WSR 24-01-073
PERMANENT RULES
NORTHWEST CLEAN AIR AGENCY

[Filed December 14, 2023, 3:17 p.m., effective January 14, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Update the adoption-by-reference date to allow implementation of the most recent version of the referenced state and federal rules; delete chapter 173-442 WAC since it has been repealed; and add 40 C.F.R. 60 Subparts AAb, KKa, MMa, and TTTa and 40 C.F.R. 62 Subpart OOO to the list (Northwest Clean Air Agency (NWCAA) Section 104).

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

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

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

Citation of Rules Affected by this Order: Amending Sections 104, 155, 106, and 200 of the Regulation of the NWCAA.

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

Adopted under notice filed as WSR 23-21-098 on October 18, 2023.

Date Adopted: December 14, 2023.

Mark Buford
Executive Director

AMENDATORY SECTION

SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES

104.1 All provisions of the following state rules that are in effect as of October 18, 2023 ((~~August 24, 2022~~)) are hereby adopted by reference and made part of the Regulation of the NWCAA: chapter 173-400 WAC, (except - -025, -030, -035, -036, -040(1) & (7), -045, -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, ((~~chapter 173-442 WAC,~~)) chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-476 WAC, chapter 173-480 WAC, chapter 173-481 WAC, chapter 173-485 WAC, chapter 173-491 WAC. The requirements of the NWCAA Regulation apply in addition to the statewide regulations adopted and enforced under this paragraph.

104.2 All provisions of the following federal rules that are in effect as of October 18, 2023 ((~~August 24, 2022~~)) are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X,

Y, Z, AA, AAa, AAb, CC, DD, EE, GG, HH, KK, KKa, LL, MM, MMa, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, TTTa, UUU, VVV, WWW, XXX, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, OOOOa, QQQQ, and Appendix A - I; 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF; 40 CFR Part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) Subparts LLL and OOO; 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBBB, CCCCC, DDDDD, EEEEE, FFFFF, GGGGG, HHHHH, IIIII, LLLLL, MMMMM, NNNNN, PPPPP, QQQQQ, RRRRR, SSSSS, TTTTT, UUUUU, WWWWW, YYYYY, ZZZZZ, BBBBBB, CCCCCC, EEEEEE, FFFFFF, GGGGGG, HHHHHH, JJJJJJ, MMMMMM, NNNNNN, OOOOOO, QQQQQQ, SSSSSS, TTTTTT, VVVVVV, WWWWWW, XXXXXX, ZZZZZZ, AAAAAAA, DDDDDDD, EEEEEEE, and HHHHHHH; and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015, August 11, 2016, September 13, 2018, April 11, 2019, May 14, 2020, June 10, 2021, February 10, 2022, November 10, 2022, December 14, 2023

AMENDATORY SECTION

SECTION 106 - PUBLIC RECORDS

106.1 AUTHORITY ((~~AND PURPOSE.~~))

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

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

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

106.2 POLICY ((~~AGENCY CONTACT INFORMATION~~))

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

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

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

~~Public Records Officer~~
~~Northwest Clean Air Agency~~
~~1600 S Second St~~
~~Mount Vernon, WA 98273-5202~~
~~Phone: 360-428-1617~~
~~Facsimile: 360-428-1620~~
~~Email: PublicInformationRequests@nwcleanairwa.gov~~
~~Requests may be submitted on the NWCAA website at www.nwcleanairwa.gov.~~

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

106.3 PURPOSE ((~~AVAILABILITY OF PUBLIC RECORDS.~~))

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

((~~(A) Public records are available for inspection Monday through Friday during the hours of 8:30 a.m. to 4:00 p.m., excluding legal holidays. Records must be inspected at the NWCAA office. Arrangements to inspect records should be made in advance with the Public Records Officer.~~

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

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

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

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

~~(a) Name of requester;~~

~~(b) Address of requester;~~

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

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

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

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

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

~~106.4 PROCESSING OF PUBLIC RECORDS REQUESTS~~

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

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

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

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

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

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

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

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

~~(5) Deny the request.~~

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

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

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

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

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

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

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

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

~~(B) The NWCAA is not calculating actual costs for copying its records because to do so would be unduly burdensome for the following reasons: the NWCAA does not have the resources to conduct a study to determine actual copying costs for all its records and to conduct such a study would interfere with other essential agency functions. Therefore, in order to timely implement a fee schedule consistent with the~~

~~public records act, it is more cost efficient, expeditious and in the public interest for the NWCAA to adopt the state legislature's approved fees and costs for most of the NWCAA records, as authorized in RCW 42.56.120 and as published in NWCAA 106.5(C).~~

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

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

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

~~106.6 EXEMPT RECORDS~~

~~(A) The Public Records Act provides that some records are exempt in whole or in part from public inspection and copying. In addition to the list of exemptions in RCW 42.56.050, RCW 42.56.210 through RCW 42.56.400, and WAC 44-14-060, common exemptions include:~~

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

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

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

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

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

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

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

~~(C) In the event that the requested public records contain information that may affect rights of others and may be exempt from disclo-~~

~~sure, the Public Records Officer may, prior to providing the public records, give notice to such others whose rights may be affected by the disclosure.~~

106.7 REVIEW OF DENIALS OF PUBLIC RECORD

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

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

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

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

AMENDATORY SECTION

SECTION 155 - STATE ENVIRONMENTAL POLICY ACT

155.1 Authority

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

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

155.2 Purpose and Adoption by Reference.

(A) NWCAA adopts the following sections of Chapter 197-11 WAC by reference in effect as of October 18, 2023 ((~~February 19, 2020~~)):

WAC 197-11-040: Definitions
-050: Lead Agency
-055: Timing of the SEPA Process
-060: Content of Environmental Review
-070: Limitations on Actions During SEPA Process
-080: Incomplete or Unavailable Information
-090: Supporting Documents
WAC 197-11-100: Information Required of Applicants
-250: SEPA/Model Toxics Control Act Integration
-253: SEPA Lead Agency for MTCA Actions
-256: Preliminary Evaluation
-259: Determination of Nonsignificance for MTCA Remedial Action
-262: Determination of Significance and EIS for MTCA Remedial Action
-265: Early Scoping for MTCA Remedial Actions
-268: MTCA Interim Actions
WAC 197-11-300: Purpose of This Part
-305: Categorical Exemptions
-310: Threshold Determination Required
-315: Environmental Checklist
-330: Threshold Determination Process
-335: Additional Information
-340: Determination of Non-Significance (DNS)
-350: Mitigated DNS
-360: Determination of Significance (DS)/Initiation of Scoping

-734: Determination of Non-Significance (DNS)
-736: Determination of Significance (DS)
-738: EIS
-740: Environment
-742: Environmental Checklist
-744: Environmental Document
-746: Environmental Review
-750: Expanded Scoping
-752: Impacts
-754: Incorporation by Reference
-756: Lands Covered by Water
-758: Lead Agency
-760: License
-762: Local Agency
-764: Major Action
-766: Mitigated DNS
-768: Mitigation
-770: Natural Environment
-772: NEPA
-774: Non-Project
-776: Phased Review
-778: Preparation
-780: Private Project
-782: Probable
-784: Proposal
-786: Reasonable Alternative
-788: Responsible Official
-790: SEPA
-792: Scope
-793: Scoping
-794: Significant
-796: State Agency
-797: Threshold Determination
-799: Underlying Governmental Action
WAC 197-11-800: Categorical Exemptions
-880: Emergencies
-890: Petitioning DOE to Change Exemptions
WAC 197-11-900: Purpose of This Part
-902: Agency SEPA Policies
-904: Agency SEPA Procedures
-916: Application to Ongoing Actions
-920: Agencies with Environmental Expertise
-922: Lead Agency Rules
-924: Determining the Lead Agency
-926: Lead Agency for Governmental Proposals
-928: Lead Agency for Public and Private Proposals
-930: Lead Agency for Private Projects With One Agency With Jurisdiction
-932: Lead Agency for Private Projects Requiring Licenses From More Than One Agency, When One of the Agencies Is a County/City
-934: Lead Agency for Private Projects Requiring Licenses From A Local Agency, Not a City/County, and One or More Than One State Agency
-936: Lead Agency for Private Projects Requiring Licenses From More Than One State Agency
-938: Lead Agencies for Specific Proposals
-940: Transfer of Lead Agency Status to a State Agency
-942: Agreements on Lead Agency Status

-944: Agreements on Division of Lead Agency Duties
-946: DOE Resolution of Lead Agency Disputes
-948: Assumption of Lead Agency Status
WAC 197-11-960: Environmental Checklist
-965: Adoption Notice
-970: Determination of Non-Significance (DNS)
-980: Determination of Significance and Scoping Notice (DS)
-985: Notice of Assumption of Lead Agency Status
-990: Notice of Action

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

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

155.3 Responsible Official Designation and Responsibilities

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

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

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

155.4 Lead Agency Determination and Responsibilities

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

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

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

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

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

155.5 Time Limits and Other Considerations Applicable to SEPA Rules

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

155.6 Use of Exemptions

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

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

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

(1) NWCAA shall not give authorization for:

(a) Any nonexempt action;

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

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

(2) NWCAA may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

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

155.7 Environmental Checklist

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

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

(C) For private proposals, NWCAA will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, NWCAA shall complete the environmental

checklist. NWCAA may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

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

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

155.8 Mitigated DNS

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

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

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

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

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

(1) Be written;

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

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

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

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

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

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

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

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

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

(G) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be en-

forced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by NWCAA.

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

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

155.9 Preparation of EIS--Additional Considerations

(A) Preparation of a draft and final EIS (DEIS and FEIS) and draft and final supplemental EIS (SEIS) is the responsibility of the responsible official. Before NWCAA issues an EIS, the responsible official shall be satisfied that it complies with these policies and procedures and Chapter 197-11 WAC.

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

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

155.10 Additional Elements To Be Covered In An EIS

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

(A) Economy

(B) Social policy analysis

(C) Cost-benefit analysis

155.11 Public Notice

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

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

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

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

(b) Posting notice on the NWCAA website.

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

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

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

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

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

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

(5) Notifying the news media;

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

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

(8) Posting notice on the NWCAA website.

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

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

155.12 Designation of Official to Perform Consulted Agency Responsibilities for NWCAA

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

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

155.13 SEPA Substantive Authority

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

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

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

(2) Such conditions are in writing; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Regulation of the Northwest Clean Air Agency

(3) Resolutions adopted by NWCAA Board of Directors.

(4) Maintenance plans.

(5) Washington State Implementation Plan.

(F) NWCAA establishes the following additional policies:

(1) Air quality

(a) Policy Background

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

(ii) NWCAA is responsible for monitoring air quality in the three-county area, setting standards, and regulating certain development activities with the objective of meeting all applicable air quality standards.

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

(b) Policies

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

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

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

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

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

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

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

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

(2) Land Use

(a) Policy Background

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

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

(b) Policies

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

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

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

(3) Transportation

(a) Policy Background

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

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

(b) Policies

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

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

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

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

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

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

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

(4) Cumulative Effects

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

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

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

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

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

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

155.14 Administrative Appeals

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

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

155.15 Notice/Statue of Limitations

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

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

155.16 Fees

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

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

(2) Environmental Impact Statement

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

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

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

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

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

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

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

155.17 Severability

(A) If any provision of these policies and procedures or their application to any person or circumstance is held invalid, the remainder of these policies and procedures, or the application of such invalid provision to other persons or circumstances, shall not be affected.

PASSED: June 10, 2010 AMENDED: August 13, 2015, May 14, 2020, December 14, 2023

AMENDATORY SECTION

SECTION 200 - DEFINITIONS

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

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

(A) In general, the actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions

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

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

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

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

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

AIR POLLUTION - The presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant, or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purposes of the NWCAA Regulation, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

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

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

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

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

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

AMBIENT AIR - The surrounding outside air.

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

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

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

BEGIN ACTUAL CONSTRUCTION - In general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation

of building supports and foundations, laying underground pipe work, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

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

BOARD - Board of Directors of the NWCAA.

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

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

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

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

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

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

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

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

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

CONTROL FACILITY - Includes any treatment works, control devices and disposal systems, machinery equipment, structures, property or any part of accessories thereof, installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste

which, if released to the outdoor atmosphere, could cause air pollution.

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

CRITERIA POLLUTANT - A pollutant for which there is established a National Ambient Air Quality Standard at 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O_3), sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

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

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

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

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

ECOLOGY - Washington State Department of Ecology (WDOE).

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

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

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

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

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

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

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

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

FEDERALLY ENFORCEABLE - All limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61, 62, and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or order

of approval under a SIP-approved new source review regulation, or any voluntary limits on emissions pursuant to WAC 173-400-091.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MAJOR MODIFICATION - (A) Major modification as it applies to stationary sources subject to requirements for new stationary sources in nonat-

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

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

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

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

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

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

NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS) - An ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O_3), sulfur dioxide (SO_2), lead (Pb), and nitrogen dioxide (NO_2).

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

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

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

NEW SOURCE - means one or more of the following:

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

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

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

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

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

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

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

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

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

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

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

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

(3) The engine otherwise included in (A)(3) of this definition remains or will remain at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. A seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

$PM_{2.5}$ - Particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix L and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

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

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

PM_{10} EMISSIONS - Finely divided solid or liquid material, including condensible particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as

measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

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

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

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

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

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

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

PROPER ATTACHMENT FITTINGS - Connecting hardware for the attachment of fuel transfer or vapor lines that meets or exceeds industrial standards or specifications and the standards of other agencies or institutions responsible for health and safety.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TRANSPORT TANK - A container with a capacity greater than 264 gallons used for transporting gasoline, including, but not limited to, tank truck, tank trailer, railroad car, and metallic or nonmetallic tank or cell conveyed on a flatbed truck, trailer, or railroad car.

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

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

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY - Referred to as EPA.

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

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

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

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

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

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

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

WSR 24-02-007
PERMANENT RULES
DEPARTMENT OF HEALTH
[Filed December 20, 2023, 3:31 p.m., effective January 20, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Review and update chapter 246-926 WAC, Radiological technologists. The department of health (department) completed a periodic rule review, as required by RCW 43.70.041, and determined that chapter 246-926 WAC was in need of updating and clarification. The department is adopting amendments to chapter 246-926 WAC to clarify, streamline, and modernize the regulations of cardiovascular invasive specialists, diagnostic radiologic technologists, therapeutic radiologic technologists, nuclear medicine technologists, radiologist assistants, and X-ray technicians. This includes removing outdated provisions, updating outdated terms and citations, clarifying credentialing and competency requirements, clarifying allowable duties for radiological technologists and X-ray technicians, repealing and adding new sections of rule, and renaming the chapter to better reflect all types of professions credentialed under the chapter.

The department received two petitions for rule making specific to WAC 46-926-300 and 246-926-400. One request asked to change supervision for certain tasks from personal supervision to direct supervision under WAC 246-926-300. The second request asked to prohibit certain tasks for cardiovascular invasive specialists (CVIS). The adopted rules incorporate some tasks changed from personal to direct supervision based on education and training. No change was made to CVIS tasks because RCW 18.84.020 defines CVIS to include parenteral procedures.

The adopted amendments to chapter 246-926 WAC include the repeal of 10 rule sections with several sections renumbered into new sections to group requirements more effectively. Three of the new sections describe the certification requirements and scope of practice for diagnostic radiologic, therapeutic radiologic, and nuclear medicine technologists, CVIS, and X-ray technicians. These amendments protect 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 imaging professionals, and creating standards for all practitioners who have achieved a particular level of competency. The adopted rules establish enforceable licensing requirements and safety mechanisms for patients receiving imaging services.

Citation of Rules Affected by this Order: New WAC 246-926-095, 246-926-135, 246-926-155, 246-926-165, 246-926-500, 246-926-510 and 246-926-600; repealing WAC 246-926-040, 246-926-050, 246-926-060, 246-926-070, 246-926-080, 246-926-090, 246-926-140, 246-926-145, 246-926-170 and 246-926-190; and amending WAC 246-926-020, 246-926-030, 246-926-100, 246-926-110, 246-926-120, 246-926-130, 246-926-150, 246-926-180, 246-926-300, 246-926-310, 246-926-400, and 246-926-410.

Statutory Authority for Adoption: RCW 18.84.040, 43.70.040.

Adopted under notice filed as WSR 23-13-112 on June 21, 2023.

A final cost-benefit analysis is available by contacting Tommy Simpson III, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4910, fax 360-236-2901, TTY 711, email tommy.simpson@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0,

Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 7, Amended 11, Repealed 10.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 4.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 7, Amended 12, Repealed 10.

Date Adopted: December 20, 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.

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.

NEW SECTION

WAC 246-926-095 Diagnostic radiologic, therapeutic radiologic, and nuclear medicine technologists—Certification. (1) To obtain certification 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 Pro-

grams 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 individual 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~~)).

((~~(c)~~)) (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.

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((~~,~~));

(b) Medical ethics and law((~~,~~));

(c) Medical terminology((~~,~~));

(d) Methods of patient care((~~,~~));

(e) Radiographic procedures((~~,~~));

(f) Radiographic film processing((~~,~~));

(g) Evaluation of radiographs((~~,~~));

(h) Radiographic pathology((~~,~~));

(i) Introduction to quality assurance((~~,~~)); 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.

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((~~, or 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.

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.

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.

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.

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 materials 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 de-

termined 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.

((~~(c)~~)) (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.

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((~~)~~)). Dis-

crepancies ((~~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.,~~)) for 3D reconstruction, modifications to field of vision ((~~(FOV)~~)), slice spacing, or algorithm((~~)~~));

(B) Specialized CT ((~~(e.g.,~~)) for cardiac scoring((~~,~~)) or shunt graft measurements((~~)~~)); and

(C) ((~~MR~~)) Magnetic resonance data analysis ((~~(e.g.,~~)) 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.,)~~)) 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.,~~)) 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.

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.

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.

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 Cardiovascu-

lar 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.

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 24-02-017
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed December 21, 2023, 1:34 p.m., effective January 21, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 458-19-025 to incorporate 2023 legislation, HB 1303. Section 8 of this bill explains how a taxing district calculates its levy limit if it doesn't levy on a regular basis. WAC 458-19-070 and 458-19-075 are also being updated to incorporate HB 1303. Sections 3 and 5 of this bill explain how to prorate certain property tax levies due to the correction of a levy error.

Citation of Rules Affected by this Order: Amending WAC 458-19-025 Restoration of regular levy, 458-19-070 Five dollars and ninety cents statutory aggregate dollar rate limit calculation, and 458-19-075 Constitutional one percent limit calculation.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.55.060.

Adopted under notice filed as WSR 23-21-051 on October 10, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 21, 2023.

Atif Aziz
Rules Coordinator

OTS-5013.1

AMENDATORY SECTION (Amending WSR 15-03-087, filed 1/21/15, effective 2/21/15)

WAC 458-19-025 Restoration of regular levy. (1) **Introduction.** This rule explains how a taxing district restores a regular property tax levy if it has not levied ((~~since 1985~~)) for the last seven calendar years and it elects to restore a regular property tax levy in accordance with RCW 84.55.015.

(2) **Calculation of restored regular levy.**

(a) If a taxing district has not levied ((~~since 1985~~)) for the last seven calendar years and it elects to restore a regular property tax levy, then the amount of the first ((~~regular property tax payable as a result of the restored levy cannot exceed the lesser of:~~

~~(a) The combination of the following:~~

~~(i) The amount last levied plus,~~

~~(ii) A dollar amount calculated by multiplying the property tax levy rate which is proposed to be restored, by the increase in assessed value in the district since the last levy resulting from:~~

~~(A) New construction;~~

~~(B) Improvements to property;~~

~~(C) Increases in the assessed value of state assessed property; and~~

~~(D) Increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities, if such facilities generate electricity and the property is not included elsewhere under chapter 84.55 RCW for purposes of providing an additional dollar amount. The property may be classified as real or personal property.~~

~~The levy rate that is proposed to be restored is determined by dividing the total dollar amount that was last levied by the district by the current year's assessed value after deducting the accumulated assessed values attributable to (A) through (D) of this subsection~~)) restored levy must result in a tax rate that does not exceed the statutory rate limit applicable to the taxing district's regular property tax levy; or

(b) ((~~The maximum amount which could be lawfully levied by that district in the year the restored levy is proposed, subject to the statutory dollar rate limit contained in the taxing district's authorizing statute, without considering the calculation used in subsection (2)(a) of this rule~~)) If a taxing district has not levied for the last six or fewer calendar years and elects to restore a regular property tax levy, then the first restored levy must not exceed the maximum levy amount allowed by the levy limit that would have been imposed had the taxing district continuously levied.

(3) **Example.** Taxing district "A" has not levied a regular levy ((~~since 1985~~)) in over 20 years when it levied $10,000 based upon ((~~1985~~)) 1999 assessed values and all lawful limitations at that time. ((~~The total increase since the 1985 assessment year in assessed value of property in the district as a result of new construction, improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities beginning in 1986 through the current assessment year is $3,000,000. The assessed value of taxing district "A" for the current year is $15,000,000. The calculation for subsection (2)(a) of this rule is as follows:~~

~~Current year A.V. -~~	~~$15,000,000~~
~~Minus increases in new construction, improvements to property, etc., since 1985 -~~	~~- 3,000,000~~
	~~$12,000,000~~
~~Amount levied in 1985 -~~	~~$10,000~~
~~Current year A.V. less increases in new construction, improvements to property, etc., -~~	~~÷ $12,000,000~~
~~Levy rate proposed to be restored -~~	~~.000833~~
~~Increases in new construction, improvements to property, etc., -~~	~~x $3,000,000~~
~~Calculated dollar amount -~~	~~$2,500~~
~~Allowable 1985 levy -~~	~~+ 10,000~~
~~Allowable levy for current year (under subsection (2)(a) of this rule) -~~	~~$12,500~~

~~The amount calculated under subsection (2)(a) of this rule must be compared to the amount determined under subsection (2)(b) of this rule and the lesser of the two amounts is the maximum amount that can be levied.~~

~~(4) **Assessor to maintain taxing district records.** Records of value increases attributable to new construction, improvements to property, increases in the assessed value of state assessed property, and increases in assessed value due to the construction of wind turbine, solar, biomass, and geothermal facilities are to be maintained each year by the county assessor for each taxing district whether or not the district imposes a regular property tax levy.~~)) Because taxing district "A" has not levied regular property taxes in more than seven calendar years, its first restored levy may not exceed the statutory maximum dollar rate limit applicable to taxing district "A," multiplied by taxing district's "A" total assessed value.

AMENDATORY SECTION (Amending WSR 22-04-023, filed 1/24/22, effective 2/24/22)

WAC 458-19-070 Five dollars and ninety cents statutory aggregate dollar rate limit calculation. (1) **Introduction.** This rule describes the process used to reduce or eliminate a levy rate when the assessor finds the statutory aggregate dollar rate limit exceeds $5.90. The aggregate of all regular levy rates of junior taxing districts and senior taxing districts, other than the state and other specifically identified districts, cannot exceed $5.90 per $1,000 of assessed value in accordance with RCW 84.52.043. When the county assessor finds that this limit has been exceeded, the assessor recalculates the levy rates and establishes a new consolidated levy rate as described in RCW 84.52.010. The $5.90 statutory aggregate dollar rate limit is reviewed before the constitutional one percent limit.

(2) **Levies not subject to statutory aggregate dollar rate limit.** The following levies are not subject to the statutory aggregate dollar rate limit of $5.90 per $1,000 of assessed value:

(a) Levies by the state;

(b) Levies by or for port or public utility districts;

(c) Excess property tax levies authorized in Article VII, section 2 of the state Constitution;

(d) Levies by or for county ferry districts under RCW 36.54.130;

(e) Levies for acquiring conservation futures under RCW 84.34.230;

(f) Levies for emergency medical care or emergency medical services under RCW 84.52.069;

(g) Levies for financing affordable housing under RCW 84.52.105;

(h) The portion of metropolitan park district levies protected under RCW 84.52.120;

(i) The portions of levies by fire protection districts and regional fire protection service authorities protected under RCW 84.52.125;

(j) Levies for criminal justice purposes under RCW 84.52.135;

(k) Levies for transit-related purposes by a county under RCW 84.52.140;

(l) The protected portion of the levies imposed under RCW 84.52.816 by flood control zone districts;

(m) Levies imposed by a regional transit authority under RCW 81.104.175; ((~~and~~))

(n) Levies imposed under RCW 36.69.145, by a park and recreation district located on an island and within a county with a population exceeding 2,000,000, for collection in calendar years 2022 through 2026; and

(o) The portion of any levy resulting from the correction of a levy error under RCW 84.52.085(3).

(3) **Consolidated levy rate limitation.** RCW 84.52.010 explains the order in which the regular levies of taxing districts will be reduced or eliminated by the assessor to comply with the statutory aggregate dollar rate limit of $5.90 per $1,000 of assessed value. The order in the statute lists which taxing districts are the first to either reduce or eliminate their levy rate. Taxing districts that are at the same level are grouped together in tiers. Reductions or eliminations in levy rates are made on a pro rata basis within each tier of taxing district levies until the consolidated levy rate no longer exceeds the statutory aggregate dollar rate limit of $5.90.

As opposed to the order in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the statutory aggregate dollar rate is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis. The proration factor, which is multiplied by each levy rate within the tier, is obtained by dividing the dollar rate remaining available to the taxing districts in that tier as a group by the sum of the levy rates originally certified by or for all of the taxing districts within the tier.

(a) Step one: Total the aggregate regular levy rates requested by all affected taxing districts in the tax code area. If this total is less than $5.90 per $1,000 of assessed value, no levy rate reduction or elimination is necessary. If this total levy rate is more than $5.90, the assessor must proceed through the following steps until the aggregate dollar rate is brought within that limit.

(b) Step two: Subtract from $5.90 the levy rates of the county, including the rate of any separate property tax levy as described in RCW 84.55.135, and the county road district if the tax code area includes an unincorporated portion of the county, or the levy rates of the county and the city or town if the tax code area includes an incorporated area, as applicable.

(c) Step three: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first 50 cents per $1,000 of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first 50 cents per $1,000 of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates, if any, for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c). However, under RCW 84.52.125, a fire protection district or regional fire protection service authority may protect up to 25 cents per $1,000 of assessed value of the total levies made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1)(b) and (c) from reduction or elimination.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. It is at this point that the provisions of RCW 84.52.125 come into play; that is, a fire protection district or regional fire protection service authority may protect up to 25 cents per $1,000 of assessed value of the total levies made under RCW 52.16.140 and 52.16.160, or 52.26.140 (1)(b) and (c) from reduction or elimination under RCW 84.52.043(2), if the total levies would otherwise be reduced or eliminated under RCW 84.52.010 (3)(a)(iii) with respect to the $5.90 per $1,000 of assessed value limit. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate, if any, for the first 50 cents per $1,000 of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the 25 cent per $1,000 of assessed value levy rate for metropolitan park districts if it is not protected under RCW 84.52.120, the 25 cent per $1,000 of assessed value levy rate for public hospital districts under RCW 70.44.060(6), and the levy rates, if any, for cemetery districts under RCW 68.52.310 and all other junior taxing districts if those levies are not listed in steps three through five or seven or eight of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is

zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate, if any, for flood control zone districts other than the portion of a levy protected under RCW 84.52.816.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates, if any, for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, except a park and recreation district described in subsection (2)(n) of this rule, and cultural arts, stadium, and convention districts under RCW 67.38.130.

