, and participating contractors within 60 calendar days of completion.

(10) Participating contractors must provide PSCA reports, corrective action plans, and interim assessments to their employees and employee representatives within 14 calendar days of receipt.

(11) The employer must provide for employee collaboration, pursuant to WAC 296-67-315 Employee collaboration.

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NEW SECTION

WAC 296-67-379 Human factors. (1) The employer must develop, implement and maintain an effective written human factors program within 18 months following the effective date of Part B of this chapter.

(2) The employer must include a written analysis of human factors, where relevant, in that, at a minimum, represents industry RAGA-GEP relevant to, major changes, incident investigations, PHAs, MOOCs, and HCAs. The analysis must include a description of the selected methodologies and criteria for their use.

(3) The employer must assess human factors in existing operating and maintenance procedures and must revise these procedures accordingly. The employer must complete 50 percent of assessments and revisions within three years following the effective date of Part B of this chapter, and 100 percent within five years.

(4) The human factors analysis must apply an effective method in evaluating at least the following:

- (a) Staffing levels;
- (b) Complexity of tasks;
- (c) Length of time needed to complete tasks;
- (d) Level of training, experience and expertise of employees;
- (e) Human-machine and human-system interface;
- (f) Physical challenges of the work environment in which the task is performed;
- (g) Employee fatigue and other effects of shiftwork and overtime;
- (h) Communication systems; and
- (i) The understandability and clarity of operating and maintenance procedures.

(5) The human factors analysis of process controls must include:

- (a) Error-proof mechanisms;
- (b) Automatic alerts; and
- (c) Automatic system shutdowns.

(6) The employer must include an assessment of human factors in new and revised operating and maintenance procedures.

(7) The employer must train affected operating and maintenance employees in the written human factors program.

(8) The employer must make available, and provide upon request, a copy of the written human factors program to affected employees and their representatives, and affected contractors, employees of contractors, and contractor employee representatives as relevant.

(9) The employer must provide for employee collaboration pursuant to WAC 296-67-315 Employee collaboration.

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NEW SECTION

WAC 296-67-383 Corrective action program. (1) The employer must develop, implement and maintain an effective written corrective action program to prioritize and implement recommendations of:

- (a) PHAs;
- (b) SPAs;
- (c) DMRs;
- (d) HCAs;

(e) Incident investigations; and

(f) Compliance audits.

(2) All findings and associated recommendations must be provided to the employer by the team performing the analysis, review, investigation, or audit in a timely manner.

(3) The employer may reject a team recommendation if the employer can demonstrate in writing that the recommendation meets one of the following criteria:

(a) The analysis upon which the recommendation is based contains material factual errors;

(b) The recommendation is not relevant to process safety; or

(c) The recommendation is infeasible; however, a determination of infeasibility must not be based solely on cost.

(4) The employer may change a team recommendation if the employer can demonstrate in writing that an alternative measure would provide an equivalent or higher order of inherent safety. The employer may change a team recommendation for a safeguard if an alternative safeguard provides an equally or more effective level of protection.

(5) The employer must document all instances where any one of the criteria in subsection (3) or (4) of this section is used for the purpose of rejecting or changing a team recommendation.

(6) Each recommendation that is changed or rejected by the employer must be communicated to on-site team members for comment and made available to off-site team members for comment. The employer must document all written comments received from team members for each changed or rejected recommendation. The employer must document a final decision for each recommendation and must communicate it to on-site team members and make it available to off-site team members.

(7) The employer must develop and document corrective actions to implement each accepted recommendation. The employer must assign a completion date for each corrective action and a person responsible for completing the corrective action.

(8) If the employer determines that a corrective action requires revalidation of any applicable PHA, SPA, HCA, or DMR, these revalidations must be subject to the corrective action requirements of this section. The employer must promptly append all revalidated PHAs, SPAs, DMRs, and HCAs to the applicable report.

(9) The employer must promptly complete all corrective actions and must comply with all completion dates required by this section. The employer must perform an MOC for any proposed change to a completion date, pursuant to WAC 296-67-355 Management of change. The employer must make all completion dates available, upon request, to all affected employees and employee representatives.

(10) Except as required by subsections (11) and (13) of this section, each corrective action that does not require a process shutdown must be completed within 30 months after the completion of the analysis or review, unless the employer demonstrates in writing that it is infeasible to do so.

(11) Each corrective action from a compliance audit must be completed within 18 months after completion of the audit, unless the employer demonstrates in writing that it is infeasible to do so. Each corrective action from an incident investigation must be completed within 18 months after completion of the investigation, unless the employer demonstrates in writing that it is infeasible to do so.

(12) Each corrective action requiring a process shutdown must be completed during the first regularly scheduled turnaround of the applicable process, following completion of the PHA, SPA, DMR, HCA, MOC,

compliance audit or incident investigation, unless the employer demonstrates in writing that it is infeasible to do so.

(13) Notwithstanding subsections (10), (11), and (12) of this section, corrective actions addressing process safety hazards must be prioritized and promptly corrected, either through permanent corrections or interim safeguards sufficient to ensure employee safety and health, pending permanent corrections.

(14) Where a corrective action cannot be implemented within the time limits required in subsection (10), (11), or (12) of this section, the employer must ensure that interim safeguards are sufficient to ensure employee safety and health, pending permanent corrections. The employer must document the decision and rationale for any delay and must implement the corrective action as soon as possible. The documentation must include:

(a) The rationale for deferring the corrective action;

(b) All MOC requirements;

(c) A revised timeline describing when the corrective action will be implemented; and

(d) An effective plan to make available the rationale and revised timeline to all affected employees and their representatives.

(15) The employer must track and document the completion of each corrective action and must append the documentation to the applicable PHA, SPA, DMR, HCA, incident investigation or compliance audit.

(16) The employer must provide for employee collaboration, pursuant to WAC 296-67-315 Employee collaboration.

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NEW SECTION

WAC 296-67-387 Trade secrets. (1) Without regard to possible trade secret status of such information, employers must make all information available as necessary to comply with Part B of this chapter, pursuant to WAC 296-901-14018 Trade secrets.

(2) Nothing in this section precludes the employer from requiring the persons to whom the information is made available under this section to enter into confidentiality agreements not to disclose the information as set forth in WAC 296-901-14018 Trade secrets.

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WSR 23-13-130
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed June 21, 2023, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-21-139.

Title of Rule and Other Identifying Information: Elective credit for paid work experience; sections of chapters 392-410 and 392-121 WAC.

Hearing Location(s): On Tuesday, July 25, 2023, at 11:00 a.m., virtual public hearing via Zoom (call-in option also available). Participation link available on office of superintendent of public instruction (OSPI) rules web page k12.wa.us/policy-funding/ospirulemaking-activity. The hearing will be held as a virtual public hearing, without a physical meeting space. For participation questions, please email kristin.murphy@k12.wa.us.

Date of Intended Adoption: July 28, 2023.

Submit Written Comments to: Becky Wallace, Assistant Superintendent, OSPI, P.O. Box 47200, Olympia, WA 98504, email rebecca.wallace@k12.wa.us, by July 25, 2023.

Assistance for Persons with Disabilities: Contact Kristin Murphy, OSPI rules coordinator, phone 360-725-6133, TTY 360-664-3631, email kristin.murphy@k12.wa.us, by July 18, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is to ensure consistent implementation of elective high school credit for work experience. The proposed additions and changes clarify definitions and ensure consistent application of funding calculations and reporting requirements. The proposed rules are intended to ensure that local education agencies increase access to credit for paid work experiences in an equitable way, honoring the value of work.

Reasons Supporting Proposal: OSPI is proposing the changes to support consistent implementation of work-related learning experiences and to align with HB [SHB] 1658 passed by the legislature in 2023.

Statutory Authority for Adoption: RCW 28A.230.100 and new section of chapter 28A.600 RCW as established by SHB 1658 (2023).