(i) If the balance is zero, there is no remaining levy capacity for other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step nine.

(i) Step nine: Subtract from the remaining levy capacity the levy imposed, if any, for cultural access programs under RCW 36.160.080 until the remaining levy capacity equals zero.

(4) **Example.**

DISTRICT	ORIGINAL LEVY RATE	PRORATION FACTOR	FINAL LEVY RATE	REMAINING LEVY CAPACITY
County County Road	1.8000 2.2500	NONE NONE	1.8000 2.2500	 1.850
Library Fire Hospital	.5000 .5000 .5000	NONE NONE NONE	.5000 .5000 .5000	 .350
Fire	.2000	NONE	.2000	.150
Cemetery Hospital	.1125 .2500	.4138 .4138	.0466 .1034	
Totals	6.1125		5.90	

(a) Beginning with the limit of $5.90, subtract the original certified levy rates for the county and county road taxing districts leaving $1.85 available for the remaining districts.

(b) Subtract the total of the levy rates for each district within the next tier: The library's $.50, the fire district's $.50 and the hospital's $.50 = $1.50, which leaves $.35 available for the remaining districts.

(c) Subtract the fire district's additional $.20 levy rate, which leaves $.15 available for the remaining districts.

(d) The remaining $.15 must be shared by the cemetery and the hospital districts within the next tier of levies. The cemetery district originally sought to levy $.1125 and the hospital district sought to levy $.25. The proration factor is arrived at by dividing the amount available ($.15) by the original levy rates ($.3625) requested within that tier resulting in a proration factor of .4138. Finally, the original levy rates in this tier of $.1125 and $.25 for the cemetery and hospital, respectively, are multiplied by the proration factor.

AMENDATORY SECTION (Amending WSR 22-04-023, filed 1/24/22, effective 2/24/22)

WAC 458-19-075 Constitutional one percent limit calculation.

(1) **Introduction.** This rule explains how to determine if the constitutional one percent limit is being exceeded and the sequence in which levy rates will be reduced or eliminated in accordance with RCW 84.52.010 if the constitutional one percent limit is exceeded. The constitutional one percent calculation is made after the assessor ensures that the $5.90 statutory aggregate dollar rate limit is not exceeded. The total amount of all regular property tax levies that can be applied against taxable property is limited to one percent of the true and fair value of the property in money. The one percent limit is stated in Article VII, section 2 of the state Constitution and the enabling statute, RCW 84.52.050. The constitutional one percent limit is based on the amount of taxes actually levied on the true and fair value of the property, not the dollar rate used in calculating property taxes.

(2) **Preliminary calculations.** After reducing or eliminating the levy rates under RCW 84.52.043 (the $5.90 statutory aggregate dollar rate limit) has occurred, make the following calculations to determine if the constitutional one percent limit is being exceeded:

(a) First, add together all regular levy rates in the tax code area, including the rates for the state levy, but not the rates for port and public utility districts, to arrive at a combined levy rate for that tax code area. "Regular levy rates" in this context means the levy rates that remain after reduction or elimination under RCW 84.52.043 has occurred. The levy rates for port and public utility districts are not included in this calculation because they are not subject to the constitutional one percent limit.

(b) Second, divide $10 by the higher of the real or personal property ratio of the county for the assessment year in which the levy is made to determine the maximum effective levy rate. If the combined levy rate exceeds the maximum effective levy rate, then the individual levy rates must be reduced or eliminated until the combined levy rate is equal to the maximum effective levy rate.

(3) **Constitutional one percent limit.** RCW 84.52.010 provides the order in which levy rates are to be reduced or eliminated when the constitutional one percent limit is exceeded.

As opposed to the order in RCW 84.52.010, which lists the taxing districts that are the first to have their levy rates reduced or eliminated, this rule is written in reverse order; that is, it lists the taxing districts that must be first either fully or partially funded. If the constitutional one percent limit is exceeded, then the levy rates for taxing districts within a particular tier must be reduced or eliminated on a pro rata basis.

If the constitutional one percent limit is exceeded after performing the preliminary calculations described in subsection (2) of this rule, the following levies must be reduced or eliminated until the combined levy rate no longer exceeds the maximum effective levy rate:

(a) Step one: Subtract the aggregate levy rate calculated for the state for the support of common schools from the effective rate limit.

(b) Step two: Subtract the levy rates for the county, including the rate of any separate property tax levy as described in RCW 84.55.135, county road district, regional transit authority, and for city or town purposes.

(c) Step three: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.130, regional fire protection service authorities under RCW 52.26.140 (1)(a), library districts under RCW 27.12.050 and 27.12.150, the first 50 cents per $1,000 of assessed value for metropolitan park districts created before January 1, 2002, under RCW 35.61.210, and the first 50 cents per $1,000 of assessed value for public hospital districts under RCW 70.44.060(6).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis from the remaining balance in step two until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step four.

(d) Step four: Subtract from the remaining levy capacity the levy rates for fire protection districts under RCW 52.16.140 and 52.16.160, and regional fire protection service authorities under RCW 52.26.140 (1)(b) and (c).

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis from the remaining balance in step three until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step five.

(e) Step five: Subtract from the remaining levy capacity the levy rate for the first 50 cents per $1,000 of assessed value of metropolitan park districts created on or after January 1, 2002, under RCW 35.61.210.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step four. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step six.

(f) Step six: Subtract from the remaining levy capacity the levy rates for all other junior taxing districts if those levies are not listed in steps three through five or steps seven through 18 of this subsection.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis to the remaining balance in step five until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step seven.

(g) Step seven: Subtract from the remaining levy capacity the levy rate for flood control zone districts other than the portion of a levy protected under RCW 84.52.816.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step six. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step eight.

(h) Step eight: Subtract from the remaining levy capacity the levy rates for city transportation authorities under RCW 35.95A.100, park and recreation service areas under RCW 36.68.525, park and recreation districts under RCW 36.69.145, except a park and recreation district located on an island and within a county with a population exceeding 2,000,000, and cultural arts, stadium, and convention districts under RCW 67.38.130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis from the remaining balance in step seven until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step nine.

(i) Step nine: Subtract from the remaining levy capacity the levy imposed, if any, for cultural access programs under RCW 36.160.080.

(i) If the balance is zero, there is no remaining levy capacity from any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, the levy is reduced to the remaining balance in step eight. There is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed to step 10.

(j) Step 10: Subtract from the remaining levy capacity the levy rate for the first 30 cents per $1,000 for emergency medical care or emergency medical services under RCW 84.52.069.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step nine. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 11.

(k) Step 11: Subtract from the remaining levy capacity the levy rates for levies used for acquiring conservation futures under RCW 84.34.230, financing affordable housing under RCW 84.52.105, and any portion of a levy rate for emergency medical care or emergency medical services under RCW 84.52.069 in excess of 30 cents per $1,000 of assessed value.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levies within this tier must be reduced on a pro rata basis from the remaining balance in step 10 until the balance is zero. After prorationing, there is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 12.

(l) Step 12: Subtract from the remaining levy capacity the levies imposed under RCW 36.69.145 for a park and recreation district located on an island and within a county with a population exceeding 2,000,000.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step 11. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 13.

(m) Step 13: Subtract from the remaining levy capacity the portion of the levy by a metropolitan park district with a population of 150,000 or more that is protected under RCW 84.52.120.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step 12. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 14.

(n) Step 14: Subtract from the remaining levy capacity the levy rates for county ferry districts under RCW 36.54.130.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 13. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 15.

(o) Step 15: Subtract from the remaining levy capacity the levy rate for criminal justice purposes imposed under RCW 84.52.135.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 14. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 16.

(p) Step 16: Subtract from the remaining levy capacity the levy rate for a fire protection district or regional fire protection service authority protected under RCW 84.52.125.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the portion of the levy within this tier must be reduced to the remaining balance in step 15. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 17.

(q) Step 17: Subtract from the remaining levy capacity the levy rate for transit-related purposes by a county under RCW 84.52.140.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 16. There is no remaining levy ca-

pacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 18.

(r) Step 18: Subtract from the remaining levy capacity the protected portion of the levy imposed under RCW 84.52.816 by a flood control zone district until the remaining levy capacity equals zero.

(i) If the balance is zero, there is no remaining levy capacity for any other junior taxing districts at a lower tier and their levies, if any, must be eliminated.

(ii) If the balance is less than zero, then the levy is reduced to the remaining balance in step 17. There is no remaining levy capacity for any other junior taxing district at a lower tier and their levies, if any, must be eliminated.

(iii) If the remaining balance is greater than zero, this amount is available to the remaining junior taxing districts at a lower tier and the assessor should proceed on to step 19.

(s) Step 19: Subtract from the remaining levy capacity any portion of a levy resulting from the correction of a levy error under RCW 84.52.085(3) until the remaining levy capacity equals zero.

WSR 24-02-018
PERMANENT RULES
DEPARTMENT OF REVENUE
[Filed December 21, 2023, 1:38 p.m., effective January 21, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending WAC 458-16-130 to incorporate 2023 legislation, HB 1303. Section 2 of this bill explains how the assessor lists and values publicly owned property that loses its exempt status. WAC 458-16-165 is being amended to incorporate 2023 legislation, HB 1265. Section 2 of this bill explains certain provisions regarding a property tax exemption for housing for persons with developmental disabilities.

Citation of Rules Affected by this Order: Amending WAC 458-16-130 Change in taxable status of real property and 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.36.865.

Adopted under notice filed as WSR 23-21-050 on October 10, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 21, 2023.

Atif Aziz
Rules Coordinator

OTS-5012.1

AMENDATORY SECTION (Amending WSR 02-02-009, filed 12/20/01, effective 1/20/02)

WAC 458-16-130 Change in taxable status of real property. (1) **Introduction.** This rule explains what occurs when taxable property becomes exempt and when exempt property becomes taxable. It also describes how property will be treated when exempt use is pending.

(2) **Definitions.** For purposes of this rule, the following definitions apply:

(a) "Back taxes" means the property taxes that would have been paid but for the existence of the property tax exemption during the three years immediately preceding the cancellation or removal of the exemption or during the life of the exemption, whichever is less, plus interest at the same rate and ((~~computed~~)) calculated in the same way

as delinquent property taxes((~~, see~~)). RCW 84.36.810. However, "back taxes" are calculated differently when an exemption is ((~~cancelled~~)) canceled or removed from property owned by a not-for-profit foundation established for the exclusive support of an institution of higher education under RCW 84.36.050(2) or a nature conservancy under RCW 84.36.260. See RCW 84.36.810 (1)(b) and WAC 458-16-150 Cessation of use—Taxes collectible for prior years, regarding not-for-profit foundations and RCW 84.36.262 and WAC 458-16-290 Nature conservancy lands, regarding nature conservancies for a more detailed explanation of the back taxes imposed on these entities.

(b) "Cessation of use" means that an owner or user of exempt real property has ceased to use the property for an exempt purpose. The term also refers to property that has lost its exempt status because it was sold, transferred, loaned, or rented to an owner or user that is not entitled to a property tax exemption under chapter 84.36 RCW.

(c) "Department" means the state department of revenue.

(d) "Real property" means real property, as defined in RCW 84.04.090, owned or used by a nongovernmental nonprofit organization, association, or corporation, a foreign national government, cemetery, soil and water conservation district, and public hospital district established under chapter 70.44 RCW.

(e) "Rollback" means the back taxes and interest imposed in accordance with RCW 84.36.810 because the exempt property lost its exempt status and is now taxable for property tax purposes. However, when an exemption granted to a nature conservancy under RCW 84.36.260 is ((~~cancelled~~)) canceled or removed different rollback procedures are applied. See RCW 84.36.262 and WAC 458-16-290.

(3) **Acquiring tax exempt status.** An application must be filed with the department within ((~~sixty~~)) 60 days of acquiring real property that may qualify for exemption or converting real property to a use that may qualify for exemption, any nongovernmental nonprofit organization, association, or corporation, foreign national government, cemetery, or public hospital district established under chapter 70.44 RCW that wants to obtain a property tax exemption for this property ((~~must file an application with the department~~)). The applicant may file an application for either a new or continued exemption from property tax under chapter 84.36 RCW. All applications must comply with the requirements set forth in WAC 458-16-110 Initial application and renewal declaration.

(a) If an application for a new exemption is approved, the property will be exempt for taxes payable during the following calendar year. For example, a nonprofit hospital acquires a new building on February 10, ((~~2001~~)) 2022, converts it to an exempt use by April 1, ((~~2001~~)) 2022, and applies for a property tax exemption on April 14, ((~~2001~~)) 2022. If the application is approved, the property tax exemption will be effective for taxes payable in ((~~2002~~)) 2023.

(b) When exempt property is acquired by an entity that is eligible for a property tax exemption under chapter 84.36 RCW, the exempt status of the property will continue ((~~as long as~~)) if the purchaser makes an application to continue the property tax exemption within ((~~sixty~~)) 60 days of the date of acquisition and the application is subsequently approved by the department. For example, if a nonprofit home for the aging acquires exempt property from a nursing home, the exempt status of the property will not change ((~~as long as~~)) if the home for the aging makes application to the department within ((~~six-~~

~~ty~~)) 60 days of acquiring the nursing home and the application for exemption is later approved by the department.

(4) **Exempt to taxable status((~~-- Pro rata share of taxes for current tax year~~)).** Real property may lose its exempt status for ((~~a number of~~)) several reasons; when this occurs, the property tax exemption will be ((~~cancelled~~)) canceled or removed. ((~~Once~~)) When the exemption is ((~~cancelled~~)) canceled or removed, the property becomes subject to the following year's taxes. Except for publicly owned property that was exempt under RCW 84.36.010, the property will be assessed and taxed at its true and fair value as of the date of the cessation of use or the change of ownership occurred, as provided in RCW 84.40.350 through 84.40.390. Additionally, the treasurer of the county in which the property is located ((~~shall~~)) will collect a pro rata portion of the taxes allocable to the remaining portion of the current tax year after the date the exemption is ((~~cancelled~~)) canceled or removed. If only a portion of the property no longer qualifies for a tax exemption, the exempt status for only that portion of the property ((~~shall~~)) will be ((~~cancelled~~)) canceled and that portion of the property will be subjected to assessment and taxation during the current tax year.

For publicly owned property that was exempt under RCW 84.36.010, and loses its exempt status and becomes taxable, the assessor must value and list the property as of the January 1st assessment date for the year of the status change in accordance with RCW 84.40.175.

(a) Real property changes from exempt to taxable status ((~~whenever~~)) when the property is:

(i) Transferred as a result of a sale, exchange, gift, or contract from tax exempt to taxable ownership;

(ii) Transferred as a result of a sale, exchange, gift, or contract from tax exempt ownership to ((~~another~~)) a nonprofit organization, association, or corporation that fails to apply for or has been denied a property tax exemption;

(iii) Converted to a taxable use; or

(iv) Loses its exempt status for some other reason.

(b) Except for publicly owned property exempt under RCW 84.36.010, the rollback provisions of RCW 84.36.810 apply when the status of real property changes from exempt to taxable. See WAC 458-16-150 for specific information. However, the rollback provisions of RCW 84.36.262 apply when the property was exempt under RCW 84.36.260 for the conservation of ecological systems, natural resources, or open space. When property changes from exempt to taxable status, the taxes owing will be prorated as of:

(i) The date the instrument of sale, exchange, gift, or contract is executed; or

(ii) The date on which the property is converted to a taxable use.

(c) Example 1. For five years, nonprofit "A" operated a day care center and received a property tax exemption for this property. Nonprofit "A" transfers this property to nonprofit "B," a nonprofit hospital, that continues to receive a property tax exemption for this property. Two years after acquiring the property nonprofit "B" ceases to use the exempt property for an exempt purpose. One hundred days after the exempt activity ceased, nonprofit "B" sells the exempt property to XYZ Printing Company, a profit seeking business. The property became taxable and the provisions of RCW 84.34.810 will be applied as of the date "B" ceased to use the property for an exempt purpose.

(d) Example 2. A nonprofit shelter for low-income persons owned and occupied a building for which it received a property tax exemption. The shelter ceased to use the property on January 1, ((~~2001~~)) 2022, and had no intent to reoccupy the property. ((~~But it hoped to rent the property~~)) The shelter advertised the property so it could rent it to another nonprofit organization for a tax exempt purpose ((~~and actively advertised and looked for such a tenant. On June 1, 2001,~~)). The nonprofit shelter((~~, which had been unable to find a suitable tax exempt tenant for the property,~~)) was unable to find another nonprofit organization to rent the property for a tax exempt purpose, so on June 1, 2022, it signed a lease agreement with a for-profit business enterprise((~~,~~)) which intended to ((~~use and~~)) occupy the property effective ((~~June 1, 2001~~)) July 1, 2022. The rollback provisions of RCW 84.36.810 must be applied as of January 1, ((~~2001~~)) 2022.

(5) **Change of ownership or use - Exempt use pending.** If the ownership of exempt property changes or the use of exempt property ceases but the owner of the property begins to use it for an exempt purpose within ((~~one hundred twenty~~)) 120 days of the date the ownership changed or the previous exempt use ceased, the property will continue to be exempt from property tax. However, if an agreement establishing an alternate exempt use is not signed or an alternate exempt use is not found within ((~~one hundred twenty~~)) 120 days, the property becomes taxable and is noted as such on the assessment roll as of the date the ownership changed or the exempt use ceased. Additionally, if appropriate, the rollback provisions of RCW 84.36.810 will be applied or RCW 84.36.262 if the exempt property was exempt as a nature conservancy. A pro rata share of taxes allocable for the remaining portion of the year in which the cessation of use or change in ownership occurred will be collected.

AMENDATORY SECTION (Amending WSR 22-24-097, filed 12/6/22, effective 1/6/23)

WAC 458-16-165 Conditions under which nonprofit organizations, associations, or corporations may obtain a property tax exemption. (1) **Introduction.** This rule describes the conditions in RCW 84.36.805 and 84.36.840 that most nonprofit organizations, associations, and corporations must satisfy in order to receive a property tax exemption under chapter 84.36 RCW.

(2) **Definitions.** For purposes of this rule, the following definitions apply:

(a) "Department" means the department of revenue.

(b) "Inadvertent use" or "inadvertently used" means the use of the property in a manner inconsistent with the purpose for which the exemption is granted through carelessness, lack of attention, lack of knowledge, mistake, surprise, or neglect.

(c) "Maintenance and operation expenses" means items of expense allowed under generally accepted accounting principles to maintain and operate the loaned or rented portion of the exempt property.

(d) "Revenue" means income received from the loan or rental of exempt property when the income exceeds the amount of maintenance and operation expenses attributable to the portion of the property loaned or rented.

(e) "Personal service contract" means a contract between a nonprofit organization, association, or corporation and an independent contractor under which the independent contractor provides a service on the organization's, association's, or corporation's tax exempt property. (See example in subsection (5)(c) of this rule.)

(3) **Examples.** This rule includes examples that identify a set of facts and then state a conclusion. These examples should only be used as a general guide. The department will evaluate each case on its particular facts and circumstances.

(4) **Applicability of this rule.** This rule does not apply to exemptions granted to:

(a) Public burying grounds or cemeteries under RCW 84.36.020;

(b) Churches, parsonages, convents, and church grounds under RCW 84.36.020;

(c) Administrative offices of nonprofit recognized religious organizations under RCW 84.36.032;

(d) Nonprofit homeownership development entities under RCW 84.36.049;

(e) Water distribution property owned by a nonprofit corporation or cooperative association under RCW 84.36.250;

(f) Nonprofit fair associations under RCW 84.36.480(2); or

(g) Multipurpose senior citizen centers under RCW 84.36.670.

(5) **Exclusive use.** Exempt property must be exclusively used for the actual operation of the activity for which the nonprofit organization, association, corporation, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW, received the property tax exemption unless the authorizing statute states otherwise. The property exempted from taxation must not exceed an area reasonably necessary to facilitate the exempt purpose.

(a) Loan or rental of exempt property. ((~~As a general rule~~)) For information on loans and rentals of property exempt under RCW 84.36.030, see RCW 84.36.031. For other exempt property, generally, the loan or rental of exempt property does not make it taxable if:

(i) The rents or donations received for the use of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; ((~~and~~))

(ii) Except for the exemptions under RCW 84.36.030(4), 84.36.037, 84.36.050, and 84.36.060 (1)(a) and (b), the property would be exempt from tax if owned by the organization to which it is loaned or rented; and

(iii) The loan and rental provisions described in this subsection (5)(a) do not apply to real and personal property owned or leased by a nonprofit organization, corporation, or association to provide housing for eligible persons with developmental disabilities, as described under RCW 84.36.042.

(b) Fund-raising events. The use of exempt property for fund-raising events conducted by an exempt organization, association, corporation, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW, does not jeopardize the exemption if the fund-raising events are consistent with the purposes for which the exemption was granted. The term "fund-raising" means any revenue-raising event limited to less than five days in length that disburses 51 percent or more of the profits realized from the event to the exempt nonprofit entity conducting the fund-raising event.

(i) Example 1. A nonprofit social service agency holds an art auction in the auditorium of its tax exempt facility to raise funds. The event must be less than five days in length and 51 percent of the profits must be disbursed to the social service agency because the fund-raising event is being held on exempt property.

(ii) Example 2. A nonprofit school has a magazine subscription drive to raise funds and the subscriptions are being sold door-to-door by students. There are no limitations on this fund-raising event because the subscription drive is not being held on exempt property.

(c) Personal service contract - Exempt programs. Programs provided under a personal service contract will not jeopardize the exemption if the following conditions are met:

(i) The program is compatible and consistent with the purposes of the exempt organization, association, or corporation;

(ii) The exempt organization, association, or corporation maintains separate financial records as to all receipts and expenses related to the program; and

(iii) A summary of all receipts and expenses of the program are provided to the department upon request.

(iv) Example 3. A nonprofit school may decide to contract with a provider to offer aerobic classes to promote general health and fitness. All brochures and bulletins advertising these classes must show that the school is sponsoring the classes. Under the terms of the contract between the nonprofit school and the aerobics instructor, an independent contractor, the instructor must provide the classes for a predetermined fee. All fees collected from the participants of the classes must be received by the school; the school, in turn, will absorb all costs related to the classes.

(d) Personal service contract - Nonexempt programs. Programs provided under a personal service contract (i) that require the contractor to reimburse the nonprofit organization for program expenses, or (ii) in which the instructor is paid a fee based on the number of people who attend the program will be viewed as a rental agreement and will subject the property to property tax.

(e) Inadvertent use. An inadvertent use of the property in a manner inconsistent with the purpose for which the exemption was granted does not subject the property to tax if the inadvertent use is not part of a pattern of use. A "pattern of use" is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(6) **No discrimination allowed.** The exempt property and the services offered must be available to all persons regardless of race, color, national origin, or ancestry.

(7) **Compliance with licensing or certification requirements.** A nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW seeking or receiving a property tax exemption must comply with all applicable licensing and certification requirements imposed by law or regulation.

(8) **Property sold subject to an option to repurchase.** Property sold to a nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW with an option to be repurchased by the seller cannot qualify for an exemption. This prohibition does not apply to:

(a) Limited equity cooperatives as defined in RCW 84.36.675; or

(b) Property sold to a nonprofit entity, as defined in RCW 84.36.560, by:

(i) A nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code;

(ii) A governmental entity established under RCW 35.21.660, 35.21.670, or 35.21.730;

(iii) A housing authority created under RCW 35.82.030;

(iv) A housing authority meeting the definition of RCW 35.82.210 (2)(a); or

(v) A housing authority established under RCW 35.82.300.

(9) **Duty to produce financial records.** To determine whether a nonprofit entity is entitled to receive a property tax exemption under the provisions of chapter 84.36 RCW and before the exemption is renewed each year, the entity claiming exemption must submit a signed statement made under oath, with the department. This sworn statement must include a declaration that the income, receipts, and donations of the entity seeking the exemption have been used to pay the actual expenses incurred to maintain and operate the exempt facility or for its capital expenditures and to no other purpose. It must also include a statement listing the receipts and disbursements of the organization, association, or corporation. This statement must be made on a form prescribed and furnished by the department.

(a) The provisions of this subsection do not apply to an entity either applying for or receiving an exemption under RCW 84.36.020, 84.36.030, or 84.36.049.

(b) This signed statement must be submitted on or before March 31st each year by any entity currently receiving a tax exemption. If this statement is not received on or before March 31st, the department will remove the tax exemption from the property. However, the department will allow a reasonable extension of time for filing if the exempt entity has submitted a written request for an extension on or before the required filing date and for good cause.

(10) **Caretaker's residence.** If a nonprofit entity, hospital established under chapter 36.62 RCW, or public hospital district established under chapter 70.44 RCW exempt from property tax under chapter 84.36 RCW employs a caretaker to provide either security or maintenance services and the caretaker's residence is located on exempt property, the residence may qualify for exemption if the following conditions are met:

(a) The caretaker's duties include regular surveillance, patrolling the exempt property, and routine maintenance services;

(b) The nonprofit entity, hospital established under chapter 36.62 RCW, or the public hospital district established under chapter 70.44 RCW demonstrates the need for a caretaker at the facility;

(c) The size of the residence is reasonable and appropriate in light of the caretaker's duties and the size of the exempt property; and

(d) The caretaker receives the use of the residence as part of his or her compensation and does not pay rent. Reimbursement of utility expenses created by the caretaker's presence is not considered rent.

(11) **Nonexempt uses of property.** The use of property exempt under this chapter, other than as specifically authorized by this chapter, nullifies the exemption otherwise available for the property for the assessment year. However, the exemption is not nullified by the use of the property by any individual, group, or entity, where such use is not otherwise authorized by this chapter, for not more than 50 days in each calendar year, and the property is not used for pecuniary gain or to promote business activities for more than 15 of the 50 days in each

calendar year. The 50 and 15-day limitations do not include days for setup and takedown activities that take place immediately preceding or following a meeting or other event. If these requirements are not met, the exemption is removed for the affected portion of the property for that assessment year.

(12) **Farmers markets.** The 50 and 15-day limitations in subsection (11) of this rule do not apply to exempt property under RCW 84.36.037 if the property is used for activities related to a qualifying farmers market, for up to 53 days each calendar year, and all income received from the rental or use of the exempt property is used for capital improvements to the exempt property, maintenance and operation of the exempt property, or exempt purposes. For purposes of this rule, "farmers market" has the same meaning as "qualifying farmers market" as defined in RCW 66.24.170.

(13) **Segregation of nonqualifying property.** Any portion of exempt property not meeting the qualifications of this rule will lose its exempt status. Nonqualifying property must be segregated from property used for exempt purposes. For example, if a portion of a building owned by a nonprofit hospital is rented to a sandwich shop, this portion of the hospital must be segregated from the remainder of the building that is being used for exempt hospital purposes. The portion of the building rented to the sandwich shop is subject to property tax.

WSR 24-02-019
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed December 21, 2023, 1:44 p.m., effective March 1, 2024]

Effective Date of Rule: March 1, 2024.

Purpose: The health care authority (agency) revised the premium payment program (PPP) rules to: (a) Update eligibility requirements for clients enrolled in a qualified health plan; and (b) clarify when and how the agency recovers overpayments from PPP clients.