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

Name of Agency Personnel Responsible for Drafting and Implementation: Rebecca Wallace, OSPI, 600 South Washington Street, Olympia, WA; Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

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

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

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

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small businesses and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

Scope of exemption for rule proposal:

Is fully exempt.

June 20, 2023

Chris P.S. Reykdal

State Superintendent of Public Instruction

OTS-4316.2

AMENDATORY SECTION (Amending WSR 16-11-104, filed 5/18/16, effective 6/18/16)

WAC 392-121-107 Definition—Course of study. As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, 180-51, 392-169, 392-134, and 392-410 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction - Teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, or teaching/learning experiences conducted by charter school staff as directed by the charter school administration and charter school board, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district or charter school for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(b) Alternative learning experience - Alternative learning experience provided by the school district or charter school in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - Instruction provided by a contractor in conformance with WAC 392-121-188 or 392-121-1885.

(d) National guard - Participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.300.165 and WAC 392-410-320.

(e) Ancillary service - Any cocurricular service or activity, any health care service or activity, and any other services or activities, for or in which enrolled students are served by appropriate school district or charter school staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district or charter school, certificated contact time pursuant to RCW 28A.225.010 (4) (a) with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts and charter schools report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) (~~Work-based~~) Worksite learning - Training provided (~~pursuant to~~) in accordance with WAC 392-410-315 and reported as provided in WAC 392-121-124.

(g) Running start - Attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.400, chapter 392-169 WAC.

(h) Transition school - Participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district or charter school.

(i) Technical college direct funding - Enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the school district agree to have the school district report such enrollment.

(j) Dropout reengagement program - Enrollment in a state approved dropout reengagement program pursuant to RCW 28A.175.100 and chapter 392-700 WAC.

(k) Paid work experience - Training provided in accordance with WAC 392-410-316 and reported as provided in WAC 392-121-139.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, county and city adult jails, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188 or 392-121-1885;

(h) Enrollment for residents of the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

[Statutory Authority: RCW 28A.150.290. WSR 16-11-104, § 392-121-107, filed 5/18/16, effective 6/18/16. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-107, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.305. WSR 13-02-004, § 392-121-107, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.150.290. WSR 09-06-038, § 392-121-107, filed 2/25/09, effective 3/28/09; WSR 07-23-008, § 392-121-107, filed 11/8/07, effective 12/9/07. Statutory Authority: 1997 c 265 § 6 and RCW 28A.150.290. WSR 99-08-008 (Order 99-01), § 392-121-107, filed 3/25/99, effective 4/25/99. Statutory Authority: RCW 28A.150.290. WSR 97-22-013 (Order 97-06), § 392-121-107, filed 10/27/97, effective 11/27/97; WSR

95-18-097, § 392-121-107, filed 9/6/95, effective 10/7/95; WSR 95-01-013, § 392-121-107, filed 12/8/94, effective 1/8/95. Statutory Authority: 1990 c 33. WSR 90-16-002 (Order 18), § 392-121-107, filed 7/19/90, effective 8/19/90. Statutory Authority: RCW 28A.41.055 and 28A.41.170. WSR 88-03-013 (Order 88-8), § 392-121-107, filed 1/11/88.]

AMENDATORY SECTION (Amending WSR 16-14-031, filed 6/27/16, effective 7/28/16)

WAC 392-121-124 Full-time equivalent enrollment for ((work based)) worksite learning. For ((work-based)) worksite learning provided ((pursuant to)) in accordance with WAC 392-410-315 or by charter schools, a student's full-time equivalent shall be determined as follows:

(1) For cooperative ((work-based)) worksite learning experience, in accordance with WAC 392-410-315 (1)(g) and instructional worksite learning in accordance with WAC 392-410-315 (1)(f) and 296-125-043(4), divide the student's hours of work experience for the month by ((two hundred;)) 100. For example: ((Forty)) Twenty hours of cooperative work experience equals two tenths of a full-time equivalent ((40 ÷ 200 = 0.20). For instructional work based learning experience, in accordance with WAC 392-410-315 (1)(f) and 296-125-043(4), divide the student's enrolled hours of work experience for the month by one hundred; for example: Twenty hours of instructional work experience equals two tenths of a full-time equivalent)) (20 ÷ 100 = 0.20). Enrollment exclusions in WAC 392-121-108 apply to ((instructional work based)) worksite learning enrolled hours.

(2) Estimated or scheduled hours of cooperative ((work-based)) worksite learning experience may be used in determining a student's full-time equivalent on an enrollment count date: Provided, That the combined monthly hours reported for the school year shall not exceed the student's actual hours of cooperative ((work-based)) worksite learning experience documented on the student's work records and maintained by the school district or charter school for audit purposes.

(3) ((Work-based)) Worksite learning provided as part of a state-approved vocational education ((program)) course qualifies for enhanced vocational funding and may be included in determining a student's vocational full-time equivalent enrollment.

(4) Preparatory ((work-based)) worksite learning provided as part of a state-approved skill center program qualifies for enhanced skill center vocational funding and may be included in determining a student's skill center vocational full-time equivalent enrollment.

(5) No more than ((three hundred sixty)) 360 hours of cooperative ((work-based)) worksite learning may be claimed for funding for each credit a student pursues as reported on the student's transcript. No more than ((one hundred eighty)) 180 hours of instructional ((work based)) worksite learning may be claimed for funding for each credit a student pursues as reported on the student's transcript.

(6) Funding may be claimed only for ((work-based)) worksite learning hours that occur after the ((work-based)) worksite learning plan, ((work-based)) worksite agreement, program orientation and new employee orientation, as defined in WAC 392-410-315, are completed.

[Statutory Authority: RCW 28A.150.305. WSR 16-14-031, § 392-121-124, filed 6/27/16, effective 7/28/16. Statutory Authority: RCW

28A.150.305, 28A.150.290. WSR 16-06-124, § 392-121-124, filed 3/2/16, effective 4/2/16. Statutory Authority: RCW 28A.150.290 and 28A.710.220. WSR 15-18-078, § 392-121-124, filed 8/28/15, effective 9/28/15. Statutory Authority: RCW 28A.150.305. WSR 13-02-004, § 392-121-124, filed 12/19/12, effective 1/19/13. Statutory Authority: RCW 28A.150.290. WSR 07-23-026, § 392-121-124, filed 11/9/07, effective 12/10/07; WSR 04-14-068, § 392-121-124, filed 7/2/04, effective 9/1/04; WSR 98-07-060 (Order 98-03), § 392-121-124, filed 3/17/98, effective 4/17/98.]

NEW SECTION

WAC 392-121-139 Full-time equivalent enrollment for paid work experience for elective credit. For paid work experience for elective credit provided under WAC 392-410-316 or by charter schools, a student's full-time equivalent shall be determined as follows:

(1) For paid work experience, in accordance with WAC 392-410-316, divide the student's actual hours of work experience for the month by 100. For example, 20 hours of paid work experience equals 0.20 (two-tenths) of a full-time equivalent ($20 \div 100 = 0.20$).

(2) Actual hours of paid work experience shall be reported monthly provided no student's total monthly enrollment exceeds the limitations under WAC 392-121-136 and the annual average enrollment under WAC 392-121-123. The student's actual hours of paid work experience must be documented and maintained by the school district or charter school for audit purposes.

(3) No more than 360 hours of paid work experience may be claimed for funding for each credit a student pursues as reported on the student's transcript. A maximum of two elective credits may be earned through paid work experience calculated in accordance with this subsection.

(4) Funding may be claimed only for paid work experience hours that occur as part of a school monitored placement scheduled as part of the student's school day. A minimum per term hour verification is required, and should be completed by an employee of the district possessing a valid Washington state secondary education teaching certificate (under chapter 181-79A or 181-77 WAC).

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OTS-4317.2

AMENDATORY SECTION (Amending WSR 08-12-094, filed 6/4/08, effective 7/5/08)

WAC 392-410-315 Equivalency course of study—Credit for ((work based)) worksite learning. School districts may accept worksite learning in lieu of either required or elective high school credits if such worksite learning meets the standards under subsections (1)

through ~~((+5))~~ (4) of this section. Comprehensive guidelines are available on the OSPI website in the worksite learning manual.