The amended rules:

- Allow clients with individual health plans through Washington health benefit exchange (HBE) to enroll in the PPP.
- Require clients enrolled in an individual health plan purchased through Washington HBE who are eligible for the PPP to undergo an eligibility telephone consultation within 30 days of submitting a completed application.
- Limit PPP enrollment to clients with employer-sponsored insurance (ESI) or individual health plans purchased through Washington HBE; clients purchasing individual health plans outside of Washington HBE are not eligible for PPP.
- Update and clarify exceptions to the comprehensive health insurance requirement for clients enrolled in the PPP if the client meets certain criteria.
- Describe the documentation required for payment of a comprehensive health insurance premium that is more than the average cost-per-user and describe the approval process.
- Clarify actions the agency may take if a PPP client has been identified as being encouraged into PPP enrollment for the purpose of maximizing revenue.
- Clarify situations in which the agency may adjust the premium reimbursement if the client's premiums or medicaid eligibility have changed. The agency may also recover an overpayment for a retroactive disenrollment from a health plan.
- Remove language that would have grandfathered certain PPP clients.

Citation of Rules Affected by this Order: Amending WAC 182-558-0020, 182-558-0030, 182-558-0060, 182-558-0070, and 182-558-0080.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-22-106 on October 31, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: December 21, 2023.

Wendy Barcus

Rules Coordinator

OTS-4701.3

AMENDATORY SECTION (Amending WSR 19-11-129, filed 5/22/19, effective 6/22/19)

WAC 182-558-0020 Definitions. The following definitions, and those definitions found in chapter 182-500 WAC, apply to this chapter.

"Average cost per user" means the average medicaid expenditure for a person of the same age, sex, and eligibility type as the applicant, per fiscal year, as calculated by the agency.

"Comprehensive" means coverage comparable to the services offered under the agency's medicaid state plan that provides at least the following: Physician-related services, inpatient hospital services, outpatient hospital services, prescription drugs, immunizations, and laboratory and X-ray costs.

"Cost-effective" means it would cost less for the agency to pay premium assistance than not to pay premium assistance. The agency determines cost-effectiveness by comparing the anticipated cost of premiums, cost-sharing, and administrative costs to:

(a) The average cost per user; or

(b) The medicaid expenditures to be incurred if the client does not receive the premium assistance, based on the client's documented medical condition.

"Employer-sponsored group health insurance" means a comprehensive group health plan provided through an employer or other entity, for which the employer or entity pays some portion of the cost. Group health plans must cover all applicants whose employment qualifies them for coverage and cannot increase the cost for an applicant with a preexisting condition.

"Flexible health spending arrangement" means the portion of an employee's wages set aside in an account to pay for qualified expenses such as medical or child care costs.

"Health savings account" means a medical savings account available to employees enrolled in a high-deductible health insurance plan.

"High-deductible health insurance plan" means coverage that meets the definition in Section 223 (c)(2) of the Internal Revenue Code.

"Individual health insurance plan" means any plan sold on the individual market, as defined by RCW 48.43.005.

"Overpayment" has the same definition for purposes of this chapter as that term is defined in RCW 41.05A.010.

"Premium tax credit" has the same definition for purposes of this chapter as defined in 26 C.F.R. 1.36B-1 through 1.36B-5.

"Qualified employer-sponsored group health insurance" means a comprehensive group health plan provided through an employer that is offered in a nondiscriminatory manner under 26 U.S.C. Sec. 105(h)(3), and for which the employer subsidizes at least forty percent of the cost of the premium.

AMENDATORY SECTION (Amending WSR 19-11-129, filed 5/22/19, effective 6/22/19)

WAC 182-558-0030 Overview of eligibility. (1) **Eligibility.** To be eligible for the premium payment program (PPP):

(a) A member of the client's medical assistance unit, as described in chapter 182-506 WAC, must be receiving benefits under the medicaid agency's:

(i) Alternative benefits plan coverage;

(ii) Categorically needy coverage; or

(iii) Medically needy coverage.

(b) The client must provide the medicaid agency with proof of:

(i) Enrollment in a comprehensive individual or comprehensive employer-sponsored health insurance plan;

(ii) A Social Security Number or tax identification number for the policy holder; and

(iii) Premium expenditures.

(c) A client enrolled in a qualified individual health insurance plan purchased through the Washington health benefit exchange must complete an eligibility telephone consultation with the medicaid agency within 30 calendar days of submitting a completed application.

(i) The telephone consultation must occur between the agency and the client, or the client's legal representative, or both.

(A) Within seven business days of receipt of the client's completed application, the agency attempts to schedule the consultation with the client by telephone. If the client is not reached within two business days from the first attempt, the agency attempts to reach the client in the manner in which the application was received (i.e., mail or email).

(B) The client must schedule their telephone consultation by responding to the agency by telephone or email within 10 business days of the agency's outreach.

(C) Upon completion of the telephone consultation, premium payment enrollment begins as outlined in subsection (7) of this section.

(ii) The agency may deny the client's application if the client fails to timely complete their telephone consultation.

(d) If the agency suspects that a client has been encouraged by any entity into enrollment in the premium payment program for the purpose of maximizing the revenue of a provider or a health plan, the agency immediately informs the client of their right to disenroll from the program. The agency may take other legal actions, as appropriate, which could result in the exclusion of a provider from the medicaid program under chapter 182-502 WAC.

(2) **Comprehensive health insurance plans.** A comprehensive health insurance plan includes:

(a) An individual health insurance plan purchased from the Washington health benefit exchange, also known as a qualified health plan (QHP);

(b) An employer-sponsored group health insurance plan; or

(c) A qualified employer-sponsored group health insurance plan.

(3) **Comprehensive health insurance plan exclusions.** A comprehensive health insurance plan does not include:

(a) A health savings account ((~~or~~)), flexible health spending arrangement, or other surcharge deductions (i.e., tobacco and spousal deductions);

(b) A high-deductible plan;

(c) A high-risk plan, including a Washington state health insurance pool (WSHIP) plan;

(d) A ((~~limited or supplemental plan, including a medicare supplemental plan~~)) medicare advantage or supplemental plan, including medicare Part C;

(e) ((~~A medicare advantage plan (medicare Part C);~~

~~(f) A qualified health plan (QHP)~~)) A QHP purchased through the Washington health benefit exchange with a premium tax credit; ((~~or (g)~~)) (f) A plan that is the legal obligation of a noncustodial parent, or any other liable party under RCW 74.09.185; or

(g) Any individual health insurance plan that was not purchased through the Washington health benefit exchange.

(4) **Exceptions to comprehensive health insurance plan requirement:**

(a) The agency allows an exception to the comprehensive health insurance requirement for clients enrolled in the PPP based on a plan as described in subsection (3)((~~(c),~~)) (d)((~~,~~)) and (e) of this section when the client:

(i) Has been enrolled in the same plan continuously since January 1, 2012;

(ii) Was approved for and continuously enrolled in the PPP since January 1, 2012; and

(iii) Remained eligible for a medicaid program identified in subsection (1)(a) of this section continuously since January 1, 2012.

(b) If a client's medicaid eligibility for a program identified in subsection (1)(a) of this section or their enrollment in their health plan changes or terminates, the exception to the comprehensive health insurance requirement terminates.

(5) **Cost-effective comprehensive health insurance plan.** A comprehensive health insurance plan must be cost-effective as defined in WAC 182-558-0020.

(6) **Comprehensive health insurance premium above average cost.**

(a) If the agency determines that a client's comprehensive health insurance premium is more than the average cost per user, the ((~~client must provide the agency proof from the client's provider(s):~~

~~(a) Of an existing medical condition that requires or will be requiring extensive medical care; and~~

~~(b) That the cost of the medicaid expenditures would be greater if the agency does not pay premium assistance.~~)) agency pays a greater amount for a medicaid client on the health insurance plan if the following criteria are met:

(i) The client must provide the following completed information to the agency:

(A) A written request that the agency pay a greater amount than the average cost per user for a medicaid client on the health insurance plan.

(I) The client must currently have a medical condition or conditions requiring ongoing medical care.

(II) The request must include the cost of the premium for each member on the comprehensive health insurance.

(B) Written documentation from the client's provider of a medical condition or conditions that require ongoing medical care. (For example, a client's providers could submit treatment plans, medication or durable medical equipment lists, or other documentation.)

(ii) The agency reviews the submitted documentation and determines that the cost of the greater premium is less than the cost of covering the client under medicaid.

(A) The agency's clinical staff reviews the written documentation from the client's providers to determine if the client has a medical condition or conditions requiring ongoing medical care.

(B) The agency notifies the client within 60 days of the initial request if additional documentation is required.

(b) The agency notifies the client in writing of the approval or denial of the client's request within 90 calendar days from the date the agency received:

(i) All requested information from the client; or

(ii) The client's written request.

(c) The agency may deny the request if the client fails to submit all requested information in (a)(i) of this subsection within 90 calendar days of the client's request or fails to participate in consultation as required in subsection (1)(c) of this section.

(d) The agency determines the updated premium amount based on the client's portion of the total premium using the information submitted by the client under (a)(i) of this subsection.

(e) If approved, the effective date of the increased premium amount is the date the client submitted the written request to the agency.

(7) **Premium limit.** The agency pays no more than one premium per client, per month. PPP enrollment begins no sooner than the date on which:

(a) A client is approved for a medicaid program identified in subsection (1)(a) of this section;

(b) The agency receives and accepts the completed Application for HCA Premium Payment Program (HCA 13-705) form; ((~~and~~))

(c) A client's apple health managed care enrollment, if applicable, ends; and

(d) A client completes the telephone eligibility phone consultation, if applicable under subsection (1)(c) of this section.

(8) **Integrated managed care exemption.** A client enrolled in the PPP is exempt from ((~~mandatory~~)) integrated managed care under chapter 182-538 ((~~and 182-538A~~)) WAC.

(9) **Premium assistance subsidy.** The agency's premium assistance subsidy may not exceed the minimum amount required to maintain comprehensive health insurance for the medicaid-eligible client.

(10) **Proof of premium expenditures.** Proof of premium expenditures must be submitted to the agency by the client or the client's representative no later than the end of the third month following the last month of coverage.

(11) **Cost-sharing benefit limitations.** The agency's cost-sharing benefit for copays, coinsurance, and deductibles is limited to services covered under the medicaid state plan.

(12) **Proof of cost-sharing required.** Proof of cost-sharing must be submitted to the agency no later than the end of the sixth month following the date of service.

(13) **Client eligibility review.**

(a) The agency ((~~may~~)) reviews a client's eligibility annually for the PPP ((~~at any time including, but not limited to,~~)) or when the client's:

((~~(a)~~)) (i) Health insurance plan has an annual open enrollment;

((~~(b)~~)) (ii) Medicaid eligibility for a program identified in subsection (1)(a) of this section changes or ends;

((~~(c)~~)) (iii) Medical assistance unit changes;

((~~(d)~~)) (iv) Premium changes; or

((~~(e)~~)) (v) Private health insurance coverage changes or ends.

(b) If the agency finds that the client's premiums or medicaid eligibility have changed, the agency may adjust the premium reimbursement or terminate eligibility for the PPP. The agency notifies the client of any changes in PPP eligibility under this subsection.

AMENDATORY SECTION (Amending WSR 19-11-129, filed 5/22/19, effective 6/22/19)

WAC 182-558-0060 PPP for a client with a qualified employer-sponsored group health insurance plan. (1) **General rule.** Under section 1906A of the Social Security Act, the agency pays an eligible person's premium assistance subsidy and other cost-sharing obligations when the agency determines it is cost-effective as defined in WAC 182-558-0020.

(2) **Eligible persons.** An eligible person is:

(a) A client under age nineteen who is:

(i) Covered under a qualified employer-sponsored group health insurance plan as defined in WAC 182-558-0020;

(ii) Receiving benefits under:

(A) Alternative benefits plan coverage;

(B) Categorically needy coverage; or

(C) Medically needy coverage.

(b) The parent of the client in (a) of this subsection, if:

(i) Enrollment in the health plan depends on a parent's enrollment; and

(ii) The client is a dependent of the parents.

(3) **Cost-sharing benefit.** The premium payment ((~~plan~~)) program (PPP) may provide cost-sharing reimbursement to nonmedicaid-eligible parents for medicaid-covered services under this section.

AMENDATORY SECTION (Amending WSR 17-03-014, filed 1/5/17, effective 3/1/17)

WAC 182-558-0070 Program monitoring. (1) The agency monitors payments under the premium payment program.

(2) Under ((~~chapter 41.05A~~)) RCW 41.05A.110, the agency may recover any over-payment of a premium assistance subsidy or cost-sharing amount((~~, whether due to an~~)). Events that may cause an overpayment for purposes of this section include agency administrative error, ((~~or~~)) client error ((~~or~~)), misrepresentation, or retroactive disenrollment from a health plan.

AMENDATORY SECTION (Amending WSR 17-03-014, filed 1/5/17, effective 3/1/17)

WAC 182-558-0080 Administrative hearings. A client may request an administrative hearing under ((~~RCW 41.05A.110, 74.09.741, and~~)) chapter 182-526 WAC if the client does not agree with an agency decision regarding eligibility for the premium payment program, the amount of a premium assistance subsidy, or an overpayment of a premium assistance subsidy.

WSR 24-02-020
PERMANENT RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)
[Filed December 21, 2023, 3:46 p.m., effective January 21, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Physician health monitoring programs for substance use disorders of veterinarian professions. WAC 246-933-601 through 246-933-630 physician health monitoring. The veterinary board of governors (board) has adopted amendments to physician health monitoring programs for substance use disorders of veterinarian professions. The board has made rule amendments to the physician health substance use disorder monitoring program to update language changes made by SSB 5496 (chapter 43, Laws of 2022).

Amendments include terminology and definitions for currently accepted language and replacing "substance abuse" with "substance use disorder." The board also made amendments to correct citations and other general housekeeping changes.

Citation of Rules Affected by this Order: Amending WAC 246-933-601, 246-933-610, 246-933-620, and 246-933-630.

Statutory Authority for Adoption: RCW 18.92.030, 18.130.175.

Other Authority: RCW 18.92.047, 18.130.050, 18.130.175, and 18.130.186.

Adopted under notice filed as WSR 23-16-098 on July 31, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: December 21, 2023.

Andrea Sanchez-Chambers, DVM, Chair
Veterinary Board of Governors

OTS-4675.1

((~~SUBSTANCE ABUSE~~)) PHYSICIAN HEALTH MONITORING

Participation in Approved Physician Health or Substance Use Disorder Monitoring Program

AMENDATORY SECTION (Amending WSR 91-02-060, filed 12/28/90, effective 1/31/91)

WAC 246-933-601 Intent. It is the intent of the legislature that the veterinary board of governors seek ways to identify and support the rehabilitation of veterinarians ((~~where practice or competency may be impaired due to the abuse of drugs or alcohol~~)) who have a health condition that may impair their ability to practice. The legislature intends that these veterinarians be treated so that they can return to or continue to practice veterinary medicine ((~~in a way which safeguards the public~~)) safely and competently. The legislature specifically intends that the veterinary board of governors establish an alternate program to the traditional administrative proceedings against such veterinarians.

In lieu of disciplinary action under RCW 18.130.160 and if the veterinary board of governors determines that the unprofessional conduct may be the result of ((~~substance abuse~~)) an impairing health condition, the veterinary board of governors may refer the license holder to a ((~~voluntary substance abuse monitoring program approved by the veterinary board of governors~~)) monitoring program.

AMENDATORY SECTION (Amending WSR 91-02-060, filed 10/9/90, effective 11/10/90)

WAC 246-933-610 Definitions. ((~~As used in this chapter:~~

~~(1) "Approved substance abuse monitoring program" or "approved monitoring program" is a program, complying with applicable state law and approved by the board, which oversees a veterinarian's compliance with a contractually prescribed substance abuse recovery program. Substance abuse monitoring programs may provide evaluation and/or treatment to participating veterinarians.~~

~~(2) "Contract" is a comprehensive, structured agreement between the recovering veterinarian and the approved monitoring program wherein the veterinarian consents to comply with the monitoring program and the required components for the veterinarian's recovery activity.~~

~~(3) "Approved treatment facility" is a facility recognized as such according to RCW 18.130.175(1).~~

~~(4) "Substance abuse" means the impairment, as determined by the board, of a veterinarian's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, controlled substances, or other addictive drugs.~~

~~(5) "Aftercare" is that period of time after intensive treatment that provides the veterinarian or the veterinarian's family with group or individual counseling sessions, discussions with other families, ongoing contact and participation in self-help groups, and ongoing continued support of treatment and/or monitoring program staff.~~

~~(6) "Veterinarian support group" is a group of veterinarians and/or other health professionals meeting regularly to support the recovery of its members. The group provides a confidential setting with a trained and experienced facilitator in which participants may safely discuss drug diversion, licensure issues, return to work, and other professional issues related to recovery.~~

~~(7) "Twelve-steps groups" are groups such as Alcoholics Anonymous, Narcotics Anonymous, and related organizations based on a philosophy of anonymity, peer group association, and self-help.~~

~~(8) "Random drug screens" are the observed collection of specified bodily fluids together with laboratory tests to detect the presence of drugs of abuse in bodily fluids. Collection must occur at irregular intervals not known in advance by the person to be tested.~~

~~(9) "Veterinarian" means an impaired practitioner.~~))

The definitions in this section apply in WAC 246-933-601 through 246-933-630 unless the context clearly requires otherwise.

(1) "Continuing care" means ongoing treatment and other supports recommended by treatment providers following a period of intensive treatment or illness stabilization, typically at a lower level of care or service intensity.

(2) "Health professional monitoring group" means a group of veterinarians and other health professionals meeting regularly to support the health and well-being of its members. The group provides a confidential setting in which participants may safely discuss impairing or potentially impairing health conditions with a trained and experienced facilitator.

(3) "Impaired" or "impairment" means an inability to practice veterinary medicine with reasonable skill and safety due to a health condition.

(4) "Monitoring agreement" means a comprehensive, structured set of written expectations between the recovering veterinarian and the monitoring program wherein the veterinarian consents to comply with the expectations and elements of monitoring as required by the program.

(5) "Monitoring program" means a physician health program or voluntary substance use disorder monitoring program, which complies with applicable state law and is approved by the board. Such programs oversee a veterinarian's compliance with program requirements and may provide recommendations for approved evaluators or treatment providers.

(6) "Mutual support group" means a group within a 12-step or other organization approved by the monitoring program that promotes a philosophy of personal growth and change through peer support.

(7) "Random drug screens" means the collection of specified bodily fluids together with laboratory tests to detect the presence of drugs related to a substance use. Collection must occur at irregular intervals not known in advance by the veterinarian.

(8) "Substance use disorder" means continued use of substances and related behaviors that continue despite negative consequences.

(9) "Veterinarian" means an impaired or potentially impaired practitioner.

AMENDATORY SECTION (Amending WSR 91-24-098, filed 12/4/91, effective 1/4/92)

WAC 246-933-620 Approval of ((~~substance abuse~~)) monitoring program((~~s~~)). The board shall approve the monitoring program((~~(s)~~)) which shall participate in the ((~~recovery~~)) rehabilitation of veterinarians. The board shall enter ((~~into~~)) a contract with the ((~~approved substance abuse~~)) monitoring program((~~(s)~~)) on an annual basis.

(1) ((~~An approved~~)) A monitoring program may provide referrals for evaluations ((~~and/or~~)) or treatment to the participating veterinarians.

(2) ((~~An approved~~)) Monitoring program ((~~staff~~)) shall have ((~~the~~)) staff with qualifications and knowledge ((~~of both substance abuse as defined in this chapter and the practice of veterinary medicine to be able~~)) commensurate with the scope of health conditions monitored by the program and the practice of veterinary medicine. At a minimum, program staff should be qualified to evaluate:

(a) ((~~Drug screening laboratories~~)) Toxicology testing results;

(b) Laboratory results;

(c) ((~~Providers of substance abuse treatment, both individual and facilities~~)) The qualifications, work products, and recommendations of evaluators and treatment providers who serve program participants;

(d) ((~~Veterinarians' support~~)) Facilitator reports from health professional monitoring group((~~s~~));

(e) The ((~~veterinarians'~~)) veterinarian's work environment; and

(f) The ability of the veterinarian to practice with reasonable skill and safety.

(3) ((~~An approved monitoring program shall enter into a contract with the veterinarian and the board to oversee the veterinarian's compliance with the requirements of the program.~~

~~(4) An approved~~)) Monitoring program staff shall ((~~evaluate and recommend to the board, on an individual basis,~~)) determine whether a veterinarian ((~~will be prohibited from engaging in the practice of~~)) should refrain from practicing veterinary medicine for a period ((~~of time and restrictions, if any, on the veterinarian's access to controlled substances in the work place.~~

~~(5) An approved monitoring program shall maintain records on participants.~~

~~(6) An approved monitoring program shall be responsible for providing feedback to the veterinarian as to whether treatment progress is acceptable.~~

~~(7) An approved monitoring program shall report to the board any veterinarian who fails to comply with the requirements of the monitoring program.~~

~~(8) An approved monitoring program shall provide the board with a statistical report on the program, including progress of participants, at least annually, or more frequently as requested by the board. Progress reports shall not include names or any identifying information regarding voluntary participants.~~

~~(9)~~)) pending further evaluation or treatment and whether the veterinarian's access to controlled substances, or other workplace accommodations, are recommended to protect the health and well-being of the participant and their patients. Refusal to comply with recommended voluntary practice cessation, practice restrictions, or workplace accommodations will be reported to the board.

(4) A monitoring program shall:

(a) Enter an agreement with the veterinarian and the board to oversee the veterinarian's compliance with program requirements;

(b) Maintain records on participants;

(c) Provide feedback to the veterinarian if the treatment progress is acceptable;

(d) Report to the board any veterinarian who fails to comply with the requirements of the program;

(e) Provide the board with a statistical report on the program and relevant program updates, at least annually, or as requested by the board. Reports shall not include any identifying information regarding voluntary participants;

(f) Provide the board with a complete financial breakdown of cost for each veterinary participant by usage as required by the contract;

(g) Provide the board with a complete annual audited financial statement.

(5) The board shall approve and provide the monitoring program guidelines on treatment, monitoring, ((~~and/or~~)) or limitations on the practice of veterinary medicine for ((~~those participating in the program~~)) participants.

((~~(10) An approved monitoring program shall provide for the board a complete financial breakdown of cost for each individual veterinary participant by usage at an interval determined by the board in the annual contract.~~

~~(11) An approved monitoring program shall provide for the board a complete annual audited financial statement.~~))

AMENDATORY SECTION (Amending WSR 91-24-098, filed 12/4/91, effective 1/4/92)

WAC 246-933-630 Participation in approved ((~~substance abuse~~)) monitoring programs. (1) In lieu of disciplinary action, the veterinarian may accept board referral into ((~~an approved substance abuse~~)) a monitoring program.

(a) ((~~The veterinarian shall undergo a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation will be performed by health care professionals with expertise in chemical dependency.~~)) Before entering the program, the veterinarian shall undergo evaluation(s) by experts approved by the program as a condition of program participation.

(b) The veterinarian shall enter into ((~~a contract~~)) an agreement with the ((~~approved substance abuse monitoring program to comply with the requirements of the program which shall include, but not be limited to the following~~)) program that identifies program requirements. The veterinarian shall:

(i) ((~~The veterinarian shall agree to~~)) Remain free of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as defined in RCW 69.41.030 and 69.50.101, when specified by the monitoring program agreement.

(ii) ((~~The veterinarian shall~~)) Submit to initial and random ((~~drug screening as~~)) toxicology testing when specified by the ((~~approved~~)) monitoring program.

(iii) ((~~The veterinarian shall~~)) Sign a waiver allowing the ((~~approved monitoring~~)) program to release information to the board if the veterinarian does not comply with the ((~~requirements of this contract~~)) program or monitoring agreement.

((~~(iv) The veterinarian shall undergo approved substance abuse treatment in an approved treatment facility.~~

~~(v) The veterinarian shall complete the prescribed aftercare program of the approved treatment facility, which may include individual and/or group psychotherapy.~~

~~(vi) The veterinarian shall cause the treatment counselor(s) to provide~~)) (iv) Complete continuing care as recommended by the treatment providers.

(v) Ensure that treatment provider(s) send reports to the ((~~approved monitoring~~)) program at specified intervals. Reports shall include treatment ((~~prognosis and goals~~)) adherence and progress.

((~~(vii) The veterinarian shall attend veterinarians' support groups and/or twelve-step group meetings as specified by the contract.~~

~~(viii) The veterinarian shall~~)) (vi) Attend health professional monitoring groups and mutual support groups as recommended by the program.

(vii) Comply with ((~~specified~~)) practice conditions and restrictions ((~~as defined by the contract~~)).

(viii) Comply with other conditions in the agreement.

(ix) Except for (b)(i) through (iii) of this subsection, ((~~an approved monitoring~~)) a program may make an exception to the foregoing requirements ((~~on~~)) of individual ((~~contracts~~)) agreements.

(c) The veterinarian is responsible for paying the costs of ((~~the physical and psychosocial evaluation, substance abuse treatment, random drug screens, and therapeutic group sessions~~)) evaluation, treatment, toxicology testing, and monitoring program fees.

(d) The veterinarian may be subject to disciplinary action under RCW 18.130.160 and 18.130.180 if the veterinarian ((~~does not consent to be referred~~)) refuses referral to the ((~~approved~~)) monitoring program, does not comply with specified practice restrictions or modifications, or does not successfully complete the program.

(2) A veterinarian who is not being investigated or monitored by the board for ((~~substance abuse~~)) an impairing health condition and who is not currently the subject of ((~~current~~)) disciplinary action, may voluntarily participate in the ((~~approved~~)) monitoring program without ((~~being referred~~)) referral by the board. Such voluntary participants shall not be subject to disciplinary action under RCW 18.130.160 and 18.130.180 for their ((~~substance abuse~~)) health condition, and shall not have their participation made known to the board if they meet the requirements of the ((~~approved monitoring~~)) program:

(a) Before entering the program, the veterinarian shall undergo ((~~a complete physical and psychosocial evaluation before entering the approved monitoring program. This evaluation shall be performed by health care professional(s) with expertise in chemical dependency.~~

~~(b) The veterinarian shall enter into a contract with the approved substance abuse monitoring program to comply with the requirements of the program which may include, but not be limited to the following:~~

~~(i) The veterinarian shall undergo approved substance abuse treatment in an approved treatment facility.~~

~~(ii) The veterinarian shall agree to~~)) evaluation(s) by experts approved by the program as a condition of program participation.

(b) The veterinarian shall enter into an agreement with the program that identifies program requirements. The veterinarian shall:

(i) Remain free of all mind-altering substances, including alcohol, except for medications prescribed by an authorized prescriber, as

defined in RCW 69.41.030 and 69.50.101, when specified by the monitoring program agreement.

((~~(iii) The veterinarian shall complete the prescribed aftercare program of the approved treatment facility, which may include individual and/or group psychotherapy.~~

~~(iv) The veterinarian shall cause the treatment counselor(s) to provide~~)) (ii) Complete continuing care as recommended by the treatment providers.

(iii) Ensure the treatment provider(s) send reports to the ((~~approved monitoring~~)) program at specified intervals. Reports shall include treatment ((~~prognosis and goals.~~

~~(v) The veterinarian shall submit to random observed drug screening as specified by the approved monitoring program.~~

~~(vi) The veterinarian shall attend veterinarians' support groups and/or twelve-step group meetings as specified by the contract.~~

~~(vii) The veterinarian shall~~)) adherence and progress.