(1) Definitions:

(a) "Work based learning" means ~~((a learning experience that connects knowledge and skills obtained in the classroom to those needed outside the classroom, and comprises a range of activities and instructional strategies designed to assist students in developing or fulfilling their education plans))~~ sustained interactions with industry or community professionals in real workplace settings, to the extent practicable, or simulated environments at an educational institution that foster in-depth, firsthand engagement with the tasks required in a given career field, that are aligned to curriculum and instruction.

(b) "Worksite learning" means a learning experience that occurs at a qualified worksite outside the classroom in fulfillment of a student's educational or career plan through the coordination of a worksite learning certified teacher. Direct instruction and supervision is provided by a qualified worksite supervisor.

(c) "Worksite learning coordinator" means a certified school district employee responsible for coordinating worksite learning experiences. For career and technical education programs, the coordinator must possess a worksite learning certificate ~~((+))~~ in accordance with WAC 181-77-068(+)). For noncareer and technical education programs, the coordinator must successfully demonstrate competencies related to coordination techniques as verified by a professional educator standards board approved program.

(d) "Worksite supervisor" means a qualified adult from the worksite responsible for overseeing the worksite learning experience and acting as liaison between the worksite and school district.

(e) "Worksite learning agreement" means a contract that specifies the terms and conditions under which the worksite learning experience shall occur. It is agreed to and signed by the school district, worksite supervisor, student, and the student's parents/guardians.

(f) "Program orientation" means a meeting conducted by a worksite learning coordinator giving information to a worksite supervisor about the worksite learning program of the school. The orientation clarifies program objectives, establishes support systems, and delineates the responsibilities and rights of the various parties—school/district, worksite, students, and parents/guardians. The worksite learning coordinator qualifies the worksite and the worksite supervisor.

(g) "Employee orientation" means training for the student facilitated by a worksite supervisor or designee (e.g., human resources). This is necessary for students in cooperative worksite learning and instructional worksite learning experiences. The orientation includes worksite safety procedures and practices, workers' rights and responsibilities, issues related to harassment, and employer policies, procedures and expectations. The orientation shall also include a description of the formal accident prevention program of the worksite.

(h) "Instructional worksite learning" means a learning experience that takes place in the community (or school if the experience is comparable to that in a community setting) as part of a specific course content where the student performs tasks in order to gain desired skills, competencies, qualifications or industry certifications through direct instruction.

(i) "Cooperative worksite learning" means a learning experience where a student practices in the community (or school if the experi-

ence is comparable to that in a community setting) the skills and knowledge learned in the classroom. An employer/employee relationship must exist if the work performed by the student results in a net increase in productivity or profitability for the business or organization.

(j) "Qualifying class" means any high school class previously ~~((completed (successfully)))~~ passed or concurrently taken that directly connects the knowledge and skills learned in the class to opportunities provided by the worksite learning experience. For career and technical education funding, "qualifying classes" mean classes approved for career and technical education in the district offering worksite learning credit.

(2) The student shall be placed in a worksite that is appropriate to his or her previous learning experience and educational goals which shall be formalized through a worksite learning agreement and worksite learning plan. The worksite learning experience shall be connected to the student's high school and beyond plan ~~((WAC 180-51-061))~~ in accordance with WAC 180-51-220. The student must have taken or be currently enrolled in a qualifying class.

(a) The worksite learning plan shall articulate the connection between the education plan of the student and the worksite learning experience.

(b) Evaluation of learning progress related to the worksite learning plan shall occur during the worksite learning experience.

~~((Evaluation of learning progress related to the worksite learning plan shall occur during the work based learning experience.))~~

(i) Learning objectives shall be evaluated and updated on a regular basis as outlined in the worksite learning agreement.

(ii) Documentation of progress shall be on file in the district as outlined in the worksite learning agreement.