(iv) Submit to initial and random toxicology testing when specified by the program.

(v) Attend health professional monitoring groups and mutual support groups as recommended by the program.

(vi) Comply with practice conditions and restrictions ((~~as defined by the contract~~)).

((~~(viii) The veterinarian shall~~)) (vii) Sign a waiver allowing the ((~~approved monitoring~~)) program to release information to the board if the veterinarian does not comply with the ((~~requirements of this contract~~)) agreement.

(viii) Comply with other conditions in the agreement.

(ix) Except for (b)(ii) through (iii) of this subsection, ((~~an approved monitoring~~)) a program may make an exception to the foregoing requirements ((~~on~~)) of individual ((~~contracts~~)) agreements.

(c) The veterinarian is responsible for paying the costs of ((~~the physical and psychosocial evaluation, substance abuse treatment, random drug screens, and therapeutic group sessions~~)) evaluation, treatment, toxicology testing, and monitoring program fees.

(3) ((~~Treatment and pretreatment~~)) Monitoring program records shall be confidential as provided by law.

WSR 24-02-022
PERMANENT RULES
DEPARTMENT OF HEALTH
(Veterinary Board of Governors)
[Filed December 21, 2023, 4:33 p.m., effective January 21, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Health equity continuing education (CE) for the veterinarian and veterinary technician professions. The veterinary board of governors (board) created new WAC 246-933-437 and 246-935-307 for licensed veterinarians and veterinary technicians to establish health equity CE to implement ESSB 5229 (chapter 276, Laws of 2021).

Citation of Rules Affected by this Order: New WAC 246-933-437 and 246-935-307.

Statutory Authority for Adoption: RCW 18.92.030, 18.130.040, and 43.70.613.

Other Authority: ESSB 5229 (chapter 276, Laws of 2021).

Adopted under notice filed as WSR 23-16-075 on July 28, 2023.

A final cost-benefit analysis is available by contacting Poppy Budrow, P.O. Box 47852, Olympia, WA 98504, phone 564-669-0026, fax 360-236-2901, TTY 711, email Poppy.Budrow@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 0, Repealed 0.

Date Adopted: September 11, 2023.

Andrea Sanchez-Chambers, DVM, Chair
Veterinary Board of Governors

OTS-4446.1

NEW SECTION

WAC 246-933-437 Veterinarians health equity continuing education training requirements. (1) Veterinarians must complete a minimum of two hours in health equity continuing education training every four years by complying with WAC 246-12-800 through 246-12-830.

(2) This training must be completed by the end of the second full continuing education reporting period after January 1, 2024, or the second full continuing education reporting period after initial licensure, whichever is later.

(3) The hours spent completing health equity continuing education under this section count toward meeting applicable continuing education requirements for veterinarian license renewal.

(4) The board may randomly audit up to 25 percent of licensed veterinarians every two years for compliance after the license is renewed as allowed by WAC 246-12-190.

OTS-4447.1

NEW SECTION

WAC 246-935-307 Veterinary technicians health equity continuing education training requirements. (1) Veterinary technicians must complete a minimum of two hours in health equity continuing education training every four years by complying with WAC 246-12-800 through 246-12-830.

(2) This training must be completed by the end of the second full continuing education reporting period after January 1, 2024, or the second full continuing education reporting period after initial licensure, whichever is later.

(3) The hours spent completing health equity continuing education under this section count toward meeting applicable continuing education requirements for veterinary technician license renewal.

(4) The board may randomly audit up to 25 percent of licensed veterinary technicians every two years for compliance after the license is renewed as allowed by WAC 246-12-190.

WSR 24-02-029
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Denturists)
[Filed December 22, 2023, 2:17 p.m., effective January 22, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Denturist rules regarding prefabricated implant abutments and infection control standards. New WAC 246-812-462 was adopted by the board of denturists (board) for the use of placement of prefabricated implant abutments. The adopted [rule] establishes the requirements that are to be followed in order for a licensed denturist to place a prefabricated implant abutment on an implant for the purpose of fabricating, repairing, relining, or rebasing a denture.

The board amended WAC 246-812-501 to ensure that a licensed denturist develop and maintain written infection control policies, procedures, and requirements for infection prevention and control that are appropriate for the denturist services provided by the facility.

Citation of Rules Affected by this Order: New WAC 246-812-462; and amending WAC 246-812-501.

Statutory Authority for Adoption: RCW 18.30.065, 18.130.040.

Other Authority: RCW 18.30.065.

Adopted under notice filed as WSR 23-19-088 on September 20, 2023.

Changes Other than Editing from Proposed to Adopted Version: In response to public comments, the board added the phrase "no more than 90 days" to WAC 246-812-462 so it now reads: "The prefabricated implant abutment seat shall be verified by radiographic assessment by a licensed dentist no more than 90 days prior to delivery of the denture."

Also the board added the phrase "prefabricated implant" before the term "abutment" in WAC 246-821-462 in two places for clarity.

A final cost-benefit analysis is available by contacting Vicki Brown, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4865, fax 360-236-2901, TTY 711, email vicki.brown@doh.wa.gov, website https://www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 1, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: October 25, 2023.

Joshua Brooks, Chair
Board of Denturists

OTS-4569.2

NEW SECTION

WAC 246-812-462 Prefabricated implant abutments. A licensed denturist, prior to placing a prefabricated implant abutment on an implant for the purpose of fabricating, repairing, relining, or rebasing a denture, must have documented proof that a licensed dentist has examined the patient clinically. The documented proof from the licensed dentist must include a report that the implant is sufficiently osseointegrated, the surrounding soft tissues are stable and healthy, and provide a documented diagnosis that the implant is ready to restore. The prefabricated implant abutment seat shall be verified by radiographic assessment by a licensed dentist no more than 90 days prior to delivery of the denture.

AMENDATORY SECTION (Amending WSR 98-20-068, filed 10/2/98, effective 11/2/98)

WAC 246-812-501 Purpose. The purpose of WAC 246-812-501 through 246-812-520 is to establish that a licensed denturist must have written policies, procedures, and requirements for infection prevention and control in denturist offices to protect the health and well-being of the people of the state of Washington. For purposes of infection control, all denturist staff members and all patients shall be considered potential carriers of communicable diseases. Infection control procedures are required to prevent disease transmission from patient to denturist and staff, denturist and staff to patient, and from patient to patient. Every denturist is required to comply with the applicable standard of care in effect at the time of treatment. At a minimum, the denturist must comply with the requirements defined in WAC 246-812-520.

WSR 24-02-036
PERMANENT RULES
HEALTH CARE AUTHORITY
[Filed December 27, 2023, 8:30 a.m., effective January 27, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is amending WAC 182-513-1100 to define intensive behavioral health treatment facility (IBHTF) as a residential treatment facility licensed under chapter 246-337 WAC, and add and amend definitions related to long-term services and supports.

Citation of Rules Affected by this Order: Amending WAC 182-513-1100.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 23-23-144 on November 20, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 27, 2023.

Wendy Barcus
Rules Coordinator

OTS-5031.1

AMENDATORY SECTION (Amending WSR 23-11-039, filed 5/11/23, effective 6/11/23)

WAC 182-513-1100 Definitions related to long-term services and supports (LTSS). This section defines the meaning of certain terms used in chapters 182-513 and 182-515 WAC. Within these chapters, institutional, home and community-based services (HCBS) waiver, program of all-inclusive care for the elderly (PACE), and hospice in a medical institution are referred to collectively as long-term care (LTC). Long-term services and supports (LTSS) is a broader definition which includes institutional, HCBS waiver, and other services such as medicaid personal care (MPC), community first choice (CFC), PACE, and hospice in the community.

• See chapter 182-516 WAC for definitions related to trusts, annuities, life estates, and promissory notes.

• See chapter 388-106 WAC for long-term care services definitions.

• See WAC 182-513-1405 for long-term care partnership definitions.

• See chapter 182-500 WAC for additional apple health eligibility definitions.

"Adequate consideration" means that the fair market value (FMV) of the property or services received, in exchange for transferred property, approximates the FMV of the property transferred.

"Administrative costs" or **"costs"** means necessary costs paid by the guardian including attorney fees.

"Aging and long-term support administration (ALTSA)" means the administration within the Washington state department of social and health services (DSHS).

"Alternate living facility (ALF)" is not an institution under WAC 182-500-0050; it is one of the following community residential facilities:

(a) ((~~An~~)) Adult family home (AFH) licensed under chapter 70.128 RCW.

(b) ((~~An~~)) Adult residential care facility (ARC) licensed under chapter 18.20 RCW.

(c) ((~~A behavioral health adult residential treatment facility licensed under chapter 246-337 WAC.~~

~~(d) An~~)) Assisted living facility (AL) licensed under chapter 18.20 RCW.

((~~(e) A~~)) (d) Behavioral health adult residential treatment facility (RTF) licensed under chapter 246-337 WAC.

(e) Intensive behavioral health treatment facility (IBHTF) is an RTF licensed under chapter 246-337 WAC.

(f) Developmental disabilities administration (DDA) group home (GH) licensed as an adult family home under chapter 70.128 RCW or an assisted living facility under chapter 18.20 RCW.

((~~(f) An~~)) (g) Enhanced adult residential care facility (EARC) licensed as an assisted living facility under chapter 18.20 RCW.

((~~(g) An~~)) (h) Enhanced service facility (ESF) licensed under chapter 70.97 RCW.

((~~(h) A staffed residential facility licensed under chapter 74.15 RCW.~~

~~(i) A~~)) (i) Facility for children and youth 20 years of age and younger where a state-operated living alternative program, as defined under chapter 71A.10 RCW, is operated.

(j) Group care facility for medically complex children licensed under chapter 74.15 RCW.

((~~(j) A facility for children and youth 20 years of age and younger where a state-operated living alternative program, as defined under chapter 71A.10 RCW, is operated.~~)) (k) Staffed residential facility licensed under chapter 74.15 RCW.

"Assets" means all income and resources of a person and of the person's spouse, including any income or resources which that person or that person's spouse would otherwise currently be entitled to but does not receive because of action:

(a) By that person or that person's spouse;

(b) By another person, including a court or administrative body, with legal authority to act in place of or on behalf of the person or the person's spouse; or

(c) By any other person, including any court or administrative body, acting at the direction or upon the request of the person or the person's spouse.

"Authorization date" means the date payment begins for long-term services and supports (LTSS) under WAC 388-106-0045.

"Clothing and personal incidentals (CPI)" means the cash payment (under WAC 388-478-0090, 388-478-0006, and 388-478-0033) issued by the department for clothing and personal items for people living in an ALF or medical institution.

"Community first choice (CFC)" means a medicaid state plan home and community-based service developed under the authority of section 1915(k) of the Social Security Act under chapter 388-106 WAC.

"Community options program entry system (COPES)" means a medicaid home and community-based services (HCBS) waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-106 WAC.

"Community spouse (CS)" means the spouse of an institutionalized spouse.

"Community spouse resource allocation (CSRA)" means the resource amount that may be transferred without penalty from:

(a) The institutionalized spouse (IS) to the community spouse (CS); or

(b) The spousal impoverishment protections institutionalized (SIPI) spouse to the spousal impoverishment protections community (SIPC) spouse.

"Community spouse resource evaluation" means the calculation of the total value of the resources owned by a married couple on the first day of the first month of the institutionalized spouse's most recent continuous period of institutionalization.

"Comprehensive assessment reporting evaluation (CARE) assessment" means the evaluation process defined under chapter 388-106 WAC used by a department designated social services worker or a case manager to determine a person's need for long-term services and supports (LTSS).

"Continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved.

"Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Dependent" means a minor child, or one of the following who meets the definition of a tax dependent under WAC 182-500-0105: Adult child, parent, or sibling.

"Developmental disabilities administration (DDA)" means an administration within the Washington state department of social and health services (DSHS).

"Developmental disabilities administration (DDA) home and community-based services (HCBS) waiver" means a medicaid HCBS waiver program developed under the authority of section 1915(c) of the Social Security Act under chapter 388-845 WAC authorized by DDA. There are five DDA HCBS waivers:

(a) Basic Plus;

(b) Core;

(c) Community protection;

(d) Children's intensive in-home behavioral support (CIIBS); and

(e) Individual and family services (IFS).

"Equity" means the fair market value of real or personal property less any encumbrances (mortgages, liens, or judgments) on the property.

"Fair market value (FMV)" means the price an asset may reasonably be expected to sell for on the open market in an agreement, made by two parties freely and independently of each other, in pursuit of their own self-interest, without pressure or duress, and without some special relationship (arm's length transaction), at the time of transfer or assignment.

"Guardianship fees" or **"fees"** means necessary fees charged by a guardian for services rendered on behalf of a client.

"Home and community-based services (HCBS) waiver programs authorized by home and community services (HCS)" means medicaid HCBS waiver programs developed under the authority of Section 1915(c) of the Social Security Act under chapter 388-106 WAC authorized by HCS. There are three HCS HCBS waivers: Community options program entry system (COPES), new freedom consumer directed services (New Freedom), and residential support waiver (RSW).

"Home and community-based services (HCBS)" means LTSS provided in the home or a residential setting to persons assessed by the department.

"Institutional services" means services paid for by Washington apple health, and provided:

(a) In a medical institution;

(b) Through an HCBS waiver; or

(c) Through programs based on HCBS waiver rules for post-eligibility treatment of income under chapter 182-515 WAC.

"Institutionalized individual" means a person who has attained institutional status under WAC 182-513-1320.

"Institutionalized spouse" means a person who, regardless of legal or physical separation:

(a) Has attained institutional status under WAC 182-513-1320; and

(b) Is legally married to a person who is not in a medical institution.

"Life care community" see continuing care community.

"Likely to reside" means the agency or its designee reasonably expects a person will remain in a medical institution for 30 consecutive days. Once made, the determination stands, even if the person does not actually remain in the facility for that length of time.

"Long-term care services" see "Institutional services."

"Long-term services and supports (LTSS)" includes institutional and noninstitutional services authorized by the department.

"Medicaid alternative care (MAC)" is a Washington apple health benefit authorized under Section 1115 of the Social Security Act. It enables the medicaid agency and the agency's designees to deliver an array of person-centered long-term services and supports (LTSS) to unpaid caregivers caring for a medicaid-eligible person who meets nursing facility level of care under WAC 388-106-0355 and 182-513-1605.

"Medicaid personal care (MPC)" means a medicaid state plan home and community-based service under chapter 388-106 WAC.

"Most recent continuous period of institutionalization (MRCPI)" means the current period an institutionalized spouse has maintained uninterrupted institutional status when the request for a community spouse resource evaluation is made. Institutional status is determined under WAC 182-513-1320.

"Noninstitutional medicaid" means any apple health program not based on HCBS waiver rules under chapter 182-515 WAC, or rules based on a person residing in an institution for 30 days or more under chapter 182-513 WAC.

"Nursing facility level of care (NFLOC)" is ((~~under~~)) described in WAC 388-106-0355.

"Participation" means the amount a person must pay each month toward the cost of long-term care services received each month; it is the amount remaining after the post-eligibility process under WAC 182-513-1380, 182-515-1509, or 182-515-1514. Participation is not room and board.

"Penalty period" or **"period of ineligibility"** means the period of time during which a person is not eligible to receive services that are subject to transfer of asset penalties.

"Personal needs allowance (PNA)" means an amount set aside from a person's income that is intended for personal needs. The amount a person is allowed to keep as a PNA depends on whether the person lives in a medical institution, ALF, or at home.

"Presumptive eligibility (PE)" for long-term services and supports is described in WAC 182-513-1110.

"Program of all-inclusive care for the elderly (PACE)" provides long-term services and supports (LTSS), medical, mental health, and substance use disorder (SUD) treatment through a department-contracted managed care plan using a personalized plan of care for each enrollee.

"Roads to community living (RCL)" is a demonstration project authorized under Section 6071 of the Deficit Reduction Act of 2005 (P.L. 109-171) and extended through the Patient Protection and Affordable Care Act (P.L. 111-148).

"Room and board" means the amount a person must pay each month for food, shelter, and household maintenance requirements when that person resides in an ALF. Room and board is not participation.

"Short stay" means residing in a medical institution for a period of 29 days or fewer.

"Significant financial duress" means, but is not limited to, threatened loss of, or financial burden from, basic shelter, food, or medically necessary health care. It means that a member of a couple has established to the satisfaction of a hearing officer that the community spouse needs income above the level permitted by the community spouse maintenance standard to provide for medical, remedial, or other support needs of the community spouse to permit the community spouse to remain in the community.

"Special income level (SIL)" means the monthly income standard that is 300 percent of the supplemental security income (SSI) federal benefit rate.

"Spousal impoverishment protections" means the financial provisions within Section 1924 of the Social Security Act that protect income and assets of the community spouse through income and resource allocation. The allocation process is used to discourage the impoverishment of a spouse due to the other spouse's need for LTSS. This includes services provided in a medical institution, HCBS waivers authorized under 1915(c) of the Social Security Act, and through September 30, 2027, services authorized under 1115 and 1915(k) of the Social Security Act.

"Spousal impoverishment protections community (SIPC) spouse" means the spouse of a SIPI spouse.

"Spousal impoverishment protections institutionalized (SIPI) spouse" means a legally married person who qualifies for the noninstitutional categorically needy (CN) Washington apple health SSI-related program only because of the spousal impoverishment protections under WAC 182-513-1220.

"State spousal resource standard" means the minimum CSRA standard for a CS or SIPC spouse.

"Tailored supports for older adults (TSOA)" is a federally funded program approved under Section 1115 of the Social Security Act. It enables the medicaid agency and the agency's designees to deliver person-centered long-term services and supports (LTSS).

"Third-party resource (TPR)" means funds paid to or on behalf of a person by a third party, where the purpose of the funds is for payment of activities of daily living, medical services, or personal care. The agency does not pay for these services if there is a third-party resource available.

"Transfer" means, in the context of long-term care eligibility, the changing of ownership or title of an asset, such as income, real property, or personal property, by one of the following:

(a) An intentional act that changes ownership or title; or

(b) A failure to act that results in a change of ownership or title.

"Uncompensated value" means the fair market value (FMV) of an asset on the date of transfer, minus the FMV of the consideration the person receives in exchange for the asset.

"Undue hardship" means a person is not able to meet shelter, food, clothing, or health needs. A person may apply for an undue hardship waiver based on criteria under WAC 182-513-1367.

WSR 24-02-037
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed December 27, 2023, 10:24 a.m., effective December 27, 2024]

Effective Date of Rule: December 27, 2024.

Purpose: The department of labor and industries (L&I) adopted 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 adopted language in chapter 296-67 WAC, Part B.

Amended Section:
WAC 296-67-001 Process safety management of highly hazardous chemicals.

- Updated 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.
- Added 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.
- Clarified that Part B supersedes Part A of this chapter as it relates to petroleum refineries.

WAC 296-67-307 Definitions.

- Included 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, 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 (RAGAGEP), 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.

- Outlined the requirements employers must follow to develop and maintain an effective written process safety management program that needs to be reviewed and updated at least once every three years.

WAC 296-67-315 Employee collaboration.

- Outlined 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.

- Outlined 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.

- Outlined 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.

- Outlined 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 296-67-331 Training.

- Outlined 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.

- Outlined 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.
- Outlined 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 the division of occupational safety and health (DOSH) upon request.
- Set 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.

- Outlined 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.
- Outlined requirements that a PSSR must contain all of the requirements prior to the introduction of highly hazardous chemicals or materials to a process.

- Outlined 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.

- Outlined 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.

- Outlined 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.

- Outlined 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.

- Outlined 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.

- Outlined 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.

- Outlined 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.

- Outlined 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.
- Outlined 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.
- Outlined 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.

- Outlined 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.
- Outlined 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.

- Outlined 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.
- Outlined 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.
- Outlined 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.

- Outlined 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.

- Outlined 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.
- Outlined 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.

- Outlined 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 certain criteria.
- Outlined 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.
- Outlined 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.
- Outlined, 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 isn't feasible.
- Outlined that within 18 months of the audit being completed, each corrective action from the compliance audit must be completed, unless the employer demonstrates in writing that it isn't 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 isn't feasible.
- Outlined 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.

- Outlined that employers must make all information available as necessary to comply with all requirements of Part B in this chapter.
- Outlined 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.

Citation of Rules Affected by this Order: New WAC 296-67-300, 296-67-307, 296-67-311, 296-67-315, 296-67-319, 296-67-323, 296-67-327, 296-67-331, 296-67-335, 296-67-339, 296-67-343, 296-67-347, 296-67-351, 296-67-355, 296-67-359, 296-67-363, 296-67-367, 296-67-371, 296-67-375, 296-67-379, 296-67-383 and 296-67-387; and amending WAC 296-67-001.

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

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 23-13-127 [and 23-15-089] on June 21, 2023 [and July 18, 2023].

Changes Other than Editing from Proposed to Adopted Version:

WAC 296-67-307 Definitions.

- **Employee representative.** Updated definition to include that an employee representative must be "on-site."
- **Major change.** Removed subsection (d) from the definition.
- **Nonroutine.** Removed this definition and placed this language in WAC 296-67-327 (1)(a)(viii) and also renumbered all definitions after it. This is to ensure the rule is clear and having the term defined in the applicable section will reduce the need for a separate definition section to be referenced when trying to understand the rule.
- **Process.** Updated definition to include "transfer using" before "piping" to provide clarity on what activities are included in a process.
- **Qualified operator.** Updated to provide clarity on what training requirements must be met to be a qualified operator by adding a reference to WAC 296-67-331.
- **RAGAGEP.** Removed "The employer should also consider informative sources of industry practices as appropriate" from the definition. This change is consistent with Cal/OSHA's PSM refinery rule.

WAC 296-67-319 Process safety information.

- Removed "implement" from subsection (1). This change is consistent with Cal/OSHA's PSM refinery rule.
- Removed language cross-referencing the employee collaboration section of the rule to streamline the rule and remove repetitive language.

WAC 296-67-323 Hazard analyses.

- Removed language cross-referencing the employee collaboration section of the rule to streamline the rule and remove repetitive language.

WAC 296-67-327 Operating procedures.

- To provide clarity, updated language regarding "nonroutine work" to "Any other operating condition not described in subsection (1)(a) of this section."
- Removed language cross-referencing the employee collaboration section of the rule to streamline the rule and remove repetitive language.

WAC 296-67-331 Training.

- Removed "including employees of contractors" from subsection (1) since contractors have their own training section. This change is

consistent with Cal/OSHA's PSM refinery rule. Also added a reference to WAC 296-67-327.
- Added "affected" before "employees of contractors" in subsection (1)(b) for consistency throughout the rule.
- Removed language cross-referencing the employee collaboration section of the rule to streamline the rule and remove repetitive language.

WAC 296-67-335 Contractors.

- Removed subsection (2)(a) and adjusted numbering of the subsections under subsection (2). This change is consistent with Cal/OSHA's PSM refinery rule. Added a reference to chapter 296-71 WAC.
- Removed "and procedures" from subsection (3)(a)(ii). This change is consistent with Cal/OSHA's PSM refinery rule.
- Removed language cross-referencing the employee collaboration section of the rule to streamline the rule and remove repetitive language.

WAC 296-67-339 Pre-startup safety review.

- Removed language cross-referencing the employee collaboration section of the rule to streamline the rule and remove repetitive language.

WAC 296-67-343 Mechanical integrity.

- Added the word "affected" in front of "employees of contractors" in subsection (1)(c) for consistency throughout the rule.
- Updated language regarding timing of inspections and tests of equipment. This change is consistent with Cal/OSHA's PSM refinery rule.
- Added "including certification, when applicable" to provide clarity that documentation required under the rule includes certifications.
- Updated language regarding temporary repairs by consolidating subsections to provide clarity and streamline the rule.
- Removed language cross-referencing the employee collaboration section of the rule to streamline the rule and remove repetitive language.

WAC 296-67-347 Damage mechanism review.

- Updated "contractor employees" to "affected employees of a contractor" in subsection (12) for consistency throughout the rule.
- Removed language cross-referencing the employee collaboration section of the rule to streamline the rule and remove repetitive language. Renumbered remaining subsection.

WAC 296-67-351 Hot work, 296-67-355 Management of change, 296-67-359 Management of organizational change, 296-67-363 Incident investigation ––Root cause analysis, 296-67-367 Emergency planning and response, 296-67-371 Compliance audits, and 296-67-375 Process safety culture assessment.

- Removed language cross-referencing the employee collaboration section of the rule to streamline the rule and remove repetitive language.

WAC 296-67-379 Human factors.

- Removed "in that, at a minimum, represents industry RAGAGEP relevant to" to ensure clarity. This change is consistent with Cal/OSHA's PSM refinery rule.
- Replaced "as relevant" with a cross-reference to WAC 296-67-315 to provide clarity. This change is consistent with Cal/OSHA's PSM refinery rule.
- Removed language cross-referencing the employee collaboration section of the rule to streamline the rule and remove repetitive language.

WAC 296-67-383 Corrective action program.

- Added cross-reference to WAC 296-67-355 to provide clarity on the standard that needs to be met. This change is consistent with Cal/OSHA's PSM refinery rule.
- Removed language cross-referencing the employee collaboration section of the rule to streamline the rule and remove repetitive language.

WAC 296-67-387 Trade secrets.

- Added "all requirements contained in" before Part B in subsection (1), and removed "pursuant to WAC 296-901-14018 Trade secrets" from the end of the subsection to provide clarity.

A final cost-benefit analysis is available by contacting Tari Enos, L&I, DOSH, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-902-5541, fax 360-902-5619, email Tari.Enos@Lni.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 22, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 22, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 27, 2023.

Joel Sacks
Director

OTS-1344.11

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; ((~~or~~))

(iii) Normally unoccupied remote facilities; or

(iv) Petroleum refineries under Part B of this chapter.

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.

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 on-site and 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 materi-

al 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.

(21) **Must.** Must means mandatory.

(22) **Process.** Any activity involving a highly hazardous chemical or material, including:

(a) Use;

(b) Storage;

(c) Manufacturing;

(d) Handling;

(e) Transfer using 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.

(23) **Process equipment.** Equipment including, but not limited to, pressure vessels, rotating equipment, piping, instrumentation, process control, or appurtenances, related to a process.

(24) **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.

(25) **Process safety hazard.** A hazard of a process that has the potential for causing a process safety incident, or death or serious physical harm.

(26) **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.

(27) **Process safety management (PSM).** The application of management systems to ensure the safety of petroleum refinery processes.

(28) **Process safety performance indicators.** Measurements of the refinery's activities and events that are used to evaluate the performance of process safety systems.

(29) **Qualified operator.** A person designated by the employer who, by fulfilling the requirements of the training program as described in WAC 296-67-331, has demonstrated the ability to safely perform all assigned duties.

(30) **Reactive substance.** A self-reactive chemical, as defined in WAC 296-901-14024 Appendix B—Physical hazard criteria.

(31) **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). RAGAGEP does not include standards, guidelines or practices developed for internal use by the employer.

(32) **Replacement-in-kind.** A replacement that satisfies the design specifications of the item it is replacing.

(33) **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 de-

viations 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.

(34) **Safety instrumented system.** Engineered systems designed to achieve or maintain safe operation of a process in response to an unsafe process condition.

(35) **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.

(36) **Toxic substance.** Acute toxicity, as defined in WAC 296-901-14022 Appendix A—Health hazard criteria.

(37) **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.

(38) **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.

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.

NEW SECTION

WAC 296-67-315 Employee collaboration. (1) In consultation with employees and employee representatives, the employer must develop, im-

plement, 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.

NEW SECTION

WAC 296-67-319 Process safety information. (1) The employer must develop 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 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.

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 mechanisms, 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.

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) Any other operating condition not described in (a) of this subsection.

(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.

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, must be trained in an overview of the process and in the applicable operating procedures in WAC 296-67-327.

(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 affected 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.

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) 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 pursuant to chapter 296-71 WAC.

(b) 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.

(c) 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.

(d) 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.

(e) 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;

(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 hazards 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.

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.

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 affected 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 necessary, based on the operating experience with the process equipment.

(d) The employer must retain documentation, including certification, where applicable, for each inspection and test that has been performed on process equipment. The documentation, including certification, where applicable, 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. The employer must correct deficiencies to ensure safe operation of process equipment, including any temporary repairs. Repair methodologies and preventative maintenance must be consistent with RAGAGEP or more protective internal practices.

(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.

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 affected employees of a contractor, 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) DMR reports must be retained for the life of the process.

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) Hot work permits must be kept on file for one year.

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.

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.

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) Incident investigation reports must be retained for the life of the process.

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.

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.

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.

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, 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, pursuant to WAC 296-67-315.

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 comple-

tion 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 under WAC 296-67-355;

(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.

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 all requirements contained in Part B of this chapter.

(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.

WSR 24-02-042
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed December 27, 2023, 12:38 p.m., effective January 27, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The developmental disabilities administration (DDA) amended rules and added new rules within chapter 388-101D WAC to establish procedures for addressing a client's unmet support needs, suspending or terminating a client's services, and to codify procedures for the client critical case protocol.

Citation of Rules Affected by this Order: New WAC 388-101D-0196, 388-101D-0197, 388-101D-0198 and 388-101D-0201; and amending WAC 388-101D-0190, 388-101D-0195, and 388-101D-0200.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.26.030.

Adopted under notice filed as WSR 23-19-071 on September 18, 2023.

Changes Other than Editing from Proposed to Adopted Version: In WAC 388-101D-0190, DDA changed "ensure the plan meets" to "determine whether the plan meets."

In WAC 388-101D-0200, DDA changed "a provider may terminate a client's services if" to "a provider must not terminate a client's services unless."

In WAC 388-101D-0201(c), DDA reformatted the section by adding a colon and breaking the sentence into subitems. This formatting change clarifies that the phrase "can address the client's needs" applies only to "other setting," not a hospital, jail, or health care facility.

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 4, Amended 3, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 4, Amended 3, Repealed 0.

Date Adopted: December 27, 2023.

Lisa N. H. Yanagida
Chief of Staff

SHS-4945.8

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0190 ((~~Changes in client service needs-Nonemergent.~~)) What must a provider do if a client experiences a change in support needs? ((~~The service provider must notify the department:~~

~~(1) When a client's service needs change and the individual support plan no longer addresses the client's needs; and~~

~~(2) May request in writing, assistance from the department's case manager in setting up an assessment meeting.~~))

If a client experiences a change in support needs, the provider must:

(1) Coordinate with the client to the maximum extent possible to:

(a) Review the client's individual instruction and support plan (IISP) to determine whether the IISP meets the client's needs and requirements under chapter 388-101D WAC, and update if needed;

(b) Review the client's positive behavior support plan (PBSP), if the client has one, to determine whether the PBSP meets the client's needs and requirements under chapter 388-101D WAC, and update if needed;

(c) Review the client's person-centered service plan (PCSP) and, if necessary, notify DDA that changes to the PCSP may be needed;

(d) Participate in a significant change assessment, if one occurs, unless requested by the client not to do so; and

(e) Implement the new PCSP, if updated.

(2) Contact the resource manager if the provider believes additional resources or a rate assessment are needed.

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0195 ((~~Changes in client service needs—Emergent.~~)) What must a provider do when a client's support needs remain unmet? ((~~(1) The service provider must promptly notify the department to ask for emergency assistance when a client's needs change and the actions or continued presence of the client endangers the health, safety and/or personal property of other clients, the client, those working with the client, or other public citizens.~~

~~(2) If further assistance is needed following the department's initial response, the service provider must confirm in writing to the client's case manager on the first working day after initiating a verbal request for such assistance:~~

~~(a) The nature of the emergency;~~

~~(b) The need for immediate assistance and the specific type of assistance needed; and~~

~~(c) The specific type of assistance needed.~~

~~(3) When the emergency cannot be resolved and the service provider wants to terminate services to the client, the service provider must:~~

~~(a) Notify the department in writing;~~

~~(b) Specify the reasons for terminating services to the client; and~~

~~(c) Ensure that the department receives the notice at least seventy-two hours before moving the client from the program.~~))

(1) If the client's support needs remain unmet after following the procedures in WAC 388-101D-0190, the provider must submit a written request to the client's case manager for assistance with addressing the unmet need.

(2) No more than five working days after receipt of the provider's request, DDA must respond to address the unmet need, which might include identification of a critical case.

NEW SECTION

WAC 388-101D-0196 What is the client critical case protocol? (1) The client critical case protocol is a formal, person-centered process for addressing unmet residential support needs for a client receiving services from a contracted supported living provider, which, if unaddressed might result in a disruption in residential services.

(2) DDA must include in the client critical case protocol:

(a) The client, if they choose to participate;

(b) The client's legal representative, if the client has one, and if they choose to participate;

(c) A representative from the client's current supported living agency; and

(d) DDA.

(3) The steps of the client critical case protocol include DDA:

(a) Identifying the client's unmet need as a critical case;

(b) Notifying parties in subsection (2) of this section that a critical case has been identified;

(c) Conducting a critical case conference under WAC 388-101D-0198;

(d) Identifying action steps through a critical case conference; and

(e) Distributing an outcome summary to participants for review and correction.

NEW SECTION

WAC 388-101D-0197 Who may request a client critical case protocol and when is it initiated? (1) A client, the client's legal representative, or the provider may request a critical case protocol if:

(a) The client is at risk of losing their home;

(b) The client is at risk of losing their supported living provider;

(c) The client is medically cleared for discharge from a hospital but does not have a discharge plan;

(d) The client's person-centered service plan or positive behavior support plan cannot be implemented as written; or

(e) There is other indication of a critical case.

(2) DDA must respond to the request for a critical case protocol no more than five working days after receiving the request.

(3) A client critical case protocol may be initiated by DDA when requested by:

(a) The client or legal representative, if the client has one; or

(b) The supported living provider.

(4) DDA must initiate a client critical case protocol if the provider suspends the client's services or DDA learns that the client is at risk of losing residential supports from the provider.

NEW SECTION

WAC 388-101D-0198 Who must attend a critical case conference and when must the conference occur? (1) The client's critical case conference must be attended by:

(a) The client, if the client chooses to attend;

(b) The client's legal representative, if the client has one, and if the legal representative chooses to attend;

(c) A representative from the client's current supported living agency; and

(d) DDA.

(2) If requested, DDA must invite other people identified by the client or the client's legal representative, if the client has one.

(3) The client may identify people whom the client does not want to attend a critical case conference.

(4) The critical case conference must occur no more than 10 business days after identification of a critical case.

(5) If the client, or the client's legal representative, if the client has one, does not attend the first critical case conference within the 10-day timeframe:

(a) The conference may occur as scheduled;

(b) A follow-up conference must be offered to the client and their legal representative, if the client has one; and

(c) The outcome summary must be shared with the client and their legal representative, if the client has one, for review and correction.

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0200 ((~~Service provider refusal to serve a client.~~)) When may a provider terminate a client's services? (1) ((~~The service provider may refuse services to a client when the service provider has determined and documented~~)) A provider must not terminate a client's services unless the provider determines and documents that:

(a) ((~~Why the provider~~)) The provider cannot meet the client's needs; ((~~or~~))

(b) ((~~How the provider's refusal to serve the client would be in the best interest of the client or other clients.~~)) The client's safety or the safety of other people in the residence is endangered;

(c) The client's health or the health of other people in the residence would otherwise be endangered; or

(d) The provider ceases to operate.

(2) Before ((~~terminating~~)) a provider may terminate a client's services ((~~to the client~~)), the ((~~service~~)) provider must: ((~~notify the department, the client and the client's legal representative in writing ten working days before terminating services.~~))

(a) Engage in the client critical case protocol and attend a critical case conference if the client receives services from a contracted supported living provider; and

(b) At least 60 days before the termination date, send written notice to:

(i) The client and the client's legal representative or necessary supplemental accommodation; and

(ii) DDA.

(3) The notice to the client must state the:

(a) Reason for the termination;

(b) Circumstances that led to the termination;

(c) Steps taken to prevent the termination; and

(d) Effective date of the termination.

(4) The terminating provider must participate in transition meetings when requested by DDA, the client, or the new provider.

(5) Crisis diversion service providers are exempt from the requirements in this section.

NEW SECTION

WAC 388-101D-0201 When may the provider suspend a client's services? (1) A contracted supported living provider may immediately suspend a client's services if:

(a) The provider cannot safely meet the client's needs;

(b) The actions or continued presence of the client endangers the health or safety of the client, other clients, those working with the client, or member of the public; and

(c) The client is in a:

(i) Hospital;

(ii) Jail;

(iii) Health care facility; or

(iv) Other setting that can address the client's needs.

(2) The provider must give written notice to the client, their legal representative, if they have one, and DDA before suspending the client's services.

(3) The notice must specify the provider's reasons for suspending the client's services.

(4) While the client's services are suspended, the provider must engage in the client critical case protocol to determine the client's support needs and if the client will choose to:

(a) Resume services with the provider and the provider agrees;

(b) Transition to a new provider; or

(c) Transition to another service.

(5) The suspension status must be addressed at a critical case conference. The provider must inform the client and DDA if the status of the suspension changes.

(6) Crisis diversion service providers are exempt from the requirements in this section.

WSR 24-02-056
PERMANENT RULES
DEPARTMENT OF HEALTH
(Dental Quality Assurance Commission)
[Filed December 28, 2023, 3:58 p.m., effective January 28, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Dental provider health equity continuing education (CE) requirements. WAC 246-817-440 Dental continuing education requirements and 246-817-445 Dental anesthesia assistant continuing education requirements. ESSB 5229 (chapter 276, Laws of 2021), codified as RCW 43.70.613 directed the rule-making authority for each health profession licensed under Title 18 RCW that is subject to continuing competency to adopt rules requiring a licensee to complete health equity CE training at least once every four years. The statute also directed 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. The model rules require two hours of training every four years. Any rules developed for the dental quality assurance commission (commission) must meet or exceed the minimum standards in the model rules in WAC 246-12-800 through 246-12-830.

The commission is amending WAC 246-817-440 and 246-817-445, to implement ESSB 5229. The commission is adopting the health equity model rules, WAC 246-12-800 through 246-12-830, for dentists and dental anesthesia assistants to comply with RCW 43.70.613.

The amended rule adds two hours of health equity education, as required in the model rules, to be completed as part of the current CE requirements every three years. The amended rule does not change total dentist CE hours but requires two hours in health equity CE every three years which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for dentists.

The amended rule also adds two hours of health equity education for dental anesthesia assistants every three years; however, the amended rule increases the total number of existing CE hours for dental anesthesia assistants to include the two hours of health equity CE courses.

The requirement for training every three years rather than four is consistent with the existing CE cycle.

Citation of Rules Affected by this Order: Amending WAC 246-817-440 and 246-817-445.

Statutory Authority for Adoption: RCW 18.32.002, 18.32.0365, 18.32.180, 18.350.030, 18.130.040, and 43.70.613.

Adopted under notice filed as WSR 23-19-091 on September 20, 2023.

A final cost-benefit analysis is available by contacting Amber Freeberg, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4893, fax 360-236-2901, TTY 711, email dental@doh.wa.gov, website www.doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 27, 2023.

David Carsten, DDS, Chair
Dental Quality Assurance Commission

OTS-4884.2

AMENDATORY SECTION (Amending WSR 22-02-022, filed 12/28/21, effective 1/28/22)

WAC 246-817-440 Dentist continuing education requirements. The goal of continuing education is to encourage the lifetime professional development of the licensed dentist, and to enhance the clinical and overall skills needed to protect the health and safety of all patients.

(1) A licensed dentist shall complete a minimum of ((~~sixty-three~~)) 63 hours of continuing education every three years.

(a) The three-year continuing education reporting period for a dentist licensed in Washington before 2019 begins January 1, 2019, and verification of completion of continuing education hours will be due on the dentist's annual license renewal date in 2022, and every three years thereafter. The three-year continuing education reporting period for a dentist initially licensed in Washington in 2019 or later begins upon date of licensure.

(b) A licensed dentist shall attest to the completion of ((~~sixty-three~~)) 63 hours of continuing education every three years as a part of their license renewal requirement.

(c) The dental quality assurance commission (commission) may randomly audit up to ((~~twenty-five~~)) 25 percent of licensed dentists every three years for compliance after the license is renewed as allowed by ((~~chapter 246-12 WAC, Part 7~~)) WAC 246-12-170 through 246-12-240.

(d) A licensed dentist shall comply with the requirements of ((~~chapter 246-12 WAC, Part 7~~)) WAC 246-12-170 through 246-12-240.

(e) The commission will not authorize or approve specific continuing education courses.

(2) A licensed dentist shall complete the commission approved dental jurisprudence examination once every three years. One hour of continuing education will be granted toward the ((~~sixty-three~~)) 63-hour requirement.

(3) A licensed dentist must complete a minimum of two hours of commission approved health equity training every three years. Two hours of continuing education will be granted towards the 63-hour requirement. An approved program providing health equity continuing education training must meet the requirements listed in WAC 246-12-830. For purposes of this rule, health equity has the same meaning as defined in WAC 246-12-810.

(4) Continuing education must contribute to the professional knowledge and development of the licensed dentist or enhance services provided to patients. Continuing education must be completed in one or more of the following subject categories:

(a) Education courses relating to the practice of dentistry;

(b) Emergency management, advanced cardiac life support (ACLS), and pediatric advanced life support (PALS);

(c) Health care provider basic life support (BLS). BLS certification is required in WAC 246-817-720. One hour of continuing education for each BLS certification course will be granted. A licensed dentist may not count more than three hours every three years in this category;

(d) Infection control, federal/state safety standards, and radiation protection;

(e) Pharmacology, prescribing practices, and pain management;

(f) Ethics;

(g) Patient care related education including risk management, methods of health delivery, multicultural, and suicide prevention education;

(h) Washington state dentistry law;

(i) Practice management and billing practices. A licensed dentist may not count more than ((~~twenty-one~~)) 21 hours every three years in this category.

((~~(4)~~)) (5) Continuing education in subject categories identified in subsection ((~~(3)~~)) (4) of this section may be completed using any of the following activities or methods:

(a) Attendance at local, state, national, or international continuing education courses, live interactive webinars, dental study clubs, postdoctoral education, and dental residencies;

(b) Self-study by various means, relevant to dentistry, without an instructor physically present.

(i) Self-study can be continuing education provided online or through the mail provided by a continuing education provider. Thirty minutes will count for every one hour completed for this activity, except for live or recorded interactive webinars;

(ii) Self-study can be reading a book that contributes to the professional knowledge and development of the licensed dentist, or enhance services provided to patients. A two-page synopsis of what was learned written by the licensed dentist is required. Two hours of continuing education for each book and synopsis will be granted. A licensed dentist may not count more than six hours every three years for this activity.

(c) Teaching, presenting, or lecturing in a course, only if the presentation or lecture is created or authored by the dentist claiming the continuing education hours. A licensed dentist may not count more than ((~~twenty-one~~)) 21 hours every three years in this activity;

(d) Direct clinical supervision of dental students and dental residents. A licensed dentist may not count more than ((~~twenty-one~~)) 21 hours every three years in this activity;

(e) Publishing a paper in a peer review journal. A licensed dentist may count ((~~fifteen~~)) 15 hours the year the paper is published and may not count more than a total of ((~~thirty~~)) 30 hours every three years in this activity. A copy of the publication is required;

(f) Reading and critically evaluating any hypothesis-driven scientific journal article on a topic that has relevance to dentistry and is published in a peer-reviewed journal devoted to dentistry, medi-

cine, or useful to dentistry. A licensed dentist may not count more than ((~~twenty-one~~)) 21 hours every three years.

(i) Before completing this activity, the licensed dentist must complete at least four hours of education in evidence-based dentistry or medicine that includes journal article evaluation. The four-hour education may count toward the required ((~~sixty-three~~)) 63-hour requirement. The four-hour education is a one-time requirement. A licensed dentist may not count more than four hours every three years.

(ii) A licensed dentist may count one hour for each article that the dentist completes a "Critical Evaluation of a Journal Article" questionnaire. The questionnaire may be obtained from the commission. The completed questionnaire is required;

(g) Volunteer dental patient care. A licensed dentist may not count more than ((~~twenty-one~~)) 21 hours every three years; and

(h) The commission will accept a current certification or recertification from any specialty board approved and recognized by the American Dental Association (ADA), the American Board of Dental Specialties (ABDS), or other specialty board certification or recertification approved by the commission as ((~~sixty-two~~)) 62 hours of continuing education. The commission will also accept the award of Fellow of the Academy of General Dentistry, Master of the Academy of General Dentistry, or the Lifelong Learning and Service Recognition Award as ((~~sixty-two~~)) 62 hours of continuing education. The certification, recertification, or award must be obtained in the three-year reporting period.

((~~(5)~~)) (6) Proof of continuing education is a certificate of completion, letter, or other documentation verifying or confirming attendance or completion of continuing education hours. Documentation must be from the organization that provided the activity, except in subsection ((~~(4)~~)) (5)(b)(ii), (e), and (f)(ii) of this section, and must contain at least the following:

(a) Date of attendance or completion;

(b) Hours earned; and

(c) Course title or subject.

AMENDATORY SECTION (Amending WSR 13-15-144, filed 7/23/13, effective 8/23/13)

WAC 246-817-445 Dental anesthesia assistant continuing education requirements. (1) To renew a certification a certified dental anesthesia assistant must complete a minimum of ((~~twelve~~)) 14 hours of continuing education every three years and follow the requirements of ((~~chapter 246-12 WAC, Part 7~~)) WAC 246-12-170 through 246-12-240.

(2) A certified dental anesthesia assistant must complete a minimum of two hours of approved health equity training every three years. Two hours of continuing education will be granted towards the 14-hour requirement. An approved program providing health equity continuing education training must meet the requirements listed in WAC 246-12-830. For purposes of this rule, health equity has the same meaning as defined in WAC 246-12-810.

(3) Continuing education must involve direct application of dental anesthesia assistant knowledge and skills in one or more of the following categories:

(a) General anesthesia;

(b) Moderate sedation;

(c) Physical evaluation;

(d) Medical emergencies;

(e) Health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS);

(f) Monitoring and use of monitoring equipment;

(g) Pharmacology of drugs; and agents used in sedation and anesthesia.

((~~(3)~~)) (4) Continuing education is defined as any of the following activities:

(a) Attendance at local, state, national, or international continuing education courses;

(b) Health care provider basic life support (BLS), advanced cardiac life support (ACLS), or pediatric advanced life support (PALS), or emergency related classes;

(c) Self-study through the use of multimedia devices or the study of books, research materials, or other publications.

(i) Multimedia devices. The required documentation for this activity is a letter or other documentation from the organization. A maximum of two hours is allowed per reporting period.

(ii) Books, research materials, or other publications. The required documentation for this activity is a two-page synopsis of what was learned written by the credential holder. A maximum of two hours is allowed per reporting period.

(d) Distance learning. Distance learning includes, but is not limited to, correspondence course, webinar, print, audio/video broadcasting, audio/video teleconferencing, computer aided instruction, e-learning/on-line-learning, or computer broadcasting/webcasting. A maximum of four hours of distance learning is allowed per reporting period.

WSR 24-02-057
PERMANENT RULES
DEPARTMENT OF HEALTH
[Filed December 28, 2023, 4:11 p.m., effective January 31, 2024]

Effective Date of Rule: January 31, 2024.

Purpose: Multistate nursing license fee (new) and increase to nursing center surcharge fee. The department of health (department), in consultation with the Washington state board of nursing (board), is adopting amendments to WAC 246-840-990 to establish the multistate nursing license fee and increase the nursing center surcharge fee as directed by SSB 5499 (chapter 123, Laws of 2023).

Citation of Rules Affected by this Order: Amending WAC 246-840-990.

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

Adopted under notice filed as WSR 23-22-060 on October 25, 2023.

Changes Other than Editing from Proposed to Adopted Version: Non-substantive technical changes were made to reflect the correct nursing center surcharge.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 28, 2023.

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

OTS-4971.3

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

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

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

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

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

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

(6) The following nonrefundable fees will be charged:

((**~~Application Fees~~**

	~~Registered Nurse~~	~~Licensed Practical Nurse~~	~~Advanced Registered Nurse Practitioner[1]~~	~~Nursing Technician~~
~~Application Fee~~	~~114~~	~~69~~	~~130~~	~~25~~
~~HEAL-WA Surcharge~~	~~16~~	~~16~~	~~0~~	~~0~~
~~Nursing Center Surcharge~~	~~5~~	~~5~~	~~0~~	~~0~~
~~**Total**~~	~~**135**~~	~~**90**~~	~~**130**~~	~~**25**~~

~~[1]Pays a $125 application fee per specialty license. If not currently a licensed RN, must also pay RN application fees.~~

~~**On-Time Renewal**~~

	~~Registered Nurse~~	~~Licensed Practical Nurse~~	~~Advanced Registered Nurse Practitioner[2]~~	~~Nursing Technician~~
~~Renewal Fee~~	~~114~~	~~69~~	~~130~~	~~25~~
~~HEAL-WA Surcharge~~	~~16~~	~~16~~	~~0~~	~~0~~
~~Nursing Center Surcharge~~	~~5~~	~~5~~	~~0~~	~~0~~
~~**Total**~~	~~**135**~~	~~**90**~~	~~**130**~~	~~**25**~~

~~[2]Pays a $125 renewal fee per specialty license once every two years. Must also renew RN license every year.~~

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

	~~Registered Nurse~~	~~Licensed Practical Nurse~~	~~Advanced Registered Nurse Practitioner[3]~~	~~Nursing Technician~~
~~Renewal Fee~~	~~114~~	~~69~~	~~130~~	~~25~~
~~HEAL-WA Surcharge~~	~~16~~	~~16~~	~~0~~	~~0~~
~~Nursing Center Surcharge~~	~~5~~	~~5~~	~~0~~	~~0~~
~~Late Renewal Penalty~~	~~50~~	~~50~~	~~50~~	~~25~~
~~**Total**~~	~~**185**~~	~~**140**~~	~~**180**~~	~~**50**~~

~~[3]Pays $50 per specialty license in late fees.~~

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

	~~Registered Nurse~~	~~Licensed Practical Nurse~~	~~Advanced Registered Nurse Practitioner~~
~~Renewal Fee~~	~~114~~	~~69~~	~~130~~

HEAL-WA Surcharge	16	16	0
Nursing Center Surcharge	5	5	0
Late Renewal Penalty	50	50	50
Expired Licenses Reissuance	70	70	0
Total	**255**	**210**	**180**

Retired Active Renewal

	Registered Nurse	Licensed Practical Nurse
Renewal Fee	44	44
HEAL-WA Surcharge	16	16
Nursing Center Surcharge	5	5
Total	**65**	**65**

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

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

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

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

Inactive License Renewal

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

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

	Registered Nurse	Licensed Practical Nurse	Advanced Registered Nurse Practitioner
Renewal Fee	44	44	40

~~HEAL-WA Surcharge~~	~~16~~	~~16~~	~~0~~
~~Nursing Center Surcharge~~	~~5~~	~~5~~	~~0~~
~~Late Renewal Penalty~~	~~45~~	~~45~~	~~40~~
~~**Total**~~	~~**110**~~	~~**110**~~	~~**80**~~

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

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

~~**Other fees**~~

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

Application Fees

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

[1]Pays a $130 application fee per specialty license. If not currently a licensed RN, must also pay RN application fees.

[2] Providers currently licensed in Washington state pay the $65 multistate license fee to convert their existing license to a multistate license.

On-Time Renewal

	Registered Nurse	Multistate Registered Nurse	Licensed Practical Nurse	Multistate Licensed Practical Nurse	Advanced Registered Nurse Practitioner[2]	Nursing Technician
Renewal Fee	114	114	69	69	130	25
HEAL-WA Surcharge	16	16	16	16	0	0
Nursing Center Surcharge	8	8	8	8	0	0
Multistate License Fee	0	20	0	20	0	0

On-Time Renewal

	Registered Nurse	Multistate Registered Nurse	Licensed Practical Nurse	Multistate Licensed Practical Nurse	Advanced Registered Nurse Practitioner[2]	Nursing Technician
Total	**138**	**158**	**93**	**113**	**130**	**25**

[2]Pays a $130 renewal fee per specialty license once every two years. Must also renew RN license every year.

Late Renewal - Up to One Year Past the Expiration

	Registered Nurse	Multistate Registered Nurse	Licensed Practical Nurse	Multistate Licensed Practical Nurse	Advanced Registered Nurse Practitioner[3]	Nursing Technician
Renewal Fee	114	114	69	69	130	25
HEAL-WA Surcharge	16	16	16	16	0	0
Nursing Center Surcharge	8	8	8	8	0	0
Late Renewal Penalty	50	50	50	50	50	25
Multistate License Fee	0	20	0	20	0	0
Total	**188**	**208**	**143**	**163**	**180**	**50**

[3]Pays $50 per specialty license in late fees.

Late Renewal - One Year or More Expired

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

Retired Active Renewal

	Registered Nurse		Licensed Practical Nurse			
Renewal Fee	44		44			
HEAL-WA Surcharge	16		16			
Nursing Center Surcharge	8		8			
Total	**65**		**65**			

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

	Registered Nurse		Licensed Practical Nurse			
Renewal Fee	44		44			
HEAL-WA Surcharge	16		16			
Nursing Center Surcharge	8		8			
Late Renewal Penalty	45		45			
Total	**110**		**110**			

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

	Registered Nurse		Licensed Practical Nurse			
Renewal Fee	44		44			
HEAL-WA Surcharge	16		16			
Nursing Center Surcharge	8		8			
Late Renewal Penalty	45		45			
Expired License Reissuance	70		70			
Total	**180**		**180**			

Inactive License Renewal

	Registered Nurse		Licensed Practical Nurse		Advanced Registered Nurse Practitioner	
Renewal Fee	44		44		40	
HEAL-WA Surcharge	16		16		0	
Nursing Center Surcharge	8		8		0	
Total	**65**		**65**		**40**	

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

	Registered Nurse		Licensed Practical Nurse		Advanced Registered Nurse Practitioner	
Renewal Fee	44		44		40	
HEAL-WA Surcharge	16		16		0	
Nursing Center Surcharge	8		8		0	
Late Renewal Penalty	45		45		40	
Total	**110**		**110**		**80**	

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

	Registered Nurse		Licensed Practical Nurse		Advanced Registered Nurse Practitioner	
Renewal Fee	44		44		40	
HEAL-WA Surcharge	16		16		0	
Nursing Center Surcharge	8		8		0	
Late Renewal Penalty	45		45		40	
Expired License Reissuance	40		40		40	
Total	**150**		**150**		**120**	

Other fees

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

WSR 24-02-062
PERMANENT RULES
DEPARTMENT OF HEALTH
(Board of Naturopathy)
[Filed December 29, 2023, 9:23 a.m., effective January 29, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Continuing competency for naturopathic physicians. The board of naturopathy (board) has adopted amendments to WAC 246-836-080 Continuing competency program, to clarify continuing education (CE) requirements pertaining to pharmacology CE and to implement health equity CE requirements mandated by ESSB 5229 (chapter 276, Laws of 2021), codified as RCW 43.70.613.