(3) The worksite learning experience shall be supervised by the school. A worksite learning coordinator shall be responsible for:

(a) Aligning the worksite learning experience to the education plan of the student;

(b) Identifying and developing worksite learning sites, establishing worksite learning agreements and worksite learning plans, orienting and coordinating with a worksite supervisor on the worksite, and assessing and reporting student progress;

(c) Ensuring that a worksite supervisor:

(i) Has received an orientation on the worksite learning program of the school prior to placement of the student on the worksite;

(ii) Has provided the student with a new-employee orientation upon placement;

(iii) Applies legal requirements of the employment of minors in accordance with chapters 296-125 and 296-131 WAC, particularly on issues of occupational health and safety, discrimination, harassment, worker/employer rights and responsibilities, and work rules for minors;

(d) Possessing a valid Washington state secondary teaching certificate ~~((+))~~ in accordance with chapter 181-79A or 181-77 WAC ~~((+))~~;

(e) Successfully demonstrating competencies related to coordination techniques as verified by a professional educator standards board approved program; and

(f) Supervising the experience and communicating with the worksite supervisor when not on-site.

(4) A 1.0 credit may be granted for no less than ~~((one hundred eighty))~~ 180 hours for instructional worksite learning experience, and

not less than (~~three hundred sixty~~) 360 hours of cooperative work-site learning experience, or one credit may be granted on a competency basis as provided under WAC 180-51-050 (1)(b).

(a) A student participating in an instructional worksite learning experience shall receive instruction supervised by the school. The worksite learning coordinator oversees the experience but does not need to be on-site with the student during the entire experience unless specific accommodations and a plan to address those accommodations are on file with the district requiring direct supervision of the student at the worksite. The student shall be (~~sixteen~~) 16 years of age or older unless under direct supervision of a school district employee.

Career and technical education approved instructional worksite learning shall be coordinated by a certificated worksite learning coordinator who is also certificated in the program area where credit is offered.

(b) A student participating in a cooperative worksite learning experience shall be legally employed if the work being performed by the student results in a net increase in productivity or profitability for the business or organization. The student shall be (~~sixteen~~) 16 years of age or older.

(i) Career and technical education approved cooperative worksite learning shall be coordinated by a certificated worksite learning coordinator.

(ii) The cooperative worksite learning experience shall be a direct extension of a qualifying class.

~~((5) The superintendent of public instruction shall report biennially at the state board's fall meeting on the use of the worksite learning credit option authorized in this section.)~~

(iii) For cooperative worksite learning, the learning experience must be reported using the specific worksite placement state course code and course designation code per OSPI guidance.

[Statutory Authority: RCW 28A.305.130. WSR 08-12-094, § 392-410-315, filed 6/4/08, effective 7/5/08; WSR 08-04-074, § 392-410-315, filed 2/4/08, effective 3/6/08. Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-410-315, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.305.130 (8), (9), and 28A.230.100. WSR 03-04-054, § 180-50-315, filed 1/29/03, effective 3/1/03. Statutory Authority: RCW 28A.04.120. WSR 00-19-106, § 180-50-315, filed 9/20/00, effective 10/21/00. Statutory Authority: RCW 28A.04.120 (6) and (8) and 28A.05.060. WSR 85-12-037 (Order 13-85), § 180-50-315, filed 6/3/85. Statutory Authority: RCW 28A.04.120 (6) and (8). WSR 84-21-004 (Order 12-84), § 180-50-315, filed 10/4/84.]

NEW SECTION

WAC 392-410-316 Equivalency course of study—Elective credit for paid work experience. (1) The board of directors of a district offering a high school diploma and providing students with the opportunity to learn and master the state financial education learning standards adopted in RCW 28A.300.469, shall adopt written policies providing for

the granting of elective high school graduation credit for paid work experience. Credit is earned when the following conditions are met:

(a) The student is legally eligible for paid employment and is at least 16 years old.

(b) A 1.0 credit is granted for no less than 360 hours of paid work, a .5 credit may be granted for no less than 180 hours of paid work.