The adopted amendments clarify acceptable forms of documentation to verify the pharmacology CE requirements and also implement the model health equity CE requirements, in accordance with RCW 43.70.613. The adopted rule regarding health equity does not change the total CE hours but requires two hours in health equity CE every four years which is absorbed into the existing number of CE hours required. The health equity CE requirement is counted under existing, unspecified CE requirements for the profession.

RCW 43.70.613 directs the rule-making authority for each health profession licensed under Title 18 RCW and 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 establish model rules creating minimum standards for health equity CE training programs. The department adopted model rules on November 23, 2022, under WSR 22-24-167 requiring two hours of training every four years and creating four new sections in chapter 246-12 WAC to implement RCW 43.70.613; purpose, definitions, minimum health equity CE hours, and health equity CE training content.

The goal of health equity CE training is to equip health care workers with the skills to recognize and reduce health inequities in their daily work. The content of the health equity trainings includes instruction on skills to address structural factors, such as bias, racism, and poverty, that manifest as health inequities.

Citation of Rules Affected by this Order: Amending WAC 246-836-080.

Statutory Authority for Adoption: RCW 18.36A.160 and 43.70.613.

Adopted under notice filed as WSR 23-20-063 on September 28, 2023.

Changes Other than Editing from Proposed to Adopted Version: The board voted to remove the proposed amendments to WAC 246-836-080(5) that pertain to the expansion of accrediting organizations that are designated as a category one CE. Several amendments to WAC 246-836-080(5) will remain, as they were approved as clarifying changes to the rule and are considered nonsubstantive including amendments to WAC 246-836-080 (5)(a)(i), (c)(iii), and (c)(vi).

The final adopted rule includes the proposed amendments to WAC 246-836-080 (3) and (4) that pertain to pharmacology CE and health equity CE.

A final cost-benefit analysis is available by contacting Rachel Phipps, P.O. Box 47852, Olympia, WA 98504-7852, phone 564-233-1277, fax 360-236-2901, TTY 711, email naturopathy@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0,

Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: December 28, 2023.

Krystal Richardson, ND, Chair
Board of Naturopathy

OTS-4620.6

AMENDATORY SECTION (Amending WSR 19-08-032, filed 3/27/19, effective 1/1/21)

WAC 246-836-080 Continuing competency program. (1) General provisions. Each licensed naturopathic physician must complete ((~~sixty~~)) 60 hours of continuing education related to the naturopathic scope of practice in Washington state every two years, as provided in chapter 246-12 WAC((~~, Part 7~~)).

(2)(a) A license holder's first ((~~sixty~~)) 60 hour continuing education requirement is due on the third renewal date after the license is issued. After that, it is due every other year on the licensee's renewal date.

(b) A licensee may begin to accrue continuing education from the date of initial licensure and apply it toward the fulfillment of their first continuing education requirement.

(c) License reissuance. When applying for reissuance of an expired license, a naturopathic physician must attest to ((~~sixty~~)) 60 hours of continuing education for the two years preceding the reissuance application. Upon reissuance, the licensee's continuing education sequence will resume based on the last active license continuing education cycle.

(3)(a) A licensee((~~s~~)) must complete a minimum of ((~~fifteen~~)) 15 continuing education hours over two years on the subject of pharmacology ((~~consistent with naturopathic scope of practice in this state. Course content, or a portion thereof, must be designated as pharmacology by an entity listed in subsection (5)(a)(i) or (b)(i) of this section~~)). Examples of eligible pharmacology course content include, but are not limited to:

((~~(a)~~)) (i) Legend substances as defined in RCW 69.41.010;

((~~(b)~~)) (ii) Controlled substances in chapter 69.50 RCW;

((~~(c)~~)) (iii) Biopharmacology, which is the study of medicinal or drug products manufactured in, extracted from, or semi-synthesized from biological sources;

((~~(d)~~)) (iv) Pharmacognosy, which is the study of medicinal drugs derived from plants or other natural sources;

((~~(c)~~)) (v) Contraindications or interactions of drug-to-drug, drug-to-herb, or drug-to-nutrient; or

((~~(f)~~)) (vi) Other subjects approved by the board.

(b) Acceptable documentation is information included on course completion certificates, transcripts, course descriptions, course brochures, or course registration forms.

(c) Pharmacology hours may be fulfilled through courses meeting the requirements in any category in subsection (5) of this section.

(4) Required continuing education topics. The hours spent completing required topics under this subsection count toward meeting any applicable continuing education requirements. Nothing in this subsection is intended to expand or limit the naturopathic scope of practice.

(a) Suicide prevention requirements. As part of continuing education and in accordance with RCW 43.70.442, a licensed naturopathic physician must complete a board-approved one-time training that is at least six hours long in suicide assessment, treatment, and management. This training must be completed by the end of the ((~~first full continuing education reporting period after January 1, 2016, or the~~)) first full continuing education reporting period after initial licensure((~~, whichever is later.~~

~~(a) Until July 1, 2017, a board-approved training must be an empirically supported training in suicide assessment, including screening and referral, suicide treatment, and suicide management, and meet any other requirement in RCW 43.70.442.~~

~~(b) Beginning July 1, 2017,~~)). Training accepted by the board must be on the department's model list developed in accordance with rules adopted by the department that establish minimum standards for training programs. ((~~The establishment of the model list does not affect the validity of training completed prior to July 1, 2017.~~

~~(c)~~)) A board-approved training must be at least six hours in length and may be provided in one or more sessions.

((~~(d) The hours spent completing the training in suicide assessment, treatment, and management under this subsection count toward meeting any applicable continuing education requirements.~~

~~(e) Nothing in this subsection is intended to expand or limit the naturopathic scope of practice.~~))

(b) Health equity requirements. As part of continuing education and in accordance with RCW 43.70.613, a licensed naturopathic physician must complete a minimum of two hours of training in health equity to address health inequities such as bias, racism, and poverty. A naturopathic physician fulfills this by complying with the requirements in WAC 246-12-800, 246-12-810, 246-12-820, and 246-12-830. Such training must be completed once every four years, beginning with the first full continuing education cycle due on or after January 1, 2024.

(5) Categories of creditable continuing education.

(a) Category 1. A licensee is required to obtain a minimum of ((~~twenty~~)) 20 hours over two years in this category; however, all ((~~sixty~~)) 60 hours may be earned in this category. Category 1 credit hours and activities include:

(i) Live-attended, both in-person and remote-attendance, education ((~~related to the naturopathic scope of practice in this state~~)) approved or offered by the following sources:

(A) American Association of Naturopathic Physicians (AANP);

(B) Washington Association of Naturopathic Physicians (WANP);

(C) North American Naturopathic Continuing Education Accreditation Council (NANCEAC) through the Federation of Naturopathic Medicine Regulatory Authorities (FNMRA); or

(D) Naturopathic medicine academic institutions and scholarly organizations approved by the board according to WAC 246-836-150.

(ii) Prerecorded education meeting the requirement in (a)(i) of this subsection ((~~related to the naturopathic scope of practice in this state~~)). To qualify for credit under this section the course must require the licensee to pass an examination in order to complete the course.

(iii) Completion of a one year residency accredited by the Council on Naturopathic Medical Education (CNME) meets the full ((~~two year~~)) 60 hour continuing education requirement.

((~~(iv) Licensees completing a medical marijuana continuing education course approved by the department may claim the hours designated by the course provider for this activity. This activity can only be claimed once during a two year continuing education cycle.~~

~~(v) Licensees completing the suicide prevention requirement in subsection (4) of this section may claim six hours for this activity. This activity can only be claimed once during a two year continuing education cycle.~~))

(b) Category 2. Category 2 credit hours and activities include:

(i) Live-attended, both in-person and remote-attendance, education relevant to various other health professions, however licensees may only claim those hours that have content consistent with naturopathic scope of practice in this state. Hours must be obtained through an entity that is accredited or nationally recognized, examples of which include, but are not limited to, courses accredited by:

(A) The accreditation council for continuing medical education (ACCME);

(B) The American Nurses Credentialing Center (ANCC); or

(C) The accreditation council for pharmacy education (ACPE).

(ii) Prerecorded education meeting the requirement in (b)(i) of this subsection, however only content related to naturopathic scope of practice in this state may be claimed. To qualify for credit under this section the course must require the licensee to complete an examination in order to complete the course.

(iii) Teaching, lecturing, or serving as a residency director, which shall equate ((~~one full-time work week~~)) 40 hours worked to one continuing education hour.

(iv) Publishing in a peer-reviewed, scientific journal or textbook. Ten credit hours may be claimed for each paper, exhibit, publication, or chapter. Credit shall be claimed as of the date materials were presented or published.

(c) Category 3. A licensee may claim up to a maximum of five hours over two years in this category. Category 3 credit hours and activities include:

(i) Online study not otherwise specified above;

(ii) Multimedia education (CD/DVD);

(iii) Certification or recertification in basic life support ((~~(also known as cardiopulmonary resuscitation)~~)) (BLS), advanced cardiac life support (ACLS), neonatal resuscitation (NRP), or pediatric advanced life support (PALS);

(iv) Self-study including, but not limited to, board examination preparation or reading papers and publications where an assessment tool is required upon completion; and

(v) Courses in nonclinical practice topics, such as:

(A) Health promotion;
(B) Health care cost management;
(C) Coding;
(D) Regulatory affairs; or
(E) Professional ethics, disciplinary prevention, or jurisprudence. Licensees completing the board's jurisprudence examination may claim two hours for this activity. This activity can only be claimed once during a two year continuing education reporting cycle.

(vi) In-person or virtual attendance at a board of naturopathy business meeting. Each meeting counts for one hour. Acceptable documentation is the licensee's presence as recorded in the board's minutes or transcript.

(6) Documentation. A licensee must submit documentation upon request or audit. Acceptable documentation includes:
(a) Certificates of completion;
(b) Transcripts;
(c) Letters from instructors; or
(d) Other records, which must include participant's name, course title, course content, dates, provider(s) name(s), and signature of sponsor or instructor.
(e) For self-study activities that do not offer documentation, licensees should keep lists with hours spent reading publications, papers, or articles; or hours spent preparing for specialty board examinations.

(7) Waiver or extension. In emergent or unusual situations, such as personal or family illness, the board may waive all or part of the continuing education requirement for a particular continuing education reporting period for an individual licensee if the board determines there is good cause. The board may also grant the licensee an extension period in order to meet the full requirement if the board determines there is good cause. Licensees requesting an extension must include a detailed plan on how they will obtain the deficient hours. Hours obtained for an extension ((~~can only be applied~~)) only apply to the extension and cannot be used for any other continuing education reporting cycle. The board may require verification of the emergent or unusual situation as is necessary.

WSR 24-02-066
PERMANENT RULES
STATE BOARD OF EDUCATION
[Filed December 29, 2023, 2:40 p.m., effective January 29, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the proposal is to implement recent legislation regarding the high school and beyond plan (SB [E2SSB] 5243, chapter 271, Laws of 2023) and graduation pathway options (HB 1308, chapter 349, Laws of 2023). The rules implement an additional graduation pathway option, a performance-based pathway. The rules also add additional advanced courses to the list of courses that meet the graduation pathway requirement. In addition, the rules incorporate other requirements of the legislation: Clarifying the purpose of graduation pathways, establishing some additional data and monitoring requirement on the use of graduation pathway options by students, clarifying and adding additional requirements to the high school and beyond plan such as specifying that the plan must be updated annually and that school districts must annually provide students in eighth through 12th grade with comprehensive information about graduation pathway options offered by the district, and directing school districts to provide students with access to the adopted universal high school and beyond plan platform within two years of completion of the platform.

Citation of Rules Affected by this Order: Amending WAC 180-51-201, 180-51-220, and 180-51-230.

Statutory Authority for Adoption: RCW 28A.305.130.

Adopted under notice filed as WSR 23-20-003 on September 20, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 7, 2023.

Randy Spaulding
Executive Director

OTS-4947.1

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

WAC 180-51-201 Overview of the requirements for a high school diploma beginning in 2020. For students who enter the ninth grade or begin the equivalent of a four-year high school program as of July 1,

2016, (the class of 2020) or later, the graduation requirements shall consist of:

(1) State credit and subject area requirements as established in WAC 180-51-067, 180-51-068, or 180-51-210 in this chapter, depending on the credit graduation requirements aligned with the year the student entered ninth grade; and, credit and subject area requirements established by local school boards. Students in the class of 2019 and the class of 2020 in districts with a waiver to delay implementation of WAC 180-51-068 shall graduate with the credit and subject area requirements of WAC 180-51-067 until the expiration of the waiver.

(2) A high school and beyond plan that must include the minimum requirements established in RCW 28A.230.090 and WAC 180-51-220 in this chapter. Local school boards may establish additional requirements for a high school and beyond plan to serve the needs and interests of its students. Any decision on whether a student has met the requirement of a high school and beyond plan shall be made by the district.

(3) A graduation pathway option. Students must meet the requirements of at least one of ((~~eight~~)) nine graduation pathway options in chapter 28A.655 RCW and WAC 180-51-230.

((~~(4) By December 2022 the state board of education will make recommendations to the legislature for policy changes that would require new legislation to address including: Barriers school districts have to offering all of the graduation pathways, equitable student access to all of the graduation pathways, modifications or additions to the pathways, or other challenges to implementing graduation pathways. Based on the analysis of the pathways and/or other feedback received during implementation of graduation pathways the state board of education may initiate rule making to address changes allowed within current statute.~~))

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

WAC 180-51-220 High school and beyond plan. (1) Each student must have a high school and beyond plan((~~, initiated during seventh or eighth grade with the administration of a~~)) informed by a career interest and skills inventory((~~, to guide the student's high school experience and inform course-taking that is aligned with the student's goals for education or training and career after high school. School districts are encouraged to develop and utilize high-quality high school and beyond plan tools.~~)) administered by seventh grade to inform eighth grade course-taking. By the end of the eighth grade, each student will have begun a high school and beyond plan that includes a plan for course-taking in the first year of high school that aligns with graduation requirements and the student's high school and post-high school goals.

(2) Beginning in the 2020-21 school year, each school district must have an electronic high school and beyond plan platform available to all students((~~; districts may utilize one of the electronic platforms on the list that the office of the superintendent of public instruction creates and posts on its website. Districts are encouraged to utilize electronic high school and beyond platforms that meet the criteria specified in chapter 28A.230 RCW.~~

~~(2)~~)) who are required to have a high school and beyond plan. Within two years of completion of a universal online high school and

beyond plan platform in alignment with the requirements in RCW 28A.230.215, school districts must provide students with access to the adopted universal platform.

(3) Required elements of ((~~the~~)) all high school and beyond plans must at minimum include:

(a) Identification of career goals and interests aided by a skills and interest assessment.

(b) Identification of secondary and postsecondary education and training goals.

(c) A four-year plan for courses taken in high school that satisfies state and local graduation requirements and aligns with students' secondary and postsecondary goals that may include education, training, and career((~~s~~)) preparation.

(d) Identification of options for satisfying state and local graduation requirements, including ((~~academic acceleration pursuant to RCW 28A.320.195, that could include dual credit courses, career and technical education, and other programs that align with the student's educational and career goals. This includes identification of the graduation pathway option(s) the student intends to complete to meet their educational and career goals~~)):

(i) Available advanced course sequences per the school district's academic acceleration policy, as described in RCW 28A.320.195.

(ii) Dual credit courses.

(iii) Career and technical education courses and programs, including career and technical education equivalency courses that can satisfy core subject area graduation requirements under RCW 28A.230.097.

(iv) Work-based learning opportunities that can lead to technical college certifications and apprenticeships.

(v) Mastery-based credit opportunities, including options for earning the Seal of Biliteracy.

(vi) If applicable, opportunities for credit recovery and acceleration, including partial and mastery-based credit accrual to eliminate barriers for on-time grade level progression and graduation per RCW 28A.320.192.

(e) A current resume or activity log that provides a written compilation of the student's education, any work experience, and any community service, and how the district recognizes community service pursuant to RCW 28A.320.193.

(f) Evidence that the student has received information on federal and state financial aid programs that help pay for the costs of postsecondary programs, including evidence that the student has received information about the following:

(i) The college bound scholarship program established in chapter 28B.118 RCW, the Washington college grant created in RCW 28B.92.200, and other scholarship opportunities.

(ii) Documentation necessary for completing financial aid applications, including at a minimum the Free Application for Federal Student Aid (FAFSA) or the Washington application for state financial aid (WASFA).

((~~(ii)~~)) (iii) Application ((~~timeliness~~)) and submission deadlines.

((~~(iii)~~)) (iv) The importance of submitting applications early.

((~~(iv)~~)) (v) Information specific to students who are or have been ((~~in foster care~~)) the subject of a dependency proceeding pursuant to chapter 13.34 RCW.

((~~(v)~~)) (vi) Information specific to students who are, or are at risk of, ((~~being homeless~~)) experiencing homelessness.

((~~(vi)~~)) (vii) Information specific to students whose family member or guardians will be required to provide financial and tax information necessary to complete the application.

((~~(vii)~~)) (viii) Opportunities to participate in sessions that assist students and, when necessary, their family members or guardians, in filling out financial aid applications.

((~~(viii)~~)) (ix) A sample financial aid letter and a link to the financial aid calculator created in RCW 28B.77.280.

(x) Information provided on the Washington student achievement council website concerning each of the state and federal financial aid applications in this subsection, in accordance with RCW 28A.300.815.

((~~(ix) Information on college bound scholarship application and eligibility.~~))

(g) As established by RCW 28A.230.097, if a student completes a career and technical education equivalency course that is transcribed as a core subject area course to meet graduation requirements, then a record showing that the career and technical education course was used to meet a core course must be retained in the student's high school and beyond plan. This record may be useful if the student pursues education, training, or a career in the same or related field as the career and technical education course.

((~~(3)~~)) (4) High school and beyond plan process and development.

(a) ((~~Each student's high school and beyond plan must be initiated by seventh or eighth grade. Before or at the initiation of the plan~~)) By seventh grade, each student must be administered a career interest and skills inventory that will help inform the student's ((~~ninth~~)) eighth grade course taking and initial identification of their education and career goals.

(b) ((~~School districts are encouraged to involve parents and guardians in the process of developing and updating the high school and beyond plan. The plan must be provided to the student's parents or guardians in their native language if that language is one of the two most frequently spoken non-English languages of students in the district. Districts are also encouraged to provide plans to parents and guardians in additional languages as needed, to the extent feasible.~~)) By eighth grade, each student must have begun development of a high school and beyond plan that includes a proposed plan for first-year high school courses aligned with graduation requirements and secondary and postsecondary goals.

(c) Seventh and eighth grade students must be informed of the college bound scholarship program established in chapter 28B.118 RCW. Students ((~~in foster care, students who are dependents of the state~~)) who are or have been the subject of a dependency proceeding pursuant to chapter 13.34 RCW, students who are or who are at risk of experiencing homelessness, and ninth grade students who may be eligible must also be provided with information on the program. Students in the college bound scholarship program should be reminded about program requirements to remain eligible and provided with information about filling out a financial aid application in their senior year.

(d) ((~~Students who have not earned a score of level 3 or level 4 on the middle school math state assessment must include in their plan taking math courses in ninth and tenth grade. The math courses may include career and technical education equivalencies in math, established in RCW 28A.230.097.~~)

~~(e)~~)) With staff support, students must update their high school and beyond plan annually, at a minimum, to review academic progress and inform future course-taking, including the potential impact of course selections on postsecondary opportunities. The review may include in-school or out-of-school opportunities that would help prepare students for their career or educational goals, such as summer learning opportunities, internships, student leadership organizations and clubs, and community service.

(e) The high school and beyond plan must be updated in the tenth grade to reflect high school assessment results in RCW 28A.655.061, ensure student access to advanced course options per the district's academic acceleration policy in RCW 28A.320.195, assess progress toward identified goals, and revised as necessary for changing interests, goals, and needs.

(f) School districts shall involve parents and legal guardians to the greatest extent feasible in the process of developing and updating the high school and beyond plan. The plan must be provided to the student and the student's parents or legal guardians in a language the student and parents or legal guardians understand and in accordance with the school district's language access policy and procedures as required under chapter 28A.183 RCW, which may require language assistance for students and parents or legal guardians with limited-English proficiency.

(g) School districts must annually provide students in grades eight through 12 and their parents or legal guardians with comprehensive information about the graduation pathway options offered by the district and are strongly encouraged to begin providing this information in sixth grade. School districts must provide this information in a manner that conforms with the school district's language access policy and procedures as required under chapter 28A.183 RCW.

(h) School districts are strongly encouraged to partner with student-serving, community-based organizations that support career and college exploration and preparation for postsecondary and career pathways. Partnerships may include high school and beyond plan coordination and planning, data sharing agreements, and safe and secure access to individual students' high school and beyond plans.

(i) Students who have not earned a score of level 3 or level 4 on the middle school math state assessment must include in their plan taking a math course in each of ninth and tenth grade. The math courses may include career and technical education equivalencies in math, established in RCW 28A.230.097.

(j) For students who have not earned a level 3 or level 4 on their middle school English language arts exam or their middle school science exam, districts are encouraged to inform students of supports and courses that will address ((~~the~~)) students' learning needs and be considered in ((~~the~~)) students' course-taking plans.

((~~(f)~~)) (k) The high school and beyond plan must be updated ((~~periodically~~)) annually at a minimum to address:

(i) High school assessment results and junior year course-taking.

(ii) A student's changing interests, goals, and needs, including identification of the graduation pathway option(s) the student intends to complete to meet their educational and career goals.

(iii) Available interventions, academic supports, and courses that will enable students to meet high school graduation credit requirements and graduation pathway requirements.

((~~(g)~~)) (l) For students meeting graduation requirements in WAC 180-51-068 and 180-51-210, the students' high school and beyond plans

should be used to guide the choices of the third credit of high school math and the third credit of high school science. These credits may be earned through career and technical education courses determined to be equivalent to math and science courses as established in RCW 28A.230.097.

((~~(h)~~)) (m) A student's high school and beyond plan must inform the student's choice of their graduation pathway option or options in accordance with WAC 180-51-230.

((~~(4)~~)) (5) For a student with an individualized education program (IEP), the student's IEP and high school and beyond plan((~~s~~)) must align. Students with an IEP transition plan, which begins during the school year in which they turn ((~~sixteen~~)) 16, may use their transition plan in support of, but not as a replacement for, their high school and beyond plan. The process for developing and updating the student's high school and beyond plans must be similar to and conducted with similar school personnel as for all other students. The student's high school and beyond plans must be updated in alignment with the student's school to postschool transition plan.

((~~(5)~~)) (6) Any decision on whether a student has met the state board of education's high school graduation requirements for a high school and beyond plan shall remain at the local level. A district may establish additional, local requirements for a high school and beyond plan to serve the needs and interests of its students and the purposes of RCW 28A.230.090.

((~~(6)~~)) (7) Districts may offer core and elective courses that embed required elements and processes of high school and beyond planning((~~,~~)) and are encouraged to provide annual credit-bearing options for the delivery and completion of high school and beyond plan elements. Conversely, a high school and beyond planning course or courses may be counted as core or elective credit, as defined in WAC 180-51-210, if the learning standards of the content area are addressed.

AMENDATORY SECTION (Amending WSR 20-01-101, filed 12/13/19, effective 1/13/20)

WAC 180-51-230 Graduation pathway options. (1) Beginning with the graduating class of 2020, each student must meet the requirements of at least one of the ((~~eight~~)) nine graduation pathway options in this section. Each of the graduation pathway options are equally valid for earning a Washington state high school diploma.

(2) School districts are encouraged to make the ((~~eight~~)) nine graduation pathways specified below available to their students and to expand their pathway options until this goal is met((~~,~~)) yet have discretion in determining which graduation pathway options they will offer.

((~~(3)~~)) (a) Student access to all pathways offered by a district must not be restricted based on a student's disability. Students receiving special education services must be provided with the services and accommodations outlined in the student's individualized education program to support them in meeting the pathway requirement.

(b) Starting in the sixth grade, school districts are strongly encouraged to annually provide students and their parents or guardians with comprehensive information about graduation pathway options offered by the school district.

(c) Beginning in the eighth grade, school districts must annually provide information about graduation pathway options to students and their parents or guardians as part of the students' high school and beyond plan. The information must be provided in a manner that conforms with the school district's language access policy and procedures as required under RCW 28A.183.040.

(3) The state board of education shall review and monitor the implementation of the graduation pathway options to ensure school district compliance with requirements established under RCW 28A.655.250 and subsection (4) of this section. The reviews and monitoring required by this subsection may be conducted concurrently with other oversight and monitoring conducted by the state board of education. The information shall be collected annually and reported to the education committees of the legislature by January 10, 2025, and biennially thereafter.

(4) At least annually, school districts shall examine data on student groups participating in and completing each graduation pathway option offered by the school district.

(a) At minimum, the data on graduation pathway participation and completion must be disaggregated by the student groups described in RCW 28A.300.042 (1) and (3), and by:

(i) Gender;

(ii) Students who are the subject of a dependency proceeding pursuant to chapter 13.34 RCW;

(iii) Students who are experiencing homelessness as defined in RCW 28A.300.542(4);

(iv) Multilingual/English language learners.

(b) If the results of the analysis required under (a) of this subsection show disproportionate participation and completion rates by student groups, then the school district shall identify reasons for the observed disproportionality and implement strategies as appropriate to ensure the graduation pathway options are equitably available to all students in the school district.

(5) The graduation pathway option(s) used by a student must be in alignment with the student's high school and beyond plan.

((~~(4)~~)) (6) All assessment scores used for graduation pathways in subsection ((~~(5)~~)) (7)(a) through ((~~(f)~~)) (g) of this section will be posted on the state board of education website. Assessment scores that the state board of education is responsible for setting, will only be changed through a public process culminating in official board action in a public board meeting.

((~~(5)~~)) (7) **The following are the ((~~eight~~)) nine graduation pathway options:**

(a) **Statewide high school assessments.** Meet or exceed the graduation standard established by the state board of education under RCW 28A.305.130 on the statewide high school assessments in English language arts and mathematics as provided for under RCW 28A.655.070.

(b) **Dual credit courses.** Earn at least one high school credit in English language arts and at least one high school credit in mathematics in dual credit courses. For the purposes of this subsection, "dual credit course" means a course in which a student is eligible for both high school credit and college credit at the level of 100 or higher, upon successfully completing the course, by meeting the dual credit course or program criteria established by the local district and the applicable higher education entity. Dual credit courses include running start, college in the high school courses, and career and techni-

cal education dual credit courses. Nothing in this subsection requires a student to pay fees or claim college credit to meet this pathway.

(c) **Transition courses.** Earn high school credit in a high school transition course in English language arts and mathematics, an example of which includes a bridge to college course. For the purposes of this subsection, "high school transition course" means an English language arts or mathematics course offered in high school that, based on the final grade, allows the student to place directly into a credit-bearing college level course at participating institutions of higher education in RCW 28B.10.016, in accordance with established policy and criteria of the local school district and the applicable higher education entity. This definition includes transition courses identified through local agreements between colleges and school districts. English language arts and math high school transition courses must satisfy a student's core or elective credit graduation requirements established by the state board of education in WAC 180-51-210.