(c) The student's High School and Beyond Plan is updated to reflect the paid work experience.

(d) The paid work experience is approved in advance and in writing by the school counselor, principal, or principal designee. Approval is contingent upon submission of the following information:

(i) Identification of the work-based sponsor (employer) who will serve as the point of contact and supervise the student during employment.

(ii) A student narrative that describes how the paid work experience will develop knowledge and skills for basic education; an understanding of work and finance; and how performance, effort, and decisions affect future career and educational opportunities as provided in RCW 28A.150.210(4).

(iii) A plan to include how the student will demonstrate or be assessed on:

(A) Grade-level proficiency of the state financial education learning standards for employment, income, or financial decisions adopted in RCW 28A.300.469; and

(B) Growth in proficiency in meeting the state financial education learning standards that occurred between pre-work and post-work experiences.

(e) Paid hour verification is completed by the school district no less than once per term.

(f) Students may earn credit under this section for work experiences scheduled as part of their school day, experiences that occur outside of the regular school calendar, or through WAC 180-51-050 and 180-51-051.

(g) The learning experience must be reported using the specific state course code and course designation code per OSPI guidance.

(2) A maximum of two elective credits may be earned through paid work experience reflected in this section.

(3) This section does not impact the legal requirements of the employment of minors in accordance with chapters 296-125 and 296-131 WAC, particularly on issues of occupational health and safety, discrimination, harassment, worker/employer rights and responsibilities, and work rules for minors.

(4) This subsection does not modify a district's ability to adopt policies to increase student access to credit for worksite learning that includes cooperative worksite learning for nonelective credit as referenced in WAC 392-410-315; or through mastery-based education as referenced in WAC 180-51-051.

(5) Paid work experience scheduled as part of the student's school day may be claimed for apportionment in alignment with WAC 392-121-140.

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AMENDATORY SECTION (Amending WSR 06-14-009, filed 6/22/06, effective 6/22/06)

WAC 392-410-340 Equivalency credit for alternative learning experiences, nonhigh school courses, electronically mediated courses, work experience, and challenges. The board of directors of a district offering a high school diploma shall adopt written policies providing for the granting of high school graduation credit for alternative learning experiences, nonhigh school courses, work experience, and challenges. High school credits may be given for, but not limited to, the following:

(1) Planned learning experiences conducted away from the school under the supervision or with the approval of the school and linked to one or more of the state learning goals and related essential academic learning requirements;

(2) Work experience on the basis that ((~~four hundred five~~)) 360 hours of work experience equals one credit;

(3) National Guard high school career training and National Guard youth challenge;

(4) Postsecondary courses in accredited colleges and universities. In the case of courses taken under the statutory running start option under RCW 28A.600.300 through 28A.600.400, the district shall award high school credit pursuant to RCW 28A.230.090(6);

(5) Courses in accredited or approved technical colleges;

(6) Correspondence courses from accredited colleges and universities or schools approved by the National University Education Association or the Distance Education and Training Council;

(7) Electronically mediated courses meeting standards which shall be adopted by written policy by the school district, or standards adopted by the Northwest Association of Schools and Colleges, or the Distance Education and Training Council, or the Commission for International and Trans-regional Accreditation;

(8) Other courses offered by any school or institution if specifically approved for credit by the district; and

(9) Credit based on competency testing, in lieu of enrollment or taking specific courses, may be granted by the district.

[Statutory Authority: 2006 c 263. WSR 06-14-009, recodified as § 392-410-340, filed 6/22/06, effective 6/22/06. Statutory Authority: RCW 28A.230.090. WSR 05-23-058, § 180-51-110, filed 11/10/05, effective 12/11/05; WSR 00-19-108, § 180-51-110, filed 9/20/00, effective 10/21/00. Statutory Authority: RCW 28A.05.060. WSR 85-12-041 (Order 12-85), § 180-51-110, filed 6/5/85. Statutory Authority: Chapter 28A.05 RCW. WSR 84-11-049 (Order 7-84), § 180-51-110, filed 5/17/84.]