(d) **Advanced placement, international baccalaureate, or Cambridge international.** Meet either (d)(i) or (ii) of this subsection:

(i) Earn high school credit, with a grade of C+ or higher in each term, in the following advanced placement, international baccalaureate, or Cambridge international courses in English language arts and mathematics.

(A) For English language arts, successfully complete one high school credit in any of the following courses with a grade of C+ or higher in each term: Advanced placement courses in English language and composition, ((~~advanced placement~~)) English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, ((~~or~~)) comparative government and politics, European history, human geography, African American studies, seminar, or research; any of the international baccalaureate individuals and societies courses or English language and literature courses; or earn an E in any of the following Cambridge advanced or Cambridge advanced subsidiary courses: English language, literature and English, English general paper, psychology, history, sociology, global perspectives and research, ((~~or~~)) law, classical studies, drama, economics, thinking skills, or geography.

(B) For mathematics, successfully complete one high school credit in any of the following courses with a grade of C+ or higher: Advanced placement courses in statistics, computer science A, computer science principles, precalculus or calculus; any of the international baccalaureate mathematics or computer science courses; or a Cambridge advanced or advanced subsidiary mathematics ((~~or~~)), further mathematics, or computer science course.

(ii) Score a three or higher on advanced placement exams in one of the English language arts and one of the mathematics courses identified above; score a four or higher on international baccalaureate exams in one of the English language arts and one of the mathematics courses identified above; or score an E or higher on Cambridge international exams in one of the English language arts and one of the mathematics courses identified above.

(e) **SAT** or **ACT.** Meet or exceed the scores established by the state board of education for the mathematics portion and the reading, English, ((~~or~~)) and writing portion of the SAT or ACT.

(f) **Performance-based learning experience.** Complete a performance-based learning experience that results in a product created by the student that provides evidence of meeting or exceeding state learning standards in English language arts and mathematics. The

learning experience may take a variety of forms such as a project, practicum, work-related experience, community service, or cultural activity and should permit the student to demonstrate knowledge and skills in a real-world context. "Real-world context" means learning experiences that provide students the opportunity to carry out activities and solve problems in a way that reflects the complex nature of such tasks in the world outside of the classroom. The product may take a variety of forms such as a performance, presentation, portfolio, report, film, or exhibit that allows the student to demonstrate meeting or exceeding English language arts and/or math learning standards.

(i) Prior to offering a performance-based pathway option, the school district board of directors shall adopt a written policy. The policy must address:

(A) Approval of student proposals.

(B) Approval of school or district-developed performance-based pathway options, if the district chooses to provide such options. For a student to use a school or district-developed performance-based pathway option, the student will sign a learning contract with the school or district.

(C) Evaluation of student products. The evaluation of each student's product must be conducted by a certificated teacher with an endorsement in the relevant subject area, or with other applicable qualifications as permitted by the professional educator standards board, or by an evaluation panel that must include at least one teacher with an endorsement in the relevant subject area, or with other applicable qualifications as permitted by the professional educator standards board. The evaluation panel may include external parties such as community leaders or professionals. Districts are encouraged to use a panel of evaluators.

(D) Measures to ensure the safety of the student learning experience, including if appropriate, work-based learning rules, industry safety standards, youth employment regulations, and local risk management practices.

(ii) To complete a performance-based graduation pathway option, a student shall:

(A) Submit a proposal or sign a learning contract. The proposal or learning contract must describe the student learning experience, the product based on the student learning experience that will allow the student to demonstrate meeting or exceeding English language arts and/or math standards. The proposal or learning contract must identify the learning standards in English language arts and/or math that will be addressed, in accordance with performance-based pathway graduation proficiency targets posted on the state board of education web page and may include additional learning standards appropriate for the individual student's performance-based pathway.

(B) Engage in a student learning experience that takes place no earlier than the student's ninth grade year. The student learning experience may take place outside of the school day and outside of the school facility, or it may be incorporated into a school day and into a high school course or courses provided the learning experience reflects a real-world context.

(C) Submit a product created by the student based on the student learning experience that permits the student to demonstrate meeting or exceeding the English language arts and/or math learning standards identified in the student's proposal or learning contract. The product must include a student reflection that minimally identifies the connection between the student's learning and the student's preparation

for their posthigh school goals and includes a student self-evaluation of the skills and learning gained.

(iii) The decision as to whether a student meets the graduation pathway requirement through a performance-based pathway option will be locally determined based on an evaluation of the student's product as a demonstration of meeting English language arts and/or math standards identified in the proposal/learning contract. Districts may collaborate on the evaluation process.

(A) Evaluation of the student's project must be conducted by a certificated teacher endorsed in the relevant subject area, or with other applicable qualifications permitted by the professional educators standards board, or an evaluation panel that must involve at least one certificated teacher endorsed in the relevant subject area, or with other applicable qualifications permitted by the professional educators standards board. The evaluation panel may include external parties such as community leaders or professionals. Districts are encouraged to use a panel of evaluators.

(B) The evaluation to determine whether the student has met the identified state learning standards must be based on rubrics and proficiency targets developed by the state board of education in collaboration with the office of the superintendent of public instruction. The rubrics and proficiency targets will be posted on the state board of education website. As state learning standards are updated under RCW 28A.655.070, the rubrics and proficiency targets will be updated, if needed, within one year.

(g) **Combination.** Meet any combination of at least one English language arts option and at least one mathematics option established in pathway options (a) through ((~~(e)~~)) (f) of this subsection.

((~~(g)~~)) (h) **Armed services vocational aptitude battery.**

(i) Meet standard on the armed forces qualification test portion of the armed services vocational aptitude battery by scoring at least the minimum established by the military for eligibility to serve in a branch of the armed services at the time that the student takes the assessment. The state board of education will post eligibility scores at least annually by September 1st. Each student may choose to meet either the posted minimum score the year a student takes the armed services vocational aptitude battery or the score posted by the state board of education on a later date prior to the student turning ((~~twenty-one~~)) 21 years of age.

(ii) The school must inform the students taking the armed services vocational aptitude battery about the minimum eligibility score required by each branch of the military as well as information about eligibility requirements for specific military occupations. Schools are encouraged to schedule an armed services vocational aptitude battery career exploration program interpretation seminar after the test so students can participate in high school and beyond planning and learn about available military and nonmilitary occupations for which they have an aptitude. The state board of education will maintain a web page with information about military occupation requirements and minimum eligibility scores required by each branch of the military.

(iii) Schools that offer the armed services vocational aptitude battery must inform students regarding the ways in which their scores and personal information might be shared, per the agreement between the school and the United States Department of Defense which administers the armed services vocational aptitude battery. Each student must be given prior written notice of the option to decide whether the school can release the student's armed services vocational aptitude

battery scores to military recruiters for contact purposes. A school administrator, teacher, or counselor must also explain and offer this option to the students on the day of the test.

(iv) This pathway does not require students to meet the physical or other requirements for military enlistment, require enlistment, or require students to release their scores to the military for purposes of recruitment.

(v) Satisfying this pathway does not require students to meet the separate English and mathematics graduation pathway requirements of pathway options (a) through ((~~(f)~~)) (g) of this subsection.

((~~(h)~~)) (i) **Career and technical education course sequence.** Complete the curriculum requirements of a core plus program relevant to the student's postsecondary goals outlined in the student's high school and beyond plan as defined in WAC 180-51-220 in aerospace, maritime, health care, information technology, or construction and manufacturing; or complete a sequence of at least two high school credits in career and technical education courses that meet the following criteria:

(i) The sequence is comprised of courses that are technically intensive and rigorous in a progression relevant to the student's postsecondary goals outlined in the student's high school and beyond plan as defined in WAC 180-51-220. Courses to satisfy this pathway must be comprised of either:

(A) Courses within the same career and technical program area; or

(B) A local sequence of courses within more than one career and technical program area if approved by a district's local school board, local board's designee, or the district's local vocational (career and technical education) advisory committee established under RCW 28A.150.500 and submitted to the office of the superintendent of public instruction for an expedited approval. A sequence submitted to the office of superintendent of public instruction for expedited approval will be deemed approved if a decision is not provided to the district within ((~~forty-five~~)) 45 calendar days of submittal. If a sequence is denied approval, the office of superintendent of public instruction must provide the district with a written notification including the reason for denial. Once a local sequence has been approved by the office of superintendent of public instruction, it may be implemented in other districts with notification of implementation to the office of superintendent of public instruction.

(ii) Each sequence of career and technical education courses must be comprised of courses that meet the minimum criteria identified in RCW 28A.700.030. Specifically, the courses must:

(A) ((~~Either~~)) Satisfy either of the following conditions:

(I) Lead to a certificate or credential that is state or nationally recognized by trades, industries, or other professional associations as necessary for employment or advancement in that field; or

(II) Allow students to earn dual credit for high school and college through tech prep (career technical education dual credit), advanced placement, or other agreements or programs.

(B) Be comprised of a sequenced progression of multiple courses that are technically intensive and rigorous; and

(C) Lead to workforce entry, state or nationally approved apprenticeships, or postsecondary education in a related field.

(iii) Satisfying the career technical education pathway does not require a student to take a course that is part of a career and technical education preparatory program that is approved under RCW 28A.700.030 nor does satisfying this pathway require students to meet

the separate English and mathematics graduation pathway requirements of pathway options (a) through ((~~(f)~~)) (g) of this subsection.

(iv) A course that is used to meet graduation pathway requirements may also be used to meet credit subject area requirements, including career and technical education course equivalencies per RCW 28A.700.070.

WSR 24-02-069
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed January 2, 2024, 8:18 a.m., effective April 1, 2024]

Effective Date of Rule: April 1, 2024.

Purpose: The purpose of this rule making is to lower the pension discount rate (PDR) to better align with the rate of return for long-term treasuries for self-insured pensions. PDR is the interest rate used to account for the time value of money when evaluating the present value of future pension payments. This rule lowers PDR for self-insured employers from 5.6 percent to 5.5 percent, effective April 1, 2024.

Citation of Rules Affected by this Order: Amending WAC 296-14-8810.

Statutory Authority for Adoption: RCW 51.04.020, 51.44.070(1), and 51.44.080.

Adopted under notice filed as WSR 23-21-085 on October 17, 2023.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 2, 2024.

Joel Sacks
Director

OTS-4788.1

AMENDATORY SECTION (Amending WSR 23-04-078, filed 1/31/23, effective 4/1/23)

WAC 296-14-8810 Pension tables, pension discount rate and mortality tables. (1) The department uses actuarially determined pension tables for calculating pension annuity values, required pension reserves, and actuarial adjustments to monthly benefit amounts.

(a) The department's actuaries calculate the pension tables based on:

(i) Mortality tables from nationally recognized sources;

(ii) The department's experience with rates of mortality, disability, and remarriage for annuity recipients;

(iii) A pension discount rate of 4.0 percent for state fund pensions;

(iv) A pension discount rate of ((~~5.6~~)) 5.5 percent for self-insured pensions, including the United States Department of Energy pensions; and

(v) The higher of the two pension discount rates so that pension benefits for both state fund and self-insured recipients use the same reduction factors for the calculation of death benefit options under RCW 51.32.067.

(b) The department's actuaries periodically investigate whether updates to the mortality tables relied on or the department's experience with rates of mortality, disability, and remarriage by its annuity recipients warrant updating the department's pension tables.

(2) To obtain a copy of any of the department's pension tables, contact the department of labor and industries actuarial services.

WSR 24-02-072
PERMANENT RULES
OFFICE OF
ADMINISTRATIVE HEARINGS

[Filed January 2, 2024, 9:20 a.m., effective February 2, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To improve clarity and readability of WAC 10-16-010 by adding "OAH" definition of "Office" to mean the office of administrative hearings, to identify the agency's physical locations, and to establish that the agency procedures are in Title 10 WAC.

Citation of Rules Affected by this Order: Amending WAC 10-16-010.

Statutory Authority for Adoption: RCW 34.12.080.

Adopted under notice filed as WSR 23-21-081 on October 16, 2023.

Changes Other than Editing from Proposed to Adopted Version: Subsection (1) of the adopted rule is the current rule, with minor edits. Subsection (2) of the adopted rule is the current rule with the addition of a phrase in the second sentence. The proposed subsection (2) would have allowed any person to file a written complaint. The adopted subsection (2) maintains the current rule "an interested party" but expands the meaning to include a witness, interpreter, or court reporter in an administrative hearing. The adopted rule's subsection (5) replaces the proposed term manager for the term supervisor. Subsection (7) as adopted adds a phrase for clarity.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 2, 2024.

Edward Pesik
Acting Chief Administrative Law Judge

OTS-5017.3

AMENDATORY SECTION (Amending WSR 99-20-115, filed 10/6/99, effective 11/6/99)

WAC 10-16-010 Procedure for complaints regarding improper conduct of an administrative law judge. ((~~(1) Administrative law judges must at all times adhere to the fundamental principles of law, fairly and equitably. Administrative law judges should be fair in their rulings and should conduct the proceedings in a judicious manner.~~

~~(2) Any interested party to an administrative proceeding may file a complaint alleging improper conduct of an administrative law judge.~~

~~For purposes of this section, an interested party is a person who has a right to receive notice of the administrative hearing.~~

~~(3) A complaint concerning a decision or order shall be handled through the appeal or petition for review process. This includes initial or final orders and interim orders or discretionary rulings from which further appeal may be taken.~~

~~(4) A complaint concerning the conduct of an administrative law judge, apart from a decision from which further appeal may be filed, shall be in writing and sent to the supervising administrative law judge.~~

~~(5) The written complaint must set forth in detail all pertinent facts and information. It shall include, among other things, the name of the administrative law judge, the date of the incident, the individuals present, and any other information which would assist in investigation of the complaint. The complaint should be no more than five pages.~~

~~(6) Within ten days of receipt of a written complaint, the supervising administrative law judge shall send a letter acknowledging receipt of the complaint. The supervising administrative law judge shall conduct an investigation of the complaint. For matters no longer pending before the office of administrative hearings at the time the complaint is filed, the supervising administrative law judge shall issue a written response to the complaining party within thirty days of receipt of the complaint. However, for matters pending before the office of administrative hearings at the time the complaint is filed, the supervising administrative law judge shall issue a written response within thirty days after issuance of the administrative law judge's decision. If additional time is needed, the supervising administrative law judge shall notify the complaining party in writing and indicate an expected response date.~~

~~(7) If, after investigation, the complaint is found to have merit, the supervising administrative law judge shall take appropriate corrective action. If disciplinary action is warranted, it shall be handled internally subject to the individual's privacy rights as in other personnel matters.~~

~~(8) Should the complaining party not be satisfied with the result of the investigation, he or she may request review of the complaint by the chief administrative law judge. The chief administrative law judge shall review all facts and information pertinent to the complaint and issue a written response. The response of the chief administrative law judge shall be final.~~

~~(9) Any inquiries concerning the grievance procedure may be made through the administrative office or any field office of the office of administrative hearings. A directory listing the names and mailing addresses of supervising administrative law judges, deputy chief administrative law judges and the chief administrative law judge will be available through these offices.~~))

(1) Administrative law judges (ALJs) will at all times adhere to the fundamental principles of law, fairly and equitably. They should be fair in their rulings and should conduct the proceedings in a judicious manner.

(2) Any interested party to an administrative proceeding may file a complaint alleging improper conduct of an administrative law judge. For purposes of this section, an interested party is a person who has a right to receive notice of the administrative hearing, or was a witness, interpreter, or court reporter in an administrative hearing.

(3) The written complaint must include:

(a) The name of the ALJ;
(b) What the ALJ said or did that was improper;
(c) The date of incident;
(d) The individuals present; and
(e) Any other facts and information that would help the office of administrative hearings (OAH) investigate the complaint.

(4) A person filing a complaint must send it to OAH by mail or facsimile (fax) to the location listed on the notice or order, or by mail to 2420 Bristol Ct. S.W., P.O. Box 42488, Olympia, Washington, 98504-2488. A person may also file a complaint online at www.oah.wa.gov.

(5) OAH will acknowledge the complaint within 10 days after receiving it. A supervising ALJ (supervisor) will investigate the complaint. If the case is no longer pending before OAH when the complaint is filed, the supervisor will respond to the person in writing within 30 days after receiving the complaint. If the case is pending before OAH when the complaint is filed, the supervisor will respond within 30 days after the ALJ issues their decision. If additional time is needed, the supervisor will tell the person in writing and state when the supervisor expects to send a response.

(6) If the investigation finds that the ALJ acted improperly, OAH will take appropriate action. If discipline is warranted, it shall be handled internally. The person who filed the complaint will not be told about any action taken against an individual judge, but may be told of policy or practice changes that result from the complaint.

(7) If the person who filed the complaint is not satisfied with the result of the investigation, they may ask the chief administrative law judge (chief) to review the complaint. The chief will review all facts and information related to the complaint and respond in writing. The chief's response will be final.

(8) Any questions concerning the complaint procedure may be asked by calling OAH at the number listed on the order or notice, or in writing by mail or fax as explained in subsection (4) of this section.

(9) Disagreements with an ALJ's decisions or rulings must only be handled through the appeal or petition for review process, rather than this complaint process. If the complaint is only about the decisions and rulings of the ALJ, it will not be investigated.

WSR 24-02-078
PERMANENT RULES
HEALTH CARE AUTHORITY

[Filed January 2, 2024, 2:04 p.m., effective June 10, 2024]

Effective Date of Rule: June 10, 2024.

Purpose: To implement the prescription drug affordability board as required in SSSB [2SSB] 5532, chapter 153, Laws of 2022; chapter 70.405 RCW.

Citation of Rules Affected by this Order: New WAC 182-52-0005, 182-52-0010, 182-52-0015, 182-52-0020, 182-52-0025, 182-52-0030, 182-52-0035, 182-52-0040, 182-52-0045, 182-52-0050, 182-52-0055, 182-52-0060, 182-52-0065, 182-52-0070, 182-52-0075, 182-52-0080, 182-52-0085, and 182-52-0090.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Other Authority: Chapter 70.405 RCW; SSSB [2SSB] 5532.

Adopted under notice filed as WSR 23-21-082 on October 16, 2023.

Changes Other than Editing from Proposed to Adopted Version:

Proposed /Adopted	WAC Subsection	Reason
WAC 182-52-0010		
Proposed	"Confidential information" means: (a) Specific information collected by the authority that is not publicly available for the purposes of this chapter; or (b) Proprietary data provided by manufacturers in accordance with this chapter that is not subject to public disclosure.	Clarification based on stakeholder comment; changed manufacturers to any entity.
Adopted	"Confidential information" means: (a) Specific information collected by the authority that is not publicly available for the purposes of this chapter; or (b) Proprietary data provided by any entity in accordance with this chapter that is not subject to public disclosure.	
WAC 182-52-0010		
Proposed	No definition	Clarification based on stakeholder comment regarding data confidentiality.
Adopted	**"Data recipient"** means an individual or entity authorized to receive data under chapter 70.405 RCW.	
WAC 182-52-0010		
Proposed	**"Device"** means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is: (a) Recognized in the official national formulary, or the United States Pharmacopoeia, or any supplement to them; (b) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in human beings or other animals; or (c) Intended to affect the structure or any function of the body of human beings or other animals, and which does not achieve its primary intended purposes through chemical action within or on the body of human beings or other animals and which is not dependent upon being metabolized for the achievement of its primary intended purposes. (d) The term "device" does not include software functions excluded under 21 U.S.C. Sec. 360j(o). See 21 U.S.C. Sec. 321 (h)(1) of the Federal Food, Drug, and Cosmetic Act.	Removed definition as it is not relevant to the prescription drug affordability board (PDAB) and not used in the rule.
Adopted	Definition removed.	
WAC 182-52-0010		

Proposed /Adopted	WAC Subsection	Reason
Proposed	**"Drug"**means a substance: (a) Recognized as drugs in the official United States Pharmacopeia, official Homeopathic Pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; (b) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings; (c) Other than food, minerals, or vitamins intended to affect the structure of any function of the body of human beings; and (d) Intended for use as a component of any article specified in (a), (b), or (c) of this definition. "Drug" does not include devices or their components, parts, or accessories.	Removed part of definition referencing device as it is not relevant to PDAB and not referenced in the rule text.
Adopted	**"Drug"** means a substance: (a) Recognized as drugs in the official United States Pharmacopeia, official Homeopathic Pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; (b) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings; (c) Other than food, minerals, or vitamins intended to affect the structure of any function of the body of human beings; and (d) Intended for use as a component of any article specified in (a), (b), or (c) of this definition.	
WAC 182-52-0010		
Proposed	**"Rebate"** means negotiated price concessions, discounts, however characterized, that accrue directly or indirectly to a reporting entity in connection with utilization of prescription drugs by reporting entity members including, but not limited to, rebates, administrative fees, market share rebates, price protection rebates, performance-based price concessions, volume-related rebates, other credits, and any other negotiated price concessions or discounts that are reasonably anticipated to be passed through to a reporting entity during a coverage year, and any other form of price concession prearranged with a covered manufacturer, dispensing pharmacy, pharmacy benefit manager, rebate aggregator, group purchasing organization, or other party which are paid to a reporting entity and are directly attributable to the utilization of certain drugs by reporting entity members.	Clarification of definition based on stakeholder comment.
Adopted	**"Rebate"** means negotiated price concessions, discounts, however characterized, that accrue directly or indirectly to an entity in connection with utilization of prescription drugs including, but not limited to, rebates, administrative fees, market share rebates, price protection rebates, performance-based price concessions, volume-related rebates, other credits, and any other negotiated price concessions or discounts that are reasonably anticipated to be passed through to an entity during a coverage year, and any other form of price concession prearranged with a manufacturer, dispensing pharmacy, pharmacy benefit manager, rebate aggregator, group purchasing organization, or other party which are paid to an entity and are directly attributable to the utilization of certain drugs.	
WAC 182-52-0010		

Proposed /Adopted	WAC Subsection	Reason
Proposed	**"Therapeutic alternative"** means a drug product that contains a different chemical structure than the drug prescribed but is in the same pharmacologic or therapeutic class and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to individuals in a therapeutically equivalent dose.	Definition updated based on stakeholder comment.
Adopted	**"Therapeutic alternative"** means a drug product that may contain a different chemical or biological structure than the drug prescribed and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to individuals in a therapeutically equivalent dose.	
WAC 182-52-0020(3)		
Proposed	(3) The board chair may, if they choose, to step down from their chair responsibilities but can continue to be an active board member.	Clarification.
Adopted	(3) The board chair may choose to step down from their chair responsibilities and can continue to be an active board member.	
WAC 182-52-0040(2)		
Proposed	For drugs chosen for the affordability review, the board must determine whether the drug has led or will lead to excess costs to patients or to public or private health care systems. The board may examine publicly available and confidential information from the prescription drug manufacturer and other sources.	Clarification based on stakeholder comment.
Adopted	For drugs chosen for the affordability review, the board must determine whether the drug has led or will lead to excess costs to patients. Additionally, the board will determine whether a drug has led to or will lead to excess costs as defined in RCW 70.405.010. The board may examine publicly available and confidential information from the prescription drug manufacturer and other sources.	
WAC 182-52-0045(3)		
Proposed	(3) All confidential information collected by the board or the authority under this section is not subject to public disclosure under chapter 42.56 RCW.	Based on stakeholder comment removed term "confidential" to align with statute.
Adopted	(3) All information collected by the board or the authority under this section is not subject to public disclosure under chapter 42.56 RCW.	
WAC 182-52-0050(3)		
Proposed	(3) The confidential information provided by manufacturers under this chapter is not subject to public disclosure under chapter 42.56 RCW.	Clarification based on stakeholder comment.
Adopted	(3) The information collected by the board pursuant to RCW 70.405.040 is not subject to public disclosure under chapter 42.56 RCW.	
WAC 182-52-0050(4)		

Proposed /Adopted	WAC Subsection	Reason
Proposed	(4) Any confidential information provided under this chapter may not be publicly released. Recipients of data under subsection (1) of this section must: (a) Follow all rules adopted by the authority regarding appropriate data use and protection; and (b) Acknowledge that the recipient may be responsible for liability arising from misuse of the data and that the recipient does not have any conflicts under the Ethics in Public Service Act that would prevent the recipient from accessing or using the data.	Clarification of data confidentiality based on stakeholder comment.
Adopted	(4) The authority provides data only after the data recipient, as defined by this chapter, has signed a nondisclosure agreement. The authority may prohibit access to or use of the data by a data recipient who violates the nondisclosure agreement.	
WAC 182-52-0050(5)		
Proposed	No previous subsection.	Added data confidentiality criteria as a result of stakeholder request. These data mirror those in the drug price transparency program found in WAC 182-51-0900.
Adopted	(5) Data recipients must keep data confidential by: (a) Accessing, using, and disclosing information only in accordance with this section and consistent with applicable statutes, regulations, and policies; (b) Having a public policy purpose to access and use the confidential information according to chapter 70.405 RCW; (c) Protecting all confidential information against unauthorized use, access, disclosure, or loss by employing reasonable security measures in alignment with the agency information system security plan, including physically securing any computers, documents, or other media containing confidential information and viewing confidential information only on secure workstations in nonpublic areas; (d) Destroying all confidential information according to document retention requirements; (e) Adhering to the confidentiality requirements in this section after the data recipient is no longer an authorized data recipient under chapter 70.405 RCW; and (f) Acknowledging that the data recipient may be responsible for liability arising from misuse of the data.	
WAC 182-52-0050(6)		
Proposed	No previous subsection.	Added data confidentiality criteria as a result of stakeholder request. These data mirror those in the drug price transparency program found in WAC 182-51-0900.
Adopted	(6) Data recipients must not: (a) Disclose any confidential information, as defined by WAC 182-52-0010, or otherwise publicly release the confidential information; (b) Use or disclose any confidential information for any commercial or personal purpose, or any other purpose that is not authorized in chapter 70.405 RCW; (c) Attempt to identify people who are the subject of the confidential information; (d) Discuss confidential information in public spaces in a manner in which unauthorized individuals could overhear; (e) Discuss confidential information with unauthorized individuals, including spouses, domestic partners, family members, or friends; (f) Have any conflicts of interests under the Ethics in Public Service Act that would prevent the data recipient from accessing or using confidential information; and (g) Share information received according to this chapter with any person who is not authorized to receive confidential information as specified by this chapter.	

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 18, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 18, Amended 0, Repealed 0.

Date Adopted: January 2, 2024.

Wendy Barcus
Rules Coordinator

OTS-4753.4

Chapter 182-52 WAC
PRESCRIPTION DRUG AFFORDABILITY BOARD

NEW SECTION

WAC 182-52-0005 Prescription drug affordability board—Purpose. The prescription drug affordability board conducts reviews of drug prices, performs drug affordability reviews, and sets upper payment limits for prescription drugs.

NEW SECTION

WAC 182-52-0010 Prescription drug affordability board—Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Authority" means the health care authority, as defined in WAC 182-02-045.

"Biological product" has the same meaning as in 42 U.S.C. Sec. 262 (i)(1).

"Biologics" means biological products and biosimilars.

"Biosimilar" has the same meaning as in 42 U.S.C. Sec. 262 (i)(2).

"Board" means the prescription drug affordability board.

"Brand name drug" means specific legend drug products that are sold by a manufacturer under certain trademarks or patents.

"Confidential information" means:

(a) Specific information collected by the authority that is not publicly available for the purposes of this chapter; or

(b) Proprietary data provided by any entity in accordance with this chapter that is not subject to public disclosure.

"Conflict of interest" means an association, including a financial or personal association, that has the potential to bias or appear to bias an individual's decisions in board matters or activities.

"Data recipient" means an individual or entity authorized to receive data under chapter 70.405 RCW.

"Drug" means a substance:

(a) Recognized as drugs in the official United States Pharmacopeia, official Homeopathic Pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings;

(c) Other than food, minerals, or vitamins intended to affect the structure of any function of the body of human beings; and

(d) Intended for use as a component of any article specified in (a), (b), or (c) of this definition.

"Excess costs" means costs of appropriate utilization of a prescription drug that exceed the therapeutic benefit relative to other alternative treatments; or, costs of appropriate utilization of a prescription drug that are not sustainable to public and private health care systems over a 10-year time frame.

"Generic drug" has the same meaning as in RCW 69.48.020.

"Health carrier" or **"carrier"** has the same meaning as in RCW 48.43.005.

"Legend drug" means brand drug, generic drug, or biological product which is required by state law or regulation of the pharmacy quality assurance commission to be dispensed on prescription only or are restricted to use by practitioners only.

"Manufacturer" means a person, corporation, or other entity engaged in the manufacture of prescription drugs sold in or into Washington state. "Manufacturer" does not include a private label distributor or retail pharmacy that sells a drug under the retail pharmacy's store, or a prescription drug repackager.

"Out-of-pocket costs" means the amount of money the patient, another person on behalf of the patient, or entity on behalf of the patient paid to the pharmacy each time a prescription is filled, excluding the amount paid by insurance. Out-of-pocket costs include deductibles, coinsurance, and copayments for covered drugs plus all costs for drugs that are not covered.

"Prescription drug" means a drug regulated under chapter 69.41 or 69.50 RCW, including generic drugs, brand name drugs, specialty drugs, and biological products.

"Publicly available" means information that is available to the general public, whether through internet search, Freedom of Information Act request or similar request, or through purchase or subscription, and includes information submitted to or reviewed by the Food and Drug Administration, information contained in financial statements, and information published or otherwise made available through drug information resources. "Publicly available" does not include trade secrets as defined by RCW 19.108.010 and information protected by copyright law. Publicly available information includes:

(a) Drug name;

(b) Drug class;

(c) Price and pricing;

(d) Course of treatment;

(e) Manufacturer name;

(f) Price increase over time;

(g) Competitors; and

(h) Competitor price and pricing.

"Rebate" means negotiated price concessions, discounts, however characterized, that accrue directly or indirectly to an entity in connection with utilization of prescription drugs including, but not limited to, rebates, administrative fees, market share rebates, price protection rebates, performance-based price concessions, volume-related rebates, other credits, and any other negotiated price concessions or discounts that are reasonably anticipated to be passed through to an entity during a coverage year, and any other form of price concession prearranged with a manufacturer, dispensing pharmacy, pharmacy benefit manager, rebate aggregator, group purchasing organization, or other party which are paid to an entity and are directly attributable to the utilization of certain drugs.

"Therapeutic alternative" means a drug product that may contain a different chemical or biological structure than the drug prescribed and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to individuals in a therapeutically equivalent dose.

"Therapeutic equivalent" means a drug product of the identical base or salt as the specific drug product prescribed with essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen.

NEW SECTION

WAC 182-52-0015 Prescription drug affordability board—Board members. (1) The prescription drug affordability board has five governor-appointed members with expertise in health care economics or clinical medicine. Once appointed, board members serve a five-year term.

(2) The governor may reappoint board members for additional terms.

(3) Board members cannot be an employee of, a board member of, or a consultant to any of the following:

(a) Prescription drug manufacturer;

(b) Pharmacy benefit manager;

(c) Health carrier;

(d) Prescription drug wholesale distributor; or

(e) Trade association related to (a) through (d) of this subsection.

(4) Board members can be replaced or removed under the following circumstances including, but not limited to:

(a) Failure to participate;

(b) Unprofessional/unethical behavior; or

(c) Conflict of interest.

(5) If a board member violates subsection (3) or (4) of this section or other board established policies, the member may be removed from the board.

(6) Following appointment, board members must submit a conflict of interest disclosure form provided by the authority. The conflict of interest disclosure form must be submitted on an annual basis by July 1st of each year while the member is active with the board. Board members must keep their disclosure statements current and provide updated information within 30 calendar days whenever circumstances change.

(7) Board members must recuse themselves from any board activity in which they have a conflict of interest or the appearance of a conflict of interest, whether or not it is disclosed in the conflict of interest disclosure form.

(8) Following appointment and prior to participating in board activities, board members must enter into a personal services contract with the authority to be compensated for participation in the work of the board.

NEW SECTION

WAC 182-52-0020 Prescription drug affordability board—Procedures. (1) The board determines by member vote who will be the board chair and vice chair.

(2) The board chair remains as the chair for the duration of their term unless there are violations as stated in WAC 182-52-0015(4).

(3) The board chair may choose to step down from their chair responsibilities and can continue to be an active board member.

(4) In the absence of the board chair, the vice chair acts in their place for that meeting.

(5) If board member vacancies exist, business continues as necessary with the remaining board members, as long as a quorum exists.

(6) A simple majority of the board's membership constitutes a quorum for the purpose of conducting business. If only three board members are present for a vote, the vote must be unanimous in order to pass.

NEW SECTION

WAC 182-52-0025 Prescription drug affordability board—Meetings. (1) The board meets at least once annually, and additionally as defined by board policy.

(2) All board meetings must be open and public, except that the board may hold executive sessions to the extent permitted by chapter 42.30 RCW.

(a) Before convening an executive session, the board chair must publicly announce the purpose for excluding the public from the executive session.

(b) The board chair must announce the executive session place, date, and time.

(c) The executive session may be extended or have the date and time changed by announcement from the board chair.

NEW SECTION

WAC 182-52-0030 Prescription drug affordability board—Advisory groups—Purpose, participation, application process, and operations. (1) The prescription drug affordability board advisory groups provide

stakeholder input to the board regarding the affordability of prescription drugs.

(2) Utilizing administrative support from the authority, the board will establish advisory groups consisting of relevant stakeholders and subject matter experts for each drug selected for a drug affordability review conducted by the board.

(a) Advisory groups will consist of patients and patient advocates for the condition treated by the drug and one representative of the prescription drug industry. Additional group members, as selected by the board may include, but are not limited to, relevant stakeholders and experts in the following subject matters:

(i) The pharmaceutical business model;

(ii) Supply chain business model;

(iii) The practice of medicine or clinical training;

(iv) Health care consumer or patient perspectives;

(v) Health care cost trends and drivers;

(vi) Clinical and health services research;

(vii) The state's health care marketplace; or

(viii) Health care provider who specializes in treating the condition for the drug being reviewed.

(b) To the extent possible, advisory group members will have experience serving underserved communities and reflect the diversity of the state with regard to race, ethnicity, immigration status, income, wealth, disability, age, gender identity, sexual orientation, and geography.

(3) Advisory group members are chosen by the authority. Once members complete the conflict of interest form, they serve on the advisory group(s) through conclusion of the current affordability review. The authority may remove or replace advisory group members for, among other reasons:

(a) Failure to participate;

(b) Unprofessional/unethical behavior; or

(c) Conflict of interest.

(4) Advisory group members cannot be an employee of, a board member of, or a consultant to any of the following:

(a) Prescription drug manufacturer (with the exception that one representative from the prescription drug industry can serve on an advisory group and may be an employee, consultant, or board member of a prescription drug manufacturer or related trade association and will not be deemed to have a conflict of interest, see subsection (2) of this section);

(b) Pharmacy benefit manager;

(c) Health carrier;

(d) Prescription drug wholesale distributor; or

(e) Trade association related to (a) through (d) of this subsection.

(5) If an advisory group member violates any of subsection (4) of this section, the member may be removed from the advisory group(s).

(6) To become a member of advisory groups, the authority will establish an application process to be maintained and posted on the authority's website.

(7) Advisory groups meet on a frequency as determined necessary by the board.

(8) Participation in advisory groups is voluntary. Members of the advisory groups are not compensated.

NEW SECTION

WAC 182-52-0035 Prescription drug affordability board—Review of drug prices. (1) By June 30th of each year, using data considered relevant by the board, the board must identify legend drugs and biologics that:

(a) Have been on the market for at least seven years;

(b) Are dispensed at a retail, specialty, or mail-order pharmacy; and

(c) Are not designated by the FDA under 21 U.S.C. Sec. 360bb as a drug solely for the treatment of a rare disease or condition.

(2) The legend drugs and biologics must meet the following thresholds:

(a) Brand name drugs and biologic products that must have:

(i) A wholesale acquisition cost of $60,000 or more per year or course of treatment lasting less than 12 months; or

(ii) A wholesale acquisition cost increase of 15 percent or more in any 12-month period or for a course of treatment lasting less than 12 months, or a 50 percent cumulative increase during any 36-month period.

(b) A biosimilar product with an initial wholesale acquisition cost that is less than 15 percent lower than the wholesale acquisition cost of the reference biological product, on the date the biosimilar becomes available on the market; and

(c) Generic drugs with a wholesale acquisition cost of $100 or more, for a 30-day supply or course of treatment less than 30 days, that has an increase in price of 200 percent or more in the preceding 12 months.

NEW SECTION

WAC 182-52-0040 Prescription drug affordability board—Affordability review requirements. (1) The board may choose to conduct an affordability review of up to 24 legend drugs or biologics per year and consider the following:

(a) The class of the prescription drug and whether any therapeutically equivalent prescription drugs are available for sale;

(b) Input from relevant advisory groups as listed in this chapter; and

(c) The out-of-pocket cost for the drug.

(2) For drugs chosen for the affordability review, the board must determine whether the drug has led or will lead to excess costs to patients. Additionally, the board will determine whether a drug has led to or will lead to excess costs as defined in RCW 70.405.010. The board may examine publicly available and confidential information from the prescription drug manufacturer and other sources.

(3) The board, or the authority as directed by the board, may request information from the manufacturer. The requested information must be sent to the authority in the form and manner as published by the authority within 30 calendar days of the date on the request.

(4) The authority may assess a fine against a manufacturer for each failure to comply with a request for information from the board or the authority on behalf of the board. See WAC 182-52-0075 for information on notification of violation and fine(s).

NEW SECTION

WAC 182-52-0045 Prescription drug affordability board—Drug publication and conducting affordability reviews. Drugs selected for an affordability review are published on the board's website before initiating the affordability review.

(1) When conducting an affordability review, the board will consider:

(a) The relevant factors contributing to the price paid for the prescription drug, including the wholesale acquisition cost, discounts, rebates, and other price concessions;

(b) The average out-of-pocket cost for the drug;

(c) The effect of the price on consumers' access to the drug in the state;

(d) Orphan drug status;

(e) The dollar value and accessibility of patient assistance programs offered by the manufacturer for the drug;

(f) The price and availability of therapeutic alternatives;

(g) Input from:

(i) Patients affected by the condition or disease treated by the drug; and

(ii) Individuals with medical or scientific expertise related to the condition or disease treated by the drug;

(h) Any other information the drug manufacturer or other relevant entity chooses to provide; and

(i) The impact of pharmacy benefit manager policies on the price consumers pay for the drug.

(2) In performing an affordability review of a drug the board may consider the following factors:

(a) Life-cycle management;

(b) The average cost of the drug in the state;

(c) Market competition and context;

(d) Projected revenue;

(e) Off-label usage of the drug; and

(f) Any additional factors identified by the board.

(3) All information collected by the board or the authority under this section is not subject to public disclosure under chapter 42.56 RCW.

NEW SECTION

WAC 182-52-0050 Prescription drug affordability board—Data and confidentiality. (1) For the purpose of reviewing drug prices and conducting affordability reviews, the board (as established in chapter 70.405 RCW) and the health care cost transparency board (established in chapter 70.390 RCW) may access all data collected under RCW 43.71C.020 through 43.71C.080 and any analysis prepared by the authority.

(2) Advisory group members may not access or review any confidential information.

(3) The information collected by the board pursuant to RCW 70.405.040 is not subject to public disclosure under chapter 42.56 RCW.

(4) The authority provides data only after the data recipient, as defined by this chapter, has signed a nondisclosure agreement. The authority may prohibit access to or use of the data by a data recipient who violates the nondisclosure agreement.

(5) Data recipients must keep data confidential by:

(a) Accessing, using, and disclosing information only in accordance with this section and consistent with applicable statutes, regulations, and policies;

(b) Having a public policy purpose to access and use the confidential information according to chapter 70.405 RCW;

(c) Protecting all confidential information against unauthorized use, access, disclosure, or loss by employing reasonable security measures in alignment with the agency information system security plan, including physically securing any computers, documents, or other media containing confidential information and viewing confidential information only on secure workstations in nonpublic areas;

(d) Destroying all confidential information according to document retention requirements;

(e) Adhering to the confidentiality requirements in this section after the data recipient is no longer an authorized data recipient under chapter 70.405 RCW; and

(f) Acknowledging that the data recipient may be responsible for liability arising from misuse of the data.

(6) Data recipients must not:

(a) Disclose any confidential information, as defined by WAC 182-52-0010, or otherwise publicly release the confidential information;

(b) Use or disclose any confidential information for any commercial or personal purpose, or any other purpose that is not authorized in chapter 70.405 RCW;

(c) Attempt to identify people who are the subject of the confidential information;

(d) Discuss confidential information in public spaces in a manner in which unauthorized individuals could overhear;

(e) Discuss confidential information with unauthorized individuals, including spouses, domestic partners, family members, or friends;

(f) Have any conflicts of interests under the Ethics in Public Service Act that would prevent the data recipient from accessing or using confidential information; and

(g) Share information received according to this chapter with any person who is not authorized to receive confidential information as specified by this chapter.

NEW SECTION

WAC 182-52-0055 Prescription drug affordability board—Authorization to assess fines. (1) RCW 70.405.040 allows the authority to assess a fine(s) against a manufacturer for failure to comply with the requirements of this chapter. See WAC 182-52-0065 for fine(s) for failing to comply with information request(s) and WAC 182-52-0070 for the amount of the fine(s) based on culpability.

(2) The authority may grant an extension of time to an information request deadline under WAC 182-52-0060.

NEW SECTION

WAC 182-52-0060 Prescription drug affordability board—Extension of deadlines. (1) The authority may grant:

(a) An extension of time for an information request submission deadline; or

(b) Permission to correct a previously submitted and accepted request.

(2) Extensions:

(a) The manufacturer or subcontractor may request an extension of time for an information request submission deadline or the resubmission of a request due to circumstances beyond their control affecting the manufacturer's or subcontractor's ability to submit the information by the deadline.

(b) The request for an extension must contain a detailed explanation as to the reason the manufacturer or subcontractor is unable to meet the information request deadline.

(c) The manufacturer or subcontractor must submit a request for an extension to the authority at least 10 calendar days before the applicable deadline unless the manufacturer or subcontractor is unable to meet this deadline due to circumstances beyond their control. If unable to meet the deadline, the manufacturer or subcontractor must notify the authority in writing as soon as the manufacturer or subcontractor determines that an extension is necessary.

(d) The authority may approve an extension on a case-by-case basis based on the specific circumstances or other circumstances beyond the control of the manufacturer. The authority provides written notification of an approval or denial to the manufacturer or subcontractor within 15 calendar days from the date the authority receives the request from the manufacturer or subcontractor. If the authority does not approve a request for an extension, the written notification includes the reason for the denial. Only the authority can approve or deny a request for an extension.

(e) The manufacturer or subcontractor may not appeal the authority's decision to deny an extension.

NEW SECTION

WAC 182-52-0065 Prescription drug affordability board—Fine(s) for failure to comply with information request(s). (1) The authority may assess a fine of up to $100,000 against a manufacturer for each failure to comply with a request for information from the board or the authority as directed by the board.

(2) The assessment of a fine under this section is subject to review under the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 182-52-0070 Prescription drug affordability board—Amount of fine(s) based on culpability. (1) In determining the amount of any fine, the authority considers the level of culpability associated with

the violation. The levels of culpability, in the order of least severe to most severe, are as follows:

(a) **Did not know.** The manufacturer did not know (and, by exercising reasonable diligence, could not have known) the violation had occurred.

(b) **Reasonable cause.** The manufacturer knew, or by exercising reasonable diligence should have known, that the violation had taken place, but the manufacturer did not act with willful neglect.

(c) **Willful neglect – Corrected.** The violation was due to the manufacturer's intentional failure or reckless indifference, and the violation was corrected within 30 calendar days from the date the manufacturer knew or with reasonable diligence should have known of the violation.

(d) **Willful neglect – Uncorrected.** The violation was due to the manufacturer's intentional failure or reckless indifference, and the violation was not corrected within 30 calendar days from the date the manufacturer knew or with reasonable diligence should have known of the violation.

(2) Culpability and fines.

Culpability Category	Fines Per Violation
Did not know	$25,000
Reasonable cause	$50,000
Willful neglect – Corrected	$75,000
Willful neglect – Uncorrected	$100,000

NEW SECTION

WAC 182-52-0075 Prescription drug affordability board—Advisory notice, notice of violation, and fine(s). (1) The authority will issue an advisory notice to the manufacturer for the initial request for information directing the manufacturer to comply within 30 calendar days of the request or request an extension of time to provide the required information, in accordance with WAC 182-52-0060.

(2) If the manufacturer fails to comply with the initial request for information within 30 calendar days, the authority may assess a fine(s). The authority will mail a preliminary notice of violation to the manufacturer's last known address in a manner that provides proof of receipt by the manufacturer.

(3) The preliminary notice of violation and fine(s) will include the following information:

(a) The specific reasons and criteria that support the imposition of the assessed fine(s);

(b) The legal authority that supports the imposition of a fine(s);

(c) The amount of the fine(s); and

(d) An explanation of the manufacturer's right to request an informal dispute resolution conference.

NEW SECTION

WAC 182-52-0080 Prescription drug affordability board—Appeal determination of a violation and assessed fine(s). (1) Each manufacturer to whom the authority issues a preliminary notice of violation and fine(s) may request an informal dispute resolution conference. If the manufacturer does request an informal dispute resolution conference, then the manufacturer must complete the process before requesting an administrative hearing.

(2) In lieu of an informal dispute resolution conference, the manufacturer may request an administrative hearing, under WAC 182-52-0090, in writing, in a manner that provides proof of receipt by the authority, within 28 calendar days after receipt of the notice of violation and fine(s). Upon receipt of the manufacturer's request for administrative hearing, the authority will issue a final notice of violation and fine(s) with an explanation of the manufacturer's administrative hearing rights (See WAC 182-52-0090).

(3) If the manufacturer does not request an informal dispute resolution conference or administrative hearing within 28 calendar days after receipt of the preliminary notice of violation and fine(s), the authority issues a final notice of violation with an explanation of the manufacturer's administrative hearing rights (See WAC 182-52-0090).

NEW SECTION

WAC 182-52-0085 Prescription drug affordability board—Informal dispute resolution process prior to an administrative hearing. (1) The manufacturer may informally dispute the authority's determination of a violation under this chapter.

(2) The manufacturer must submit a request for an informal dispute resolution conference to the authority in writing, in a manner that provides proof of receipt by the authority, within 28 calendar days after receipt of the notice violation and fine(s).

(3) Requests must specify:

(a) The name of the manufacturer requesting the informal dispute resolution conference and the manufacturer's, or representative's, mailing address, telephone number, and email address (if available);

(b) The items, facts, or conclusions in the notice of violation being contested; and

(c) The basis for contesting the authority's action, including any mitigating factors upon which the manufacturer relies and the outcome the manufacturer is seeking.

(4) The conference occurs within 60 calendar days of the date the manufacturer received the authority's written acceptance of the request for a dispute resolution conference.

(5) The manufacturer must notify the authority of who will attend the dispute resolution conference on the manufacturer's behalf at least five business days before the conference.

(6) The authority may terminate the dispute resolution process at any time and will provide the manufacturer with the reason for the termination.

(7) Upon completion or termination of the informal dispute resolution process, the authority will issue a final notice of violation and fine(s).

(8) Nothing in this chapter prevents settlement discussions between the parties. All settlement discussions are informal and without prejudice to the rights of the participants in the discussions.

NEW SECTION

WAC 182-52-0090 Prescription drug affordability board—Administrative hearing rights. A manufacturer has a right to an administrative hearing under chapters 34.05 RCW and 182-526 WAC, if the authority assesses a notice of violation and fine(s) against the manufacturer.

WSR 24-02-080
PERMANENT RULES
OFFICE OF THE
INSURANCE COMMISSIONER

[Insurance Commissioner Matter R 2023-08—Filed January 2, 2024, 3:57 p.m., effective February 2, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is adopting this rule making to resolve misalignment identified between authorities in the insurance code. The rules in chapter 284-23 WAC do not align with the laws in chapter 48.83 RCW, as applied to life insurance policy riders with accelerated benefits for long-term care insurance (LTCi). The rules currently prohibit life insurers from offering life insurance policies with riders that have accelerated benefits for LTCi and require disclosure statements communicating this prohibition. This contradicts current law that allows life insurance policies with riders to fund LTCi benefits through the acceleration of the policy's death benefits under certain conditions (see WAC 284-23-650, RCW 48.83.010(3), 48.83.020 (5)(a), and 48.83.080).

Citation of Rules Affected by this Order: Amending WAC 284-23-650.

Statutory Authority for Adoption: RCW 48.02.060 and 48.83.170.

Other Authority: RCW 48.83.010, 48.83.020, and 48.83.080.

Adopted under notice filed as WSR 23-23-173 on November 22, 2023.

A final cost-benefit analysis is available by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email Simon.Casson@oic.wa.gov, website https://www.insurance.wa.gov/consolidated-health-care-rulemaking-r-2023-07.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: January 2, 2024.

Mike Kreidler
Insurance Commissioner

OTS-5077.1

AMENDATORY SECTION (Amending WSR 08-24-023, filed 11/24/08, effective 12/25/08)

WAC 284-23-650 Disclosure statement. (1) For purposes of this section, "policy" includes any agreement, amendment, certificate, con-

tract, endorsement, plan, or statement of coverage that provides for life insurance benefits.

(2) The words "accelerated benefit" must be included in the required title of every life insurance policy or rider that includes a provision for accelerated benefits. Accelerated benefits that do not meet the definition of long-term care insurance in RCW 48.83.020(5), shall not be described, advertised, marketed, or sold as either long-term care insurance or as providing long-term care benefits.

((~~(2)~~)) (3) Possible tax consequences and possible consequences on eligibility for receipt of medicare, medicaid, Social Security, supplemental security income (SSI), or other sources of public funding shall be included in every disclosure statement.

(a) The disclosure form shall include a disclosure statement. The disclosure statement shall be prominently displayed on the first page of the policy, rider, or certificate. The disclosure statement shall contain substantially the following: "If you receive payment of accelerated benefits from a life insurance policy, you may lose your right to receive certain public funds, such as medicare, medicaid, Social Security, Supplemental Security, supplemental security income (SSI), and possibly others. Also, receiving accelerated benefits from a life insurance policy may have tax consequences for you. We cannot give you advice about this. You may wish to obtain advice from a tax professional or an attorney before you decide to receive accelerated benefits from a life insurance policy."

(b) For accelerated benefits that do not meet the definition of long-term care insurance in RCW 48.83.020(5), the disclosure statement must begin with the following statement: "This accelerated life benefit does not and is not intended to qualify as long-term care insurance under Washington state law. Washington state law prevents this accelerated life benefit from being marketed or sold as long-term care insurance or as providing long-term care benefits.

(c) The disclosure form must be provided (i) to the applicant for an individual or group life insurance policy at the time application is made for the policy or rider; and (ii)(A) to the individual insured at the time the owner of an individual life insurance policy submits a request for payment of the accelerated benefit, and before the accelerated benefit is paid, or (B) to the individual certificate holder at the time an individual certificate holder of a group life insurance policy submits a request for payment of the accelerated benefit, and before the accelerated benefit is paid. It is not sufficient to provide this required disclosure statement only to the holder of a group policy.

((~~(3)~~)) (4) The disclosure form shall give a brief and clear description of the accelerated benefit. It shall define all qualifying events which can trigger payment of the accelerated benefit. It shall also describe any effect of payment of accelerated benefits upon the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens.

(a) In the case of insurance solicited by an insurance producer, the insurance producer shall provide the disclosure form to the applicant before or at the time the application is signed. Written ((~~acknowledgement~~)) acknowledgment of receipt of the disclosure statement shall be signed by the applicant and the insurance producer.

(b) In the case of a solicitation by direct response methods, the insurer shall provide the disclosure form to the applicant at the time the policy is delivered, with a written notice that a full premium re-

fund shall be made if the policy is returned to the insurer within the free look period.

(c) In the case of group life insurance policies, the disclosure form shall be contained in the certificate of coverage, and may be contained in any other related document furnished by the insurer to the certificate holder.

((~~(4)~~)) (5) If there is a premium or cost of insurance charge for the accelerated benefit, the insurer shall give the applicant a generic illustration numerically demonstrating any effect of the payment of an accelerated benefit upon the policy's cash value, accumulation account, death benefit, premium, policy loans, or policy liens.

(a) In the case of agent solicited insurance, the agent shall provide the illustration to the applicant either before or at the time the application is signed.

(b) In the case of a solicitation by direct response methods, the insurer shall provide the illustration to the applicant concurrently with delivery of the policy to the applicant.

(c) In the case of group life insurance policies, the disclosure form shall be included in the certificate of insurance or any related document furnished by the insurer to the certificate holder.

((~~(5)~~)) (6)(a) Insurers with financing options other than as described in WAC 284-23-690 (1)(b) and (c) of this regulation, shall disclose to the policyowner any premium or cost of insurance charge for the accelerated benefit. Insurers shall make a reasonable effort to assure that the certificate holder on a group policy is made aware of any premium or cost of insurance charge for the accelerated benefits, if he or she is required to pay all or any part of such a premium or cost of insurance charge.

(b) Insurers shall furnish an actuarial demonstration to the Insurance Commissioner when filing an individual or group life insurance policy or rider form that provides accelerated benefits, showing the method used to calculate the cost for the accelerated benefit.

((~~(6)~~)) (7) Insurers shall disclose to the policyholder any administrative expense charge. The insurer shall make a reasonable effort to assure that the certificate holder on a group policy is made aware of any administrative expense charge if he or she is required to pay all or any part of any such charge.

((~~(7)~~)) (8) When the owner of an individual policy or the certificate holder of a group policy requests payment of an accelerated benefit, within ((~~twenty~~)) 20 days of receiving the request the insurer shall send a statement to that person, and to any irrevocable beneficiary, showing any effect that payment of an accelerated benefit will have on the policy's cash value, accumulation account, death benefit, premium, policy loans, and policy liens. This statement shall disclose that receipt of accelerated benefit payments may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlements. When the insurer pays the accelerated benefit, it shall issue an amended schedule page to the owner of an individual policy, or to the certificate holder of a group policy, showing any new, reduced in-force amount of the policy. When more than one payment of accelerated benefit is permitted under the policy or rider, the insurer shall send a revised statement to the owner of an individual policy, or to the certificate holder of a group policy, when a previous statement has become invalid due to payment of accelerated benefits.